

**CONFIRMED MINUTES**

**FOR THE**

**GREATER SHEPPARTON CITY COUNCIL**

**DEVELOPMENT HEARINGS PANEL**

**Meeting No. 08/2016**

**HELD ON**

**THURSDAY 15 DECEMBER 2016**

**AT 10.00AM**

**IN THE COUNCIL BOARDROOM**  
**90 WELSFORD STREET**

**CHAIR**

**Councillor Chris Hazelman**

## **1. ACKNOWLEDGEMENT**

Welcome everyone to Development Hearings Panel meeting number 8 for 2016.

I would like to begin with an acknowledgement of the traditional owners of the land.

“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**

I would like to advise all present today that:

- the proceeding is being minuted but not recorded.
- and that out of courtesy for all other attendees any recording devices should be turned off during the course of the hearing unless the chair has been formally advised that a party wishes to record proceedings.

## **3. COMMITTEE MEMBERS PRESENT**

Committee members present today are:

- Cr Chris Hazelman (Chair),
- Colin Kalms – Manager Planning and Building - Greater Shepparton City Council
- Jorine Bothma – Manager Town Planning and Building – Moira Shire Council; and
- Emma Kubeil – Manager Sustainable Development – Strathbogie Shire Council

## **4. OFFICERS AND OTHERS PRESENT**

The Planning Officers presenting today are:

- Tim Watson – Senior Statutory Planner
- Sarah Van Meurs – Statutory Planner

## **5. APOLOGIES**

- Jonathan Griffin – Team Leader Development – Greater Shepparton City Council

## **6. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

None

## **7. DECLARATIONS OF CONFLICTS OF INTEREST**

None

## **8. ORDER OF PROCEEDINGS**

For those of you who are attending the DHP for the first time the process is as follows

- The DHP operates under Local Law No 2, with such modifications and adaptations as the DHP deems necessary for the orderly conduct of meetings.
- All DHP panel members have 1 vote at a meeting.
- Decisions of the DHP are by ordinary majority resolution. If a vote is tied the Chair of the DHP has the casting vote.
- The process for submitters to be heard by the Panel today shall be:
  - The planning officer to present the planning report recommendation
  - Any objector/s or representatives on behalf of the objectors present to make a submissions in support of their objection (should they wish to)
  - The applicant/applicant representative to present in support of the application
- The officer, objectors/submitters and applicant will be limited to three minutes per person unless granted a further 3 minute extension by the Chair (following a moved and seconded motion from the panel).

## **9. MATTERS FOR CONSIDERATION**

There is six items formally listed for consideration today:

- Planning permit application 2016-398 for the use of land for materials recycling.
- Planning permit application 2016-218 for the removal of native vegetation (8 scattered trees) Trees, 1, 2, 4, 5, 6, 18, 19 & 22
- Planning permit application 2016-407 for the use and development of the land for a telecommunications facility in the Farming Zone 1 and buildings and works for a telecommunications facility in accordance with 52.19-2.
- Planning permit application 2015-279 for the erection and display of electronic promotion sign.
- Planning permit application 2016-396 for the use and development of land for a dwelling in the Farming Zone 1.

- Planning permit application 2016-229 to extend the use of the land for a cool store (controlled atmosphere and smart fresh storage) in the Farming Zone 1, works to construct a gravel hardstand area associated with a Section 2 use in the Farming Zone 1, erect and display business identification signage in the Farming Zone 1, reduction of car parking and alteration to access in a Road Zone Category 1.

#### **10. LATE REPORTS**

None

#### **11. NEXT MEETING**

To be confirmed

Meeting concluded 2.40pm

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2016-218	10 McKenzie Road, Mooroopna North	Removal of native vegetation (8 scattered trees) Trees, 1, 2, 4, 5, 6, 18, 19 & 22	35
2016-407	1200 Bitcon Road, Tatura	Use and development of the land for a telecommunications facility in the Farming Zone 1 and Buildings and Works for a telecommunications facility in accordance with 52.19-2	58
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## Application Details:

Responsible Officer:	Tim Watson
Application Number:	2016-398
Applicant Name:	F Sibio
Date Received:	26-Sep-2016
Land/Address:	6315 Midland Highway TATURA VIC 3616
Zoning & Overlays:	Farming Zone Abuts a Road Zone (category 1)
Why is a permit required (include Permit Triggers):	35.07-1 – use of land for materials recycling in the Farming Zone 35.07-4 – buildings and works in the Farming Zone associated with a section 2 use
Are there any Restrictive Covenants on the title?	No
Is a CHMP required?	No
Was the correct application fee paid?	no

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## Proposal

The application for a planning permit proposes the use of the land for materials recycling, with the application description stating:

*Farm scrap metal recycling and general, car bodie [sic] collecting and crushing, load and unload vehicles and bins, weighing and paying customers, processing farm scrap metal and general metal, non ferrous and cars.*

It is expected that there will also be minor associated works were a planning permit to be approved such as the proposed wall and fencing.

After further information was submitted as a result of a further information request, the processes to occur on the land were more clearly explained as being:

- Land used to collect, store and crush scrap metals with machinery bought in on a temporary basis at the end of each month for a couple of days.
- Hours intended to for the use are 7:00am – 6:00pm Monday to Friday and 7:00am – 12:00pm (noon) Saturday.
- Heavy noises are to be restricted to between 9:00am – 4:00pm.

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## Summary of Key Issues

- The application for a planning permit proposes the use and development of the land in the Farming Zone for Materials Recycling (scrap metal).

- A request for information was made to the applicant which was to include information addressing the materials recycling particular provision, traffic impact assessment and the decision guidelines of the Planning Scheme.
- The information despite providing a clearer description of the proposed use, did not appropriately address the further information request.
- The officer decided after an assessment of the information submitted and the relevant guidelines of the Planning Scheme that the proposed use would not achieve an acceptable planning outcome and therefore should be refused.
- The officer decided that to avoid imposing time and economic burdens on the applicant through public notice, referrals and a second request for further information that a recommendation should be made directly to the Development Hearings Panel.

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## Recommendation

### Refusal

That the Council having not caused notice of Planning Application No. **2016-398** 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 **6315 Midland Highway TATURA VIC 3616**, for the **use of land for materials recycling**.

### For the following reasons:

1. The application does not achieve an acceptable planning outcome against the following provisions of the State Planning Policy Framework:
  - a) The site does not provide for appropriate buffers for a materials recycling use identified under clauses 11.10 and 19.03-5 due to its proximity to existing dwellings;
  - b) The use will result in noise related adverse amenity impacts on surrounding sensitive uses as specified clause 13.04 given the sensitive land uses on abutting land; and
  - c) The activity which requires a substantial threshold distance should be located within a core industrial area where adequate separation distances and buffers between sensitive uses and offensive industries can be provided as specified by Clause 17.02-2.
2. Clause 21.06-4 specifies that materials recycling should be directed to locations that minimize land use conflicts and impacts on amenity. The application does not achieve acceptable outcomes under clause 21.06-4, Industrial Development in Rural Areas for the following reasons:
  - a) Proposing the location of a materials recycling use in the Farming Zone which could be located within an existing industrial area;

- b) Is not a rural-based enterprise;
  - c) Does not provide for the reuse of existing large scale packing sheds and cool stores.
3. The use of land for materials recycling does not lead to an acceptable outcome under the farming Zone and is largely unrelated to agriculture.
4. The application material submitted does not satisfy the application requirements of Clause 52.45 – Materials Recycling which are mandatory or provide an acceptable outcome in addressing the potential amenity impact on the surrounding area.
5. The application does not achieve orderly planning outcome for the area through the location of a use with an adverse amenity potential on land abutting sensitive land uses (dwellings) creating potential land use conflict.
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## Subject Site & Locality

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

Date: **10/11/16**

The site has a total area of **9364** square metres and currently comprises:

- Four main boundaries, two of which abut roads (Minchin Road to the East and the Midland Highway to the South).
- The site has two unsealed access points to Minchin Road and one to the Midland Highway.
- The site contains a number of buildings and sheds with the two buildings which front the Midland Highway being a dwelling and a previously used retail shop front.
- Towards the rear of the site (north) the area is mostly clear and vacant with a concrete pad, large shed and a line of existing trees along the existing eastern boundary.

The main site/locality characteristics are:

- The site to the north is a small dwelling allotment, with allotments further to the north also comprising smaller dwelling allotments.
- The abutting land to the west is vacant, however has planning permission for the use and development of the land for a dwelling, with a previous older dwelling removed from the land after fire damage.
- Land further to the west is used and developed for a dairy farm, with the dairy located to the north along Minchin Road.
- Land to the east is used for orchard.
- Land to the south and south east is used for grazing and pasture propagation.



The Photos below show the existing site:





























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## Pre-Application Meeting Details

As there been a pre-application meeting ? yes

If yes with Whom? Sarah Van Meurs through written correspondence which was responding to an email.

The information provided is as follows:

The subject land is in the Farming Zone 1 and is not affected by any Overlays.

I wish to confirm you have stated that extensive infrastructure currently exists on the land and for this reason, the use of the land for materials recycling (scrap metal) would be cost effective. Existing infrastructure includes weighbridge, office, shed, toilet, power, phone, concrete and hard stand surfaces, fencing and trees and crossovers the site is considered to be cost effective in terms of utilising for materials recycling.

You have stated that the proposed business will operate from 7:00 am to 6:00pm weekdays and Saturday until 12:00 midday, with heavy noise to be between 9:00 am and 4:00pm.

You have also stated that you are willing to obtain noise acoustic testing when required by Council and construct an acoustic wall to resolve noise issues to the north.

A planning permit is required for the use of the land for materials recycling (scrap metal) in the Farming Zone 1.

The purpose of the Farming Zone is to provide for the use of the land for agriculture. Further to this, Local Policy (Clause 21.06-1 of the Greater Shepparton Planning Scheme) also discourages non-agricultural uses on rural land, other than rural based industry.

Having regard to the subject land, it is noted that there are a number of small rural residential allotments located to the north of the site. The site is bounded by Midland Highway to the south with an orchard located to the east and a rural residential allotment to the west.

Given the above zoning of the land and surrounding uses, the Planning Department is unlikely to support the use of the land for materials recycling at the proposed location.

Should you wish to make a planning permit application, you will be required to submit the following:

- Planning permit application form;
- Full recent copy of Certificate of Title;
- Site layout plan;
- Detailed description of the proposed use, including hours of operation, maximum number employees, delivery and dispatch details, details of processes undertaken on the land, etc.
- Noise impact assessment;
- Measures to ensure contaminants such as engine oils, fuels, coolant etc. do not contaminate the land.
- Prescribed application fee.

You should be aware that pre-application advice is provided as assistance but cannot pre-empt a formal decision that must be made once an application is received under the *Planning and Environment Act 1987*.

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## **Permit/Site History**

The history of the site includes:

- Planning permit 2004-393 was issued on 11 October 2004 and allowed 'the land to be used for metal and plastic bumper bar recycling centre (materials recycling), with associated works in accordance with the endorsed plans forming part of this permit'.
- Condition 17 of planning permit 2004-393 states that the 'use of land for materials recycling as authorised by this planning permit is initially limited to a three (3) year period'.
- On 8 December 2010, an amended planning application was made to amend conditions of the permit to extend operating hours.
- As part of the initial assessment of this amended application, the expiry date of the permit and the possibility the permit had expired and that the use was now prohibited in the Farming Zone was raised.
- On 17 April 2012, Colin Taylor Lawyers made an amended application to delete condition 17 from planning permit 2004-393.

- The amended application was advertised on 10 May 2012 and 10 objections were made.
- At the September Ordinary Council Meeting, Council resolved to refuse to grant an amended permit. The refusal was posted to the applicant on 19 September 2012. Council also resolved to provide the occupier one year to relocate the business.
- The owner sought a VCAT review of Council's decision, however subsequently decided to withdraw the application (P3404/2012), orders were issued on 28 February 2013 to relocate.
- On 3 November 2014, a follow up letter was provided seeking an update on the relocation. This letter informed if no response was received enforcement proceedings may be commenced.
- On 18 December 2014, a third letter was provided. The letter informed enforcement proceedings would be commenced.
- Commo's Metals responded to the series of letters on 2 January 2015. A meeting was held on 8 January 2015 between Jamie Commisso, Stacey and planning officers Braydon Aitken and Andrew Dainton. Mr Commisso informed of the reasons that the relocation had not occurred including cost of triple interceptor, weigh bridges and sound wall. It was suggested that Mr Commisso make an amended application to vary the building material type of the sound wall. Mr Commisso was also informed Council intended to file an application for enforcement order to cease the use at the Minchin Road site.
- On 13 January 2015, an officer inspected the 6315 Minchin Road, Tatura site and observed that the use of land for scrap metal recycling had not ceased.
- The use ceased prior to the 1 May 2015, when it was to proceed to a VCAT enforcement hearing.

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## Further Information

Is further information required for the application? **yes**

What additional information is required?

- A full recent copy of title for the land.
- The following applications requirements of the Resource Recovery particular provision:
  - A location plan showing the site and surrounding uses including distances to nearby sensitive uses such as residential, hospital or education uses.

- A detailed site plan, showing the layout and height of buildings and works, materials, reflectivity, colour, lighting, landscaping, access roads and parking areas.
- Plans or other media showing anticipated views of the facility from sensitive use locations.
- A written report(s) including:
  - Identification of the purpose of the use.
  - A description of the proposal including the materials to be processed, the types of processes to be used and any materials to be stored and handled.
  - Proposed hours of operation.
  - Likely traffic generation including heavy vehicles.
  - Consideration of whether a works approval or licence is required from the Environment Protection Authority.
- An assessment of:
  - Potential amenity impacts such as noise, odour, emissions to air, land or water, vibration, dust, light spill, visual impact.
  - The impact of traffic generation on local roads.
- A Traffic Impact Assessment that considers traffic impacts, loading and car parking as a result on the proposed use.
- A written assessment against the State and Local Planning Policies of the Greater Shepparton Planning Scheme and in particular the *Policy Guidelines – Industrial Development in Rural Areas* at clause 21.06-4 (attached and highlighted).

What date was the information requested?: **6 October 2016**

What is the lapsed date? **6 December 2016**

What date was the information received?: **14 October 2016**

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## Public Notification

It was decided by the officer that after an assessment of the application material that the application would not achieve an acceptable planning outcome, even if the application material was more substantive. To avoid imposing additional economic and time burden on the applicant by asking for further detailed reports, it was decided that the officer would recommend refusal.

If the Development Hearings Panel is of a mind to grant a permit, it is recommended that the application is returned to the planning officer to facilitate public notice prior to a decision being made by the panel.

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## Objections

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

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## Title Details

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



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## Consultation

Consultation was undertaken. Relevant aspects of consultation, included:

- Pre-application discussions with the applicant which are summarised in a letter sent to the applicant as identified above.
- A meeting with the applicant and proposed materials recycling facility operator to discuss the further information request.
- Phone discussions with both the applicant and proposed operator to inform that the application was going to be recommended for refusal. These discussions were followed up in writing.

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## Referrals to Authorities

External Referrals Required by the Planning Scheme:

Section 55 - Referrals Authority	List Planning clause triggering referral	Determining or Recommending	Advice/Response/Conditions
The application was not referred to any authorities.	-	-	-

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## Notice to Authorities

External Notice to Authorities:

Section 52 - Notice Authority	Advice/Response/Conditions
The application was not externally notified to any authorities.	-

Internal Notice:

Internal Council Notices	Advice/Response/Conditions
The application was not referred to any internal departments	-

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## Assessment

### The zoning of the land

Farming Zone 35.07

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The purpose of the zone is:

- To provide for the use of land for agricultural land.
- To encourage the retention of productive agricultural land.

- To ensure that non-agricultural the need to uses, including dwellings, do not adversely affect the use of land for agriculture.
- To encourage the retention of employment and population to support rural communities.
- To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

A permit is required for the use of the land for a warehouse in the Farming Zone 1, with Vehicle store nested under warehouse.

#### Decision guidelines

##### General issues

- The State Planning Policy Framework and Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- Any regional catchment strategy and associated plan applying to the land.
- 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.
- How the use and development makes use of existing infrastructure and services.

##### Agricultural issues and impacts from non-agricultural uses

- Whether the use or development will support and enhance agricultural production.
- Whether the use or development will adversely affect soil quality or 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 capacity of the site to sustain the agricultural use.
- The agricultural qualities of the land, such as soil quality, access to water and access rural infrastructure.

- Any integrated land management plan prepared for the site.

#### Environmental issues

- The impact of the proposal on the natural physical features and resources of the area, in particular on soil and water quality.
- The impact of the use or development on the flora and fauna on the site and its surrounds.
- The need to protect and enhance the biodiversity of the area, including the retention of vegetation and faunal habitat and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge are.
- The location of on-site effluent disposal areas to minimise the impact of nutrient loads on waterways and native vegetation.

#### 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.
- The impact on the character and appearance of the area or features of architectural, historic or scientific significance or of natural scenic beauty or importance.
- The location and design of existing and proposed infrastructure including roads, gas, water, drainage, telecommunications and sewerage facilities.
- Whether the use and development will require traffic management measures.

#### Response

Though the site is located in a Farming Zone, the land mostly to the north and the abutting western allotment reflect a character more typical of a Low Density Residential Zone, with 16 dwellings located on the western side of Minchin Road to the north of the site within 620 metres of the northern boundary. The allotments to the east, south and south east of the land are larger allotments and used for agricultural pursuits.

The use of land for materials recycling where scrap metal is to be collected and crushed does not lend it-self to being located within close proximity to sensitive uses (dwellings) with

likely adverse amenity impacts (i.e. noise). The small size of the allotment creates a situation where buffers are not easily able to be provided on the land to create a degree of separation between the proposed materials recycling use and the dwellings.

