

CONFIRMED MINUTES

**FOR THE
GREATER SHEPPARTON CITY COUNCIL**

DEVELOPMENT HEARINGS PANEL

Meeting No. 9/2013

**HELD ON
THURSDAY 11 JULY 2013
AT 10.00AM**

**AT THE COUNCIL BOARD ROOM
90 WELSFORD STREET**

**CHAIR
Johann Rajaratnam**

**COMMITTEE MEMBERS PRESENT: Johann Rajaratnam, Councillor Les Oroszvary,
Colin Kalms and Michael MacDonagh**

**OFFICERS: Andrew Dainton – Principal Statutory Planner
Tim Watson – Planner**

1. ACKNOWLEDGEMENT

“We the Greater Shepparton City Council, begin today’s meeting by acknowledging the traditional owners of the land which now comprises Greater Shepparton. We pay respect to their tribal elders, we celebrate their continuing culture, and we acknowledge the memory of their ancestors”.

2. RECORDING OF PROCEEDINGS

The Hearing was advised by the Chair that:

- the proceeding is being recorded.
- that people can arrange to come and listen to the recording at a suitable time.
- that it is Council’s preferred position that we do not provide copies of the recording.
- that all other recording devices should be turned off during the course of the hearing

3. APOLOGIES

Braydon Aitken, Ian Boyle, Jonathan Griffin.

4. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

The unconfirmed minutes of the meeting held on 27 June 2013 could not be confirmed.

5. DECLARATIONS OF CONFLICTS OF INTEREST

None

6. MATTERS FOR CONSIDERATION

Two items listed for consideration.

7. LATE REPORTS

None

8. NEXT MEETING

25 July 2013

INDEX

| <u>Application No.</u> | <u>Subject Address:</u> | <u>Proposal:</u> | <u>Page No.</u> |
|------------------------|------------------------------------------|------------------------------|-----------------|
| 2007-300 | 836 Goulburn Valley Highway, Congupna | Extension of Time to Permit | 3 |
| 2013-136 | 565 Old Dookie Road, Shepparton East | Dwelling in the Farming Zone | 6 |

The responsible officer for application no. 2007-300 advised the Panel that the applicant had withdrawn the application, as per instructions received in email dated 11 July at 8.58 am, TRIM 2013/30044 refers.

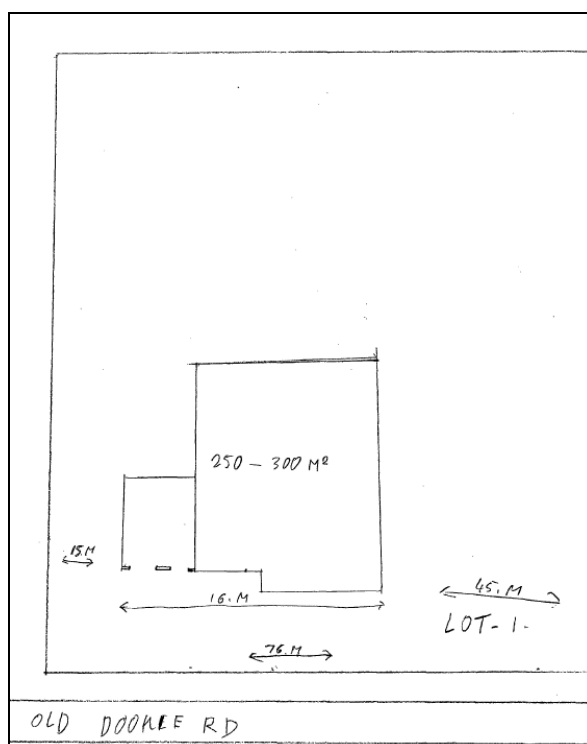
As a result this matter did not require to be considered by the Development Hearings Panel.

Application Details:

| | |
|-----------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|
| Responsible Officer: | Tim Watson |
| Application Number: | 2013-136 |
| Applicants Name: | I Jaksic |
| Date Application Received: | 21 May 2013 |
| Statutory Days: | 43 |
| Land/Address: | 565 Old Dookie Road SHEPPARTON EAST VIC 3631 |
| Zoning and Overlays: | Farming Zone and no overlays |
| Why is a permit required (include Permit Triggers): | 35.07-1 – use of land for a dwelling in the Farming Zone. 35.07-4 – buildings and works associated with a section 2 use. |
| Are there any Restrictive Covenants on the title? | No |

Proposal

The application for a planning permit proposes the use and development of the land for a dwelling in the Farming Zone. The applicant has not provided any justification against the relevant policies of the Greater Shepparton Planning Scheme, as to why a dwelling should be approved. Below is the plan submitted for the proposed dwelling.



