

# **ATTACHMENT TO AGENDA ITEM**

**Ordinary Meeting**

**15 September 2015**

<b>Agenda Item 9.4</b>	<b>Adoption of Amendment C180 (289 Maude Street, Shepparton) to the Greater Shepparton Planning Scheme and Implementation of Land Exchange</b>	
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*Planning and Environment Act 1987*

Panel Report

Greater Shepparton Planning Scheme Amendment C180  
Maude Street Bus Interchange

19 August 2015

*Planning and Environment Act 1987*

Panel Report pursuant to Section 25 of the Act

Greater Shepparton Planning Scheme Amendment C180

Maude Street Bus Interchange

19 August 2015

A handwritten signature in black ink, appearing to read 'Con Tsotsoros'. The signature is written in a cursive, somewhat stylized font.

Con Tsotsoros, Chair

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## Overview

Amendment Summary	
<b>The Amendment</b>	Greater Shepparton Planning Scheme Amendment C180
<b>Common Name</b>	Maude Street Bus Interchange
<b>Subject Land</b>	289 Maude Street, Shepparton and adjoining access road
<b>Planning Authority</b>	Greater Bendigo City Council
<b>Authorisation</b>	11 March 2015
<b>Exhibition</b>	16 April to 18 May 2015
<b>Submissions</b>	11 (4 opposing) and a petition: <ol style="list-style-type: none"> <li>1. Goulburn Broken Catchment Management Authority</li> <li>2. Goulburn Valley Water</li> <li>3. Environment Protection Authority</li> <li>4. Department of Environment, Land, Water and Planning</li> <li>5. Public Transport Authority</li> <li>6. Mr and Mrs Longo</li> <li>7. Lascorp Development Group (Aust) Pty Ltd</li> <li>8. Isodoro Patane</li> <li>9. Norovlla Nazari</li> <li>10. Danny Ryan</li> <li>11. Goulburn-Murray Water</li> <li>12. Farm Fresh Fruits petition</li> </ol>
Panel Process	
<b>The Panel</b>	Con Tsotsoros (Chair)
<b>Directions Hearing</b>	Shepparton, 29 June 2015
<b>Panel Hearing</b>	Shepparton, 6 August 2015
<b>Site Inspections</b>	Unaccompanied, 29 June and 6 August 2015
<b>Appearances</b>	<ul style="list-style-type: none"> <li>- Greater Shepparton City Council represented by Mr Ian Pridgeon of Russell Kennedy Lawyers</li> <li>- Lascorp Development Group represented by Mr Rob Harris</li> <li>- Isodoro Patane</li> <li>- Ms Grace Longo</li> </ul>
<b>Date of this Report</b>	19 August 2015

## Executive Summary

### (i) Summary

The Amendment proposes to apply the Public Acquisition Overlay to 289 Maude Street in Shepparton and the Road Closure Overlay to an access road abutting to the north.

The Shepparton Activity Centre is located in the Hume Region and serves an estimated regional population of over 170,000 people. Greater Shepparton's municipal population is predicted to grow from 63,900 in 2011 to 77,800 in 2031.

The Shepparton CBD Strategy 2008 recognises the need for an upgraded bus interchange in Maude Street between Vaughan Street and Ashenden Street in the Shepparton Activity Centre. This strategy formed the basis for Amendment C92 to the Greater Shepparton Planning Scheme that has been adopted by Council and awaiting a decision from the Minister for Planning. The Greater Shepparton City Council Plan 2013-2017 and the Greater Shepparton 2030 Strategy Plan include content relevant to the bus interchange.

In 2011, Council commenced the process for preparing a bus interchange concept plan in response to strategies, objectives and actions found in the Shepparton CBD Strategy. This process identified the need to acquire 289 Maude Street to accommodate facilities associated with the bus interchange. The proposal also includes closing an access road and Council exchanging land with Shepparton Retail Holdings Pty Ltd.

A community benefit assessment of Shepparton's revitalisation projects found that projects in Precinct 1, including the proposed bus interchange, had a generally high community benefit rating.

Amendment C180 to the Greater Shepparton Planning Scheme is supported by, and implements, the relevant sections of the State and Local Planning Policy Frameworks. A total of 11 submissions were received, with four objecting because of issues related to compensation, amenity and safety. Matters related to compensation can be addressed through the *Land Acquisition and Compensation Act 1986*. After careful consideration of all submissions, the Panel found no amenity issues that require the Amendment to be changed.

The Panel acknowledges that there will be an impact on the property owner and tenant of 289 Maude Street, however, the Panel considers that the net community benefit outweighs this impact.

### (ii) Recommendation

Based on the reasons set out in this Report, the Panel recommends:

**Greater Shepparton Planning Scheme Amendment C180 should be adopted as exhibited.**

## 1 Introduction

### 1.1 The Amendment

As exhibited, the Amendment proposes to apply the Public Acquisition Overlay (PAO20) to 289 Maude Street, Shepparton and the Road Closure Overlay to land shown as 'Road' in Figure 3.

### 1.2 The subject land and surrounds

Both sites are located in the Shepparton Activity Centre and form the subject land.

289 Maude Street comprises two lots with a total area of 738 square metres. A fresh fruit and vegetables shop currently operates from the converted residential building located on the subject land. The land directly north of 289 Maude Street, known as 25 Vaughan Street, is owned by Shepparton Retail Holdings Pty Ltd.

The Shepparton Activity Centre is located in the Hume Region and serves an estimated regional population of over 170,000 people. Greater Shepparton's municipal population is predicted to grow from 63,900 in 2011 to 77,800 in 2031<sup>1</sup>.

### 1.3 Background

<b>October 2008</b>	Shepparton CBD strategy was prepared by Planisphere and adopted by Council - the Maude Street bus interchange was identified
<b>Early/mid 2011</b>	Bus interchange concept plan commenced preparation - the need to acquire 289 Maude Street, Shepparton was identified during this process
<b>2013</b>	New Council Plan - included a goal relevant to the Maude Street bus interchange
<b>March 2013</b>	Preliminary consultation with the owners of 289 Maude Street, Shepparton commenced
<b>16 April 2013</b>	Council endorsed the concept plans and resolved to commence public consultation
<b>December 2013</b>	The 'Maude Street Bus Interchange Bus Shelters Design Report' was prepared by Liesl Malan Landscape Architects
<b>16 September 2014</b>	Council endorsed the final version of the concept plan
<b>October 2014</b>	Shepparton Revitalisation Project - Community Benefit Assessment Update was prepared by Capire
<b>21 April 2015</b>	Council resolved to adopt Amendment C92 and submit it to the Minister for Planning for a decision

<sup>1</sup> Hume Regional Growth Plan, May 2014, p9



**1.4 The proposal**

The Amendment is required to facilitate the proposed Maude Street bus interchange, as shown in the concept plan (Figure 1). The upgraded bus interchange will comprise a sheltered waiting area with seating, public amenities, parent’s room, adult change facilities, bike lockers, information and direction signage and footpath widening. This figure shows the bus interchange located partly on 289 Maude Street and partly on 25 Vaughan Street.



Figure 1 Proposed Maude Street bus interchange (Maude Street Streetscape Redevelopment Concept Plan 2013)



Figure 2 View from Vaughan Street shelter towards public facilities

**Land exchange**

The property boundaries for 25 Vaughan Street and 289 Maude Street need to be realigned before the bus interchange shown in the concept plan can be developed. To facilitate this realignment, Council is proposing to exchange land with Shepparton Retail Holdings Pty Ltd through the following stages:

- Stage 1: Acquire 289 Maude Street and close the road east of 25 Vaughan Street
- Stage 2: Realign property boundaries and exchange land.

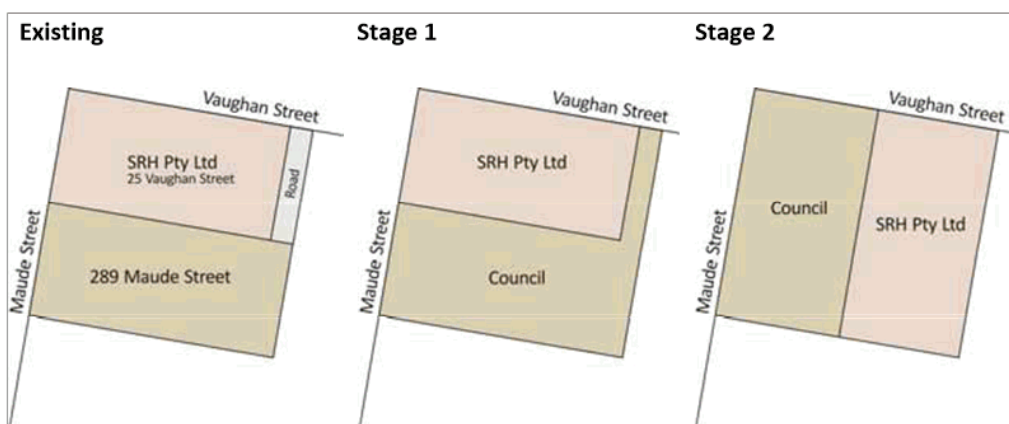


Figure 3 Staged land acquisition and land exchange

Council intends to use a land exchange agreement, pursuant to section 173 of the *Planning and Environment Act 1987*, to manage the process. A draft agreement was prepared by Russell Kennedy Lawyers and provided to the Panel.

**Land acquisition**

In its direction, the Panel asked Council to confirm in writing its intention to acquire the subject land and provide the timeframe for this acquisition. In response to this direction,

Russell Kennedy Lawyers, on behalf of Council, circulated a letter to all parties on 22 July 2015 stating:

We are instructed to the effect that the Greater Shepparton City Council intends to acquire the subject land as soon as it is practically able to, in order to advance the Maude Street bus interchange project, which is a project currently being pursued by the Council.

We are instructed that funding has already been allocated to the project by the Department of Health and Human Services and that further funding is currently being sought through the National Stronger Regions Fund program.

Further, the Maude Street bus interchange project is a project identified in the Greater Shepparton City Council Plan 2013-2017.

At the Hearing, Council submitted that \$3 million of the \$6.1 million required for the bus interchange is to be funded by Regional Development Australia; an Australian Government initiative. It added that this funding is conditional to the bus interchange being completed by September 2019.

### **Car parking**

Council submitted that the proposed bus interchange will result in 33 standard car parking spaces being removed in Maude Street between Vaughan Street and Ashenden Street. This includes parallel and centre road parking. There will be 87 additional car parking spaces provided in other streets within the Shepparton Activity Centre.

## **1.5 Issues dealt with in this report**

The Panel considered all written submissions, as well as submissions presented to it during the Hearing. In addressing the issues raised in those submissions, the Panel has been assisted by the information provided to it as well as its observations from inspections of specific sites.

Submissions raised issues related to compensation, amenity and suitability of location for the bus interchange.

This report deals with the issues under the following headings:

- Planning context
- Strategic justification
- Issues
  - Compensation
  - Amenity and safety
  - Suitability of location.

## 2 Planning context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report and its submission at the Hearing. The Panel has reviewed the policy context of the Amendment and made a brief appraisal of the relevant zone and overlay controls and other relevant planning strategies.