The use (materials recycling) is identified in the 52.10 clause of the planning scheme (uses with adverse amenity potential), which gives the indication that such uses should allow for appropriate setbacks from sensitive uses. The 52.10 clause does not provide a set threshold distance, with the threshold distance variable, dependent on the process to be used and the materials to be processed or stored.

The applicant has identified that the site is appropriate for the use, with an existing weigh-bridge on the land and multiple access points.

The use will not lead to the enhancement of agricultural production, however as identified by the applicant will provide a service to agricultural operations in taking farm related scrap. The site is not considered to be useful for agricultural production given the small size of the allotment and constraints by abutting properties to the site being consolidated into a larger land holding.

The applicant does not propose any significant new buildings or works on the land and has agreed to implement screen measures along boundaries should a permit issue to screen the site from public roads.

The applicant was requested to provide a traffic impact assessment for the proposed use. The applicant provided a plan which showed proposed traffic movements throughout the site and identified that the land would be accessed by trucks and up to 20 cars per day. No traffic impact assessment report was submitted to address the impacts of traffic movements to and from the site, which is important given the land's location on a Road Zone (category 1).

Despite the land being in the Farming Zone, the size of the allotment and surrounding uses have resulted in a situation where the land is lost to agricultural production for the foreseeable future. The creation of a number of small lots under previous planning provisions, all of which have a dwelling constructed on them has resulted in a Low Density residential type situation. Though this type of situation is not desirable or encouraged by the current planning provisions, the scheme requires the decision maker to manage these legacy issues and provide adequate amenity protection to the sensitive uses (dwellings).

### **Relevant overlay provisions**

No planning overlays affect the subject land.

### **The State Planning Policy Framework (SPPF)**

Hume Region Growth 11.10

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Relevant objectives and strategic include:

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- Create renewable energy hubs that support co-location of industries to maximise resource use efficiency and minimise waste generation.
- To focus growth and development to maximise the strengths of existing settlements.
- Support improved access to a range of employment and education opportunities, particularly in key locations such as Shepparton, Wangaratta, Wodonga, Benalla and Seymour.
- Provide for appropriate settlement buffers around sewerage treatment areas, solid waste management and resource recovery facilities and industrial areas to minimise potential impacts on the environment such as noise and odour.
- Support provision of adequate facilities to manage the region's solid waste, including resource recovery facilities.

### Response

The objectives and strategies are generally supportive of resource recovery uses and identify their importance to the region and State in managing waste. The strategies above direct that growth and development which create employment opportunities should be directed to existing settlements. The need for appropriate buffers around resource recovery facilities to minimise impacts on the environment such as noise and odour are also highlighted.

The above objectives and strategies provide some general support for the proposal as a resource recovery related business, however on the balance direct that such uses should be located toward existing settlements and provide appropriate buffers to protect the environment. The proposed use to be located a significant distance from existing settlements abutting sensitive uses does not achieve on the balance an acceptable outcome against competing objectives of economic growth and environmental protection.

### Noise and Air 13.04

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Relevant objectives and strategies include:

- To assist the control of noise effects on sensitive land uses.
- Ensure that development is not prejudiced and community amenity is not reduced by noise emissions, using a range of building design, urban design and land use separation techniques as appropriate to the land use functions and character of the area.
- To assist the protection and improvement of air quality.

- Ensure that land-use planning and transport infrastructure provision contribute to improved air quality by:
  - Integrating transport and land-use planning to improve transport accessibility and connections.
  - Locating key developments that generate high volumes of trips in the Central Activity District, Principle and Major Activity Centres.
  - Providing infrastructure for public transport, walking and cycling.
- Ensure, wherever possible, that there is suitable separation between land uses that reduce amenity and sensitive land uses.

#### Response

The applicant has identified in their application that they are willing to construct a wall along sections of the northern boundary so assist in noise mitigation. No details as to the type of wall or evidence has been submitted regarding what impact this will have in protecting the dwellings to the north, the closest being approximately 12 metres from the northern boundary of the site.

The applicant has not provided a suitable level of information for the decision maker to be conclusive that the use and development would result in an acceptable planning outcome with regard to noise and air emissions.

#### Agriculture 14.01

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Relevant objectives and strategies include:

- To protect productive farmland which is of strategic significance in the local or regional context.
- Ensure that the State's agricultural base is protected from unplanned loss of productive agricultural land due to permanent changes of land use.

#### Response

As identified under the Farming Zone guidelines, the subject land is lost to meaningful agricultural production for the foreseeable future and the above guidelines do not provide any direction of guidance for the application being assessed.

#### Economic Development 17

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Planning is to provide for a strong and innovative economy, where all sectors of the economy are critical to economic prosperity.

Planning is to contribute to the economic well-being of communities and the State as a whole by supporting and fostering economic growth and development by providing land, facilitating decisions, and resolving land use conflicts, so that each district may build on its strengths and achieve its economic potential.

#### Industrial Land Development 17.02-1

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Relevant objectives and strategies include:

- Identify land for industrial development in urban growth areas where:
  - Good access for employees, freight and road transport is available.
  - Appropriate buffer areas can be provided between the proposed industrial land and nearby sensitive land uses.

#### Design of Industrial Development 17.02-2

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Relevant objectives and strategies include:

- To facilitate the sustainable development and operation of industry and research and development activity.
- Ensure that industrial activities requiring substantial threshold distances are located in the core of industrial areas.
- Minimise inter-industry conflict and encourage like industries to locate within the same area.
- Provide adequate separation and buffer areas between sensitive uses and offensive or dangerous industries and quarries to ensure that residents are not affected by adverse environmental effect, nuisance or exposure to hazards.

#### Response

The proposed use will provide for increase in economic benefit to the municipality through the provision of a materials recycling facility, which will lead to employment creation and provide a service of need to community. The land use conflicts likely to arise from such a use close to the sensitive uses (dwellings) however are likely to result in an unacceptable amenity outcome. The provisions above provide guidance that industrial activities should be directed toward industrial areas where appropriate buffers can be provided and their growth and operation is not impeded upon by controls protecting the sensitive uses.

## Waste and Resource Recovery 19.03-5

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Relevant objectives and strategies include:

- To avoid, minimise and generate less waste to reduce damage to the environment caused by waste, pollution, land degradation and unsustainable waste practices.
- Establish new sites and facilities to safely and sustainably manage all waste and maximise opportunities for resource recovery.
- Encourage facilities for resource recovery to maximise the amount of resources recovered.
- Provide sufficient waste management and resource recovery facilities to promote re-use, recycling, reprocessing and resource recovery and enable technologies that increase recovery and treatment of resources to produce energy and marketable end products.
- Encourage waste generators and resource generators and resource recovery businesses to locate in close proximity to enhance sustainability and economies of scale.
- Ensure buffers for waste and resource recovery facilities are defined, protected and maintained.
- Site and manage waste disposal and resource recovery facilities in accordance with the *Waste management policy (Siting, Design and Management of Landfills)* (EPA, 2004).

### Response

The proposed use is supported by the above strategies and objectives in recycling scrap metals through the crushing of the materials and selling to a buyer. This process is supported by suite of documents external to the Planning Scheme which includes 'Victoria's Towards Zero Waste Strategy'.

The location of the use within close proximity to a number of dwellings, does not seek to provide a buffer to protect the sensitive uses or ensure that the use (materials recycling) can operate generally unimpeded. This locational choice does not seek to ensure that buffers for resource recovery facilities are defined, protected or maintained with such a small setback from the boundaries of sensitive uses available.



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

Agriculture 21.06-1

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Relevant objectives and strategies include:

- To ensure that agriculture is and remains the major economic driver in the region.
- Discourage land uses and development in the Farming Zone, Schedule 1 that would compromise the future agricultural use of the land, including farm related tourism.
- Discourage non-agricultural uses on rural land other than rural based industry.
- Discourage non-agricultural development in rural areas except where development is dependent on a rural location, and cannot be accommodated within existing industrial or business zoned areas.
- Discourage non-agricultural development along major roads in rural areas especially at the fringe of existing urban areas when it may contribute to ribbon development.
- Buildings for non-agricultural purposes in rural areas should be set back a minimum of 100 metres from any road, be constructed in muted colour 'colorbond' materials or similar and screened from any road by dense tree and shrub planting.
- Signs for industrial and commercial development in rural areas will be strictly limited in size and number.

Response

As identified under the Farming Zone guidelines response, the subject land is lost to meaningful agricultural production for the foreseeable future.

The proposed use and development is not defined as a rural industry, nor is it dependent on a rural location, with the use able to be located within existing industrial areas of the municipality.

The Midland Highway is defined as a major road within the municipality, where development should be discouraged.

No sign has been proposed by this application.

Industry 21.06-4

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Relevant objectives and strategies include:

## General

- To sustain a growing and diverse industrial base.
- To protect the existing industrial base in the urban areas of Shepparton, Mooroopna and Tatura.
- To provide an adequate supply of appropriately located industrial land relevant to measured demand that meets the needs of different industries.
- To minimise land use conflicts.

## Economic

- To encourage future industrial land uses to locate on existing vacant industrial zoned lands and, where this is not possible, to examine opportunities to rezone additional lands to facilitate such industrial or related land uses.
- Support the development of new industries in established industrial zoned, with access to infrastructure and constructed roads.
- Direct industries which require substantial buffer zones from sensitive land uses to locations that minimise land use conflicts and impacts on the amenity of surrounding areas.

## Amenity

- Facilitate good design and landscaping outcomes for industrial developments that enhance the municipality's built form and provide amenable working environments.
- Prevent encroachment of residential development into industrial areas, as well as ensuring that new industrial developments are located an appropriate distance from existing residential areas.
- Ensure that land within 10 metres of the frontage of an industrial site (other than land required for car parking and access) is developed for landscaping.
- Assist old and inappropriate industrial areas in their transition to more appropriate land uses.
- Direct materials recycling industries to locations that minimise land use conflicts and impacts on the amenity of surrounding areas.

## Response

The use of land for materials recycling is encouraged within the existing Industrial zones of the municipality where appropriate buffers from sensitive uses can be established. The policy specifically identifies that materials recycling should be located to minimise land use conflicts and impacts on the amenity of the surrounding areas.

The proposed use and development of the land in the Farming Zone for a materials recycling use where it will be in close proximity to sensitive uses including the sharing of a boundary does not provide for an acceptable planning outcome. The location of the use abutting the boundaries of 'rural lifestyle' allotments creates the potential for a direct land use conflict. Whilst it is acknowledged that the site is in the Farming Zone and not a Residential Zone, where the residents could expect a higher level of amenity, the large number of existing dwellings within the locality need to be considered in any planning assessment made in regards to land use conflict.

#### Policy Guidelines – Industrial Development in Rural Areas 21.06-5

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It is policy to:

- Discourage industrial use and development (other than rural industry) in rural areas, except where:
  - It is unable to be accommodated in existing industrial zoned areas;
  - It does not compromise the surrounding existing and future agricultural practices;
  - It adds value to the agricultural base of the municipality; and
  - It is a rural-based enterprise; or
  - It provides for the reuse of existing large scale packing sheds and cool stores.

#### Response

The above policy guidelines are very specific in the direction they provide to new industrial uses within rural areas. The proposed use can be accommodated within an existing industrial zoned area of the municipality, with appropriate lot sizes provides within the existing industrial zoned urban areas of the municipality.

The use is unlikely to compromise the surrounding existing future agricultural practices, as the land and abutting land lost to agriculture in the foreseeable future as identified earlier in this report.

The proposed use, despite assertions from the applicant that agricultural scrap metal will be processed, is not an agricultural based enterprise.

The proposed use will not allow result in the reuse of a large scale packing shed or cool store.

### **Relevant Particular Provisions**

#### **Car Parking 52.06**

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Clause 52.06 applies to a new use of land.

Before a new use commences the number of car parking spaces required under Clause 52.06-5 must be provided to the satisfaction of the responsible authority.

Under the table at clause 52.06-5 the applicant is required to provide 10 percent of the site area for car parking.

#### Response

A plan submitted with the further information illustrates the location of car parking onsite to be provided for employees and customers. This designated car parking area does not indicate any dimensions or the number of spaces to be provided. From a simple assessment of the plan against the overall site, it can be reasonable assumed that the 10 percent of the site is not provided for the provision of car parking.

A reduction in car parking requirements therefore needs to be considered. As identified in this report the proposed use is not considered to result in an acceptable planning outcome and the responsible authority has decided not to impose significant economic burden on the application by requesting additional reports (i.e. car parking demand assessment).

#### **Loading and Unloading of Vehicles 52.07**

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No buildings or works may be constructed for the manufacture, servicing, storage or sale of goods or materials unless:

- Space is provided on the land for loading and unloading vehicles as specified in the table below.
- The driveway to the loading bay is at least 3.6 metres wide. If a driveway changes direction or intersects another driveway, the internal radius at the change of direction or intersection must be at least 6 metres.
- The road that provides access to the loading bay is at least 3.6 metres wide.

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<b>FLOOR AREA OF BUILDING</b>	<b>MINIMUM LOADING BAY DIMENSIONS</b>	
2,600 sq m or less in single occupation	Area	27.4 sq m
	Length	7.6 m
	Width	3.6 m
	Height clearance	4.0 m
For every additional 1,800 sq m or part	Additional 18 sq m	

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### Response

The applicant has submitted a plan showing the loading area with dimensions of 28 x 30 metres, which more than meets the requirement set out in the particular provision.

### Land Adjacent to a Road Zone, Category 1 52.29

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A permit is required to create or alter access to a road in a Road Zone, Category 1.

The application does not propose any new access point to the Road Zone, with the existing access points to be relied upon.

It was determined in *Greater Shepparton CC v D'Agostino* [2016] VCAT 1355 (11 August), that the term alter referred to the physical and could not be read as alteration to the use of the access.

No permit is therefore triggered under this clause.

### Resource Recovery 52.45

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The purpose of this provision is to facilitate the establishment and expansion of a Transfer station and/or a Materials recycling facility in appropriate locations with minimal impact on the environment and the amenity of the area.

This clause applies to all land used and developed or proposed to be developed for a transfer station and/or a materials recycling facility.

An application must be accompanied by the following information:

- A location plan showing the site and surrounding uses including distances to nearby sensitive uses such as residential or education uses.
- A detailed site plan, showing the layout and height of buildings and works, materials, reflectivity, colour, lighting, landscaping, access roads and parking areas.

- Plans or other media showing anticipated views of the facility from sensitive use locations.
- A written report(s) including:
  - Identification of the purpose of the use.
  - A description of the proposal including the materials to be processed, the types of processes to be used and any materials to be stored and handled.
  - Proposed hours of operation.
  - Likely traffic generation including heavy vehicles.
  - Consideration of whether a works approval or licence is required from the Environment Protection Authority.
- An assessment of:
  - Potential amenity impacts such as noise, odour, emissions to air, land or water, vibration, dust, light spill, visual impact.
  - The impact of traffic generation on local roads.

#### Decision Guidelines

Before deciding on an application, in addition to the Decision Guidelines of Clause 65, the responsible authority must consider:

- The contribution of the proposal to achieving resource recovery targets established by the Victorian Government.
- The impacts of the proposal on the amenity of the surrounding area.
- The Towards Zero Waste Strategy (DSE, 2005) and the Metropolitan Waste and Resource Recovery Strategic Plan (Sustainability Victoria, 2009).
- Relevant guidelines applicable to the use including the Environmental Guidelines for Composting and other Organic Recycling Facilities (EPA, 1996), the Guide to Best Practice for Organics Recovery (Sustainability Victoria, 2009) and the Guide to Best Practice at Resource Recovery Centres (Sustainability Victoria, 2009).

#### Response

The proposed use is clearly identified as 'Materials Recycling' as defined by the Scheme, being:

*Land used to collect, dismantle, treat, process, store, recycle, or sell, used or surplus materials.*

The provision clearly identifies that the information listed in the application requirements must be submitted and there is no scope for the Responsible Authority to vary these requirements, as there is in other sections of the Scheme.

A further information request was made of the application to require this information. The applicant submitted a better description of the proposed use and a number of plans which showed how the site would be used. The Responsible Authority is not satisfied that the information submitted by the applicant meets the requirements as defined above. It has however been decided that after an assessment of the application material submitted that the application would not achieve an acceptable planning outcome, even if the application material was more substantive. To avoid imposing additional economic burden on the applicant by asking for further detailed reports, it was decided that the officer would make a recommendation to refuse the application to the Development Hearings Panel.

It is acknowledged that the proposed use will contribute to achieving resource recovery targets established by the Victorian Government through the recycling of surplus materials (scrap metals). Similarly the proposal is supported by the 'Towards Zone Waste Strategy' which encourages materials recycling to reduce the amount of materials sent to land fill. The proposal however as identified earlier in this report will not result in an acceptable amenity outcome for the locality. The proposal's northern boundary will abut a sensitive use (dwelling on a small lot), with the boundary approximately 12 metres from the dwelling. The wider locality to the north comprises 18 dwellings on small lots, all within approximately 620 metres of the use. The location of 'heavy industry' within close proximity of an established residential area despite the zoning (Farming Zone) is not considered to be sensible planning decision where adverse amenity impacts are very likely to arise.

The proposal does not include any organic waste recycling components.

### **The decision guidelines of Clause 65**

Because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this clause.

#### **65.01 Approval of an application or plan**

Before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate:

- The matters set out in Section 60 of the Act.
- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The purpose of the zone, overlay or other provision.

- Any matter required to be considered in the zone, overlay or other provision.
- The orderly planning of the area.
- The effect on the amenity of the area.
- The proximity of the land to any public land.
- Factors likely to cause or contribute to land degradation, salinity or reduce water quality.
- Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.
- The extent and character of native vegetation and the likelihood of its destruction.
- Whether native vegetation is to be or can be protected, planted or allowed to regenerate.
- The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.