Pursuant to map illustrated in the schedule to the Farming Zone, the subject land is identified as Intensive Agriculture Land. The schedule identifies the minimum area for which no permit is required to use land for a dwelling in areas identified as Intensive Agriculture land as 10 hectares. Under the interim controls which expired on 30 June

2013, the minimum lot size for which no permit was required to use land for a dwelling as of right was 100 hectares.

The Council through amendment C121 proposes amendments to the current minimum lot sizes for the Farming Zone. The Council put forward to the Minister of Planning that a minimum lot size for dwellings as of right be 60 hectares under amendment C121, with the minister yet to approve this amendment.

Summary of Key Issues

- Application for a planning permit made for use and development of land for a dwelling in the Farming Zone.
 - An onsite inspection was undertaken.
 - The application was not referred or notified to any authorities or notified to abutting properties with planning officers deciding to recommend refusal.
 - The interim controls have expired since the application was made, with the minimum lot size for a dwelling as of right on land identified Intensive Agriculture being 10 hectares, down from 100 under the interim controls.
 - The proposed dwelling does not meet the decision guidelines of the Farming Zone and the Objectives and strategies of the State and Local Planning policies.
-

Moved by Colin Kalms and Seconded by Michael MacDonagh

That the Council having not caused notice of Planning Application No. **2013-136** to be given under Section 52 of the *Planning and Environment Act 1987* and having considered all the matters required under Section 60 of the *Planning and Environment Act 1987* decides to refuse to Grant a Permit under the provisions of **35.07-1 and 35.07-4** of the Greater Shepparton Planning Scheme in respect of the land known and described as **565 Old Dookie Road SHEPPARTON EAST VIC 3631**, for the **use and development of land for a dwelling in the Farming Zone**.

For the following reasons:

1. The proposed use of land for a dwelling does not provide an acceptable outcome or net community benefit in terms of the State and Local Planning Policy Frameworks; and
 - a. Has the potential to impact on the continuation of primary production on nearby land;
 - b. Has the potential to limit the expansion of agriculture on adjacent land;
 - c. Has potential for conflict between the ongoing farming activities and the proposed rural living use;

- d. Will result in the construction of a dwelling on a small and inappropriate lot.
2. The application for a dwelling does not adequately address or demonstrate that the proposed dwelling is reasonably requires for the operation of agricultural activity on the land as required by the Farming Zone.
3. The application does not comply with the Rural Regional Land Use Strategy (C121) which seeks to limit dwellings in the proposed Farming Zone 1 which are not associated or required for the agricultural use of the land.

CARRIED

Subject Site & Locality

An inspection of the site and the surrounding area has been undertaken.

Date: **20/6/13**

Time: **11:00am**

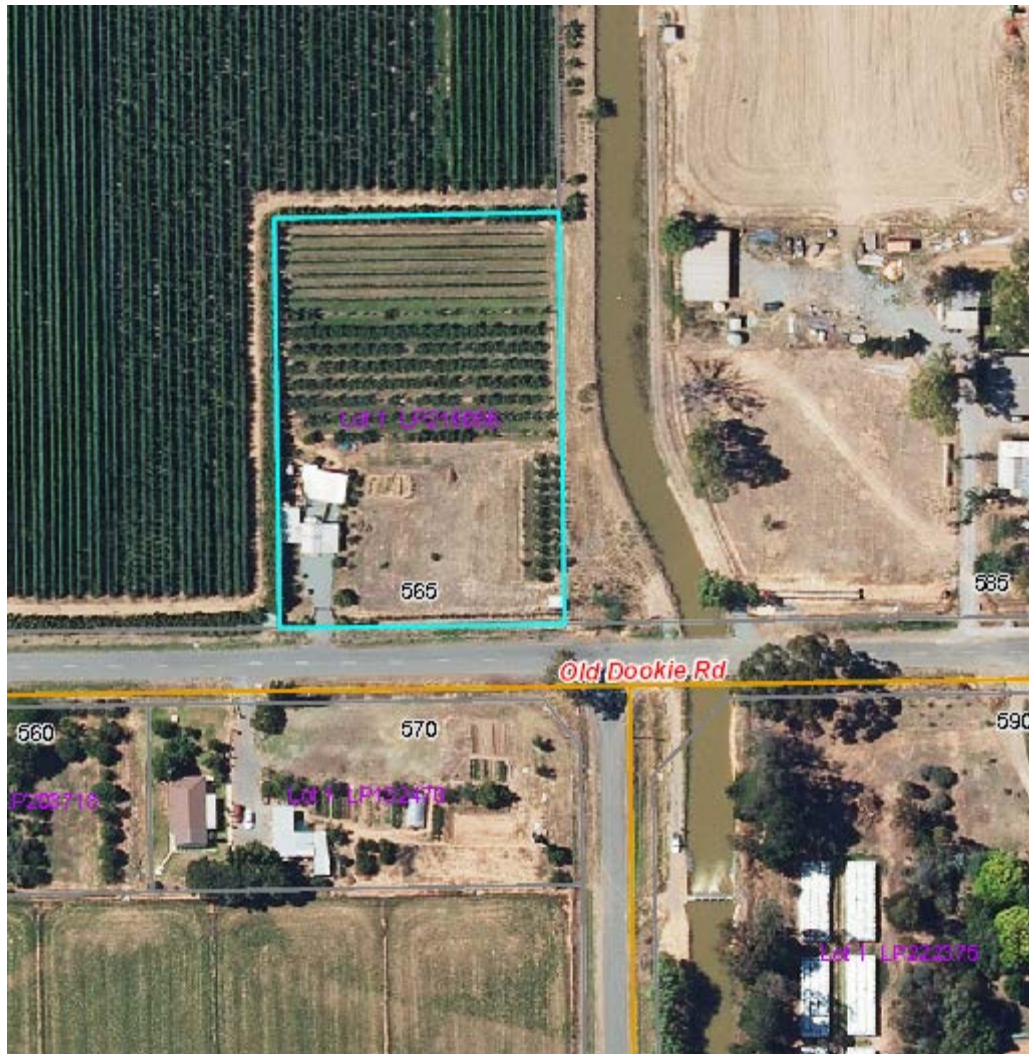
The site has a total area of 8000 square metres and currently contains:

- Existing sheds used for storage;
- A caravan with verandah attached;
- A vegetation buffer of pines is located on the northern and western boundaries of the site separating the land from the abutting orchard.
- The rear half of the site is planted with orchard trees; and
- The front (southern) part vacant but maintained with a mower.

The main site/locality characteristics are:

- The land abutting the northern and western boundaries is used for orchard and associated with a larger farming operation.
- The eastern boundary abuts a Goulburn Murray Water Channel, with the adjacent land used for cropping and fodder production. A dwelling and sheds are located on this land.
- The land to the south comprises small dwelling allotments with access onto Old Dookie Road with the non-associated land to the used for pasture production.

The Photos below show the existing site:



Permit/Site History

The history of the site includes:

- There is no previous planning permit history on record for this site.

Further Information

Was further information requested for this application? **no**

Public Notification

The application was not advertised pursuant to Section 52 of the *Planning and Environment Act 1987* as it is believed that no material detriment will be caused to any person for the following reasons:

- The officer decided that the application would not achieve an acceptable outcome against the relevant policies of the scheme and would be recommended for refusal.

Objections

The Council has received **no** objections to date, as the application was not advertised.

Title Details

The title does not contain a Restrictive Covenant or Section 173 Agreement

Consultation

Consultation was undertaken. Relevant aspects of consultation, included:

- a number of discussions, in which the land owner and applicant was advised that an application for a dwelling on the land would not likely be supported by the Council's Planning Department.
- A meeting with the applicant and Council Officer's Andrew Dainton and Tim Watson in which the existing uses and history of the land was discussed. The following points were raised:
 - The existing orchard on the land is used for hobby purposes only;
 - The existing sheds onsite are used for storage;
 - The applicant attends the land once a month;
 - A permit for a dwelling was on the land when purchased by the current land owner in 2003 (no record of this permit was found).
- Planning officers advised the requirements of the Farming Zone and the assessment process from now on.

Referrals

External Referrals/Notices Required by the Planning Scheme:

| Referrals/Notice | Advice/Response/Conditions |
|----------------------|----------------------------------------------------------------------------|
| Section 55 Referrals | The application for a planning permit was not referred to any authorities. |
| Section 52 Notices | The application for a planning permit was not notified to any authorities. |

| Internal Council Notices | Advice/Response/Conditions |
|--------------------------|----------------------------|
| Nil | Nil |
| Nil | Nil |

Assessment

The zoning of the land

Farming Zone 35.07

Clause 35.07 (Farming Zone) requires a permit for use and development of a dwelling on a lot of less than 10ha (Intensive Agriculture in the Schedule to clause 35.07), and for Buildings and works associated with a section 2 use.

Farming Zone – Clause 35.07

The purpose of the Farming Zone is to:

- Provide for the use of land for agriculture;
- Encourage the retention of productive agricultural land;
- Ensure that non-agricultural uses, particularly dwellings, do not adversely affect the use of land for agriculture;
- Encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision; and
- Protect and enhance natural resources and the biodiversity of the area.