### 2.1 Policy framework

Table 1 Policy Framework

State Planning Policy Framework	
<b>Clauses</b>	
<b>11</b>	<b>Settlement</b>
	<b>11.01 Activity centres</b>
	<b>11.01-1 Activity centre network</b>
	To build up activity centres as a focus for high-quality development, activity and living for the whole community by developing a network of activity centres.
	<b>11.01-2 Activity centre planning</b>
	To encourage the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centres which provide a variety of land uses and are highly accessible to the community.
	<b>11.10 Hume regional growth</b>
	<b>Strategies</b>
	Facilitate growth and development specifically in the regional cities of Shepparton, Wangaratta and Wodonga, and in Benalla.
	Support improved access to a range of employment and education opportunities, particularly in key urban locations such as Shepparton, Wangaratta, Wodonga, Benalla and Seymour.
<b>15</b>	<b>Built environment and heritage</b>
	Planning should ensure all new land use and development appropriately responds to its landscape, valued built form and cultural context, and protect places and sites with significant heritage, architectural, aesthetic, scientific and cultural value.
	<b>15.01 Urban development</b>
	To create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity.
<b>17</b>	<b>Economic development</b>
	<b>17.01 Commercial</b>
	<b>17.01-1 Business</b>
	To encourage development which meet the communities' needs for retail, entertainment, office and other commercial services and provides net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities.
<b>18</b>	<b>Transport</b>
	<b>18.01 Integrated transport</b>
	To create a safe and sustainable transport system by integrating land-use and transport.
<b>19</b>	<b>Infrastructure</b>
	Strategic planning should facilitate efficient use of existing infrastructure and human services. Providers of infrastructure, whether public or private bodies, are to be guided by planning policies and should assist strategic land use planning

<b>Local Planning Policy Framework</b>	
<b>Clauses</b>	
<b>21</b>	<b>Municipal Strategic Statement</b>
<b>21.06</b>	<b>Housing</b> Sustainable and well-designed housing can improve affordability over the long term, and contribute to the preferred neighbourhood character of residential areas.
<b>21.06-5</b>	<b>Commercial/Activity centres</b> Provide neighbourhood commercial and retail centres that are accessible to the local community, especially by public transport and bicycle, and that also have adequate car parking provisions.
<b>21.07</b>	<b>Infrastructure</b>
<b>21.07-1</b>	<b>Transport</b> The development and maintenance of safe and efficient traffic and transport systems throughout the municipality is a priority.

**2.2 Zones and overlays**

The Amendment proposes to apply the Public Acquisition Overlay to 289 Maude Street and the Road Closure Overlay to part of the subject land.

Table 2 Purposes of the zones and overlays

Zone	Overlays	
Commercial 1	Public Acquisition	Road Closure
<b>Common purpose</b>		
To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.		
<b>Other purposes</b>		
<ul style="list-style-type: none"> <li>- To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.</li> <li>- To provide for residential uses at densities complementary to the role and scale of the commercial centre.</li> </ul>	<ul style="list-style-type: none"> <li>- To identify land which is proposed to be acquired by a Minister, public authority or municipal council.</li> <li>- To reserve land for a public purpose and to ensure that changes to the use or development of the land do not prejudice the purpose for which the land is to be acquired.</li> <li>- To designate a Minister, public authority or municipal council as an acquiring authority for land reserved for a public purpose.</li> </ul>	<ul style="list-style-type: none"> <li>- To identify a road that is closed by an amendment to this planning scheme.</li> </ul>

**2.3 Planning strategy and plans**

**Hume Regional Growth Plan**

The Hume Regional Growth Plan was prepared in May 2014 and provides a regional approach to land use planning in the Hume Region. It recognises that:

- Major urban growth and development in the Goulburn Valley sub-region will be focused in Shepparton.
- Significant public investment will be needed in the Shepparton Central Business District to support this growth and stimulate private sector investment.
- Shepparton will continue to develop its role as a business, retail and services hub for the region.
- Redeveloping the Central Business District and infill housing development will reinvigorate the centre of the city.

#### **Greater Shepparton City Council Plan 2013-2017**

The Greater Shepparton Council Plan 2013-2017 sets Council's strategic direction for the next four years and beyond. The Plan includes five strategic goals including Quality Infrastructure which is relevant to the bus interchange.

The *Local Government Act 1989* requires each council to prepare a council plan every four years.

#### **Greater Shepparton 2030 Strategy Plan**

The Greater Shepparton 2030 Strategy Plan sets out the municipality's strategies and objections for change and growth. They are directly linked to the Municipal Strategic Statement of the Greater Shepparton Planning Scheme.

#### **Shepparton CBD Strategy**

The Shepparton CBD Strategy was prepared by Planisphere in October 2008 and contains 11 priorities and themes, objectives, strategies and actions to implement the vision set out for the Centre. Theme 4 (Access) includes objectives and strategies for the Maude Street bus interchange.

Council adopted the Strategy in October 2008 and sought to implement its findings and recommendations through Amendment C92. At its 21 April 2015 meeting, Council adopted Amendment C92 and resolved to submit it to the Minister for Planning for a decision. Amendment C92 was not introduced into the Greater Shepparton Planning Scheme at the time of this report, however, the Panel considers the Shepparton CBD Strategy to be a seriously entertained document.

#### **Bus Interchange Concept Plan**

The bus interchange concept plan, as shown in Figure 1, provides details about the new interchange and associated facilities and street works. Council submitted that the concept plan was prepared in conjunction with a working group comprising of representatives from Department of Human Services, Disability Advisory Committee, the Positive Aging Advisory Committee and members of Council's project committee.

This process resulted in the 'Maude Street Bus Interchange Bus Shelters Design Report' being prepared by Liesl Malan Landscape Architects in December 2013.

### 3 Strategic justification

There is considerable policy and strategic work to support the Amendment. This includes the Shepparton CBD Strategy and Shepparton Revitalisation Project - Community Benefit Assessment Update. The bus interchange and associated facilities are identified in the Shepparton CBD Strategy 2008 and Greater Shepparton City Council Plan 2013-2017.

#### 3.1 Shepparton CBD Strategy

In support of a new bus interchange in Maude Street, the Strategy states:

There is much support in Shepparton for creation of a bus interchange in a CBD location. An expanded bus interchange is particularly important to support access from residential areas; due to the nature of bus services being interconnecting and requiring interchange between services; and to facilitate sustainable and affordable modes of transport in Shepparton.

Relevant objectives include:

- Refocus the Shepparton CBD as a place for pedestrians and local traffic.
- Improve access to the Shepparton CBD by a variety of sustainable transport modes including foot, bicycle, public transport and private vehicle.

Strategies to achieve these objectives include a bus interchange on either side of Maude Street between Vaughan Street and Ashenden Street and reinstating car parking after completing all associated works. The Access plan on page 69 of the Strategy identifies an improved bus interchange at the location of the proposed bus interchange.

#### Greater Shepparton City Council Plan 2013-2017

The aim of Goal 4: Quality Infrastructure is:

Council, through understanding the need for appropriate transportation infrastructure is key to the health and wellbeing of the community, will continue to advocate for and strive to deliver the appropriate level of service across Greater Shepparton.

A strategy of this goal is to advocate and lobby for funding to support the Maude Street bus interchange project.

#### 3.2 Net community benefit

Council submitted:

Amendment C180 has a strong strategic basis and will facilitate a project that will provide a significant community benefit.

Although individuals will be significantly impacted upon by the amendment, on balance, the net community benefit outweighs the impacts on the individuals.

Council's position was supported by the Shepparton Revitalisation Project - Community Benefit Assessment Update that was prepared by Capire in October 2014. This document identifies the Maude Street improvements including the bus interchange and new public square in Precinct 1. Table 3 shows how key community benefits in this precinct rated against the community benefit themes.

Table 3 Summary of proposed changes and associated benefits in Precinct 1

Summary of key community benefits	Rating for community benefit themes	
<ul style="list-style-type: none"> <li>- The proposed new public gathering space addresses an identified need for more urban piazza spaces in the CBD.</li> <li>- Improvements to the public realm will increase the attractiveness, functionality and safety of the precinct as well as providing additional space for social interaction.</li> <li>- The new bus interchange will address capacity issues associated with the existing facility and improve service provision across Shepparton. The integration of a breast-feeding room and public toilets into the new bus interchange addresses identified need for these facilities.</li> </ul>	Community participation, social inclusion and recreation and cultural activity	HIGH
	Amenity and sense of place	HIGH
	Community services and facilities	HIGH
	Sustainable transport	HIGH
	Community safety	HIGH
	Educational opportunities	MEDIUM
	Housing	LOW

Source: Shepparton Revitalisation Project - Community Benefit Assessment Update, Capire, October 2014, p4

Precinct 1 received a generally high community benefit, primarily for proposals that require the Amendment to be introduced before they can be implemented. This outcome supports Council's view that, on balance, the net community benefit outweighs impacts in individuals.

Abernethy Down & Ryan, on behalf of the tenants of 289 Maude Street, disagreed and submitted:

...the detriment caused to my clients far exceeds the public benefit from the proposed bus interchange in Maude Street.

The Panel is sympathetic to the tenant's circumstances, however, it is logically impossible for an individual business of this scale and nature to outweigh the net community benefit of a bus interchange for nine regional bus routes and associated facilities in an activity centre that serves a regional catchment of an estimated 170,000 people. The Panel accepts the Precinct 1 benefits found in the Shepparton Revitalisation Project - Community Benefit Assessment Update report and agrees with Council's position regarding net community benefit.

The Panel concludes that the Amendment is strategically justified in terms of State and local policy and the positive net community benefit that it will generate.

### 3.3 Conclusion and recommendation

Council set out its vision for a new bus interchange in Maude Street over six years ago and it has reflected it in its most strategic document; the Council Plan. Council has adopted Amendment C92 which seeks to, among other changes, update the Municipal Strategic Strategy to give effect to the Shepparton CBD Strategy 2008.

The ultimate acquisition of the subject land for the purposes specified by Amendment C180 is strategically justified and aligns with the purposes of the Public Acquisition Overlay.

The Panel concludes that the Amendment is supported by, and implements, the relevant sections of the State and Local Planning Policy Framework.

**The Panel recommends that Amendment C180 to the Greater Shepparton Planning Scheme be adopted as exhibited.**



## 4 Issues

### 4.1 Compensation

Two submissions were concerned about the adequacy of compensation. In response, Council submitted:

Matters relating to the direct financial impact upon the current business operators at the subject land of the proposed acquisition are outside the scope of the PE Act. Such matters are comprehensively covered by the LAC Act<sup>2</sup>.

At the Hearing, Council informed the Panel that its Investment Attraction team could assist the tenant of 289 Maude Street by acting as a 'conduit' to set up its business at a new location. It added that there are vacant premises within close proximity to the existing business.

The September 2019 Federal funding deadline and Council's written confirmation that it intends to acquire the subject land as soon as practicable provide certainty that the land is likely to be acquired in the near future. This means that any compensation is likely to be provided within a defined timeframe.

The Panel finds that Council has acted responsibly and transparently since identifying the need to acquire 289 Maude Street. There is a process for seeking compensation, however, this is not available through the same legislation (the *Planning and Environment Act 1987*) that enables the planning scheme amendment process.

The Panel therefore agrees with Council that compensation matters can be addressed through the *Land Acquisition and Compensation Act 1986*. This legislation allows a relevant party to seek compensation if they are impacted by certain matters such as public acquisition.

### 4.2 Amenity and safety

#### (i) Submissions

Council submitted that the proposed bus interchange will result in an improved urban design outcome and improved public amenity and public safety.

Mr and Mrs Longo disagreed and submitted that the immediate area is subject to vandalism and the toilets associated with the proposed bus interchange will attract '*vandalism, pollution and uncleanliness*'. They suggested separating the bus stops to avoid large gatherings.

Mr Patane was of the same view and considered it inappropriate to locate public facilities next to the shop located at 289 Maude Street. He submitted:

Not only does this result in a loss of privacy and inconvenience those renting a shop, but also impacts those accessing the business.

In her submission, Ms Nazari was concerned about health impacts resulting from pollution from the buses and safety issues resulting from the new toilets and increased traffic. At the

<sup>2</sup> *Land Acquisition and Compensation Act 1986*

Hearing, Mrs Longo submitted that the street already had too many cars and that adding more buses would create confusion and accidents.

**(ii) Discussion**

The Panel acknowledges that the Shepparton Activity Centre, like any other centre in Victoria, may experience vandalism and cleanliness issues from time to time. The proposed bus interchange and its associated facilities are likely to improve the immediate amenity by attracting more people and increasing public surveillance of the surrounding area. The Panel supports a central bus interchange because gathering people around bus shelters and public facilities can reduce opportunities for littering and vandalism.

The Panel does not agree with Mr Patane that it is inappropriate to locate public toilets next to a shop. Public facilities, including toilets, are often found next to shops in activity centres and near eating areas in shopping complexes. As shown in Figure 2, the public facilities will be oriented to face, and be accessed from, the public plaza. Privacy to the adjacent shop and its customers is not considered relevant, however, the public facilities orientation will minimise, if not avoid, any potential conflicts between the two land uses.