### Response

The Planning Scheme establishes that while materials recycling uses are important to the State in providing for a zero waste future, they must be managed in terms of location and potential amenity impacts. This direction is provided with strong support through the inclusion of a particular provision within the Planning Scheme with a detailed list of application requirements and decision guidelines.

The officer acknowledges that the use of land for materials recycling is permissible within the Farming Zone, however this does not imply that a permit should grant. The location of a use identified within clause 52.10 (uses with adverse amenity potential) within close proximity to dwellings is not considered to be an orderly planning outcome. The proposal will likely result in adverse amenity impacts on these sensitive uses, something that Planning seeks to avoid. While these dwellings are all on small lots and the area is being used as something akin to a Low Density Residential Zone, which the Farming Zone discourages as a general principal, the dwellings are there and therefore must be considered in the assessment of this application.

It is not considered that this use could be controlled through planning permit conditions to allow for both the proposed use and the dwellings to continue without potential land use conflict.

### **Relevant incorporated or reference documents**

The Industrial Land Review, City of Greater Shepparton 2011 identifies future industrial lands. The subject site has not been included within this identification.

### **Other relevant adopted State policies or strategies policies**

There are no other relevant adopted State or Strategic Policies that relate to this application for a planning permit.



### **Relevant Planning Scheme amendments**

There are no relevant Planning Scheme Amendments that relate to this application for a planning permit

### **Are there any significant social & economic effects?**

There are no relevant significant social or economic effects that relate to this application for a planning permit.

### **Discuss any other relevant Acts that relate to the application?**

There are no other relevant Acts that relate to this application for a planning permit.

### **The Aboriginal Heritage Act 2006**

The *Aboriginal Heritage Act 2006* provides protection for all Aboriginal places, objects and human remains in Victoria, regardless of their inclusion on the Victorian Aboriginal Heritage Register or land tenure.

The *Aboriginal Heritage Act 2006* introduces a requirement to prepare a Cultural Heritage Management Plan (CHMP) if all or part of the activity is a listed high impact activity, resulting in significant ground disturbance, and all or part of the activity area is an area of cultural heritage sensitivity, which has not been subject to significant ground disturbance.

The 'Area of Cultural Heritage Sensitivity in Victoria' does not include the land within an area of cultural heritage sensitivity; therefore the proposed use does not trigger the need for a CHMP.

### **Charter of Human Rights and Responsibilities**

The Charter of Human Rights and Responsibilities has been considered when assessing this application for a planning permit and it is not considered that the application impinges on the Charter.

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## **Conclusion**

The officer acknowledges that the use of land for materials recycling is permissible within the Farming Zone, however this does not imply that a permit should grant. The location of a use identified within clause 52.10 (uses with adverse amenity potential) within close proximity to dwellings is not considered to be an orderly planning outcome. The proposal will likely result in adverse amenity impacts on these sensitive uses, something that Planning seeks to avoid. While these dwellings are all on small lots and the area is being used as something akin to a Low Density Residential Zone, which the Farming Zone discourages as a general principal, the dwellings are there and therefore must be considered in this application of assessment.

It is not considered that this use could be controlled through planning permit conditions to allow for both the proposed use and the dwellings to continue without potential land use conflict. It is therefore recommended that the application for a planning permit be refused.



# DRAFT REFUSAL TO GRANT A PERMIT

**APPLICATION NO:** 2016-398  
**PLANNING SCHEME:** GREATER SHEPPARTON PLANNING SCHEME  
**RESPONSIBLE AUTHORITY:** GREATER SHEPPARTON CITY COUNCIL  
**ADDRESS OF THE LAND:** 6315 Midland Highway TATURA VIC 3616  
**WHAT HAS BEEN REFUSED:** Use of land for materials recycling

## WHAT ARE THE REASONS FOR THE REFUSAL?

1. The application does not achieve an acceptable planning outcome against the following provisions of the State Planning Policy Framework:
  - a) The site does not provide for appropriate buffers for a materials recycling use identified under clauses 11.10 and 19.03-5 due to its proximity to existing dwellings;
  - b) The use will result in noise related adverse amenity impacts on surrounding sensitive uses as specified clause 13.04 given the sensitive land uses on abutting land; and
  - c) The activity which requires a substantial threshold distance should be located within a core industrial area where adequate separation distances and buffers between sensitive uses and offensive industries can be provided as specified by Clause 17.02-2.
2. Clause 21.06-4 specifies that materials recycling should be directed to locations that minimize land use conflicts and impacts on amenity. The application does not achieve acceptable outcomes under clause 21.06-4, Industrial Development in Rural Areas for the following reasons:
  - a) Proposing the location of a materials recycling use in the Farming Zone which could be located within an existing industrial area;
  - b) Is not a rural-based enterprise;
  - c) Does not provide for the reuse of existing large scale packing sheds and cool stores.
3. The use of land for materials recycling does not lead to an acceptable outcome under the farming Zone and is largely unrelated to agriculture.
4. The application material submitted does not satisfy the application requirements of Clause 52.45 – Materials Recycling which are mandatory or provide an acceptable outcome in addressing the potential amenity impact on the surrounding area.

5. The application does not an achieve orderly planning outcome for the area through the location of a use with an adverse amenity potential on land abutting sensitive land uses (dwellings) creating potential land use conflict.

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## Application Details:

Responsible Officer:	Tim Watson
Application Number:	2016-218
Applicant Name:	McKenzie Gold Pty Ltd
Date Received:	24-May-2016
Statutory Days:	43(21/9/16)
Land/Address:	10 McKenzie Road MOOROOPNA NORTH VIC 3629
Zoning & Overlays:	Farming Zone 1 Floodway Overlay Land Subject to Inundation Overlay
Why is a permit required (include Permit Triggers):	52.17-2 Remove native vegetation (8 scattered trees) – High Risk Pathway
Are there any Restrictive Covenants on the title?	No, one crown lot reserves the right of the crown in respect of mining and minerals
Is a CHMP required?	No
Was the correct application fee paid?	yes

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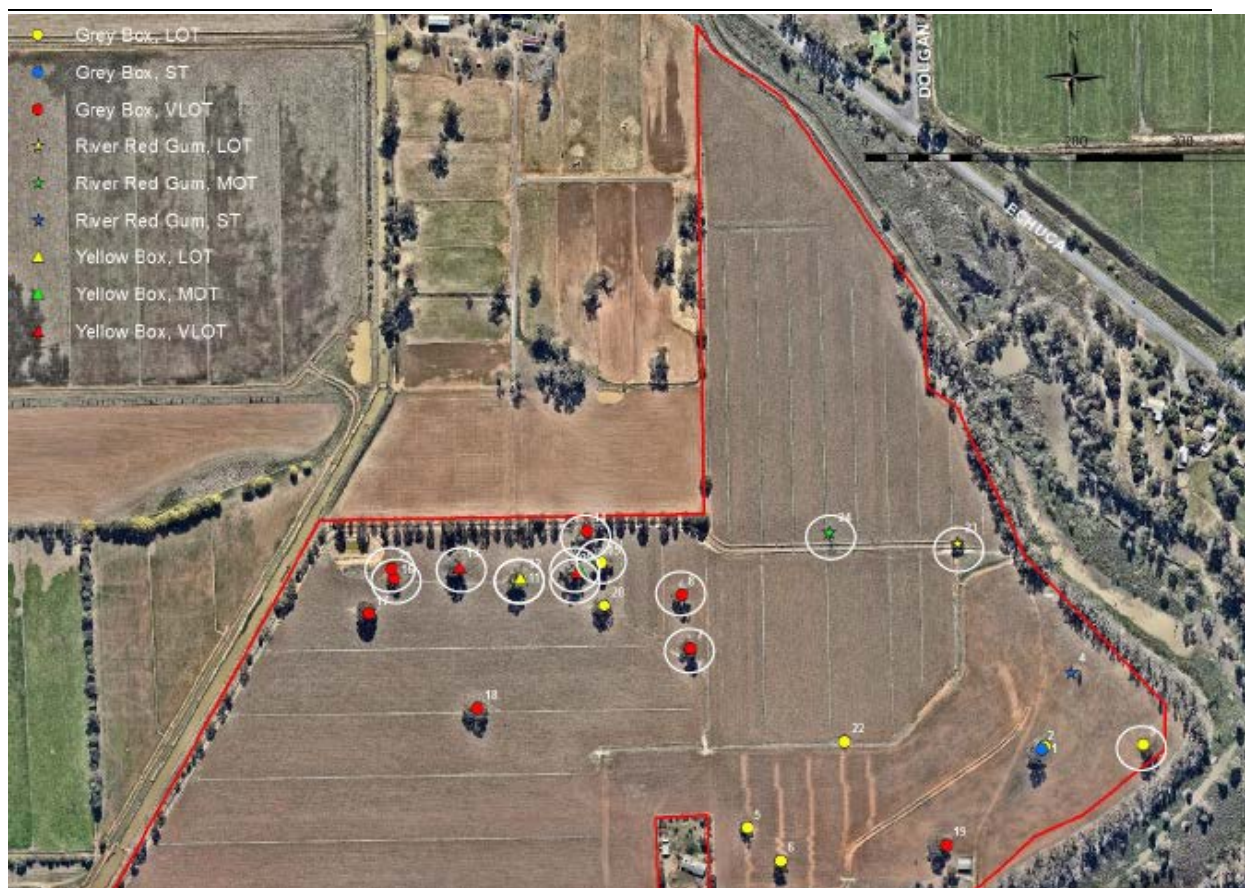
## Proposal

The application for a planning permit proposes the removal of 8 scattered trees including 7 grey box and 1 river red gum.

The trees are proposed to be removed to allow for the installation of agricultural trellis to assist with the production of kiwi fruit, and including large netting structures that cover multiple blocks of kiwi fruit plantings but cannot cover large old trees.

A Flora and Fauna Assessment, Net Gain and Loss Reporting, and Vegetation Offset Management Plan has been prepared by Hamilton Environmental Services and submitted as part of the application to work through the procedure required by *Permitted clearing of native vegetation - Biodiversity assessment guidelines (DEPI Sept 2013)*.

Below is an aerial photo of the development area showing native vegetation. The eight trees proposed to be removed are numbered 1, 2, 4, 5, 6, 18, 19 and 22.



The application also includes the Biodiversity Impact and Offset Requirements Report prepared by the DELWP Native Vegetation Support Team in July 2015. The application is classified as a high risk pathway as defined in the *Permitted clearing of native vegetation - Biodiversity assessment guidelines (DEPI Sept 2013)* by reason of location. The Report assessed the loss of the nine scattered trees and established the required General Offset.

A quote from Vegetation Link P/L has been submitted with the application to provide a permanent and protected offset site that meets the offset requirements. The applicant accepts this offer/quote to implement as the Vegetation Offset Management Plan.

The Greater Shepparton City Council planning policies are clear that agriculture is of primary importance to the region's economic wellbeing. The key objective of the rural strategy is to secure and promote the future of agriculture across the region. In context the region produces 90% of the nation's kiwi crop. Whilst it is not an ideal outcome to remove native vegetation, officers are satisfied that the application achieves acceptable planning outcomes and a net community benefit by further investing in food production and creating new employment opportunities.

## Summary of Key Issues

- Application for a planning permit proposes the removal of 8 scattered trees (7 grey Box and 1 River Red Gum);
- The application for a planning permit has been identified under the High Risk Based assessment pathway of the State Government's Biodiversity Assessment Guidelines.
- The trees are proposed to be removed to allow for the establishment of a Kiwi fruit farm which requires netting over the orchard.
- The application initially proposed the removal of 9 trees being trees 17, 18, 20, 5, 6, 22, 1, 2 and 4.
- A request was made for further information was made seeking the rationale for the removal of trees and why the proposal has altered from planning permit application 2015-136 was modified.
- The applicant has provided an adequate response to the further information request
- The application was amended to 10 trees being 17, 18, 20, 5, 6, 22, 19, 1, 2 and 4.
- The amended application was advertised to surrounding properties and with a notice in the newspaper, with one objection received from GVEG.
- The application was referred to the Department of Environment, Land Water and Planning under section 55, who do not object to the issue of a permit.
- In discussing the objections with the applicant they informed that they never intended to remove trees 17 and 20 as part of their revised proposal and would not object to these being retained, meaning only 8 trees are proposed for removal.

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## Recommendation

### Notice of Decision to Grant a Permit

That Council having caused notice of Planning Application No. **2016-218** 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* and having considered the objections to the application, decides to Grant a Notice of Decision to Grant a Permit under the provisions of **52.17** of the Greater Shepparton Planning Scheme in respect of the land known and described as **10 McKenzie Road MOOROOPNA NORTH VIC 3629**, for the **Removal of Native Vegetation (8 Scattered Trees)** in accordance with the Notice of Decision and the endorsed plans.

The following conditions are to be included on a notice of decision if issued:

**1. Layout Not Altered**

The development as shown on the endorsed plans must not be altered without the written consent of the responsible authority.

**2. Department of Environment, Land, Water and Planning**

- d) Before works start, the permit holder must advise all persons undertaking the vegetation removal of all relevant condition of this permit.
- e) In order to offset the removal of the 8 scattered Trees(0.563 Ha), approved as part of this permit, the applicant must provide a native vegetation offset that meets the following requirements set out in this permit and be in accordance with the requirements of Permitted clearing of native vegetation-biodiversity assessment guidelines and the native vegetation gain scoring manual.
- f) The offset must:
  - a. Contribute gain of 0.048 general biodiversity equivalence units.
  - b. Be located within the Greater Shepparton City Council or Goulburn Broken Catchment Management Authority Area.
  - c. Have a strategic biodiversity score of at least 0.226.
- g) Before any vegetation is removed, evidence that an offset has been secured must be provided to the satisfaction of the responsible authority. This offset must meet the requirements set out in this permit and be in accordance with the requirements of Permitted clearing of native vegetation – Biodiversity assessment guidelines and the Native vegetation gain scoring manual.  
Offset evidence can be either:
  - a. A security agreement, to the required standard, for the offset site or sites, including a 10 year offset management plan.
  - b. A credit register extract from the Native Vegetation Credit Register.
- h) Remnant trees being retained at the site must have a Tree Protection Zone (TPZ) applied in accordance with the Australian Standard AS4970-2009 Protection of trees on development sites. The radius of the TPZ is calculated by multiplying the tree's diameter at breast height (DBH) x 12. A TPZ should not be less than 2 metres and up to 15 metres (possibly more where crown protection is required).
- i) Physical barriers must be erected to delineate these Tree Protection Zones in order to protect the trees during construction activities.

**3. Time for Starting and Completion**

This permit will expire if one of the following circumstances applies:

- d) the development is not started within **two (2) years** of the date of this permit;
- e) the development is not completed within **four (4) years** of the date of this permit.



## Moved by Colin Kalms

## Seconded by Jorine Bothma

That Council having caused notice of Planning Application No. **2016-218** 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* and having considered the objections to the application, decides to Grant a Notice of Decision to Grant a Permit under the provisions of **52.17** of the Greater Shepparton Planning Scheme in respect of the land known and described as **10 McKenzie Road MOORoopNA NORTH VIC 3629**, for the **Removal of Native Vegetation (8 Scattered Trees)** in accordance with the Notice of Decision and the endorsed plans.

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Offset evidence can be either:
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**3. Time for Starting and Completion**

This permit will expire if one of the following circumstances applies:

- a) the development is not started within **two (2) years** of the date of this permit;  
b) the development is not completed within **four (4) years** of the date of this permit.

**CARRIED**

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## **Subject Site & Locality**

An inspection of the site and the surrounding area has been undertaken for the previous application on 12 May 2015.

The site has a total area of **37.36ha** and currently contains:

- Irrigated pasture for grazing and cropping

The main site/locality characteristics are:

- Similar farming land and wetlands as part of the Ardmona Depression to the east of the site.

The Photos below show the scattered trees within the site:















## **Pre-Application Meeting Details**

Has there been a pre-application meeting ? Yes in July 2015, following the lapsing of application 2015-136 the applicant was advised to make a new application based on the revised proposal that minimised tree loss to 9 trees.

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## **Permit/Site History**

As identified earlier in this report, application 2015-136 was made for the removal of 20 scattered trees on the land to allow for the installation of netting for the establishment a Kiwi orchard.

This application was advertised and received objection from GVEG.

The applicant was also asked to provide further information providing evidence in relation to the avoidance measures undertaken.

The further information was not submitted by the lapsed date and subsequently the application was lapsed.

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## **Further Information**

Is further information required for the application? Yes. Required information is:

A current kiwi orchard development plan showing planting blocks, proposed improvements including irrigation and drainage, structures including trellis supports and netting.

How the original development proposal has been modified to minimise the loss of native vegetation. While the application states that a discussion process for the previous application 2015-136 resulted in the proposed development being reconfigured to reduce the loss of trees, insufficient detail has been provided to explain why no further opportunity exists to avoid removal of some or all of the nine trees.

Justify by showing and describing netting structure requirements and costs of further minimisation of tree loss (particularly for tree number 18, why further tree loss cannot be reasonably achieved while retaining the viability of the proposed orchard production. In terms of the decision guidelines, provide evidence that any further actions to minimise impacts on biodiversity from the removal of native vegetation will undermine the key objectives of the proposal, or materially increase the cost of the proposal.

The information requested above is intended to satisfy the high risk application requirements of the *Permitted clearing of native vegetation - Biodiversity assessment guidelines*.