Farming Zone Decision Guidelines

The decision guidelines which are relevant to this application and which the Council must consider when assessing an application to construct a dwelling or subdivide land are:

General issues

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- Any Regional Catchment Strategy and associated plan applying
- The capability of the land to accommodate the proposed use or development, including the disposal of effluent.
- How the use or development relates to sustainable land management.
- Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses.

Response

The state and local policy framework are addressed under other sections within this report.

It is considered that the subject land has the capability to dispose effluent onsite given the size of the property. The proposed use (dwelling) is not compatible with abutting land uses with the predominate use of land for agriculture being orchard, pasture propagation and grazing.

Agricultural issues

- Whether the use or development will support and enhance agricultural production.
- Whether the use or development will permanently remove land from agricultural production.
- The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.

- The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure.

Response

The applicant has not provided any justification as to how a dwelling would support or enhance the agricultural activities on the land, with the dwelling to be used for rural living purposes. The proposed dwelling would not remove any land currently being used for agriculture, but if approved is likely to remove the subject land from ever being used for an agricultural activity. The proposed dwelling has the potential to impact the surrounding orchard which abuts the western and north boundary, with the potential to limit their operations. The approval of a dwelling would could result in a precedent for dwellings on small allotments within the locality.

Dwelling issues

- Whether the dwelling will result in the loss or fragmentation of productive agricultural land.
- Whether the dwelling is reasonably required for the operation of the agricultural activity conducted on the land.
- Whether the dwelling will be adversely affected by agricultural activities on adjacent and nearby land due to dust, noise, odour, use of chemicals and farm machinery, traffic and hours of operation.
- Whether the dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural uses.
- The potential for the proposal to lead to a concentration or proliferation of dwellings in the area and the impact of this on the use of the land for agriculture.

Response

Though the allotment is of a small size, there is still the opportunity for it to be planted to orchard or run as another agricultural activity in association with abutting or surrounding land. The approval of a dwelling would likely prevent this land from every being used for agriculture and would create a rural living situation.

The applicant has not proposed an agricultural activity and the existing orchard is maintained for hobby purposes only, therefore whether the dwelling is reasonably required or not has not been addressed.

The potential for the dwelling to be adversely affected by agricultural activities is high with the orchard on the land abutting the northern and western boundaries part of a larger operation. The use of sprays on trees likely to be a cause of concern and result in adverse amenity impacts for residents of the proposed dwelling.

The proposed dwelling would likely lead to a proliferation of dwellings within the locality, given the two small dwelling lot to the south and the number of dwellings within close proximity on larger lot used for agriculture.

Design and siting issues

- The need to locate buildings in one area to avoid any adverse impacts on surrounding agricultural uses and to minimise the loss of productive agricultural land.

- The impact of the siting, design, height, bulk, colours and materials to be used, on the natural environment, major roads, vistas and water features and the measures to be undertaken to minimise any adverse impacts.

Response

The small size of the allotment and the channel on the eastern boundary does not provide many options for location of a proposed dwelling. The dwelling therefore cannot be located so as to reduce the possible impacts of surrounding agricultural use on future inhabitants.

Relevant overlay provisions

The subject land is not affected by any overlays.

The State Planning Policy Framework (SPPF)

Clause 14.01 Agriculture – objective is to minimise loss of productive farmland.

The objective for agriculture in this Clause is:

- To ensure that the state agricultural base is protected from the unplanned loss of productive agricultural land due to permanent changes of land use and to enable protection of productive agricultural land which is of strategic significance in the local and regional context.

It is State policy:

- Permanent removal of productive agricultural land from the State's agricultural base must not be undertaken without consideration of its economic importance for the agricultural production and processing sectors.

In considering a proposal to subdivide or develop agricultural land, the following factors must be considered:

- The desirability and impacts of removing the land from primary production, given its agricultural productivity;
- The impacts of the proposed subdivision or development on the continuation of primary production on adjacent land, with particular regard to land values and to viability of infrastructure for such production;
- The compatibility between the proposed or likely development and the existing uses of the surrounding land; and
- Assessment of land capability.

Response

It is not considered that the proposed dwelling application satisfies the objectives and policy of the State Planning Policy Framework. The proposal is not considered to achieve an acceptable outcome through the use of the land for a dwelling to provide for the increase of agricultural productivity. The potential for the dwelling to be adversely affected by surrounding agricultural uses is high given the reasonably small size of the property and predominate agricultural uses of the surrounding land.