Like surrounding streets, this section of Maude Street is zoned Commercial 1 and forms part of the Shepparton Activity Centre. Traffic patterns, bus services and associated impacts are expected to be more intense in an activity centre when compared to low density residential areas. The proposed upgraded bus interchange will include a pedestrian crossing, fence along the median to avoid pedestrians crossing outside of the marked area, sheltered areas and public facilities. The Panel considers that the amenity will be considerably improved through these measures.

### **4.3 Suitability of location**

**(i) Submissions**

Council submitted that it considered different locations for the bus interchange before determining that Maude Street provided the best community outcomes.

Mr and Mrs Longo submitted that the bus stops should be separated to stop large groups of people gathering in one place. They suggested locating one in Ashenden Street where there are car park access points and less traffic and another in Corio Street. Another option suggested by Mr and Mrs Longo was to locate the toilets in Ashenden Street. Mr Patane submitted that moving existing bus bays from another part of the activity centre to an area with both commercial and residential land uses was 'ill-considered'. He suggested leaving the bus bays in their current location.

Council referred a petition to the Panel that appears to be signed by 97 people and includes the following statement on the front page:

We, the customers of FarmFresh fruits and vegetables would kindly ask the Greater Shepparton City Council to reconsider their plan for relocating the bus stops which will affect this business, or seek an alternative plan.

The petition did not provide a contact person's name and address and did not identify itself as a submission to the Amendment. Council forwarded it to the Panel as Submission 12 and asked that it be given little weight.

**(ii) Discussion**

Council has considered alternative locations for the bus interchange and provided good strategic basis why the Maude Street location will provide the best community outcomes.

The Panel understands that Mr and Mrs Longo are seeking alternative locations to avoid the need for Council to acquire 289 Maude Street. However, their suggested locations would result in poorer amenity outcomes. A central bus interchange is ideal for commuters seeking to transfer buses safely and conveniently in one location.

As discussed in section 4.2, the Panel considers that a bus interchange will result in amenity improvements and therefore does not support separating the stops into two locations. Many bus commuters are likely to use the public facilities, therefore making commuters, especially parents with children, walk to a separate location is not considered a better alternative.

In relation to the petition, the *Planning and Environment Act 1987* allows submissions to be made to an exhibited planning scheme amendment. It can be difficult to consider a petition within the context of a planning scheme amendment because, unlike a joint submission, a petition is generally intended for a different purpose. In this instance, customers of Farm Fresh Fruit and Vegetables, none of which identified themselves as a lead contact, asked Council to consider relocating the proposed bus interchange. This shows customer concern for the business but provides no reasons or further details. The Panel notes that K&K Farm Fresh Fruit and Vegetables provided a separate submission with reasons for its objection.

The Panel is satisfied that Council has undertaken due process to consider different locations and its decision to locate the bus interchange in Maude Street is strongly supported through strategy, plans and policy.

**4.4 Conclusion**

The Panel concludes that there are no issues that require the Amendment to be changed.

## Appendix A Document list

No.	Date	Description	Presented by
1	6/08/2015	Submission	Council
2	"	Plan - Existing property titles	Council
3a	"	Plan - Step 1: Land acquisition and consolidation	Council
3b	"	Plan - Step 2: Property title realignment	Council
4	"	Plan - Plan of proposed subdivision	Council
5	-	No document tabled	-
6	"	Submission - Lascorp Development Group (Aust) Pty Ltd	R Harris



## 7. SUSTAINABLE DEVELOPMENT DIRECTORATE

### 7.1 Amendment C180 (Application of the Public Acquisition Overlay and Road Closure Overlay to 289 Maude Street) - Consideration of Submissions

**Disclosures of conflicts of interest in relation to advice provided in this report**  
Under section 80C of the *Local Government Act 1989* officers and persons engaged under a contract providing advice to Council must disclose any conflicts of interests, including the type and nature of interest.

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

**Council Officers involved in producing this report**

**Author:** Graduate Strategic Planner

**Proof reader(s):** Team Leader Strategic Planning, Manager Planning

**Approved by:** Director Sustainable Development

**Other:** Senior Strategic Planner

**Executive Summary**

At the 16 September 2014 Ordinary Council Meeting, Council endorsed the Maude Street Bus Interchange and Maude Street Redevelopment concept plans, requested Council Officers to prepare and exhibit a Planning Scheme Amendment to include 289 Maude Street in the Public Acquisition Overlay and commence a land swap agreement with adjoining land owners to facilitate the development of the bus interchange.

Amendment C180 proposes to apply the Public Acquisition Overlay (PAO) to 289 Maude Street, Shepparton (Lots 1 & 2 on TP393266), currently occupied by a vendor known as 'Farm Fresh Fruit and Vegetables' and the Road Closure Overlay (RXO) to the land shown as "ROAD" on TP393266 (see Attachment 1).

Amendment C180 was exhibited from 16 April 2015 to 18 May 2015 in accordance with the *Planning and Environment Act 1987*.

Twelve submissions were received by Council. Five submissions objected to and requested changes to the proposed planning scheme amendment. These submissions were received from the landowners and tenants of 289 and 291 Maude Street.

The main concerns raised in the submissions include:

- An increase in pedestrian and vehicle traffic, congestion, pollution and noise;
- The loss of privacy and earnings for existing tenants and landowners;
- Safety in the area will diminish due to increased traffic, loitering and vandalism;
- 289 Maude Street is a tenanted property, the landowners are retired and rely on the income generated from this tenancy;
- Investments of time, effort and money have been made into the property and business at 289 Maude Street by the current tenants and landowners;
- The timetable for the acquisition of 289 Maude Street is uncertain, causing hardship for the tenants and landowners;
- Other more suitable sites are available in the CBD for the proposed bus interchange upgrades; and
- The application of the PAO and RXO is premature due to the lack of Strategic justification currently in the planning scheme supporting these overlays.



## 7. SUSTAINABLE DEVELOPMENT DIRECTORATE

### 7.1 Amendment C180 (Application of the Public Acquisition Overlay and Road Closure Overlay to 289 Maude Street) - Consideration of Submissions (continued)

In addition, a petition was signed by customers of Farm Fresh Fruits and Vegetables requesting Council to "reconsider their plan for relocating the bus stops which will affect this business, or seek an alternative plan."

Council officers have met with each submitter, however it has not been possible to come to a resolution with each submitter, and therefore objections still stand. These objections relate to seven main concerns (listed above), including concerns relating to the loss of income or property and compensation, which are matters that will be dealt with in the acquisition process under the *Land Acquisition and Compensation Act 1986*.

An Independent Planning Panel will be required to consider these submissions. Council Officers' position is outlined in Attachment 2 entitled 'Submissions Recorder' and summarised in the section of this report titled 'Council Officers' position at Panel Hearing'.

It is recommended that Council endorses Council officers' position at the upcoming Independent Planning Panel Hearing.

**Moved by Cr Summer**  
**Seconded by Cr Houlihan**

That, with regard to submissions received for Amendment C180 to the Greater Shepparton Planning Scheme, Council:

1. note and endorse Council Officers' response outlined in this report for presentation to an Independent Planning Panel; and
2. note that Council Officers may exercise discretion to best achieve the general position adopted by Council.

**CARRIED.**

#### **Background**

##### Shepparton CBD Strategy 2008

The *Shepparton CBD Strategy 2008* (CBD Strategy) seeks to "improve access to the Shepparton CBD by a variety of sustainable transport modes" and proposes the relocation of the Bus Interchange one block to the south along Maude Street, between Vaughan Street and Ashenden Street. The CBD Strategy recommends the following key action:

- Prepare a Maude Street Bus Interchange Master Plan, including the provision of public toilet facilities.

##### Benefits of the Maude Street Bus Interchange Redevelopment

The *Maude Street Bus Interchange Design Report, December 2013* (see Attachment 3) states that the existing bus stop facilities along Maude Street are becoming inadequate for the needs of the Greater Shepparton community. Currently, eight bus routes operate throughout the municipality, all of which utilise the current interchange, however the facilities provide space for only 5 buses at any one time.

The existing service area is causing confusion for users, congestion and time tabling restrictions. Presently, users cannot be certain which bus stop their route will pick up



## 7. SUSTAINABLE DEVELOPMENT DIRECTORATE

### 7.1 Amendment C180 (Application of the Public Acquisition Overlay and Road Closure Overlay to 289 Maude Street) - Consideration of Submissions (continued)

from because buses simply pull up to the first available bus stop, forcing users to locate them after they arrive. Additionally, space limitations restrict bus movements in and out of the interchange, which constrains the quality and frequency of services provided.

The bus interchange upgrade will create a designated stop for each route, which will provide greater certainty for users and allow buses to move more efficiently through the interchange.

#### Benefits of the Plaza and Public Toilet Facilities

The Maude Street Bus Interchange plaza and public toilet facilities will assist in creating an equitable public space for all users, a more welcoming pedestrian environment and will generate an increased level of perceived safety and security in the area.

In addition to increasing the number of public toilet facilities in the area, the Maude Street Bus Interchange Master Plan provides adult change facilities, a parent's room, breast feeding room and child changing facilities. The provision of these amenities in a central CBD location will allow all users to conduct their affairs in a dignified manner and help to make Shepparton a more equitable community.

The new plaza and public toilet facilities will create an attractive public space, which is believed to increase foot traffic and passive surveillance in the area, thus discouraging the anti-social behaviour that currently takes place at the existing interchange.

#### Previous Public Consultation

The location and design of the Maude Street Bus Interchange was subject to multiple rounds of public consultation, which took place in March 2013, May 2013 and December 2013. Consultation included meetings with the landowners of 289 Maude Street and a call for submissions from owners and occupiers fronting Maude Street and High Street, the general public and relevant authorities. At the 16 April 2013 OCM, Council resolved to release the Maude Street Bus Interchange concept plans for public consultation, which included seeking feedback for two possible locations for the plaza and public toilet facilities.

#### Amendment C180 to the Greater Shepparton Planning Scheme

At the 16 September 2014 OCM, Council endorsed the Maude Street Bus Interchange and Maude Street Redevelopment concept plans, requested Council Officers to prepare and exhibit a Planning Scheme Amendment to include 289 Maude Street in the Public Acquisition Overlay and commence a land swap agreement with adjoining land owners to facilitate the development of the bus interchange.

Amendment C180 proposes to apply a PAO to 289 Maude Street and a RXO to the adjoining road which gives access to the site.

Once the land included in the PAO is acquired and the adjoining road is closed, the land swap agreement proposes that part of 289 Maude Street and all of the land within the proposed RXO will be transferred to the adjoining land owner, Lascorp Development Group (Aust) Pty Ltd (Lascorp Pty Ltd) who operates a car park. In return, Council will receive a portion of the adjoining lot for the purpose of constructing the Bus Interchange plaza and public toilet facilities on the corner of Maude Street and Vaughan Street (see Attachment 4).



## 7. SUSTAINABLE DEVELOPMENT DIRECTORATE

### 7.1 Amendment C180 (Application of the Public Acquisition Overlay and Road Closure Overlay to 289 Maude Street) - Consideration of Submissions (continued)

#### Submissions

The amendment was exhibited in accordance with the *Planning and Environment Act 1987* for four weeks. The exhibition period closed on 18 May 2015. Twelve submissions were received by Council (see Attachment 2).

Six of these submissions were received from referral authorities who did not object to the proposed planning scheme amendment. These submissions were from:

- Goulburn Broken Catchment Management Authority;
- Goulburn Valley Water;
- Environmental Protection Authority – North East;
- Department of Environment, Land, Water and Planning;
- Public Transport Victoria; and
- Goulburn-Murray Water.

One submission was received from the adjoining landowner, Lascorp Pty Ltd. Council officers have engaged with the landowner regarding negotiations for the land swap agreement. The submitter did not object to the amendment, rather restated their terms concerning the 173 Agreement, which will facilitate the land swap.