What date was the information requested?: 27/5/2016

What is the lapsed date? 27/7/2016

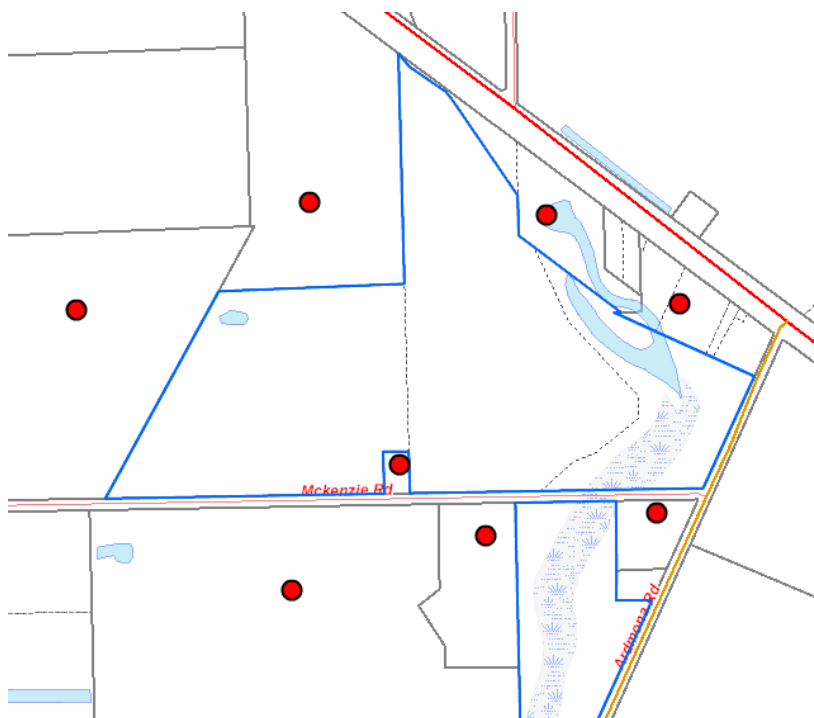
What date was the information received?: 26/07/2016

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## Public Notification

The application will be advertised pursuant to Section 52 of the *Planning and Environment Act 1987* with the following description **Removal of Native Vegetation (10 scattered trees)**, by:

- Sending notices to the owners and occupiers of adjoining land. (see map below)
- Placing a sign on site.
- Notice in newspaper



The revised application which reduced the number of trees to be removed was not advertised, as it was determined that the proposal would result in less detriment.

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## Objections

The Council has received one objection to date. The key issues that were raised in the objection is:

- The loss incremental loss of very old paddock trees (scattered trees);
- The proposed development which requires the removal of native vegetation should be sited on previously cleared land thus avoiding the clearing on the subject land;
- The proposed offsets provided by the applicant are totally inappropriate to replace the planned tree losses. GVEG further believe this offset option encourages the loss of threatened native vegetation rather than the minimisation of losses.

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- GVEG note that without the retention of trees 17, 18 and 20 they maintain objection and that there are other more appropriate sites for this development.

As noted in this report the applicant will retain trees 17 and 20.

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## Title Details

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

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## Consultation

Consultation was undertaken. Relevant aspects of consultation, included discussions with the applicant and GVEG.

### Applicant

- The applicant was provided a copy of the objection from GVEG and met with Council officers to discuss.
- The applicant informed that they did not intend to remove trees 17 and 20 despite their report and amended application showing this.
- It was agreed that this would reduce the number of trees proposed to be removed resulting in a less detrimental proposal and thus re-advertising was not required and the matter could be sorted out with amended plans was a permit to grant.

### GVEG

- A meeting was held with GVEG in which to discuss the application and was followed up with information from the application forwarded to them. GVEG informed that they would maintain their objection.

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## Referrals to Authorities

External Referrals Required by the Planning Scheme:

Section 55 -Referrals Authority	List Planning clause triggering referral	Determining or Recommending	Advice/Response/Conditions
DELWP	66.02-2	Recommending	The application was referred to DELWP, Who did not object to the issue of a permit subject to conditions.  The amended application which reduced the number of trees to 8 was again referred to DELWP, who maintained no objection subject to revised conditions.

Internal Notice:

Internal Council Notices	Advice/Response/Conditions
Sustainability and Environment Department	<p data-bbox="448 282 1390 338">Invited to provide comment and advice and responded by requesting further information regarding the economic costings.</p> <p data-bbox="448 376 1426 456">The Sustainability and Environment Team advised that it would support the granting of the permit application that retained tree 19 and removed 9 trees (tree numbers 1, 2, 4, 5, 6, 17, 18, 20, 23).</p> <p data-bbox="448 495 1326 524">As identified above the applicant reduced the number of trees to 8 to be removed.</p> <p data-bbox="448 562 1430 642">The planning officer informed the Sustainability and Environment Team that the Planning Department would support this revised application and would recommend it be approved at a Development Hearings Panel.</p>

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## Assessment

### The zoning of the land

Farming Zone 35.07

The purpose of the zone is:

- To provide for the use of land for agriculture.
- To encourage the retention of productive agricultural land.
- To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.
- To encourage the retention of employment and population to support rural communities.
- To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

The use of land for a Kiwi orchard is permitted under the zone being defined as agriculture.

The removal of native vegetation does not require planning permission under the zone.

The netting and support trellis structures are exempt from planning permission under the zone pursuant to clause 62.02-1 which provides that:

*A planning permit is not required for a crop support or protection structure associated with horticulture, including a trellis, cloche, net and shadecloth.*

### **Relevant overlay provisions**

The land is partially affected by the Floodway Overlay and Land Subject to Inundation Overlay. Neither overlay requires a permit for the removal of native vegetation and therefore the provisions of the overlays have not been considered in this report.

### **The State Planning Policy Framework (SPPF)**

#### **Native Vegetation Management 12.01-2**

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Objectives and strategies include:

- To ensure that permitted clearing of native vegetation results in no net loss in the contribution made by native vegetation to Victoria's biodiversity.
- Apply a risk based approach to managing native vegetation as set out in *Permitted clearing of native vegetation – Biodiversity assessment guidelines* (Department of Environment and Primary Industries, 2013). These are:
  - o Avoid the removal of native vegetation that makes a significant contribution to Victoria's biodiversity.
  - o Minimise impacts of Victoria's biodiversity.
  - o Where native vegetation is permitted to be removed, ensure that an offset is provided in a manner that makes a contribution to Victoria's biodiversity that is equivalent to the contribution made by the native vegetation to be removed.

Planning must consider as relevant:

- *Permitted clearing of native vegetation – Biodiversity assessment guidelines*, (Department of Environment and Primary Industries, 2013).
- The *Native Vegetation Information Management System* maintained by the Department of Environment, Land, Water and Planning.

### **Response**

The applicant in making application has provided significant concessions from their initial proposal to maximise the retention of native vegetation whilst still showing that the proposed agricultural practice can be conducted.

The applicant has provided evidence that an offset for the proposed trees to be removed can be secured so that there will be no net loss in the contribution made by native vegetation to Victoria's biodiversity.

The risk based pathway and *Permitted clearing and native vegetation – Biodiversity assessment guidelines* are addressed in detail under the native vegetation particular provision section of this report.

#### Hume Regional Growth 11.10

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Relevant Strategies and objectives include:

- Plan for a more diverse and sustainable economy by supporting existing economic activity and encourage appropriate new and developing forms of industry, agriculture, tourism and alternative energy production.
- Support agricultural production through the protection and enhancement of infrastructure and strategic resources such as water and agricultural land, including areas of strategic agricultural land.
- To protect environmental and heritage assets, and maximise the regional benefit from them, while managing exposure to natural hazards and planning for the potential impacts of climate change.

#### Response

The assessment of the proposed removal of vegetation to allow for an intensified agricultural practice on the land is a matter of finding a balance between competing objectives. The above policy provides for the ongoing support for the regions natural and environmental assets. The Policy direction also directs significant support to the protection and enhancement of agricultural production within areas of high agricultural value. This point is highlighted by the subject land being identified in the below map as both an *area containing high value terrestrial habitat* and *Strategic Agricultural Land*, as shown on the image below.

As identified, the applicant has made concessions since the initial proposal to ensure that more than half of the initial vegetation proposed to be removed is to be retained. This has allowed for a large patch of vegetation on the northern boundary to be retained, whilst the applicant has been able to show the agricultural venture and capital outlay required will still be economically viable.



**The Local Planning Policy Framework (LPPF)- including the Municipal Strategic Statement (MSS), local planning policies and Structure Plans**  
Natural Environment and Biodiversity 21.05-1

Key biodiversity issues in Greater Shepparton are associated with native vegetation and the myriad of river, floodplain and wetland systems.

The natural landscape of the municipality and wider region has been modified significantly as a result of pastoral activities and more recently through extensive irrigation activities. As a result, areas of remnant native vegetation are now primarily limited to waterways, road reserves and corridors. These corridors (as well as native vegetation stands on private property) provide important habitat links for flora and fauna and for the fostering of biodiversity.

The Regional Rural Land Use Strategy (RRLUS – 2008) notes that:

- Native vegetation is required to be preserved to maintain biodiversity and manage water tables.

Relevant objectives and strategies include:

- To maintain and enhance biodiversity of native flora and fauna communities.

- Protect remnant areas of native vegetation, streamlines, wetlands and other environmentally sensitive features.
- Ensure appropriate identification of native vegetation on land to be developed or subdivided.

### Response

The above policy which directs that remnant vegetation should be protected and preserved must be balanced with policies that support agricultural production. By simply requiring that all native vegetation be retained, it is not providing for a balanced assessment of the policy. The applicant has shown through amendments to their proposal that this balance can be achieved and a significant amount of native vegetation has been retained along on the northern boundary and small amount abutting the floodway to the east of the subject land, whilst also allowing for land to be utilised for agricultural production.

### Agriculture 21.06-1

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Key objectives and strategies include:

- To ensure that agriculture is and remains the major economic driver in the region.
- To facilitate growth of existing farm businesses.
- To facilitate growth of new agricultural investment.
- To provide for small scale, specialized agriculture.
- Encourage value adding and new enterprises for agricultural production.

### Response

The proposed removal of native vegetation will allow for the installation of trellis and a large installation of a netting structure to protect a proposed Kiwi Orchard. The establishment of new agricultural businesses is supported by the above policy which recognises the importance of agriculture to the municipality. The removal of native vegetation to allow for agricultural practices is therefore considered acceptable under the above policy.

### **Relevant Particular Provisions**

Native Vegetation 52.17

The purpose of the provision is:



- To ensure permitted clearing of native vegetation results in no net loss in the contribution made by native vegetation to Victoria's biodiversity. This is achieved through the following approach:
  - o Avoid the removal of native vegetation that makes a significant contribution to Victoria's biodiversity.
  - o Minimise impacts on Victoria's biodiversity from the removal of native vegetation.
  - o Where native vegetation is permitted to be removed, ensure that an offset is provided in a manner that makes a contribution to Victoria's biodiversity that is equivalent to the contribution made by the native vegetation to be removed.
- To manage native vegetation to minimise land and water degradation.
- To manage native vegetation near buildings to reduce the threat to life and property from bushfire.

A permit is required to remove, destroy or lop native vegetation, including dead native vegetation.

#### Decision Guidelines

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

- The contribution that native vegetation to be removed makes to Victoria's biodiversity. This is determined by:
  - o The extent and condition of the native vegetation.
  - o The biodiversity value of the native vegetation, including whether the native vegetation is important habitat for rare or threatened species.
- Whether the removal of native vegetation is defined as being in the low, moderate or high risk based pathway, as defined in the *Permitted clearing of native vegetation – Biodiversity assessment guidelines* (Department of Environment and Primary Industries, September 2013) and apply the decision guidelines accordingly.
- Whether reasonable steps have been taken to minimise the impacts of the removal of native vegetation on biodiversity.
- Whether the native vegetation to be removed makes a significant contribution to Victoria's biodiversity.

- That an offset meets the offset requirements for the native vegetation that is to be removed as defined in the *Permitted clearing of native vegetation – Biodiversity assessment guidelines (Department of Environment and Primary Industries, September 2013)* has been identified.

### Response

A Flora and Fauna Assessment, Net Gain and Loss Reporting, and Vegetation Offset Management Report has been submitted with the application which identifies:

- *The Victorian Biodiversity atlas, Biodiversity interactive mapper and EPBC searches revealed that there were records of twelve threatened flora recorded or likely to occur within 20 km radius of the site, however likelihood analysis based on site disturbance and available habitat of the assessed area indicates that none of these species are likely to be found onsite. Given the long history of disturbance and the level of site modification across the proposed development area, it is highly unlikely that any of these species would be found or would recruit into the site.*
- *Victorian Wildlife Atlas and EPBC searches revealed 23 significant fauna species previously recorded within 20 km of the site. However, given the long history of disturbance and the level of site modification across the site, it is highly unlikely that most of these species would not be resident or utilise the site. Nevertheless, even given the lack of connectivity of the development area and its history of clearing, land forming and grazing, it is considered possible that the Brown Treecreeper, Fork-tailed Swift, Rainbow Bee-eater, White-bellied Sea eagle and White-throated Needletail would utilise the adjacent Ardmona Depression wetland given their habitat preferences, and then may utilise the proposed Development Area for occasional foraging and hunting.*
- *There were no areas across the property that would be considered to be Remnant Patch according to Native Vegetation Framework, because the projective foliage cover of the tree layer was <20%, and/or there was <25% cover of indigenous understory species (DNRE 2002); as a consequence, no Habitat Hectares assessments were conducted.*

The applicant has made significant concessions to reduce native vegetation loss, demonstrating avoidance and minimisation measures. A total of 12 trees are to be retained from the initial proposal, including trees 17 and 20, which the objector raised concerns about. The application when made initially made applied for the removal of 20 trees. A revised application was made as a result of the lapsed application which proposed the removal of 9 trees. This application was amended to show the removal of 10 trees. The applicant has since informed that after the public notification period that they only intend to remove 8 trees.

The applicant has advised that to establish the netting for the orchard they need to establish high tensile cables which stretch from one end of the property to the other to hold the netting, with significant anchor points. The retention of trees within this area requires a significant buffer around each tree in which to establish the anchor points, thus resulting in a loss of productive loss of land larger than the tree retention zone. The cost of this as well as establishing additional anchor points was shown to be substantial and therefore the level of avoidance is considered acceptable.

#### **The decision guidelines of Clause 65**

Because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this clause.

#### **65.01 Approval of an application or plan**

Before deciding on an application, the responsible authority must consider, as appropriate:

- The matters set out in Section 60 of the Act.
- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The purpose of the zone, overlay or other provision.
- Any matter required to be considered in the zone, overlay or other provision.
- The orderly planning of the area.
- The effect on the amenity of the area.
- The proximity of the land to any public land.
- Factors likely to cause or contribute to land degradation, salinity or reduce water quality.
- Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.
- The extent and character of native vegetation and the likelihood of its destruction.
- Whether native vegetation is to be or can be protected, planted or allowed to regenerate.
- The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.

#### Response

The application for the removal of vegetation to allow for the establishment of an orchard is considered to be an acceptable planning outcome. The proposal strikes a balance between competing objectives of the Farming Zone and the Particular Provision for native vegetation as identified earlier in this report.

The applicant has shown through the avoidance response that they have sought to retain as much native vegetation as reasonably and viably possible, with the outcome considered acceptable.

### **Relevant incorporated or reference documents**

Rural Regional Land Use Strategy

### **Other relevant adopted State policies or strategies policies**

*Permitted clearing of native vegetation - Biodiversity assessment guidelines*

### **Relevant Planning Scheme amendments**

There are no Planning Scheme amendments that relate to this application for a planning permit.

### **Are there any significant social & economic effects?**

There are no relevant significant social or economic effects that relate to this application for a planning permit.

### **Discuss any other relevant Acts that relate to the application?**

There are no other relevant Acts that relate to this application for a planning permit.

### **The Aboriginal Heritage Act 2006**

The *Aboriginal Heritage Act 2006* provides protection for all Aboriginal places, objects and human remains in Victoria, regardless of their inclusion on the Victorian Aboriginal Heritage Register or land tenure.

The *Aboriginal Heritage Act 2006* introduces a requirement to prepare a Cultural Heritage Management Plan (CHMP) if all or part of the activity is a listed high impact activity, resulting in significant ground disturbance, and all or part of the activity area is an area of cultural heritage sensitivity, which has not been subject to significant ground disturbance.

The 'Area of Cultural Heritage Sensitivity in Victoria' does not include the land where trees are to be removed within an area of cultural heritage sensitivity, and removing trees is not a high impact activity; therefore the proposed tree removal does not trigger the need for a CHMP.

The native vegetation to be removed is to allow for the establishment of an orchard which is defined as an agricultural use under the Scheme. Agriculture is not defined as a high impact activity under the regulations and therefore a CHMP is not required under the Regulations.

### **Charter of Human Rights and Responsibilities**

The Charter of Human Rights and Responsibilities has been considered when assessing this application and it is not considered that the application impinges on the Charter.

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## **Conclusion**

As identified within this report, a balance has had to be found between competing policies which promote the retention of High Risk Native Vegetation and support agricultural

production. The applicant has shown concessions from the initial proposal through the retention of 12 of the total 20 trees originally proposed to be removed. The applicant has been able to retain these trees whilst still ensuring that setup costs for the agricultural practice are still economically viable.

It is therefore recommended that a notice of decision to grant a planning permit be issued.

# Draft Notice Of Decision

**APPLICATION NO:** 2016-218  
**PLANNING SCHEME:** GREATER SHEPPARTON PLANNING SCHEME  
**RESPONSIBLE AUTHORITY:** GREATER SHEPPARTON CITY COUNCIL

**THE RESPONSIBLE AUTHORITY HAS DECIDED TO GRANT A PERMIT.**

**THE PERMIT HAS NOT BEEN ISSUED.**

**ADDRESS OF THE LAND:** 10 MCKENZIE ROAD MOOROOPNA NORTH VIC  
3629

**WHAT THE PERMIT WILL ALLOW:** REMOVAL OF NATIVE VEGETATION (8  
SCATTERED TREES), TREES 1, 2, 4, 5, 6, 18, 19 &  
22

## WHAT WILL THE CONDITIONS OF THE PERMIT BE?

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1. **Layout Not Altered**

The development as shown on the endorsed plans must not be altered without the written consent of the responsible authority.