The Local Planning Policy Framework (LPPF)- including the Municipal Strategic Statement (MSS), local planning policies and Structure Plans

Clause 21.04-3 Dwellings in Rural Areas

While it is acknowledged that a dwelling will often be needed to properly farm land, these must be limited to those that genuinely relate to agricultural production. The number of dwellings that a farm can economically sustain relates to its rural land capability, the labour needs of the farming practice, the intensity of the farm activity and the volume of rural output. Development of houses at a density greater than is required for the rural use of land can give rise to conflicts with legitimate farming practices. Isolated dwellings in the rural areas have the potential to disrupt agricultural activities and should not impinge on the appropriate use of farming land.

Objectives – Dwellings in Rural areas

- To ensure that dwellings in rural areas are required to support the agricultural use of the land.
- To discourage the development of dwellings which are unrelated to farming.
- To ensure that the use of a dwelling on a rural lot does not prejudice surrounding agricultural activities.
- To prevent the construction of dwellings on small and inappropriate lots in rural areas.

Clause 21.06 – Economic Development objectives include:

- To protect rural land for productive agricultural purposes.

Response

The proposed dwelling will not be related to a farming activity. As noted the proposed dwelling has the potential to be adversely impacted on by surrounding agricultural uses given the small size of the allotment. The proposal would result in the use of a dwelling on a small and inappropriate lot in a rural area still used for productive agriculture.

Relevant Particular Provisions

There are no relevant Particular Provisions that relate to this application.

The decision guidelines of Clause 65

The relevant decision guidelines of Clause 65 have been considered and addressed when assessing this application. The guidelines of the State Planning Policy Framework, Local Planning Policy Framework and Farming Zone are not met as discussed within this report.

Relevant incorporated or reference documents

The Rural Regional Land Use Strategy.

Other relevant adopted State policies or strategies policies

There are no other relevant adopted State or strategic policies that relate to this application.

Relevant Planning Scheme amendments

Planning Scheme amendment C121 proposes an amendment to the Farming Zone and Local Planning Policies. The amendment amends the schedule to the Farming Zone to re-classifies the zone into three areas which relate to the minimum lot size required for the use of land for a dwelling as of right and lot sizes for subdivision.

The subject land has been identified within Farming 1 Zone which has a proposed minimum area of 80 hectares. The amendment has been advertised and gone through the panel stage, with the report having been finalised. The panel report made the recommendation for the Farming Zone 1 that a minimum lot size for the use of land for a dwelling as of right be 80 hectares. The Council having considered this report decided to adopt a minimum lot size for Farming Zone 1 of 60 hectares. The panel report has therefore been adopted in part with the recommendation provided to the Minister for consideration and if approved gazettal.

Are there any significant social & economic effects?

There are no relevant significant social or economic effects that relate to this application.

Discuss any other relevant Acts that relate to the application?

There are no other relevant Acts that relate to this application.

Conclusion

The application for the use and development of the land dwelling in the Farming Zone is not considered to achieve an acceptable planning outcome. The proposed dwelling is not considered to be reasonably required for any agricultural activities on the land.

The Dwelling is likely to remove the land permanently from agricultural use and adversely impact the surrounding agricultural enterprises. Inhabitants of the dwelling are likely to be impacted on by the surrounding existing agricultural operations. For these reasons, it is recommended that the application for a planning permit be refused.

DRAFT

REFUSAL TO GRANT A PERMIT

APPLICATION NO: 2013-136

PLANNING SCHEME: GREATER SHEPPARTON PLANNING SCHEME

RESPONSIBLE AUTHORITY: GREATER SHEPPARTON CITY COUNCIL

ADDRESS OF THE LAND: 565 Old Dookie Road SHEPPARTON EAST VIC 3631

WHAT HAS BEEN REFUSED: Use and devlopment of land for a dwelling in the Farming Zone

WHAT ARE THE REASONS FOR THE REFUSAL?

1. The proposed use of land for a dwelling does not provide an acceptable outcome or net community benefit in terms of the State and Local Planning Policy Frameworks; and
 - a. Has the potential to impact on the continuation of primary production on nearby land;
 - b. Has the potential to limit the expansion of agriculture on adjacent land;
 - c. Has potential for conflict between the ongoing farming activities and the proposed rural living use;
 - d. Will result in the construction of a dwelling on a small and inappropriate lot.
2. The application for a dwelling does not adequately address or demonstrate that the proposed dwelling is reasonably requires for the operation of agricultural activity on the land as required by the Farming Zone.
3. The application does not comply with the Rural Regional Land Use Strategy (C121) which seeks to limit dwellings in the proposed Farming Zone 1 which are not associated or required for the agricultural use of the land.

Meeting closed at 10.30 AM