Five submissions, including the petition, objected to and requested changes to the proposed planning scheme amendment. These submissions relate to seven main concerns:

- An increase in pedestrian and vehicle traffic, congestion, pollution and noise;
- The loss of privacy and earnings for existing tenants and landowners;
- Safety in the area will diminish due to increased traffic, loitering and vandalism;
- 289 Maude Street is a tenanted property, the landowners are retired and rely on the income generated from this tenancy;
- Investments of time, effort and money have been made into the property and business at 289 Maude Street by the current tenants and landowners, who are concerned they will not be adequately compensated for these investments;
- The timetable for the acquisition of 289 Maude Street is uncertain, causing hardship for the tenants and landowners;
- Other more suitable sites are available in the CBD for the proposed bus interchange upgrades; and
- The application of the PAO and RXO is premature due to the lack of Strategic justification currently in the Planning Scheme supporting these overlays.

#### Council Officers' position at Panel Hearing

Council officers have met with each submitter to discuss the concerns raised in these submissions. However, it has not been possible to come to a resolution with each submitter, and therefore objections still stand. Amendment C180 will be referred to an Independent Planning Panel for the consideration of these submissions.

Council Officers' have noted public concern relating to privacy, access and increased traffic, congestion, pollution and noise in the area, however it is believed that the net community benefits of the redevelopment outweigh these concerns.





## 7. SUSTAINABLE DEVELOPMENT DIRECTORATE

### 7.1 Amendment C180 (Application of the Public Acquisition Overlay and Road Closure Overlay to 289 Maude Street) - Consideration of Submissions (continued)

Many objections raised in the submissions relate to the loss of income or property and compensation, which will be dealt with under the Land Acquisition and Compensation Act 1986.

Other submissions state that loitering and vandalism will increase, however it is expected that the redevelopment will improve safety in the area.

Lastly, an objector believes that the application of the PAO is premature because the CBD Strategy is not referred to in the Planning Scheme. Council officers' believe that Strategic justification exists in the form of Council resolutions supporting the proposed PAO and to adopt the CBD Strategy. Additionally, Council has adopted Amendment C92 (currently with the Minister for approval), which seeks to formally implement the CBD Strategy in the Planning Scheme.

It is recommended that Council endorses Council officers' position at the upcoming Independent Planning Panel Hearing as outlined in the 'Submissions Recorder' (Attachment 2).

#### **Council Plan/Key Strategic Activity**

The *Greater Shepparton City Council - Council Plan 2013-2017* (Council Plan) states that the community envisions a future where "Greater Shepparton has the required access to services particularly transport, medical, education and a range of shopping options which enable residents to source a range of goods and services. The quality of service delivery needs to be both maintained and enhanced." The Council Plan also includes strategic goals around an active and engaged community, economic prosperity and quality infrastructure.

The development of the Maude Street Bus Interchange is consistent with the Council Plan's vision and strategic goals. In particular, it implements the following:

- Goal 1: Active and Engaged Communities (Social)
- Objective 4 - Provide sustainable community services to our community.
- 'Monitor and appropriately support the provision of quality services within the municipality.'
- Goal 3: Economic Prosperity (Economic)
- Objective 2 - Ensure retail strategies deliver appropriate outcomes for the community.
- 'Maximise the opportunities within the CBD that present themselves with the redevelopment of Vaughan Street.'
- Goal 4: Quality Infrastructure (Built)
- Objective 1 - Ensure the community has access to high quality facilities.
- Objective 2 - Ensure the community has access to appropriate transportation infrastructure.
- 'Advocate and lobby for funding to enable commencement of the Maude Street Bus Interchange project.'



## 7. SUSTAINABLE DEVELOPMENT DIRECTORATE

### 7.1 Amendment C180 (Application of the Public Acquisition Overlay and Road Closure Overlay to 289 Maude Street) - Consideration of Submissions (continued)

#### **Risk Management**

The main risk associated with this planning scheme amendment is not meeting the timelines required by Ministerial Direction No. 15 '*The Planning Scheme Amendment Process*'. This Ministerial Direction requires each stage of the planning scheme amendment process to be undertaken within set timeframes.

In accordance with Ministerial Direction No. 15, Council must request the appointment of an Independent Planning Panel, if required, within 40 business days of the closing date for submissions.

As submissions have been lodged and a resolution has not been possible, the appointment of an Independent Planning Panel is required.

Additionally, if the proposed amendment is not supported by Council, the relocation of the Maude Street Bus Interchange may be prevented or delayed.

#### **Policy Considerations**

The proposed amendment does not conflict with any existing Council policies.

Proposed Amendment C180 is in accordance with the recommendations provided in the CBD Strategy, by assisting to realise the Maude Street Bus Interchange Master Plan.

#### **Financial Implications**

The preparation of proposed Amendment C180 up to the exhibition stage of the planning scheme amendment process was funded through the 'Rural Planning Flying Squad' program.

The costs associated with an Independent Planning Panel will need to be funded by Council. This is estimated to cost approximately \$45,000, which includes expenses associated with legal advice and/or representation. These costs have been accounted for in the 2015/16 Planning Panels budget.

#### **Legal/Statutory Implications**

All procedures associated with this planning scheme amendment comply with the legislative requirements of the *Planning and Environment Act 1987* (the Act). The amendment has been assessed in accordance with the Act and the Greater Shepparton Planning Scheme. The assessment is considered to accord with the *Victorian Charter of Human Rights and Responsibilities Act 2006* (the Charter). No human rights have been negatively impacted upon throughout the process.

The Charter recognises that reasonable restrictions may be placed on the use and development of land, and that there may on occasion be reasonable and acceptable offsite impacts on others. Provided these issues are properly considered, it would be a rare and exceptional case where the exercise of a planning decision in accordance with the regulatory framework is not Charter compatible.

#### **Environmental/Sustainability Impacts**

Proposed Amendment C180 is anticipated to have positive environmental and sustainability impacts for the municipality. The amendment will result in positive environmental outcomes as improved public transport facilities and accessibility is likely



## 7. SUSTAINABLE DEVELOPMENT DIRECTORATE

### 7.1 Amendment C180 (Application of the Public Acquisition Overlay and Road Closure Overlay to 289 Maude Street) - Consideration of Submissions (continued)

to reduce the dependence on private vehicles, thereby reducing both traffic congestion and greenhouse emissions. As these reduce, along with provision of additional open public space, the attractiveness of the central city area as a walkable environment will grow.

The land affected by this amendment does not appear to have any significant environmental attributes, therefore applying a Public Acquisition Overlay and Road Closure Overlay to the land is unlikely to have any adverse environmental effects.

#### **Social Implications**

The proposed amendment is anticipated to have positive social benefits for the Greater Shepparton community and its visitors. Positive social effects and benefits will be gained through increased liveability, enhanced public transport facilities and accessibility and a design responsive community space. Attractive public transport facilities also promote active living as dependence on the car is reduced.

#### **Economic Impacts**

The proposed amendment is anticipated to have positive economic effects through increased economic activity and viability of the Shepparton town centre area, and through the provision of enhanced public transport facilities and community open space.

#### **Consultation**

The amendment was exhibited in accordance with the *Planning and Environment Act 1987* for four weeks. This included the following:

- Letters sent to owners and occupiers of land affected on 13 April 2015;
- Letters sent to relevant referral authorities on 13 April 2015;
- Letters sent to prescribed Ministers on 13 April 2015;
- Notice in the Victorian Government Gazette on 16 April 2015;
- Notice in the Shepparton News on 14 April 2015;
- Notice on Greater Shepparton City Council website;
- Notice on Department of Environment, Land, Water and Planning website; and
- Copy of exhibition documentation in the foyer of the Council offices at 90 Welsford Street, Shepparton.

The exhibition period closed on 18 May 2015.

Officers believe that appropriate consultation has occurred and the matter is now ready for Council consideration.

#### **Strategic Links**

##### a) Greater Shepparton 2030 Strategy

The *Greater Shepparton 2030 Strategy* contains an objective "to develop Walking/Bicycle and Public Transport networks that provides transport and accessibility options to segments of the community who have not or prefer not to use a motor car."

##### b) Shepparton CBD Strategy 2008

The *Shepparton CBD Strategy 2008* states a key priority is "improving movement and access by reducing traffic in the CBD, improving public transport services and cycling links and facilities."



## 7. SUSTAINABLE DEVELOPMENT DIRECTORATE

### 7.1 Amendment C180 (Application of the Public Acquisition Overlay and Road Closure Overlay to 289 Maude Street) - Consideration of Submissions (continued)

#### c) Hume Regional Growth Plan 2014

The *Hume Regional Growth Plan 2013* identifies Shepparton as a key urban centre for major urban growth and development in the Hume Region. Additionally, the plan states that significant public sector investment will be needed in the CBD to stimulate private sector investment to help create a vibrant and attractive CBD and promote business and employment activity.

The proposed amendment C180 is consistent with these strategic links and helps to facilitate the development of the Maude Street Bus Interchange.

#### Options for Consideration

1. Endorse Council officers' position at an Independent Planning Panel Hearing for Amendment C180 to the Greater Shepparton Planning Scheme (preferred); or
2. Do not endorse Council officers' position at an Independent Planning Panel Hearing for Amendment C180 to the Greater Shepparton Planning Scheme and form an alternative position; or
3. Abandon Amendment C180 to the Greater Shepparton Planning Scheme, which may delay the relocation of the Maude Street Bus Interchange.

#### Conclusion

Amendment C180 proposes to apply a PAO to 289 Maude Street and the RXO to the adjoining road which gives access to the site. The amendment is consistent with the September 2014 Council resolution, which requested Council Officers to prepare and exhibit a Planning Scheme Amendment to include 289 Maude Street in the Public Acquisition Overlay and commence a land swap agreement with adjoining land owners to facilitate the development of the bus interchange.

The amendment was exhibited and eleven submissions were received by Council. Of these, four raised objections and proposed changes to the amendment. Council officers have met with each submitter to discuss the concerns raised in these submissions. However, it has not been possible to come to a resolution with each submitter, and therefore objections still stand.

Amendment C180 is to be heard by an Independent Planning Panel for consideration of submissions. Council is to endorse Council officers' position at the Panel Hearing.

#### Attachments

- |  |          |
|--|----------|
| 1. C180 - Proposed Public Acquisition Overlay and Road Closure Overlay | Page 173 |
| 2. Submissions - Recorder - Amendment C180                             | Page 174 |
| 3. Maude Street Bus Interchange and Redevelopment                      | Page 175 |
| 4. C180 - Land Ownership Maps (Existing and Proposed)                  | Page 204 |

## Amendment C180

Sub No.	Organisation	Content of Submission	Recommendation
1	Goulburn Broken Catchment Management Authority	No Objection	No action required.
2	Goulburn Valley Water	No Objection	No action required.
3	EPA North East	No Objection	No action required.
4	Department of Environment, Land, Water & Planning	No Objection	No action required.
5	Public Transport Victoria	No Objection	No action required.
6	Landowners - represented by Maddock's Lawyers Pty Ltd	Objection -Provides retirement income -Significant investment in property and current plans for extension -Vandalism, pollution and litter will increase -Other more suitable sites exist -The application of the PAO is premature b/c the CBD Strategy is not referred to in the Planning Scheme. -RXO is also premature and has no strategic justification. Road will need to remain open to allow access to property until property is actually acquired -Believe that the purpose of the PAO is to facilitate a land swap with Lascorp, and therefore the PAO is unjustified.	*Issues relating to income/investment will be dealt with under the Land Acquisition and Compensation Act 1986 *It is expected that the redevelopment will improve safety in the area *Alternate sites have been considered *Strategic Justification exists - Council resolutions exist supporting PAO and to adopt the CBD Strategy. Amendment C92 seeks to formally implement the CBD Strategy. *Council has adopted the Amendment, currently with the Minister to approve. *Refer to Panel
7	Lascorp Development Group (Aust) Pty Ltd	No Objection	No action required.
8	Landowners of 291 Maude Street	Objection -Loss of privacy, access and earnings -Increase in traffic, congestion, pollution & noise -Loitering and vandalism will increase -Believes interchange should stay where it is	*Concerns relating to privacy, access, traffic, pollution and noise are noted, however net community benefits of redevelopment outweigh these concerns *It is expected that the redevelopment will improve safety and reduce congestion in the area *Loss of earnings will be dealt with under the Land Acquisition and Compensation Act 1986 *Refer to Panel
9	Tenant	Objection -Increase in pollution, traffic & noise -Safety will be an issue for their young family -Would like the interchange somewhere else	*Concerns relating to traffic, pollution and noise are noted, however net community benefits of redevelopment outweigh these concerns *Refer to Panel
10	Abernethy Dowd & Ryan Pty Ltd - on behalf of Ghulam Razaee & Amir Nawari (tenants)	Objection -Investment of time, effort & money into business/property -Current plans to expand business -Timetable for acquisition is uncertain causing hardship -Worried compensation will be insufficient -Want interchange to stay where it is	*Issues relating to income/investment/compensation will be dealt with under the Land Acquisition and Compensation Act 1986 *Refer to Panel
11	G-M Water	No Objection	No action required.
12	Farm Fresh Fruits Pty Ltd	Refutation - Objection *100 people have shown support, requesting that Council reconsider their plans to relocate the bus interchange, which will affect the business of Farm Fresh Fruits.	*Alternate sites have been considered *Refer to Panel

*Planning and Environment Act 1987*

**GREATER SHEPPARTON PLANNING SCHEME  
AMENDMENT C180  
EXPLANATORY REPORT**

**Who is the planning authority?**

This amendment has been prepared by Greater Shepparton City Council, which is the planning authority for this amendment.