2. **Department of Environment, Land, Water and Planning**

- a) Before works start, the permit holder must advise all persons undertaking the vegetation removal of all relevant condition of this permit.
- b) In order to offset the removal of the 8 scattered Trees(0.563 Ha), approved as part of this permit, the applicant must provide a native vegetation offset that meets the following requirements set out in this permit and be in accordance with the requirements of Permitted clearing of native vegetation-biodiversity assessment guidelines and the native vegetation gain scoring manual.
- c) The offset must:
  - Contribute gain of 0.048 general biodiversity equivalence units.
  - Be located within the Greater Shepparton City Council or Goulburn Broken Catchment Management Authority Area.
  - Have a strategic biodiversity score of at least 0.226.
- d) Before any vegetation in removed, evidence that an offset has been secured must be provided to the satisfaction of the responsible authority. This offset must meet the requirements set out in this permit and be in accordance with the requirements of Permitted clearing of native vegetation – Biodiversity assessment guidelines and the Native vegetation gain scoring manual.

Offset evidence can be either:

- A security agreement, to the required standard, for the offset site or sites, including a 10 year offset management plan.
  - A credit register extract from the Native Vegetation Credit Register.
- e) Remnant trees being retained at the site must have a Tree Protection Zone (TPZ) applied in accordance with the Australian Standard AS4970-2009 Protection of trees on development sites. The radius of the TPZ is calculated by multiplying the tree's diameter at breast height (DBH) x 12. A TPZ should not be less than 2 metres and up to 15 metres (possibly more where crown protection is required).
- f) Physical barriers must be erected to delineate these Tree Protection Zones in order to protect the trees during construction activities.

### 3. Time for Starting and Completion

This permit will expire if one of the following circumstances applies:

- a) the development is not started within **two (2) years** of the date of this permit;
- b) the development is not completed within **four (4) years** of the date of this permit.

## NOTATIONS

### DELWP

The scattered trees include several large old trees which have significant habitat values and the site adjoins the Ardmona Depression reserve which has its own natural values.

Some of the logs produced could provide valuable habitat on the Ardmona Depression reserve adjacent to the development site. This reserve is managed by Goulburn Murray Water (GMW) and any works there would require GMW's approval. The proposal to relocate logs onto the reserve has been discussed with Tim Dickinson at GMW.

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# Development Hearings Delegates Report

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## Application Details:

Responsible Officer:	Sarah van Meurs
Application Number:	2016-407
Applicant Name:	Metasite Pty Ltd
Date Received:	04-Oct-2016
Statutory Days:	49 on 5/12/2016
Land/Address:	1200 Bitcon Road TATURA VIC 3616
Zoning & Overlays:	Farming Zone Floodway Overlay Land Subject to Inundation Overlay
Why is a permit required (include Permit Triggers):	35.07-1 Use of the land for a telecommunication facility in the Farming Zone 1 35.07-4 – Buildings and works in the Farming Zone, within 100m of a Floodway 52.19 – 2 installation of a telecommunications facility.
Are there any Restrictive Covenants on the title?	No
Is a CHMP required?	No
Was the correct application fee paid?	Yes - \$604 for the application plus advertising fees paid Total \$945.50 paid

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## Proposal

The application for a planning permit proposes the installation of a Telecommunications facility comprising of a 50 metre high lattice tower at the subject address.

The subject land is in the Farming Zone 1 and is affected by the Floodway Overlay and Land Subject to Inundation Overlay.

A planning permit is required for the use of the land for a telecommunications facility in the Farming Zone 1 as the use is not exempt under 62.01 as the buildings and works do not meet the requirements of Clause 52.19.

A planning permit is also required for buildings and works associated with a section 2 use and within 100m of a designated floodway in the Farming Zone 1.

Pursuant to Clause 52.19-2 a planning permit is required to construct or carry out works for a telecommunications facility.

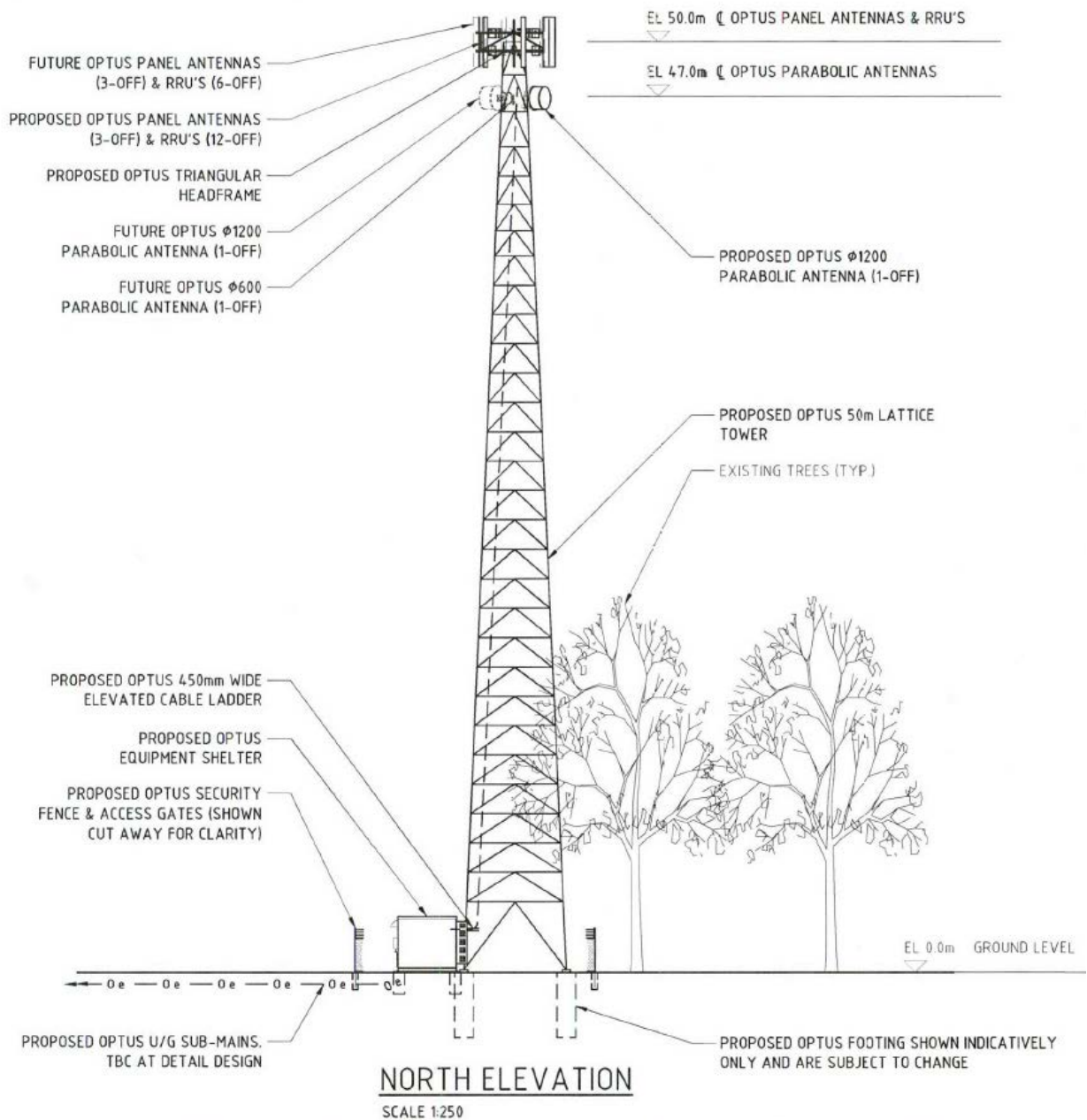
The facility is to comprise of the following:

- Installation of a 50 metre high lattice tower;



- 1 panel antenna;
- 12 Radio Remote units
- 1 radio communication dish; and
- Ancillary equipment associated with operation of facility, including cable trays, cabling, bird proofing, earthing, electrical works and air-conditioning equipment.

The proposed tower is as follows:





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the objections to the application, decides to Grant a Notice of Decision to Grant a Permit under the provisions of **35.07-1**, **35.07-4** and **52.19** of the Greater Shepparton Planning Scheme in respect of the land known and described as **1200 Bitcon Road TATURA 31**, for the use and development for a telecommunications facility to include a 50 metre lattice tower with antennas and associated ground facilities in the Farming Zone 1 and buildings and works for a telecommunications facility in accordance with 52.19 in accordance with the Notice of Decision and the endorsed plans.

## Moved by Colin Kalms

## Seconded by Jorine Bothma

That Council having caused notice of Planning Application No. **2016-407** 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* and having considered the objections to the application, decides to Grant a Notice of Decision to Grant a Permit under the provisions of **35.07-1**, **35.07-4** and **52.19** of the Greater Shepparton Planning Scheme in respect of the land known and described as **1200 Bitcon Road TATURA 31**, for the use and development for a telecommunications facility to include a 50 metre lattice tower with antennas and associated ground facilities in the Farming Zone 1 and buildings and works for a telecommunications facility in accordance with 52.19 in accordance with the Notice of Decision and the endorsed plans.

**CARRIED**

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## Subject Site & Locality

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

Date: **25 November 2016**                      Time: **3:40** pm

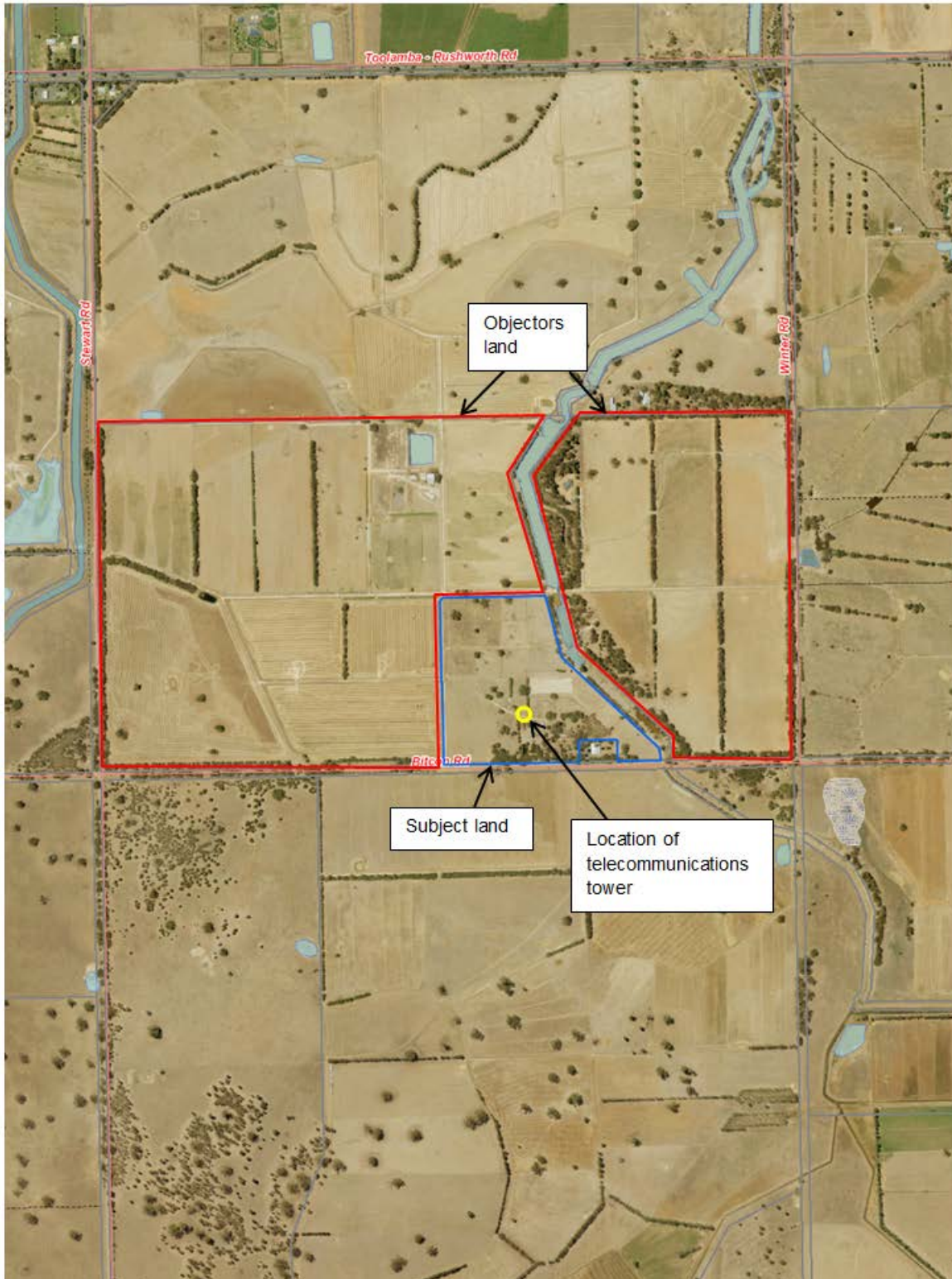
The site has a total area of 13.4 hectares and currently contains:

- Existing dwelling, agricultural shedding and other buildings,
- Mixture of native and planted vegetation and dam.

The main site/locality characteristics are:

- Bounded by GMW Channel to the east.
- Dwelling excised from the land to the south, bounded by Bitcon Road to the south
- Surrounded by a larger farm holding to the north east and west.

The Photos below show the existing site:





Looking at the proposed telecommunication facility from the objectors land.



Looking at the location of the proposed telecommunications facility from Stewart Road.



Looking at the location of the proposed telecommunication facility from Bitcon Road.





Telecommunications facility to be located to the rear of the hay shed. (view from Bitcon Road).

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## Pre-Application Meeting Details

Has there been a pre-application meeting? **No**

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## Permit/Site History

The history of the site includes:

- 2004-250 – Planning permit issued for a two lot subdivision.

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## Further Information

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

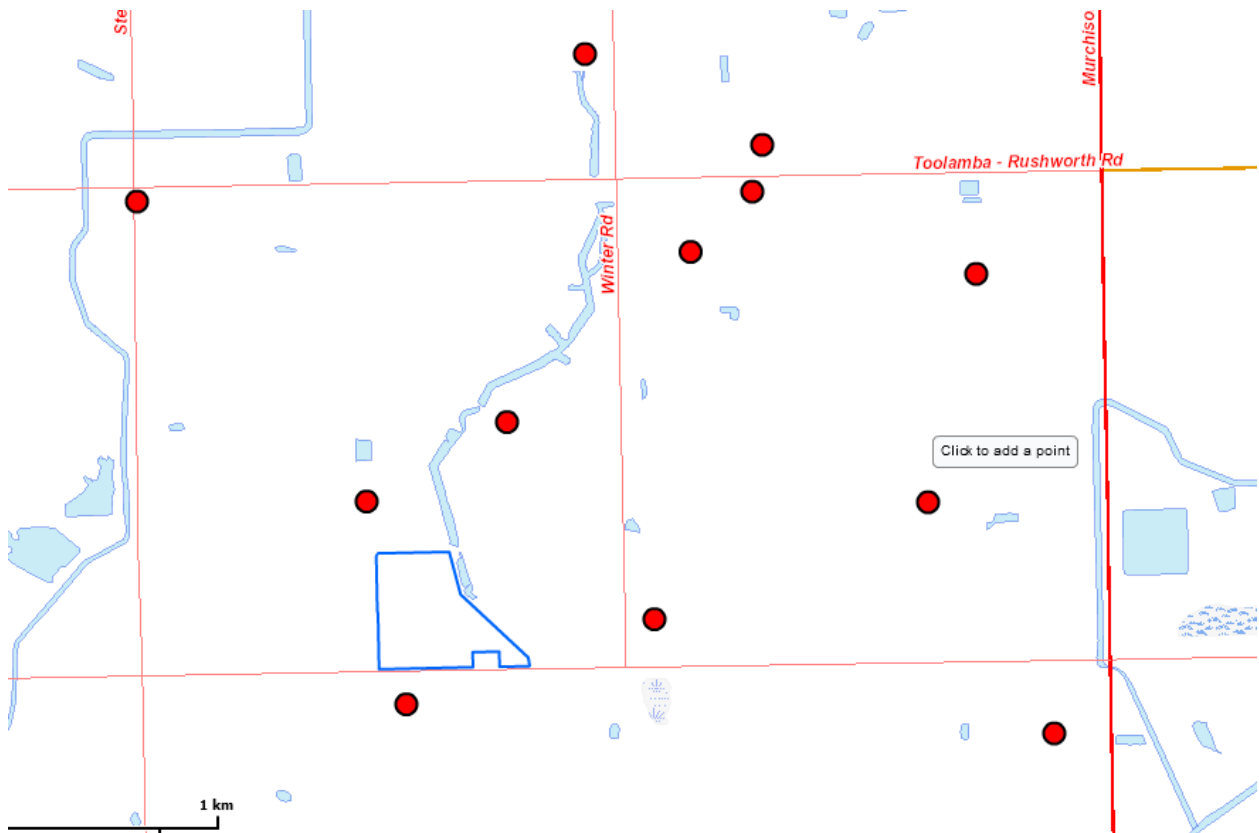
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## Public Notification

The application was advertised pursuant to Section 52 of the *Planning and Environment Act 1987* with the following description **telecommunications facility in the Farming Zone 1 comprising a 50 metre high lattice tower, antenna and associated equipment by,**

- Sending notices to the owners and occupiers of adjoining land.

- Placing a sign on site.
- Notice in Newspaper.



The applicant provided a signed declaration stating that the sign on site was displayed on the land between 26/10/2016 to 15/11/2016.

The application was exempt from being advertised in accordance with Clause 44.04-4 of the planning scheme.

## Objections

The Council has received one objection to date. The key issues that were raised in the objections are.

Reason for objection	Officers response
Visual amenity by detracting from trees natural aesthetic leading to de-valuation of properties.	Due to the nature of the proposal, there is no avoiding that the tower will be visible from certain view points. The tower has been located within existing mature vegetation and buildings, and set back from the road, so that the base may be screened as best as possible.

	<p>Whilst the tower will be viewed from the objectors land, views from the objectors dwelling will be unlikely as the dwelling is heavily screened by existing vegetation.</p> <p>When deciding on such applications, planning needs to balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.</p> <p>The telecommunications facility will provide a net community benefit to Tatura/Dhurringile by providing better network coverage.</p> <p>Given views of the tower will be restricted by existing established vegetation it is considered that the location of the proposal is appropriate.</p> <p>It is also noted that de-valuation of land is not considered to be a planning concern.</p>
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## Title Details

The title contains a Section 173 Agreement. The application does not breach the Section 173 Agreement for the following reasons:

- The agreement relates to no further subdivision of the land, and specifically no house lot for the existing or any proposed dwelling.

## Consultation

Consultation was undertaken. Relevant aspects of consultation, included:

- Meeting with the objector on his land, to discuss the application and concerns. The objector stated that they were concerned about visual aesthetics of the tower. The objector also confirmed that they were not concerned with views from the dwelling (as it would not be seen from the house, only from their surrounding farmland, and other land in the area.

## Referrals

External Referrals Required by the Planning Scheme:

Section 55 -Referrals Authority	List Planning clause triggering referral	Determining or Recommending	Advice/Response/Conditions
Clause 66 did not require referral of the	N/A	N/A	N/A

application			
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## Notice to Authorities

External Notice to Authorities:

Section 52 - Notice Authority	Advice/Response/Conditions
GBCMA	<p>The application was originally referred to the GBCMA who did not object to the application subject to the following conditions being placed on the permit:</p> <p>a) High damage equipment or goods contained in the equipment shelters must be stored at least 300 millimetres above the 100-year ARI flood level of 114.6 metres AHD; i.e. 114.9 metres AHD, or higher level deemed necessary by the responsible authority.</p> <p>It is noted that GBCMA are not a referral authority, as a telecommunication tower is exempt in accordance with the Land Subject to Inundation Overlay Schedule. The Planning Department consider the CMA to be the flood expert, and therefore do not object to the condition provided by CMA and will recommend it be included as a condition on the permit.</p>

Internal Notice:

Internal Council Notices	Advice/Response/Conditions
Environmental Health Department	A conversation was had with the Health Department regarding the location of the telecommunications facility who did not object to the application.

## Assessment

The zoning of the land

### Farming Zone 1

The land is within the Farming Zone. The purpose of the Farming Zone is:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To provide for the use of land for agriculture.*
- *To encourage the retention of productive agricultural land.*
- *To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.*
- *To encourage the retention of employment and population to support rural communities.*
- *To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.*

A Planning Permit is required for the use and development of a telecommunications facility in the Farming Zone 1.

Clause 62.01 and 62.01-1 exempts the need for a planning permit for the use and development of land for a Telecommunication facility if the associated buildings and works meet the requirements of Clause 52.19.

As the proposed Telecommunication facility does not meet the requirements of Clause 52.19 (ie. A new telecommunications tower is not listed in Section 5 of the Code of Practice for Telecommunications Facilities in Victoria (the code of practice) a permit is required.

Clause 35.07-6 of the Planning Scheme sets out the following decision guidelines:

**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 to the land.*
- *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.*
- *How the use and development makes use of existing infrastructure and services.*

**Agricultural issues and the impacts from non-agricultural uses**

- *Whether the use or development will support and enhance agricultural production.*
- *Whether the use or development will adversely affect soil quality or 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 capacity of the site to sustain the agricultural use.*
- *The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure.*
- *Any integrated land management plan prepared for the site.*

**Environmental issues**

- *The impact of the proposal on the natural physical features and resources of the area, in particular on soil and water quality.*
- *The impact of the use or development on the flora and fauna on the site and its surrounds.*
- *The need to protect and enhance the biodiversity of the area, including the retention of vegetation and faunal habitat and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge area.*
- *The location of on-site effluent disposal areas to minimise the impact of nutrient loads on waterways and native vegetation.*

**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.*
- *The impact on the character and appearance of the area or features of architectural, historic or scientific significance or of natural scenic beauty or importance.*
- *The location and design of existing and proposed infrastructure including roads, gas, water, drainage, telecommunications and sewerage facilities.*
- *Whether the use and development will require traffic management measures.*

Response:

The State and Local planning policy is discussed in subsequent sections of the report.

The application was discussed with the Council's Health Department who stated the Telecommunications facility would not impact on onsite effluent disposal.

The proposed tower is located in an area of 13.5m by 9.5m with a total area of 125.96sqm. The designated area is located within an area already established with a building envelope, with existing farm shedding surrounding the tower. The application therefore is only considered to remove a small portion of agricultural land.

The Telecommunications facility the siting is not expected impact on the existing and surrounding agricultural uses of the land.

When considering the design and siting of the development in the surrounding environment the applicant has addressed the Code of Practice and attempted to minimise the impacts of the facility.

The siting of the facility is located amongst existing buildings and mature trees, which would provide some screening, however a tower of 50m in height, whereby the height is required to achieve appropriate transmission service to the wider community there is no avoiding the visibility of the structure from certain viewpoints.

The siting though not completely invisible provides setbacks from areas of higher populations, so as to reduce the potential impact of the facility on the views and vistas of the locality.

It is noted that the locality is relatively flat, with most allotments cleared for the purposes of agricultural farming uses. Some clusters of remnant vegetation and planted windbreaks still exist in the area. The Telecommunication facility is considered appropriately sited so as to be situated behind a cluster of vegetation (facing Bitcon Road) and also does not propose the removal of vegetation.

**Relevant overlay provisions**

**Land Subject to Inundation Overlay**

The Overlay identifies land in a flood storage or flood fringe area affected by the 1 in 100 year flood or any other area determined by the floodplain management authority. The Overlay's purpose is to ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, is compatible with the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.

A planning permit was not required under the Land Subject to Inundation Overlay, with a telecommunication tower being exempt under the overlay.

### **The State Planning Policy Framework (SPPF)**

#### **10.04 Integrated decision making**

*Planning authorities and responsible authorities should endeavour to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.*

#### **19.03-4 Telecommunications**

##### **Objective**

*To facilitate the orderly development, extension and maintenance of telecommunication infrastructure.*

##### **Strategies**

- *Facilitate the upgrading and maintenance of telecommunications facilities.*
- *Ensure that modern telecommunications facilities are widely accessible to business, industry and the community.*
- *Ensure the communications technology needs of business, domestic, entertainment and community services are met.*
- *Do not prohibit the use of land for a telecommunications facility in any zone.*
- *Encourage the continued deployment of broadband telecommunications services that are easily accessible by:*
  - *Increasing and improving access for all sectors of the community to the broadband telecommunications trunk network.*
  - *Supporting access to transport and other public corridors for the deployment of broadband networks in order to encourage infrastructure investment and reduce investor risk.*
- *In consideration proposals for telecommunication services, seek a balance between the provision of important telecommunications services and the need to protect the environment from adverse impacts arising from telecommunications infrastructure.*
- *Planning should have regard to national implications of a telecommunications network and the need for consistency in infrastructure design and placement.*

##### **Response:**

The application seeks approval for the development of the subject land for a telecommunications facility to provide a mobile base station for Optus mobile and fixed services in the Tatura and Dhurringile areas. The proposal will help to provide the surrounding community with technology to achieve better voice and data telecommunication services.

The Code of Practice is addressed under another the Particular Provisions section of this report.

**The Local Planning Policy Framework (LPPF)- including the Municipal Strategic Statement (MSS), local planning policies and Structure Plans**  
**21.07-2 Urban and Rural Services**

**Objectives - Urban and Rural Services**

- *To provide telecommunications facilities available to all areas of the municipality.*

Response

The proposed development seeks to improve the quality of telecommunication coverage to a target area. (ie, improve data speeds, phone calls dropping out or difficulty in connection and network performance at busy times).

**Relevant Particular Provisions**

**52.19 Telecommunications Facility**

**Purpose**

- *To ensure that telecommunications infrastructure and services are provided in an efficient and cost effective manner to meet community needs.*
- *To ensure the application of consistent provisions for telecommunications facilities.*
- *To encourage an effective statewide telecommunications network in a manner consistent with the economic, environmental and social objectives of planning in Victoria as set out in section 4 of the Planning and Environment Act 1987.*
- *To encourage the provision of telecommunications facilities with minimal impact on the amenity of the area.*

**52.19-1 Application**

*These provisions apply to the construction of a building or the construction or carrying out of works associated with the use of land for a Telecommunications facility. They apply to the extent permitted under the Telecommunications Act 1997 (Cwth) and determinations made under that Act by the relevant Commonwealth Minister for Telecommunications, including the Telecommunications (Low-impact Facilities) Determination 1997.*

Pursuant to Clause 52.19 a planning permit is required to construct a building or carry out works for a telecommunications facility.

The land is within private ownership.



The application is not exempt from notification as the telecommunications facility contains a telecommunications tower.

It is considered that the applicant has satisfactorily submitted the appropriate application requirements as per Clause 52.19-5.

### 52.19-6 Decision guidelines

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

- *The principles for the design, siting, construction and operation of a Telecommunications facility set out in A Code of Practice for Telecommunications Facilities in Victoria.*
- *The effect of the proposal on adjacent land.*
- *If the Telecommunications facility is located in an Environmental Significance Overlay, a Vegetation Protection Overlay, a Significant Landscape Overlay, a Heritage Overlay, a Design and Development Overlay or an Erosion Management Overlay, the decision guidelines in those overlays and the schedules to those overlays.*

#### Response:

The following is an assessment against the provisions and principals of the Code of Practice.

The following four principles must be applied where relevant to the design, siting, construction and operation of any telecommunications facility which is not exempt under Commonwealth legislation.

Principle	Officers Response
<p><b>A Telecommunications facility should be sited to minimise visual impact.</b></p> <p>Application of principle:</p> <ul style="list-style-type: none"> <li>● On, or in the vicinity of a heritage place, a telecommunications facility should be sited and designed with external colours, finishes and scale sympathetic to those of the heritage place. A heritage place is a heritage place listed in the schedule to the Heritage Overlay in the planning scheme.</li> <li>● A telecommunications facility mounted on a building should be integrated with the design and appearance of the building.</li> <li>● Equipment associated with the telecommunications facility should be screened or housed to reduce its visibility.</li> <li>● The relevant officer of the responsible authority should be consulted before any street tree is pruned, lopped, destroyed or removed.</li> <li>● A telecommunications facility should be located so as to minimise any interruption to a significant view of a heritage place, a landmark, a streetscape, vista or a</li> </ul>	<ul style="list-style-type: none"> <li>• The proposed telecommunication facility is not on or within the vicinity of a heritage place.</li> <li>• The telecommunications facility is not mounted on a building.</li> <li>• The proposed telecommunications facility is located well within the site (setback approximately 110m from Bitcon Road). The proposed facility is co-located near existing buildings and is effectively screened by mature vegetation (up to 25m in height). It is noted that the tower cannot be appropriately screened due to the 50m height, required for effective operation.</li> </ul> <p>The facility is located on a clear portion of land and no vegetation is proposed to be removed as part of the application.</p> <ul style="list-style-type: none"> <li>• The location of the facility is within private property. No street trees will be impacted on.</li> <li>• The facility is located within farm land and is not expected to impact on important landmarks, heritage places or vistas.</li> <li>• The facility does not adjoin any residentially zoned</li> </ul>

<p>panorama, whether viewed from public or private land.</p>	<p>land.</p>
<p><b>Telecommunications facilities should be colocated wherever practical.</b></p> <p>Application of principle</p> <ul style="list-style-type: none"> <li>● Wherever practical, telecommunications lines should be located within an existing underground conduit or duct.</li> <li>● Overhead lines and antennae should be attached to existing utility poles, towers or other radio communications equipment to minimise unnecessary clutter.</li> </ul>	<ul style="list-style-type: none"> <li>● The applicant has submitted that the closest co-location opportunity is 5.9km from the proposed site. The tower is a Telstra tower and is 35m in height. Optus has infrastructure at a lower height on this tower which target Tatura township.</li> <li>● The applicant has stated that the coverage provided by the co-location opportunity does not meet the coverage objectives as it is too far outside of the search area, and is not a feasible option.</li> <li>● The application does not propose overhead lines. All antennae is attached to the proposed tower.</li> </ul>
<p><b>Health standards for exposure to radio emissions will be met.</b></p> <p>Application of principle</p> <ul style="list-style-type: none"> <li>● A telecommunications facility must be designed and installed so that the maximum human exposure levels to radio frequency emissions comply with <i>Radiation Protection Standard – Maximum Exposure Levels to Radiofrequency Fields – 3kHz to 300 GHz</i>, Arpana, May 2002.</li> </ul>	<ul style="list-style-type: none"> <li>● The applicant has stated that the proposal will be designed and installed to satisfy requirements of Radiation Protection Standard – Maximum Exposure Levels to Radiofrequency fields – 3kHz to 300GHz, Australian Raditation Protection and Nuclear Safety Agency (ARPANSA), May, 2002.</li> <li>● The applicant has also submitted an Environmental EME Report which stated the maximum EME level calculated for the proposed systems at this site is 1.87 V/m; equivalent to 9.32mW/m<sup>2</sup> or 0.14% of the public exposure limit.</li> </ul>
<p><b>Disturbance and risk relating to siting and construction should be minimised. Construction activity and site location should comply with State environment protection policies and best practice environmental management guidelines.</b></p> <p>Application of principle</p> <ul style="list-style-type: none"> <li>● Soil erosion during construction and soil instability during operation should be minimised in accordance with any relevant policy or guideline issued by the Environment Protection Authority.</li> <li>● Construction should be carried out in a safe and effective manner in accordance with relevant requirements of the <i>Occupational Health and Safety Act 1985</i>.</li> <li>● Obstruction or danger to pedestrians or vehicles caused by the location of the facility, construction activity or materials used in construction should be minimised.</li> <li>● Where practical, construction should be carried out during times that cause minimum disruption to adjoining properties and public access.</li> <li>● Traffic control measures should be taken during construction in accordance with <i>Australian Standard AS1742.3 – 2002 Manual of uniform traffic control devices – Traffic control devices on roads</i>.</li> </ul>	<ul style="list-style-type: none"> <li>● A construction phase condition will be included on the permit to address this principle.</li> <li>● It is also noted that the telecommunications facility is being constructed on private property, well within the site boundary and within a rural area, so the construction will have a lesser impact on the use of roads and pedestrians.</li> </ul>

- |  |  |
|--|--|
| <ul style="list-style-type: none"><li>● Open trenching should be guarded in accordance with <i>Australian Standard Section 93.080 – Road Engineering AS 1165 – 1982 – Traffic hazard warning lamps</i>.</li><li>● Disturbance to flora and fauna should be minimised during construction and vegetation replaced to the satisfaction of the land owner or responsible authority at the conclusion of work.</li><li>● Street furniture, paving or other existing facilities removed or damaged during construction should be reinstated (at the telecommunication carrier's expense) to at least the same condition as that which existed prior to the telecommunications facility being installed.</li></ul> |  |
|--|--|

As previously stated on objection has been received from the neighbouring property.

The objector has raised concerns with the visual amenity of the tower, as it will be seen from a great distance and would in turn de-valuate properties nearby. The proposed tower of this size would also detract from the surrounding treed nature and aesthetics of the land.

It is acknowledged that the tower will be clearly visible to the neighbouring property, of which was evident from an onsite inspection and can be seen in the photos within this report. It was discussed that whilst the tower can be seen from the farmland, the objector is unlikely to have any direct views of the tower from their residence on the land as it is surrounded by a large number of established trees.

Due to the nature of the proposal, it is not considered unreasonable that the tower would be seen from different vantage points across the area.

The site selection was addressed in the applicants report. The applicant investigated collocating on existing infrastructure of which was not available in the area. Two potential candidate sites which met the coverage objectives were also investigated as part of the assessment. The proposed site that has been put forward for planning permission was considered more appropriate due to the existing screening from mature trees approximately 25m in height, 24 hour access without interference with operation of existing farm, a greater setback (120m) from a road, appropriate setbacks from residential dwellings and as it is closer to an electricity connection.

The site selection process and eventual selection is considered an acceptable outcome when assessed against the various requirements of the Code.

With respect to the objectors concerns regarding devaluation of abutting land due to a proposed development, VCAT member Cimino cited in *Eckhardt v Monash CC (2006)* VCAT 1047 “if adjoining land is devalued because of detriment to its amenity that is considered in relation to town planning, not the resulting devaluation (in relation to which there is seldom, if ever, any evidence in any event)”. Therefore no consideration has been given the claims of

objectors that the abutting properties would be devalued by the proposed use and development.

The Telecommunications facility is not located in an Environmental Significance Overlay, a Vegetation Protection Overlay, a Significant Landscape Overlay, a Heritage Overlay, a Design and Development Overlay or an Erosion Management Overlay.

#### **The decision guidelines of Clause 65**

##### **Decision Guidelines**

Because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this clause.

#### **65.01 Approval of an application or plan**

*Before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate:*

- *The matters set out in Section 60 of the Act.*
- *The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *The purpose of the zone, overlay or other provision.*
- *Any matter required to be considered in the zone, overlay or other provision.*
- *The orderly planning of the area.*
- *The effect on the amenity of the area.*
- *The proximity of the land to any public land.*
- *Factors likely to cause or contribute to land degradation, salinity or reduce water quality.*
- *Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.*
- *The extent and character of native vegetation and the likelihood of its destruction.*
- *Whether native vegetation is to be or can be protected, planted or allowed to regenerate.*
- *The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.*
- *This clause does not apply to a VicSmart application.*

#### Response:

The decision guidelines of Clause 65 have been addressed under other sections of this report. The effect of the amenity of the locality has been addressed in the objectors concerns and in the assessment against the code within the report.