The Amendment has been made at the request of Greater Shepparton City Council.

**Land affected by the Amendment**

The amendment applies to 289 Maude Street, Shepparton (Lots 1 & 2 on TP393266), currently occupied by a vendor known as 'Farm Fresh Fruit and Vegetables', and to the land known as "ROAD" on TP393266, and shown on Figure 1 below.

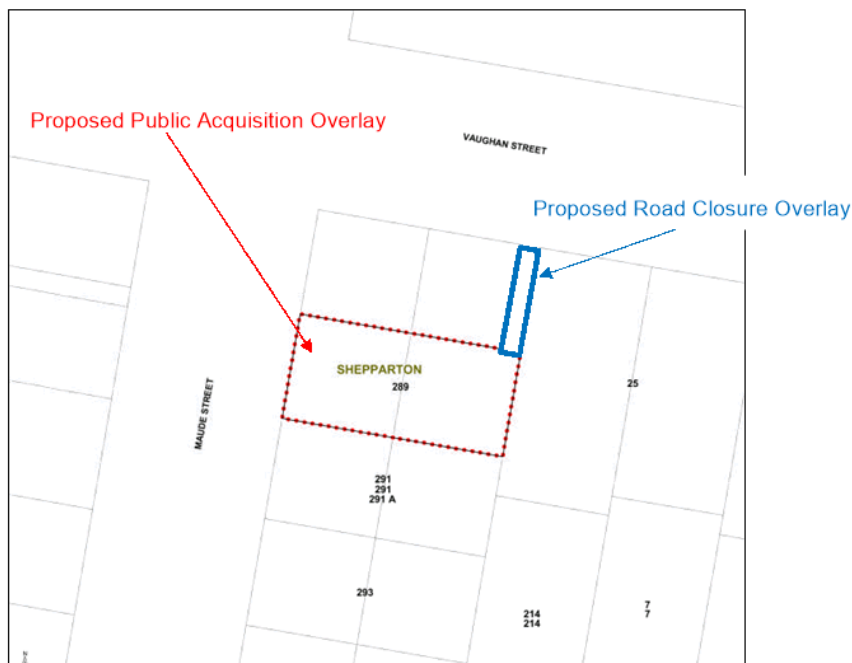


Figure 1- Proposed Public Acquisition Overlay & Road Closure Overlay

**What the amendment does**

Public Acquisition Overlay (PAO) and Road Closure Overlay (RXO)

The Amendment applies the Public Acquisition Overlay (PAO20) to 289 Maude Street, Shepparton and the Road Closure Overlay to the land shown as "ROAD" on TP393266.

Specifically, the amendment makes the following changes to the Planning Scheme:

- Inserts two (2) new maps (22PAO and 22RXO) into the Planning Scheme to include 289 Maude Street in the Public Acquisition Overlay and to apply the Road Closure Overlay to the land shown as "ROAD" on TP393266.

- Amends the Schedule to the Public Acquisition Overlay (at Clause 45.01) to include PAO20;
- Inserts a new Clause 45.04 (Road Closure Overlay) from the Victoria Planning Provisions; and
- Amends the Schedule to Clause 61.03 to include two new maps (22PAO and 22RXO).

Land Swap Agreement

- The land swap agreement proposes that part of 289 Maude Street and all of the land within the proposed RXO will be transferred to the adjoining land owner. In return, Council will receive a portion of the adjoining lot for the purpose of constructing bus interchange plaza and public toilet facilities on the corner of Maude Street and Vaughan Street (see figures 2 & 3 below).

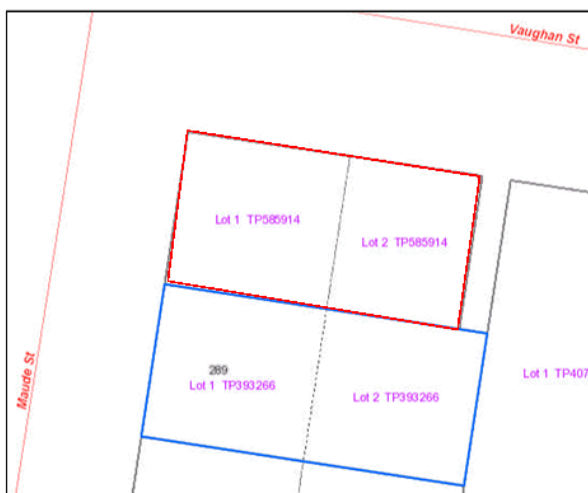


Figure 2 - Existing Title Boundaries

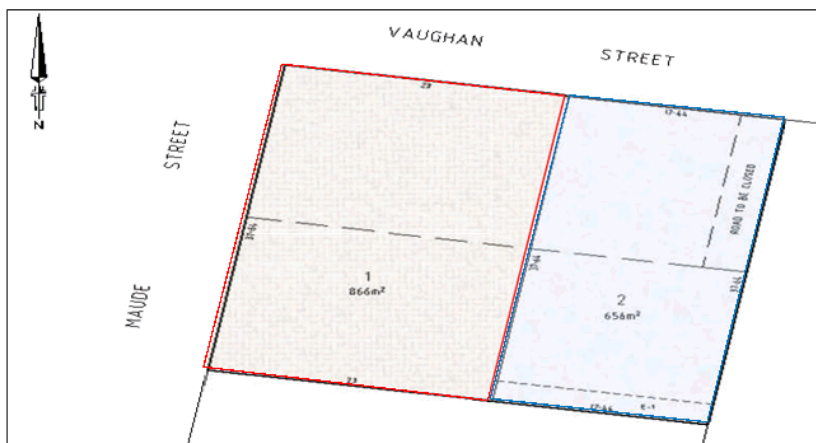


Figure 3 - Proposed Land Swap: The area outlined in red will become Council land and the area outlined in blue will be in private ownership.

## **Strategic assessment of the Amendment**

### **Why is the Amendment required?**

In September 2014, Council endorsed the Maude Street Bus Interchange Master Plan and requested Council Officers to prepare and exhibit a Planning Scheme Amendment to include 289 Maude Street in the Public Acquisition Overlay.

The amendment is required to enable Greater Shepparton City Council to acquire land to facilitate the relocation of the Maude Street Bus Interchange and the construction of public toilet facilities on the corner of Maude Street and Vaughan Street, Shepparton.

To enable Greater Shepparton City Council to legally serve Notice of Acquisition and acquire the land under the *Land Acquisition and Compensation Act 1986*, a Public Acquisition Overlay must be applied to the land.

The sole purpose of the land known as "ROAD" on TP393266 is to provide access to 289 Maude Street, Shepparton. With the land swap agreement and reconfiguration of lots, the land known as "ROAD" on TP393266 is no longer required to provide access to 289 Maude Street, Shepparton. The application of the Road Closure Overlay is therefore appropriate to facilitate the closure of this road. The adjoining landowner is aware of the preparation of this amendment and has agreed in principal to the land swap agreement.

### **How does the Amendment implement the objectives of planning in Victoria?**

The proposed planning scheme amendment will be supportive of and assist in the implementation of the objectives of planning in Victoria as set out in Section 4 of the *Planning and Environment Act 1987*.

The Maude Street Bus Interchange Master Plan recommended the acquisition of the land by the Council, and its subsequent use and development for public transport facilities. By implementing the recommendations of the Master Plan through the acquisition of the land, the amendment will facilitate the site's intended development as a transport interchange, resulting in the fair and orderly development of the site and the creation of a more efficient and pleasant environment for both the community and visitors to Shepparton, consistent with the Objectives 4(1)(a) & (c) of the Act.

Furthermore, the amendment is consistent with Objectives 4(1) (e), (f) & (g) of the Act. The acquisition of land will enable Council to facilitate the development of public transport assets in accordance with the Master Plan, which has considered the current and future needs of the community.

As the subject land does not have any apparent significant natural or man-made resources and the area has no known scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value, objectives 4(1)(b) and (d) of the Act are not relevant to this amendment.

### **How does the Amendment address any environmental, social and economic effects?**

#### Environmental Effects

The amendment will result in positive environmental outcomes as improved public transport facilities and accessibility is likely to reduce the dependence on private vehicles, thereby reducing both traffic congestion and greenhouse emissions. As these reduce, the attractiveness of the central city area as a walkable environment grows.

The land affected by this amendment does not appear to have any significant environmental attributes, therefore applying a Public Acquisition Overlay and Road Closure Overlay to the land is unlikely to have any adverse environmental effects.

#### Social Effects

The amendment will have positive social benefits for the Greater Shepparton community and its visitors. Positive social effects and benefits will be gained from the amendment through



increased liveability, enhanced public transport facilities and accessibility and a design responsive community space. Attractive public transport facilities also promote active living as dependence on the car is reduced.

#### Economic Effects

The amendment will have positive economic effects through increased economic activity and viability of the Shepparton town centre area, and through the provision of enhanced public transport facilities and community open space. The amendment is expected to have positive economic benefits for Greater Shepparton residents and visitors.

#### **Does the Amendment address relevant bushfire risk?**

The subject site is not located within a Bushfire Management Overlay and being located in the Shepparton CBD, the proposed amendment will have no practical impact on the risk of bushfire.

During the exhibition period, the proposal will be referred to Country Fire Authority for comment.

#### **Does the Amendment comply with the requirements of any Minister's Direction applicable to the amendment?**

The amendment is consistent with the Ministerial Direction on the Form and Content of Planning Schemes under Section 7(5) of the Act.

The amendment is consistent with the Minister's Direction No. 11 Strategic Assessment of Amendments under Section 12(2) (a) of the *Planning and Environment Act 1987*.

The amendment is consistent with the Minister's Direction No. 15 The Planning Scheme Amendment Process under Section 12(2) of the *Planning and Environment Act 1987*.

#### **How does the Amendment support or implement the State Planning Policy Framework and any adopted State policy?**

The amendment is consistent with and supportive of the State Planning Policy Framework as follows:

The objectives of Clause 11.01-1 and Clause 11.01-2 Activity Centres encourages high-quality development in activity centres and that activity centres are highly accessible to the community.

The amendment will assist in implementing the recommendations of the *Shepparton CBD Strategy, October 2008* and facilitate the relocation of the Maude Street bus interchange and construction of public toilet facilities at the subject site, as recommended by the Maude Street Bus Interchange Master Plan (adopted by Council in September 2014). It will assist in the renewal of this part of the Shepparton CBD and will provide improved public transport facilities and accessibility.

The objectives and strategies of Clause 11.10 Hume regional growth derive from the Hume Regional Growth Plan (2014). The renewal of the Shepparton CBD has been identified as a regional priority in the Hume Regional Growth Plan. The amendment will facilitate the renewal of this part of Maude Street by allowing the relocation the bus interchange and construction of new public toilet facilities, housed within a responsively designed community space.