No vegetation is proposed to be removed as part of the application.

#### **Relevant incorporated or reference documents**

Telecommunications Facilities 'A Code of Practice for Telecommunications Facilities in Victoria' - the code and the guidelines are addressed under other sub-sections of this report.

Local Flood Plain Development Plan – Precinct of Mosquito Creek.

#### **Other relevant adopted State policies or strategies policies**

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

#### **Relevant Planning Scheme amendments**

There are no relevant Planning Scheme amendments that relate to this application for a planning permit.

#### **Are there any significant social & economic effects?**

There are no relevant significant social or economic effects that relate to this application for a planning permit.

#### **Discuss any other relevant Acts that relate to the application?**

There are no other relevant Acts that relate to this application for a planning permit.

#### **The Aboriginal Heritage Act 2006**

The *Aboriginal Heritage Act 2006* provides protection for all Aboriginal places, objects and human remains in Victoria, regardless of their inclusion on the Victorian Aboriginal Heritage Register or land tenure.

The *Aboriginal Heritage Act 2006* introduces a requirement to prepare a Cultural Heritage Management Plan (CHMP) if all or part of the activity is a listed high impact activity, resulting in significant ground disturbance, and all or part of the activity area is an area of cultural heritage sensitivity, which has not been subject to significant ground disturbance.

The 'Area of Cultural Heritage Sensitivity in Victoria' does not include the land within an area of cultural heritage sensitivity; therefore the proposed use does not trigger the need for a CHMP.

#### **Charter of Human Rights and Responsibilities**

The Charter of Human Rights and Responsibilities has been considered when assessing this application and it is not considered that the application impinges on the Charter.

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## **Conclusion**

Given consideration to the relevant planning scheme provisions and the *Telecommunications Facilities 'A Code of Practice for Telecommunications Facilities in Victoria'*, the proposed installation of a telecommunications facility on balance is considered

to achieve acceptable planning outcome. The Planning Department therefore recommend that the Panel decide to approve a Notice of Decision for planning permit.

## Draft Notice Of Decision

**APPLICATION NO:** 2016-407  
**PLANNING SCHEME:** GREATER SHEPPARTON PLANNING SCHEME  
**RESPONSIBLE AUTHORITY:** GREATER SHEPPARTON CITY COUNCIL

**THE RESPONSIBLE AUTHORITY HAS DECIDED TO GRANT A PERMIT.**

**THE PERMIT HAS NOT BEEN ISSUED**

**ADDRESS OF THE LAND:** 1200 BITCON ROAD TATURA VIC 3616

**WHAT THE PERMIT WILL ALLOW:** USE AND DEVELOPMENT OF THE LAND FOR A TELECOMMUNICATIONS FACILITY IN THE FARMING ZONE 1 AND BUILDINGS AND WORKS FOR A TELECOMMUNICATIONS FACILITY IN ACCORDANCE WITH 52.19-2

### WHAT WILL THE CONDITIONS OF THE PERMIT BE?

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1. **Layout Not Altered**

The use and development as shown on the endorsed plans must not be altered without the written consent of the responsible authority.

2. **Construction Phase**

All activities associated with the construction of the development permitted by this permit must be carried out to the satisfaction of the Responsible Authority and all care must be taken to minimise the effect of such activities on the amenity of the locality, including:

- a) Avoiding the transport of mud onto roads;
- b) Minimising the generation of dust during earthworks or vehicles accessing site;
- c) The retention of all silt and sediment on the site during the construction phase, in
- d) accordance with the sediment control principles outlined in Construction
- e) Techniques for Sediment Pollution Control (EPA, 1991)' and;

- f) Maintaining a neat and tidy site.

**3. Rural Drainage Works**

Before the telecommunication facility is used, all stormwater and surface water from the land, buildings and works must be connected to the legal point of discharge or retained on site to the satisfaction of the responsible authority.

**4. Cessation of Use**

Should the use of the land for a telecommunication facility cease the tower and all associated infrastructure must be removed and the site area reinstated to its original state within three months of the use ceasing to the satisfaction of the responsible authority.

**5. Time for Starting and Completion**

This permit will expire if one of the following circumstances applies:

- a) the development and use are not started within **two (2) years** of the date of this permit;
- b) the development is not completed within **four (4) years** of the date of this permit.



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## Application Details:

Responsible Officer:	Tim Watson
Application Number:	2016-279
Applicant Name:	Central Station Carwash
Date Received:	04-Jul-2016
Statutory Days:	35 (25/8/16)
Land/Address:	75-77 Hawdon Street SHEPPARTON VIC 3630
Zoning & Overlays:	Industrial 3 Zone
Why is a permit required (include Permit Triggers):	52.05-8 – display electronic promotion sign
Are there any Restrictive Covenants on the title?	No
Is a CHMP required?	No
Was the correct application fee paid?	Yes

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## Proposal

The application for a planning permit proposes the erection and display of an electronic promotion sign.

The proposed sign will be displayed in the location of an existing sign on the land which faces the street.

The sign will be used to display business identification information and advertise promotions to occur on the land associated with the car wash. After careful considerations of the definitions of both Business Identification Signage and Promotional signage it has been decided that it is correct to define the sign as a promotional sign.

The Greater Shepparton Planning Scheme defines business identification signage as:

*A sign that provides business identification information about a business or industry on the land where it is displayed. The information may include the name of the business or building, the street number of the business premises, the nature of the business, a business logo or other business identification information.*

The purpose of the sign as identified by the applicant is to promote specials and promotion sales.

The sign therefore goes beyond the definition of simply information identifying the business and nature of the business.

The sign is therefore defined under the Greater Shepparton Planning Scheme as a promotion sign, being:

*A sign of less than 18 square metres that promotes goods, services, an event or any other matter, whether not provided, undertaken or sold or for hire on the land or in the building on which the sign is sited.*

The sign was publicly notified as a Business Identification Sign before it was decided to correctly define it as a promotion sign. It was decided not to re-notify it given the application was to be recommended for refusal and for the general public it would not significantly matter what material was displayed on the sign, more the way in which it was displayed (i.e. electronic board).



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## Summary of Key Issues

- The application for a planning permit proposes the erection and display of a of an electronic promotion sign.

- The proposed sign will consist of a free-standing 3.88 metre by 1.92 metre free standing electronic screen, which will be used to display promotional material relating to the business operating from the land.
- The applicant was informed in pre-application correspondence with Council's Planning Department that the application would not be supported.
- A further information request was made for details on what materials would be displayed on the sign and at what height would the sign be displayed. The information submitted as a result was limited.
- The officer determined that despite the quality of the information being poor that the application would be advertised given that it was likely the application would be refused and the requesting further information would place unnecessary burden on the applicant.
- The application was notified to surrounding properties with 5 submissions received to date.
- The submissions relate to the hours of operation for the sign, future applications and possible impacts on residential properties (not their own) which directly face the sign and traffic on the roundabout being adversely affected.
- The applicant was forwarded a copy of these submissions and asked to provide a response.

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## Recommendation

### Refusal

That the Council having caused notice of Planning Application No. **2016-279** 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 **52.05-8** of the Greater Shepparton Planning Scheme in respect of the land known and described as **75-77 Hawdon Street SHEPPARTON VIC 3630**, for the **erection and display of electronic promotion sign**.

### For the following reasons:

1. The proposed electronic promotion sign does not produce acceptable planning outcomes under Council's Local Planning Policy 21.04 for the following reasons:
  - The location form and size of the sign does not complement the semi-residential character of the area;
  - The sign is not primarily for business identification purposes;
  - The sign is not attached to a building wall; and
  - Internally illuminated promotional signs are discouraged.

2. The sign is not in accordance with the relevant purpose of the Clause 52.05 provisions in that it provides for a sign that is not compatible with the visual appearance of the locality, including the desired future character of the area for residential.
3. The size, scale and type of the sign does not produce acceptable planning outcomes under the decision guidelines of the 52.05-3 with regard to the relationship of the sign to the site, building and locality through:
  - Not appropriately scaling the sign relative to the scale and proportion of the existing building on the land;
  - Not being compatible with the existing and desired future character of the locality for primarily residential uses.
  - Not being consistent with the identifiable outdoor advertising theme of the locality of non-electronic and primarily business identification signs.
  - Not considering the potential impact of illumination on the amenity of nearby residents and the area.

## Moved by Colin Kalms

## Seconded by Emma Kubeil

That the Council having caused notice of Planning Application No. **2016-279** 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 **52.05-8** of the Greater Shepparton Planning Scheme in respect of the land known and described as **75-77 Hawdon Street SHEPPARTON VIC 3630**, for the **erection and display of electronic promotion sign.**

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2. The sign is not in accordance with the relevant purpose of the Clause 52.05 provisions in that it provides for a sign that is not compatible with the visual appearance of the locality, including the desired future character of the area for residential.
3. The size, scale and type of the sign does not produce acceptable planning outcomes under the decision guidelines of the 52.05-3 with regard to the relationship of the sign to the site, building and locality through:
  - Not appropriately scaling the sign relative to the scale and proportion of

- Not being compatible with the existing and desired future character of the locality for primarily residential uses.
- Not being consistent with the identifiable outdoor advertising theme of the locality of non-electronic and primarily business identification signs.
- Not considering the potential impact of illumination on the amenity of nearby residents and the area.

**CARRIED**

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## **Subject Site & Locality**

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

Date: **12/7/16**

Time: **11:30** am

- The site has a total area of **approximately 4037** square metres.
- The site is triangle in shape, with three boundaries.
- Two existing businesses are operated from the land being a mechanics/car sales and a car wash.
- The mechanics/car sales is operated from a building abutting the northern boundary with the car sales a very small component of the mechanics business.
- The car wash which comprises a number of buildings and structures and occupies most of the site down to the southern boundary.

- The car wash includes automatic car wash bays, manual car wash bays and vacuum bays and a car detailing business.
- The very southern portion of the site is unused except for a poorly landscaped area. This is where the existing sign which is proposed to be replaced is located.
- The signage onsite is all business identification in nature and is displayed on the buildings.

The main site/locality characteristics are:

- The land abuts railway land to the east, this being the main railway line which dissects Shepparton. The land adjacent this boundary forms part of the SPC complex and is used for warehousing.
- The land to the north is crown land and used as part of the Shepparton High School.
- The land to the west is zoned General Residential. Most lots are of a conventional size and used for single storey residential.
- The lot on the corner of Knight Street and Hawdon Street also in the General Residential Zone is a larger lot and used by the Greek orthodox church and has a childcare centre to the rear which abuts Hawdon Street

The Photos below show the existing site:







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## Permit/Site History

The history of the site includes:

- EF-2016-51 – investigation file opened after complaint made that car wash was operating 24 hours a day.
- Ef-445 - investigation file opened after complaint made that car wash was operating 24 hours a day.
- 2004-33, 2004-33/A, 2004-33/B, 2004-33/C – permits issued for the use and development of the land for a car wash, sales/car yard and storage warehouse.
- 2003-358 – file closed

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## Further Information

Was further information requested for this application? **Yes**

- Will the sign be used to display material from the businesses on the land only or external businesses also; and
- The height will the sign be displayed above ground level.



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What date was the further information requested?: **6/7/16**

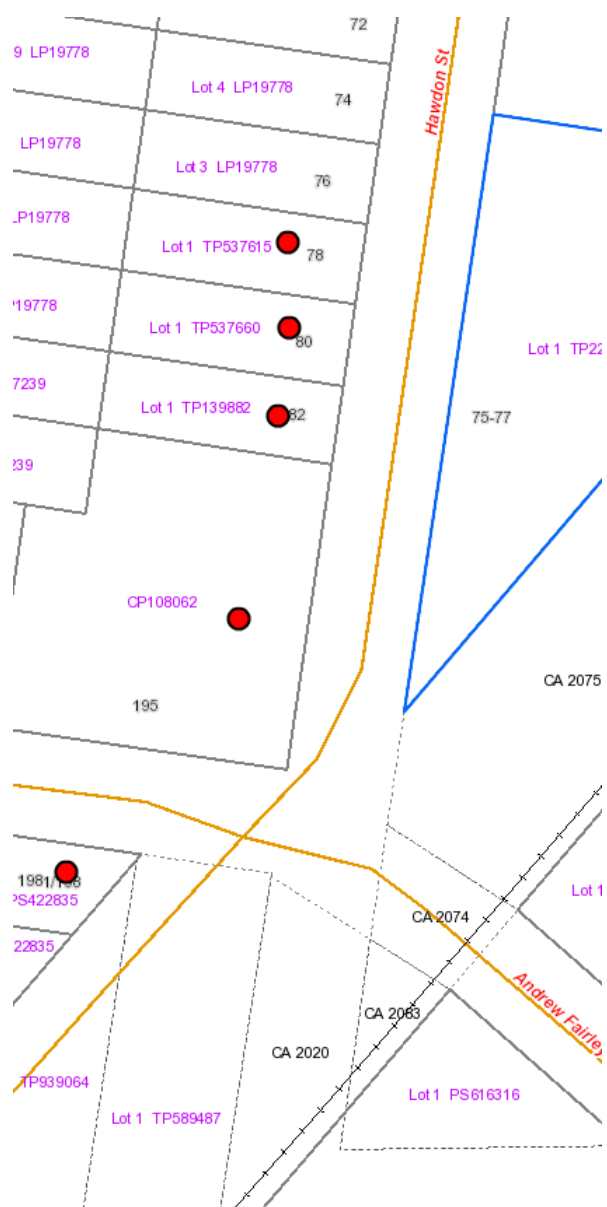
What date was the further information received?: **7/7/16**

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## Public Notification

The application was advertised pursuant to Section 52 of the *Planning and Environment Act 1987* with the following description **erection and display of an electronic business identification sign**, by:

- Sending notices to the owners and occupiers of adjoining land.



## Objections

The Council has received **5 submissions** to date. The key issues that were raised in the submissions are.

- The hours of operation of the sign and that it should only be operated within the times in which the car wash is allowed to operate, not all hours.
- They want a guarantee that a new application will not be made in the future that a similar sign will not be applied for which faces their houses.
- They also point to concerns which do not directly relate to them but raise them anyway being:
  - The sign fronting the roundabout being a possible traffic risk; and
  - The dwellings on the other side which front the sign may be affected.

### Response

Was the sign to be approved Council's Planning officer would recommend that conditions limited the hours of operation of the sign be included on the permit given the sensitive land uses opposite the land.

Council's Planning department cannot make a guarantee that a future application will be made given that additional signage would not be prohibited on the land and the land owner is entitled to make application.

The application was referred internally to the Council's Traffic Engineer who raised no serious traffic related concerns to the display of the proposed sign as per their comments in another section of this report.

Council's Planning officer agrees that the sign has the potential to impact on the amenity of nearby residents.

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## Title Details

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

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## Consultation

Consultation was undertaken. Relevant aspects of consultation, included:

- A pre-application meeting was undertaken with a Council officer in which they followed up with the following email:

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*At the meeting you enquired if a planning permit would issue for an electronic promotion sign on the southern boundary of the property facing the intersection of Hawdon Street / Knight Street / Railway Parade / Andrew Fairley Avenue roundabout.*

*The sign which we spoke about would have the following characteristics:*

- *Would have dimensions of 3.8m x 1.9m*
- *Would be an led sign with 15-30 second advertisements*

*If any of the above is incorrect please let me know.*

*In response to the above please note the following:*

- *The land is within the Industrial 3 Zone and is within Category 2 of the signage provisions set out in Clause 52.05 of the Planning Scheme;*
- *A Planning Permit would be required for the proposed sign.*

*In response to the above, Clause 24.04-4 of the Planning Scheme sets out the following (pertinent) objectives with regard to signage:*

- *Internally illuminated promotional signs are discouraged.*
- *Advertising signage is encouraged to be primarily for business identification providing basic identification information of the business.*

*Further to this, given the location of the proposed sign we consider that there may be traffic safety implications (given the proximity of the roundabout and train line)*

*In light of the above, it is considered that a Planning Permit application could be made for the proposal, however, it is unlikely that the Planning Department would support an application for an electronic promotion sign at the above location.*

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## **Referrals**

External Referrals/Notices Required by the Planning Scheme:

<b>Referrals/Notice</b>	<b>Advice/Response/Conditions</b>
Section 55 Referrals	The application was not referred to any authorities under section 55.
Section 52 Notices	The application was not notified to any external authorities.

<b>Internal Council Notices</b>	<b>Advice/Response/Conditions</b>
Traffic Engineer.	<p>The application was referred internally to the Council Traffic Engineer, who did not object to the issue of a permit and made the following comments:</p> <ul style="list-style-type: none"><li>• I have no problem with the proposed location on the existing sign frame, which is just inside the property's southern boundary.</li><li>• It may be visible to traffic heading north on Railway Pde from as far away as Fryers St roundabout, depending on its brightness and weather conditions.</li></ul> <p>At 60km/h, this would be about 40 seconds of travel time, so drivers</p>

	<p>might notice three changes of message within that travel time. I don't think this is a serious traffic issue as long as the changes of message are instant and there's no other animation of any sort. Rather than allow more messages, maybe we could suggest a change of message at a similar rate to the Shepp Hotel (assuming that's over 15 seconds). (You could probably see the Shepparton Hotel sign from Corio Street if not for the street trees).</p> <ul style="list-style-type: none"><li>• The other approaching traffic will only be able to see the sign for a short period (&lt;15 seconds) so should not be distracted by it.</li></ul>
-	-

## Assessment

### The zoning of the land Industrial 3 Zone 33.03

The purpose of the zone is:

- To provide for industries and associated uses in specific areas where special consideration of the nature and impacts of industrial uses is required or to avoid inter-industry conflict.
- To provide a buffer between the Industrial 1 zone or Industrial 2 Zone and local communities, which allows for industries and associated uses compatible with the nearby community.
- To allow limited retail opportunities including convenience shops, small scale supermarkets and associated shops in appropriate locations.
- To ensure that uses do not affect the safety and amenity of adjacent, more sensitive land uses.