The objectives of Clause 15.01 Urban environment encourage safe and functional environment and urban design outcomes that contribute positively to the urban character.

The amendment will facilitate the relocation of the Maude Street bus interchange which will be designed to create an environment that is safe and functional as well as creating a sense of place for the community. It will assist in the urban renewal of this area of Shepparton CBD.

The objective of Clause 17.01-1 Business is "To encourage development which meet the communities' needs for retail, entertainment, office and other commercial services and

*provides net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities.”*

The improved public transport facilities will improve transport efficiency and accessibility in the area thereby encouraging patrons to visit commercial areas of Shepparton. In turn, this will lead to a reduced dependence on private vehicles, a reduction of traffic congestion and will help to create a more resilient city.

The objectives and strategies under Clause 18 Transport encourage efficient and accessible public transport networks.

The acquisition of the land and closure of the road will assist in facilitating the relocation of the bus interchange and improve the movement of traffic, including public transport in the area, particularly through reduced congestion as residents and visitors are likely to increasingly patronise the public transport facilities.

### **How does the Amendment support or implement the Local Planning Policy Framework, and specifically the Municipal Strategic Statement?**

The amendment is consistent with the Local Planning Policy Framework. In particular the amendment is supportive of and assists the implementation of elements of the Municipal Strategic Statement (MSS) and Local Policies as follows:

A strategy of Clause 21.06-5 Commercial/Activity Centres is to *Provide neighbourhood commercial and retail centres that are accessible to the local community, especially by public transport.*

This amendment will assist in achieving this strategy by providing the land required to establish a new bus interchange and associated public toilet facilities that will improve accessibility to commercial and retail centres in and around Shepparton.

#### *Clause 21.07-1 Transport*

The acquisition of the land and closure of the road is required to facilitate the construction of public toilet facilities associated with the relocated Maude Street Bus Interchange. The new bus interchange will provide for additional buses and will improve the movement of traffic and provision of public transport in the area.

### **Does the Amendment make proper use of the Victoria Planning Provisions?**

The amendment makes proper use of the Victoria Planning Provisions (VPP).

The purposes of the Public Acquisition Overlay includes *“To designate a Minister, public authority or municipal council as an acquiring authority for land reserved for a public purpose.”*

The subject land is required by Greater Shepparton City Council for a public purpose (Maude Street bus interchange and associated facilities). The only Overlay within the VPP which specifically provides for land to be acquired by a public authority is the Public Acquisition Overlay.

A purpose of the Road Closure Overlay is *“To identify a road that is closed by an amendment to this planning scheme”*. Given the road will no longer be required it is considered appropriate to apply the Road Closure Overlay. Furthermore, the Road Closure Overlay is the only VPP tool which will facilitate the closure of roads.

### **How does the Amendment address the views of any relevant agency?**

All the relevant authorities were consulted with through the preparation of the Maude Street Bus Interchange Master Plan. Further consultation has been undertaken with Goulburn Valley Region Water Corporation which indicated preliminary support for the amendment.

During the exhibition of this amendment, notice will be given to all relevant referral authorities in accordance with the *Planning and Environment Act 1987*.

### **Does the Amendment address relevant requirements of the Transport Integration Act 2010?**

The purpose of the *Transport Integration Act 2010* is to create a new framework for the provision of an integrated and sustainable transport system in Victoria. The vision statement recognises the aspirations of Victorians for an integrated and sustainable transport system that contributes to an inclusive, prosperous and environmentally responsible state.

The objectives of the *Transport Integration Act 2010* relate to social and economic inclusion, economic prosperity, environmental sustainability, integration of transport and land use, efficiency, coordination and reliability, and safety and health and wellbeing.

The Minister has not prepared any statements of policy principles under Section 22 of the *Transport Integration Act 2010*; therefore, no such statements are applicable to this amendment.

The amendment is likely to have a positive impact on the transport system. It will allow Greater Shepparton City Council to acquire land that is required for relocation of the Maude Street Bus Interchange and associated public facilities to the subject land. The construction of a new bus interchange will greatly improve public transport facilities and accessibility in the Shepparton CBD, and as patronage increases a range of positive effects will be realised, including reduced dependence on private vehicles, reduced traffic congestion and improved traffic flows, creation of a more walkable city centre and promotion of active living. Furthermore, the new interchange will be designed to improve traffic flows in the immediate area by minimising potential conflicts between buses and other road users.

### **Resource and administrative costs**

- **What impact will the new planning provisions have on the resource and administrative costs of the responsible authority?**

The amendment will not place any unreasonable resource or administrative costs on Greater Shepparton City Council.

### **Where you may inspect this Amendment**

The Amendment is available for public inspection, free of charge, during office hours at the following places:

Greater Shepparton City Council

90 Welsford Street,

Shepparton, Victoria

The Amendment can also be inspected free of charge at the Department of Environment, Land, Water and Planning website at [www.delwp.vic.gov.au/public-inspection](http://www.delwp.vic.gov.au/public-inspection).

### **Submissions**

Any person who may be affected by the Amendment may make a submission to the planning authority. Submissions about the Amendment must be received by 18/05/2015.

A submission must be sent to:

Greater Shepparton City Council

Locked Bag 1000

Shepparton, VIC, 3632

### **Panel hearing dates**

In accordance with clause 4(2) of Ministerial Direction No.15 the following panel hearing dates have been set for this amendment:

- directions hearing: Week starting 29/06/2015.
- panel hearing: Week starting 27/07/2015.

*Planning and Environment Act 1987***GREATER SHEPPARTON PLANNING SCHEME****AMENDMENT C180****INSTRUCTION SHEET**

The planning authority for this amendment is Greater Shepparton City Council.

The Greater Shepparton Planning Scheme is amended as follows:

**Planning Scheme Maps**

The Planning Scheme Maps are amended by a total of two (2) attached map sheets.

**Overlay Maps**

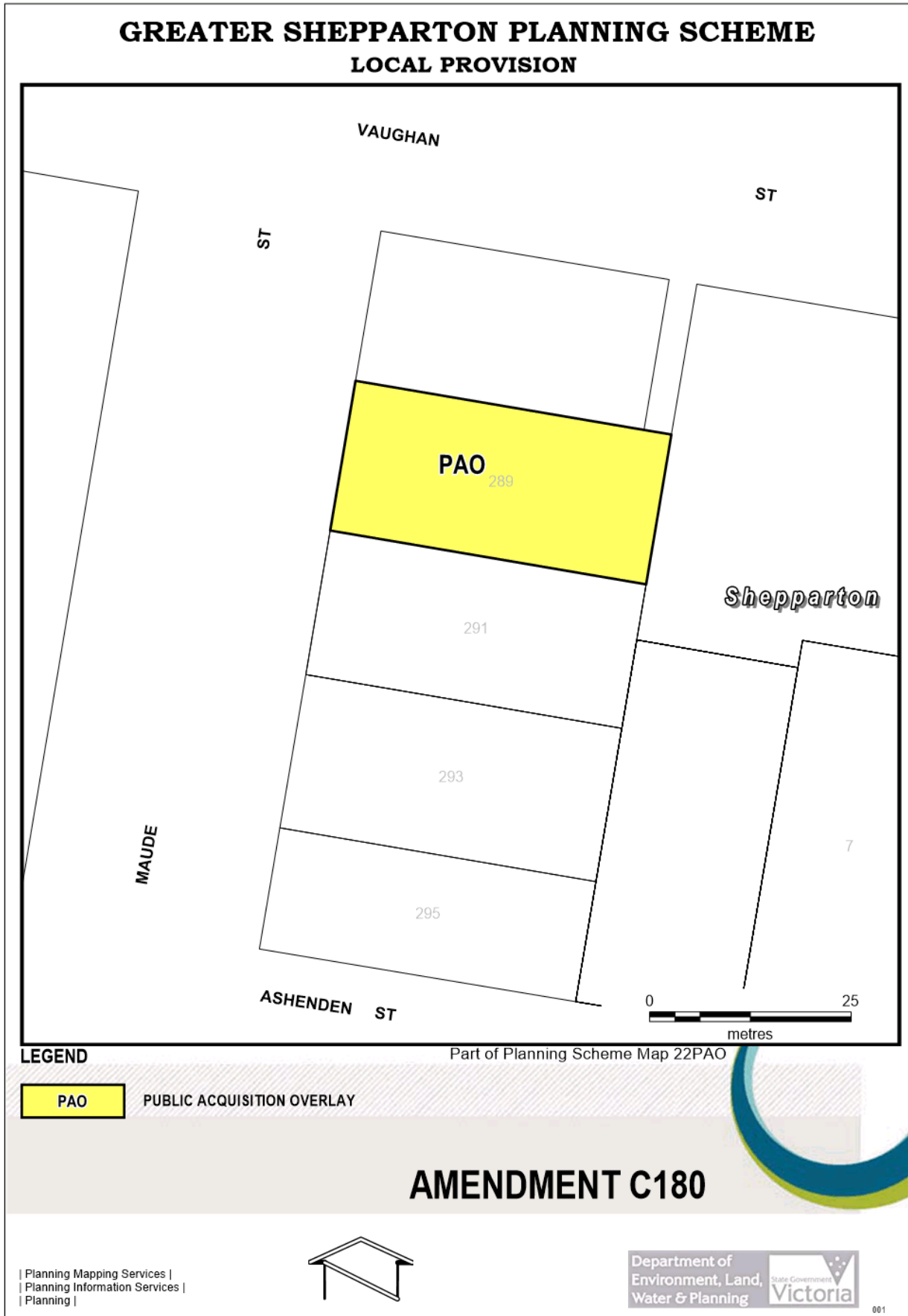
1. Insert new Planning Scheme Map Nos. 22PAO and 22RXO in the manner shown on the two (2) attached maps marked "Greater Shepparton Planning Scheme, Amendment C180".

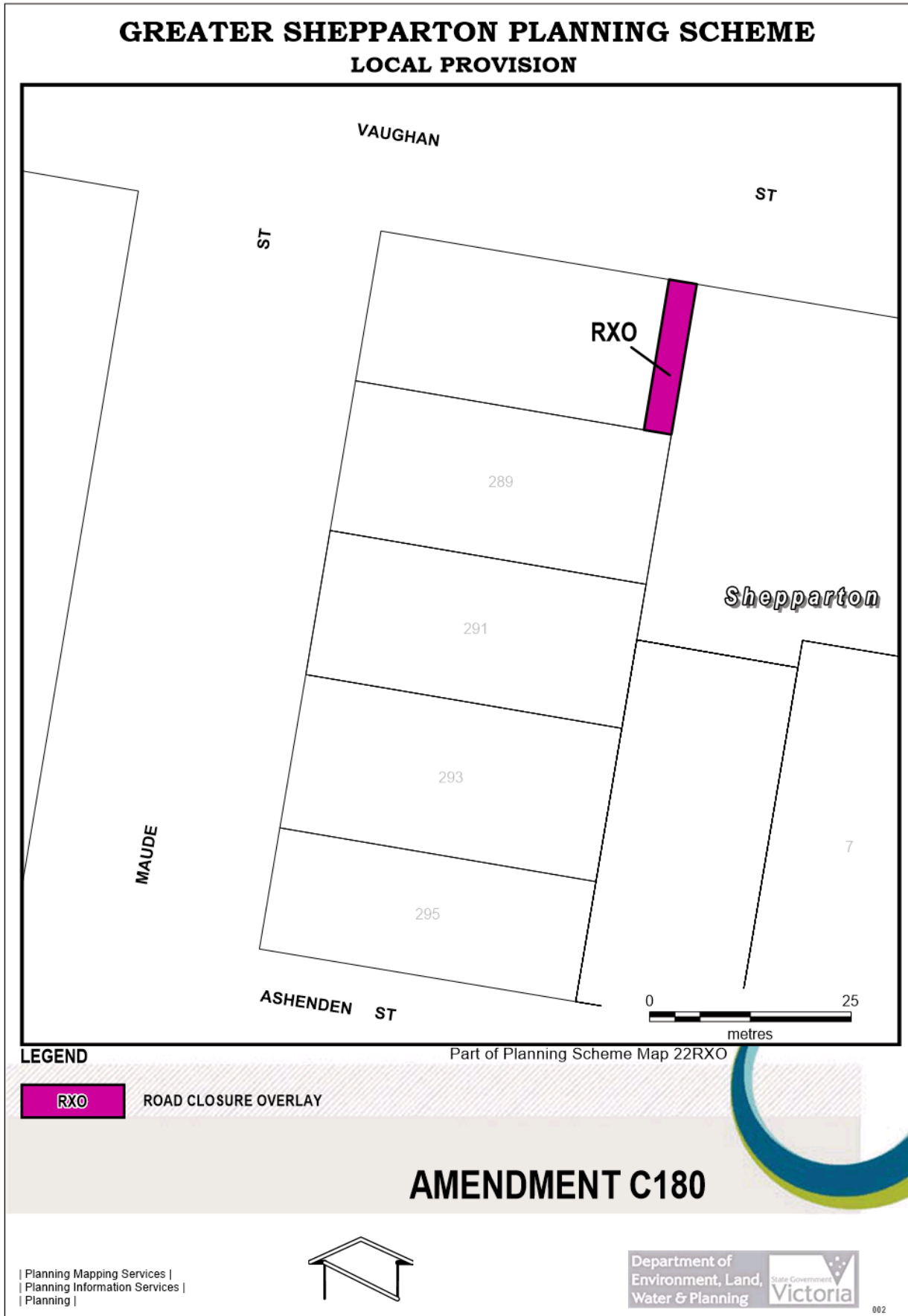
**Planning Scheme Ordinance**

The Planning Scheme Ordinance is amended as follows:

2. In Overlays – Clause 45.01, replace Schedule with a new Schedule in the form of the attached document.
3. In Overlays – insert Clause 45.04 in the form of the attached document.
4. In General Provisions – Clause 61.03, replace the schedule with a new Schedule in the form of the attached document.

End of document





## GREATER SHEPPARTON PLANNING SCHEME

28/10/2013  
VC102Prop  
osed C180

## SCHEDULE TO CLAUSE 45.01 PUBLIC ACQUISITION OVERLAY

PS Map	Acquiring Authority	Purpose of Acquisition
PAO1	Roads Corporation	Goulburn Valley Highway duplication and restoration of local access
PAO2	City of Greater Shepparton	Public car park
PAO3	Vic Roads	Intersection re-alignment at northwestern intersection of Lockwood Road and Midland Highway, Shepparton
PAO4	City of Greater Shepparton	Goulburn Valley Freight Logistics Centre
PAO5	Goulburn Valley Region Water Authority	Acquisition of land for Shepparton Wastewater Management Facility
PAO6	Goulburn Murray Water	Construction of the Mosquito Depression Drain – Stage 10
PAO7	Roads Corporation	Goulburn Valley Highway – Shepparton Bypass
PAO8	City of Greater Shepparton	Old Dookie Road land acquisition for road widening
PAO9	Goulburn Murray Water	Construction of the Mosquito Depression Drain 40 Surface Water Management System
PAO10	City of Greater Shepparton	Floodway Acquisition-Mooroopna West Growth Corridor
PAO11	City of Greater Shepparton	Roadway Acquisition-Mooroopna West Growth Corridor
PAO13	City of Greater Shepparton	256 Hickey Road, Katandra West
PAO14	City of Greater Shepparton	Community Facilities Acquisition – Mooroopna West Growth Corridor
PAO15	City of Greater Shepparton	North-South Floodway-Mooroopna West Growth Corridor
PAO16	City of Greater Shepparton	Link Road-Mooroopna West Growth Corridor
PAO19	VicRoads	293-295 Benalla Road, Shepparton – road widening
<a href="#">PAO20</a>	<a href="#">Greater Shepparton City Council</a>	<a href="#">289 Maude Street, Shepparton – bus interchange</a>



**45.04**19/01/2008  
VC37**ROAD CLOSURE OVERLAY**

Shown on the planning scheme map as **RXO**.

**Purpose**

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

To identify a road that is closed by an amendment to this planning scheme.

**45.04-1**19/01/2008  
VC37**Road closure**

A road included in this overlay is closed on the date notice of approval of the amendment is published in the Government Gazette.

**45.04-2**19/01/2008  
VC37**Decision guidelines**

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- That the road is closed.

**Notes:**

*Refer to the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement, for strategies and policies which may affect the use and development of land.*

*Check the requirements of the zone which applies to the land.*

*Other requirements may also apply. These can be found at Particular Provisions.*

## GREATER SHEPPARTON PLANNING SCHEME

03/10/2013  
 C140 Proposed  
 C180

**SCHEDULE TO CLAUSE 61.03****Maps comprising part of this scheme:**

- 1, 1HO, 1LSIO-FO, 1WMO
- 2, 2DPO, 2ESO, 2HO, 2LSIO-FO, 2PAO, 2WMO
- 3, 3HO, 3LSIO-FO, 3PAO
- 4, 4HO, 4LSIO-FO
- 5, 5HO, 5LSIO-FO
- 6, 6EAO, 6ESO, 6HO, 6LSIO-FO
- 7, 7DPO, 7HO, 7LSIO-FO
- 8, 8DPO, 8HO, 8LSIO-FO
- 9, 9DPO, 9ESO, 9HO, 9LSIO-FO
- 10, 10DPO, 10ESO, 10HO, 10LSIO-FO
- 11, 11AEO, 11DCPO, 11DDO, 11DPO, 11EAO, 11ESO, 11HO, 11LSIO-FO, 11PAO, 11VPO, 11WMO
- 12, 12DPO, 12HO, 12LSIO-FO, 12PAO, 12WMO
- 13, 13DPO, 13EAO, 13 HO, 13LSIO-FO, 13PAO
- 14, 14DCPO, 14DPO, 14EAO, 14LSIO-FO
- 15, 15DCPO, 15DPO, 15LSIO-FO, 15PAO, 15WMO
- 16, 16DPO, 16LSIO-FO, 16WMO
- 17, 17DDO, 17DPO, 17HO, 17LSIO-FO, 17WMO
- 18, 18DDO, 18HO, 18LSIO-FO, 18PAO
- 19, 19DDO, 19DPO, 19LSIO-FO, 19PAO
- 20, 20DCPO, 20DDO, 20DPO, 20HO, 20LSIO-FO, 20PAO, 20WMO
- 21, 21HO, 21LSIO-FO, 21WMO
- 22, 22AEO, 22DDO, 22DPO, 22HO, 22LSIO-FO, [22PAO](#), [22RXO](#), 22WMO
- 23, 23DPO, 23EAO, 23HO, 23LSIO-FO, 23PAO
- 24, 24DDO, 24DPO, 24LSIO-FO, 24PAO
- 25, 25DPO, 25LSIO-FO, 25PAO, 25WMO
- 26, 26AEO, 26DCPO, 26DDO, 26DPO, 26EAO, 26LSIO-FO, 26WMO
- 27, 27DPO, 27LSIO-FO
- 28, 28EMO, 28HO, 28LSIO-FO, 28SMO
- 29, 29EMO, 29HO, 29LSIO-FO, 29SMO
- 30, 30LSIO-FO
- 31, 31ESO, 31HO, 31LSIO-FO, 31PAO, 31SMO, 31WMO
- 32, 32ESO, 32HO, 32LSIO-FO, 32SMO, 32WMO
- 33, 33HO, 33LSIO-FO, 33PAO, 33WMO
- 34, 34HO, 34LSIO-FO, 34PAO, 34SMO, 34VPO, 34WMO

GREATER SHEPPARTON PLANNING SCHEME

- 35, 35LSIO-FO, 35SMO
- 36, 36LSIO-FO, 36SMO
- 37, 37HO, 37LSIO-FO, 37SMO, 37WMO



[DRAFT 29 APRIL 2015]

**GREATER SHEPPARTON CITY COUNCIL**

and

**SHEPPARTON RETAIL HOLDINGS PTY LTD**

**AGREEMENT MADE PURSUANT TO  
SECTION 173 OF THE PLANNING AND  
ENVIRONMENT ACT 1987**

LAND EXCHANGE AGREEMENT

Property: 25-31 Vaughan Street, Shepparton  
3630

Russell Kennedy Pty Ltd ACN 126 792 470 ABN 14 940 129 185  
Level 12, 469 La Trobe Street, Melbourne VIC 3000 PO BOX 5146AA, Melbourne VIC 3000 DX 494 Melbourne  
T +61 3 9609 1555 F +61 3 9609 1600 info@rk.com.au

Liability limited by a scheme approved under Professional Standards Legislation

[rk.com.au](http://rk.com.au)

IDP 119780-02393



© Russell Kennedy

**THIS AGREEMENT** is made on

2015

**PARTIES**

- 1 **GREATER SHEPPARTON CITY COUNCIL** of 90 Welsford Street, Shepparton Victoria 3630 ("**Council**")
- 2 **SHEPPARTON RETAIL HOLDINGS PTY LTD** ACN 158 972 475 of 29 Claremont Street, South Yarra Victoria 3141 ("**Owner**")

**RECITALS**

- A The Council is the responsible authority under the Act for the Scheme.
- B The Owner is registered or is entitled to be registered as proprietor of the Land.
- C The Land, the Road Land and the Required Land are within the C1Z of the Scheme.
- D Council intends to acquire the Required Land for the purpose of facilitating the Land Exchange.
- E Council intends to remove the road reservation from the Road Land and transfer this land to the Owner for the purpose of facilitating the Land Exchange.
- F The Owner and Council have agreed to undertake the Land Exchange to facilitate the implementation of the Bus Interchange and generally improve the amenity of the precinct of the Land.
- G This Agreement has been entered into in order to:
- to implement Council's strategic planning objectives in relation to the Vaughan Street commercial precinct;
  - to complement the proposed application of the Public Acquisition Overlay and the Road Closure Overlay; and
  - to achieve and advance the objectives of planning in Victoria or the objectives of the Scheme in relation to the Land.
- H This Agreement is made under Division 2 of Part 9 of the Act.

**THE PARTIES AGREE THAT:**

**1 DEFINITIONS**

In this Agreement:

- 1.1 "**Act**" means the *Planning and Environment Act 1987*.
- 1.2 "**Agreement**" means this Agreement, including the recitals and any annexures to this Agreement.
- 1.3 "**Bus Interchange**" means the bus interchange as described in the "Maude Street Bus Interchange Master Plan" that was endorsed by Council at its ordinary meeting on 16 September 2014.
- 1.4 "**Business Day**" means Monday to Friday excluding public holidays in Victoria.

- 1.5 “**Car Park**” means a car park to be constructed by Council of a standard generally commensurate with other car parks in Shepparton developed by, or for the purposes of, Shepparton Retail Holdings Pty Ltd or Lascorp Development Group (Aust) Pty Ltd at the land:
- 1.5.1 retained by the Owner; and
- 1.5.2 transferred to the Owner;
- following the Land Exchange.
- 1.6 “**C1Z**” means the Commercial 1 Zone of the Scheme.
- 1.7 “**Land**” means the land within the Scheme described as Lot 1 and Lot 2 on TP585914V, being the land more particularly described in certificate of title volume 3337 folio 395.
- 1.8 “**Land Exchange**” means:
- 1.8.1 the transfer the Road Land to the Owner following the removal of the road reservation from the Road Land; and
- 1.8.2 the exchange of part of the Required Land for part of the Land, as generally shown in the Spiire Plan, following the acquisition of the Required Land by Council.
- 1.9 “**Mortgagee**” means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as mortgagee of the Land or any part of it.
- 1.10 “**Pylon Sign**” means the existing pylon sign situated at the Land adjacent to the corner of Maude Street and Vaughan Street.
- 1.11 “**Required Land**” means the land known as 289 Maude Street, Shepparton, being the land described in certificate of title volume 4469 folio 645.
- 1.12 “**Road Land**” means the land shown as “ROAD” on TP393266A, which abuts the Land to the east.
- 1.13 “**Scheme**” means the Greater Shepparton Planning Scheme or any other planning scheme which applies to the Land from time to time.
- 1.14 “**Spiire Plan**” means the plan prepared by Spiire titled “Plan of Proposed Subdivision 25-31 Vaughan Street 289 Maude Street” (Drawing No 301366UD00 Version 2) dated 8 January 2015.
- 1.15 “**Valuation Report**” means the valuation report provided to the Council prepared by David McKenzie of the Opteon Property Group (File ref. 6061149) dated 21 April 2015.

## 2 COMMENCEMENT

This Agreement comes into force on the date it was made as set out above.

### 3 TERMINATION OF AGREEMENT

#### 3.1 Termination

This Agreement ends:

- 3.1.1 in relation to the whole of the Land or part of the Land, by mutual agreement between the parties evidenced in writing; and
- 3.1.2 in relation to the part of the Land that is transferred to Council by way of the Land Exchange, upon the registration of the plan of subdivision giving effect to the Land Exchange.

#### 3.2 Cancellation of Agreement

As soon as reasonably practicable after this Agreement has ended, the Council must, at the request and at the cost of the Owner, apply to the Registrar of Titles under section 183(2) of the Act to cancel the recording of this Agreement on the Register as to the whole of the Land or part of the Land, as the case may be.

### 4 OWNER'S COVENANTS

#### 4.1 Land Exchange

The Owner covenants and agrees that, subject to it having advised the Council in writing that it has the approval of its tenants, must:

- 4.1.1 upon being requested to do so in writing by the Council, do all things reasonably within its power, as reasonably requested by the Council, necessary to achieve the Land Exchange; and
- 4.1.2 following the Land Exchange, maintain the Pylon Sign in a state of good repair;

to the satisfaction of the Council.

#### 4.2 Adjustment payment

The Owner agrees it will receive a net payment of \$15,950 (excluding GST), in accordance with the Valuation Report, to compensate for the difference in the value of its land as a consequence of the Land Exchange.

#### 4.3 Costs associate with the Land Exchange

The Owner covenants and agrees that its obligations under this Agreement with regard to the Land Exchange are conditional upon Council:

- 4.3.1 paying all costs associated with the design, approval and construction of the Car Park, and
- 4.3.2 paying all legal costs directly associated with the Land Exchange;

to the satisfaction of the Council.

**4.4 Construction of Car Park**

The Owner covenants and agrees to allow Council, Council's contractors or Council's agents access to its land following the Land Exchange for the purpose of constructing the Car Park.

**4.5 Construction of Car Park**

The Owner covenants and agrees to allow Council, Council's contractors or Council's agents access to its land following the Land Exchange for the purpose of constructing the Car Park.

**4.6 Pylon Sign**

The Owner agrees that Council must allow the Pylon Sign to remain at the Land, subject to compliance with clause 4.1.2 of this Agreement and that a licence agreement must be entered into between the Council and the Owner in relation to the Pylon Sign within 90 days of the date of this Agreement, and further, that should Council intend to sell the land upon which the Pylon Sign is situated, a lease agreement must be entered into between the Council and the Owner, prior to the sale of that land.

**4.7 Successors in title**

Until this Agreement is recorded on the folio of the Register which relates to the Land pursuant to section 181 of the Act, the Owner must ensure that the Owner's successors in title give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement including requiring the successors in title to execute a deed agreeing to be bound by the terms of this Agreement. Until that deed is executed, the Owner, being a party to this Agreement, remains liable to perform all of the Owner's obligations contained in this Agreement.

**4.8 Further assurance**

The Owner must do all things necessary (including signing any further agreement, acknowledgment or document) to enable the Council to record this Agreement on the folio of the Register which relates to the Land.

**4.9 Indemnity**

The Owner covenants to indemnify and keep the Council, its officers, employees, agents, workmen and contractors indemnified from and against all costs, expenses, losses or damages which they or any of them may sustain incur or suffer or be or become liable for or in respect of any suit action proceeding judgement or claim brought by any person arising from any non-compliance with this Agreement by the Owner.

**4.10 Non-compliance**

If the Owner has not complied with this Agreement within 14 days after the date of service on the Owner by the Council of a notice which specifies the Owner's failure to comply with any provision of this Agreement, the Owner covenants:

4.10.1 to pay to the Council on demand, the Council's reasonable costs and expenses ("Costs") incurred as a result of the Owner's non-compliance;



- 4.10.2 to pay interest at the rate of 2% above the rate prescribed under section 2 of the *Penalty Interest Rates Act 1983* on all moneys which are due and payable but remain owing under this Agreement until they are paid in full;

and the Owner agrees:

- 4.10.3 to accept a certificate signed by the Chief Executive Officer of the Council (or any nominee of the Chief Executive Officer) as prima facie proof of the Costs incurred by the Council in rectifying the Owner's non-compliance with this Agreement;
- 4.10.4 that any payments made for the purposes of this Agreement shall be appropriated first in payment of any interest and any unpaid Costs of the Council and then applied in repayment of the principal sum; and
- 4.10.5 that all Costs or other monies which are due and payable under this Agreement but which remain owing shall be a charge on the Land until they are paid in full.

#### 4.11 Covenants run with the Land

The Owner's obligations in this Agreement are intended to take effect as covenants which shall be annexed to and run at law and in equity with the Land and every part of it, and bind the Owner and its successors, assignees and transferees, the registered proprietor or proprietors for the time being of the Land and every part of the Land.

#### 4.12 Owner's warranty

The Owner warrants and covenants that:

- 4.12.1 the Owner is the registered proprietor (or is entitled to become the registered proprietor) of the Land and is also the beneficial owner of the Land;
- 4.12.2 there are no mortgages, liens, charges or other encumbrances or leases or any rights inherent in any person other than the Owner affecting the Land which have not been disclosed by the usual searches of the folio of the Register for the Land or notified to the Council;
- 4.12.3 no part of the Land is subject to any rights obtained by adverse possession or subject to any easements or rights described or referred to in section 42 of the *Transfer of Land Act 1958*; and
- 4.12.4 until this Agreement is recorded on the folio of the Register which relates to the Land, the Owner will not sell, transfer, dispose of, assign, mortgage or otherwise part with possession of the Land or any part of the Land without first disclosing to any intended purchaser, transferee, assignee or mortgagee the existence and nature of this Agreement.

**5 COUNCIL'S COVENANTS****5.1 Land Exchange**

The Council covenants and agrees:

- 5.1.1 to do all things reasonably within its power to implement the Land Exchange;
- 5.1.2 to construct the Car Park following the completion of the Land Exchange;
- 5.1.3 to pay all costs associated with the design, approval and construction of the Car Park;
- 5.1.4 that subject to clause 4.1.2 of this Agreement, it must allow the Pylon Sign to remain in its current position at the Land;
- 5.1.5 to pay the Owner \$15,950 (excluding GST), in accordance with the Valuation Report, to compensate for the difference in the value of its land as a consequence of the Land Exchange; and
- 5.1.6 to pay all legal costs directly associated with the Land Exchange.

**5.2 Pylon Sign**

The Council covenants and agrees that it will enter a licence agreement with the Owner to allow the Pylon Sign to remain in its current location, upon terms and conditions to the satisfaction of the Council, and that should Council intend to sell the land upon which the Pylon Sign is located, it must enter a lease agreement with the Owner prior to the sale of that land.

**6 GENERAL****6.1 No fettering of Council's powers**

This Agreement does not fetter or restrict the Council's power or discretion in respect of any of the Council's decision making powers including but not limited to an ability to make decisions under the *Local Government Act 1989*, and the Act or to make or impose requirements or conditions in connection with any use or development of the Land or the granting of any planning permit, the approval or certification of any plans of subdivision or consolidation relating to the Land or the issue of a Statement of Compliance in connection with any such plans.

**6.2 Time of the essence**

Time is of the essence as regards all dates, periods of time and times specified in this Agreement.

**6.3 Governing law and jurisdiction**

This Agreement is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts and tribunals of Victoria and waives any right to object to proceedings being brought in those courts or tribunals.

**6.4 Enforcement and severability**

- 6.4.1 This Agreement shall operate as a contract between the parties and be enforceable as such in a Court of competent jurisdiction regardless of whether, for any reason, this Agreement were held to be unenforceable as an agreement pursuant to Division 2 of Part 9 of the Act.
- 6.4.2 If a Court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void, then it shall be severed and the other provisions of this Agreement shall remain operative.

**7 NOTICES****7.1 Service of notice**

A notice or other communication required or permitted, under this Agreement, to be served on a person must be in writing and may be served:

- 7.1.1 personally on the person;
- 7.1.2 by leaving it at the person's address set out in this Agreement;
- 7.1.3 by posting it by prepaid post addressed to that person at the person's current address for service; or
- 7.1.4 by facsimile to the person's current number notified to the other party.

**7.2 Time of service**

A notice or other communication is deemed served:

- 7.2.1 if served personally or left at the person's address, upon service;
- 7.2.2 if posted within Australia to an Australian address, two Business Days after posting;
- 7.2.3 if served by facsimile, subject to the next clause, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile; and
- 7.2.4 if received after 5.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

**8 INTERPRETATION**

In this Agreement, unless the contrary intention appears:

- 8.1 the singular includes the plural and vice versa;
- 8.2 a reference to a document or instrument, including this Agreement, includes a reference to that document or instrument as novated, altered or replaced from time to time;
- 8.3 a reference to an individual or person includes a partnership, body corporate, government authority or agency and vice versa;

- 8.4 a reference to a party includes that party’s executors, administrators, successors, substitutes and permitted assigns;
- 8.5 words importing one gender include other genders;
- 8.6 other grammatical forms of defined words or expressions have corresponding meanings;
- 8.7 a covenant, undertaking, representation, warranty, indemnity or agreement made or given by:
  - 8.7.1 two or more parties; or
  - 8.7.2 a party comprised of two or more persons,
 is made or given and binds those parties or persons jointly and severally;
- 8.8 a reference to a statute, code or other law includes regulations and other instruments made under it and includes consolidations, amendments, re-enactments or replacements of any of them;
- 8.9 a recital, schedule, annexure or description of the parties forms part of this Agreement;
- 8.10 if an act must be done on a specified day that is not a Business Day, the act must be done instead on the next Business Day;
- 8.11 if an act required to be done under this Agreement on a specified day is done after 5.00pm on that day in the time zone in which the act is performed, it is taken to be done on the following day;
- 8.12 a party that is a trustee is bound both personally and in its capacity as trustee;
- 8.13 a reference to an authority, institution, association or body (“**original entity**”) that has ceased to exist or been reconstituted, renamed or replaced or whose powers or functions have been transferred to another entity, is a reference to the entity that most closely serves the purposes or objects of the original entity;
- 8.14 headings and the provision of a table of contents are for convenience only and do not affect the interpretation of this Agreement.

**EXECUTED** as an agreement under Division 2 of Part 9 of the Act.

**THE COMMON SEAL** of the **GREATER** )  
**SHEPPARTON CITY COUNCIL** was affixed )  
 on this            day of 2015 )  
 in the presence of the Chief Executive Officer )  
 being a delegated officer pursuant to Local )  
 Law No. 2 of the Council: )

.....  
 CHIEF EXECUTIVE OFFICER  
 Gavin Robert Cator

**SIGNED SEALED AND DELIVERED** by )  
**SHEPPARTON RETAIL HOLDINGS PTY** )  
**LTD** ACN 158 972 475 in accordance with )  
 section 127(1) of the *Corporations Act 2001* )  
 by being signed by authorised persons:

.....  
Director

.....  
\*Director/company secretary  
\*Delete whichever is inapplicable

.....  
Full Name

.....  
Full Name

.....  
Usual Address

.....  
Usual Address

**MORTGAGEE'S CONSENT**

Westpac Banking Corporation as Mortgagee under Mortgage no. AJ891528G which encumbers part of the Land, being the parts owned by Shepparton Retail Holdings Pty Ltd consents to Shepparton Retail Holdings Pty Ltd entering into this Agreement and agrees to be bound by the terms and conditions of this Agreement.