No permit was required under the provisions of the Industrial 3 Zone, with the zone identifying that advertising sign requirements are at Clause 52.05 and that the zone is in Category 2.

### Relevant overlay provisions

The subject land is not affected by any planning overlays.

### The State Planning Policy Framework (SPPF)

Urban Design 15.01-1

Relevant objectives and strategies include:

- To create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity.

- Ensure new development or redevelopment contributes to community and cultural life by improving safety, diversity and choice, the quality of living and working environments, accessibility and inclusiveness and environmental sustainability.
- Require development to respond to its context in terms of urban character, cultural heritage, natural features, surrounding landscape and climate.

### Response

1. The proposed sign does not appropriately respond to the context in terms of the urban character or surrounding landscape.
2. It is acknowledged that the site is a interface area in terms of use, hence the use of the Industrial 3 Zone on the land, with the signage character of the locality being one where simple business identification signs are provided. The church, day care and school all display simple signs that only display necessary information and are not excessive for the sites on which they are displayed. The SPC signage is clearly visible from the surrounding land near the locality, however this signage is also only business identification displayed on the building.
3. The existing signage on the car wash site follows a similar principle, with simple business identification signage displayed on the building. The proposed sign is not considered to be in keeping with this character and if it was to be approved, it would be considered a significant departure from the character both in size and type of sign. The sign being the first promotional sign within the locality

### **The Local Planning Policy Framework (LPPF)- including the Municipal Strategic Statement (MSS), local planning policies and Structure Plans** Urban Design 21.04-4

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Advertising signage is a key and often highly visible component of the physical environment of the municipality and the inappropriate design or placement of advertising signs can have a significant effect on the appearance and visual amenity of an area. Council wants to guide the location and display of signage within the municipality to ensure signage is compatible with the character and architecture of local streetscapes. The design, form, size and placement of advertising signs should be controlled so as to protect and enhance the appearance of rural and urban areas and to avoid signs that are excessive, confusing or incompatible with the character of the surrounding area.

#### Objectives and strategies

- To control the number of signs and ensure that the appearance, size, illumination or location of signs does not adversely affect the visual amenity of the natural environment or the built form in the municipality.

- Control the location, size and scale of advertising signage, especially in key precincts of the Shepparton CBD and town centres.
- Ensure that the location, form and size of signs complements the dominate character of any urban or rural landscape, building, site or area on which they are erected.

#### Specific Implementation 21.04-7

- Fewer signs displaying a simple clear message is encouraged
- Advertising signage is encouraged to be primarily for business identification providing basic identification information of the business.
- Freestanding signs should be limited to one sign per premises with multiple occupancies encouraged to share sign space.
- Where a building is set back from the street, signs are encouraged to be located within the boundary and should be orientated to be parallel or at right angles to the street.
- Where possible signs should be located on the building.
- Pole signs should be limited to one per frontage and should be no higher than the surrounding buildings.
- Major promotional signs are discouraged, but if approved are to be confined to Regional and sub-regional centres attached to a building wall and should not be more than 3 metres above the ground or to be internally or externally illuminated.

#### Response

4. The site is located in an interface area where the largest industrial zoned area in Shepparton is adjacent to residential zoned and used locality. The site also abuts an intersection for two connector roads with frequent traffic movements. The sign will be displayed so that it faces this intersection.
5. Council appreciates as identified in the Local Planning Policy that there is a need for businesses to appropriately identify themselves through the use of signage and the display of signage will always be a visible component of the urban environment.
6. The proposed sign goes beyond the display of basic business identification information and will be used to display promotional material regarding deals and specials offered from the land.

7. The proposed electronic signage which is to have an area of 7.44 square metres is considered excessive for the locality where the minimal signage which is displayed, is mostly located on buildings and is not electronic.
8. The use of an electronic sign on land directly across from a residential zone is considered excessive and will result adversely on the amenity of the residents.

### **Relevant Particular Provisions**

#### Advertising Signs 52.05

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The purpose of this provision is to:

- Regulate the display of signs and associated structures;
- Provide for signs that are compatible with the amenity and visual appearance of an area, including the existing or desired future character;
- To ensure signs do not contribute to excessive visual clutter or visual disorder;
- To ensure that signs do not cause loss of amenity or adversely affect the natural or built environment or the safety, appearance or efficiency of a road.

### Response

9. Pursuant to Clause 52.05-8 a planning permit is required to display an electronic promotion sign in the Industrial 3 Zone.
10. Signage to be displayed within the Industrial 3 Zone is identified under Category 2, with the purpose to provide for adequate identification signs and signs that are appropriate to office and industrial areas.
11. The site already comprises a number of business identification signs which clearly identify the functions of the business and services offered on the land. The existing signs already provide what would be considered adequate identification signage on the land. The display of additional promotional signage through the display of a large electronic screen is considered excessive for the locality and not appropriate for the locality where the residential character is a predominate factor in the assessment of any application.

### **Decision Guidelines 52.05-3**

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

The character of the area including:

- The sensitivity of the area in terms of the natural environment, heritage values, waterways and open space, rural landscape or residential character.
- The compatibility of the proposed sign with the existing or desired future character of the area in which it is proposed to be located.
- The cumulative impact of signs on the character of an area or route, including the need to avoid visual disorder or clutter of signs.
- The consistency with any identifiable outdoor advertising theme in the area.

#### Response

12. The site is located in an interface area where the largest industrial zoned area in Shepparton is adjacent to residential zoned and used locality. The site also abuts an intersection for two connector roads with frequent traffic movements. The sign will be displayed so that it faces this intersection.
13. The locality is not considered to have any natural values that would be compromised by the sign.
14. The desired future character of the locality is that it remains an area where the residential amenity is protected as much as possible from the industrial uses to the east. It would be envisaged that whilst signage is expected given the industrial zoning of the surrounding land, it is respectful in terms of the strong residential character of the residential land to the west of the site.
15. The proposed sign is a significant departure from the identifiable outdoor advertising theme for the area. The sign will be the first promotion sign within the immediate locality, the sign will be the first electronic sign within the immediate locality and the sign will be a free standing sign not attached to a building. The signage theme for the locality for the limited signs which are displayed is one where the signs are only business identification and for the most part attached to existing buildings.

#### Impacts on views and vistas:

- The potential to obscure or compromise important views from the public realm.
- The potential to dominate the skyline.
- The potential to impact on the quality of significant public views.
- The potential to impede views to existing signs.

#### Response

16. The sign is unlikely to obscure or compromise any important views with the land behind the sign forming part of the rail land and SPC warehousing.
17. The sign is unlikely to form a dominate feature of the skyline, however will form a dominate feature of the locality given the electronic component and size of the sign
18. The proposed sign is unlikely to impede on views to existing signs.



The relationship to the streetscape, setting or landscape:

- The proportion, scale and form of the proposed sign relative to the streetscape, setting or landscape.
- The position of the sign, including the extent to which it protrudes above existing buildings or landscape and natural elements.
- The ability to screen unsightly built or other elements.
- The ability to reduce the number of signs by rationalising or simplifying signs.
- The ability to include landscaping to reduce the visual impact of parts of the sign structure.

Response

19. The proposed sign is considered excessive in scale for the locality, particularly the size and electronic component.
20. In a location where a residential area forms a key part of the character, the size and scale of the sign has not sought to respect this streetscape setting.

The relationship to the site and building:

- The scale and form of the sign relative to the scale, proportion and any other significant characteristics of the host site and host building.
- The extent to which the sign displays innovation relative to the host site and host building.
- The extent to which the sign requires the removal of vegetation or includes new landscaping.

Response

21. As identified above the sign will form a dominate feature of the site and the proposal does not seek to incorporate the sign with the building or scale the proportion of the sign to the site.
22. No native vegetation will need to be removed to allow for the display of the sign.

The impact of structures associated with the sign:

- The extent to which associated structures integrate with the sign.
- The potential of associated structures to impact any important or significant features of the building, site, streetscape, setting or landscape, views and vistas or area.

Response

23. The proposed sign will require the construction of a single structure with poles with a clearance underneath.
24. It is not considered that the structure itself is excessive, as most of it will comprise the advertising display area.

The impact of any illumination:

- The impact of glare and illumination on the safety of pedestrians and vehicles.
- The impact of illumination on the amenity of nearby residents and the amenity of the area.
- The potential to control illumination temporally or in terms of intensity.

Response

25. The light spill from the sign has the potential to become an amenity issue for nearby residents, with the sign to face the residential area.
26. It is acknowledged that the sign will be closest to the church and kindergarten which are not residential uses, the light spill will however likely impact on dwellings within the locality.

The impact of any logo box associated with the sign:

- The extent to which the logo box forms an integral part of the sign through its position, lighting and any structures used to attach the logo box to the sign
- The suitability of the size of the logo box in relation to its identification purpose and size of the sign.

Response

27. No logo box has been identified as part of this application

The need for identification and the opportunities for adequate identification on the site or locality.

28. The Council as identified do not discourage promotional signs outright and acknowledge that there is a need for them as reflected in the Council's Local Planning Policy.
29. The subject site already has a significant display of business identification signs, all of which is considered to be an acceptable level of signage for the locality.

The impact on road safety. A sign is a hazard if the sign:

- Obstructs a driver's line of sight at an intersection, curve or point of egress from an adjacent property.

- Obstructs a driver's view of a traffic control device, or is likely to create a confusing or dominating background which might reduce the clarity or effectiveness of a traffic control device.
- Could dazzle or distract drivers due to its size, design or colouring, or it being illuminated, reflective, animated or flashing.
- Is at a location where particular concentration is required, such as a high pedestrian volume intersection.
- Is likely to be mistaken for a traffic control device, because it contains red, green or yellow lighting, or has red circles, octagons, crosses, triangles or arrows.
- Requires close study from a moving or stationary vehicle in a location where the vehicle would be unprotected from passing traffic.
- Invites drivers to turn where there is fast moving traffic or the sign is so close to the turning point that there is no time to signal and turn safely.
- Is within 100 metres of a rural railway crossing.
- Has insufficient clearance from vehicles on the carriageway.
- Could mislead drivers or be mistaken as an instruction to drivers.

#### Response

30. Council's Planning Department in correspondence with the applicant has twice informed that an application for a planning permit would not likely be supported.
31. The Council has therefore sought to allow for the applicant to make an application and save money though the concession that a traffic safety assessment would not be sought.
32. The officer notes however that the sign will face a busy roundabout with frequent traffic movements and high pedestrian volumes before and after school hours given the close proximity of the Shepparton High School, Notre Dame and St Brendans and could have an impact on driver's concentration.
33. The sign is also located within close proximity of the railway crossing (approximately 30 metres).
34. Given the sign to be displayed is promotional it is difficult to determine or provide an assessment against some of the other criteria as the sign content will change. For this matter, should a permit issue standard road safety conditions should be included as permit conditions to ensure future road safety with regard to content displayed.

35. The application was referred internally to the Council's Traffic Engineer for comment, who responded with no objection or any concerns. They raised that if the sign is to be displayed it should have a minimum dwell time of 15 seconds in accordance with standard VicRoads requirements.

#### **The decision guidelines of Clause 65**

Because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this clause.

#### **65.01 Approval of an application or plan**

Before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate:

- The matters set out in Section 60 of the Act.
- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The purpose of the zone, overlay or other provision.
- Any matter required to be considered in the zone, overlay or other provision.
- The orderly planning of the area.
- The effect on the amenity of the area.
- The proximity of the land to any public land.
- Factors likely to cause or contribute to land degradation, salinity or reduce water quality.
- Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.
- The extent and character of native vegetation and the likelihood of its destruction.
- Whether native vegetation is to be or can be protected, planted or allowed to regenerate.
- The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.

#### Response

36. The application for a planning permit to display an electronic promotional sign is not considered to provide an acceptable outcome when assessed against the State and particularly Local Planning Policies.
37. Despite the sign being located on Industrial 3 zoned land, where a large number of business identification are located the sign does not appropriately respond to the physical context of the site or the broader locality.

38. The sign does is not considered to provide for an orderly planning outcome within the locality with the sign to form a dominate feature of the site which does not seek to incorporate its self with the building.

**Relevant incorporated or reference documents**

There are no relevant or incorporated or reference documents that relate to this application for a planning permit.

**Other relevant adopted State policies or strategies policies**

There are no other relevant State or strategic policies that relate to this application for a planning permit.

**Relevant Planning Scheme amendments**

There are no relevant Planning Scheme amendments that relate to this application for a planning permit

**Are there any significant social & economic effects?**

There are no relevant significant social or economic effects that relate to this application for a planning permit.

**Discuss any other relevant Acts that relate to the application?**

There are no other relevant Acts that relate to this application for a planning permit.

**The Aboriginal Heritage Act 2006**

The *Aboriginal Heritage Act 2006* provides protection for all Aboriginal places, objects and human remains in Victoria, regardless of their inclusion on the Victorian Aboriginal Heritage Register or land tenure.

The *Aboriginal Heritage Act 2006* introduces a requirement to prepare a Cultural Heritage Management Plan (CHMP) if all or part of the activity is a listed high impact activity, resulting in significant ground disturbance, and all or part of the activity area is an area of cultural heritage sensitivity, which has not been subject to significant ground disturbance.

The 'Area of Cultural Heritage Sensitivity in Victoria' does not include the land within an area of cultural heritage sensitivity; therefore the proposed use does not trigger the need for a CHMP.

**Charter of Human Rights and Responsibilities**

The Charter of Human Rights and Responsibilities has been considered when assessing this application and it is not considered that the application impinges on the Charter

## **Conclusion**

The application for a planning permit to display a major promotional sign is not considered to provide an acceptable outcome when assessed against the State and particularly Local Planning Policies. The proposal is specifically discouraged by the Local Planning Policy relating to the display of major promotional signs.

# DRAFT

## REFUSAL TO GRANT A PERMIT

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**APPLICATION NO:** 2016-279

**PLANNING SCHEME:** GREATER SHEPPARTON PLANNING SCHEME

**RESPONSIBLE AUTHORITY:** GREATER SHEPPARTON CITY COUNCIL

**ADDRESS OF THE LAND:** 75-77 Hawdon Street SHEPPARTON VIC 3630

**WHAT HAS BEEN REFUSED:** Erection and display of electronic promotion sign

**WHAT ARE THE REASONS FOR THE REFUSAL?**

- 
1. The proposed electronic promotion sign does not produce acceptable planning outcomes under Council's Local Planning Policy 21.04 for the following reasons:
    - The location form and size of the sign does not complement the semi-residential character of the area;
    - The sign is not primarily for business identification purposes;
    - The sign is not attached to a building wall; and
    - Internally illuminated promotional signs are discouraged.
  2. The sign is not in accordance with the relevant purpose of the Clause 52.05 provisions in that it provides for a sign that is not compatible with the visual appearance of the locality, including the residential character of the area for residential that is adjacent the land.
  3. The size, scale and type of the sign does not produce acceptable planning outcomes under the decision guidelines of the 52.05-3 with regard to the relationship of the sign to the site, building and locality through:
    - Not being compatible with the existing and desired future character of the locality for primarily residential uses.
    - Not being consistent with the identifiable outdoor advertising theme of the locality of non-electronic and primarily business identification signs.
    - Not considering the potential impact of illumination on the amenity of nearby residents and the area.





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## Application Details:

Responsible Officer:	Tim Watson
Application Number:	2016-396
Applicant Name:	S Fichera
Date Received:	26-Sep-2016
Land/Address:	360 Cornish Road, Ardmona
Zoning & Overlays:	Farming Zone No overlays
Why is a permit required (include Permit Triggers):	35.07-1 – use of land for a dwelling 35.07-4 – building and works for a dwelling
Are there any Restrictive Covenants on the title?	No
Is a CHMP required?	No
Was the correct application fee paid?	Yes

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## Proposal

An application has been made for the use and development of the land for a dwelling in the Farming Zone.

The application comprises the construction of a single dwelling on the land to be associated with a proposed orchard operation for the land, with the applicant already operating orchards on other land within the locality.

The applicant has not purchased the land and the sale is subject to the issue of a permit.

The applicant has informed that they will only proceed with the purchase of the land and plantation of orchard subject to a dwelling being allowed on the land and that the dwelling will be used to provide accommodation for their son who is part of the business.

The applicant has estimated that the cost of planting orchard on the land will be approximately \$200,000 - \$250,000.

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## Summary of Key Issues

- The application for a planning permit proposes the use and development of the land for a dwelling in the Farming Zone on an allotment less than 60 hectares.
- The application identifies that the dwelling will be associated with the planting of orchard on the rest of the land.
- The application was notified to the Council's Health Department and Goulburn Murray Water, neither of whom object subject to conditions.

- The application was advertised, with one objection received.
- The objection raised issues that the dwelling would prevent surrounding farmers from farming and that the dwelling was not needed for the applicant to farm the land.
- The approval of the use of the land for a dwelling will provide the applicant security to plant the land out for orchard resulting in beneficial outcome for agriculture through the increasing of output from the land.

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## Recommendation

### Notice of Decision to Grant a Permit

That Council having caused notice of Planning Application No. **2016-396** 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* and having considered the objections to the application, decides to Grant a Notice of Decision 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 **360 Cornish Road ARDMONA VIC 3629**, for the **use and development of land for a dwelling in the Farming Zone 1** in accordance with the Notice of Decision and the endorsed plans.

### Moved by Emma Kubeil

### Seconded by Jorine Bothma

That Council having caused notice of Planning Application No. **2016-396** 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* and having considered the objections to the application, decides to Grant a Notice of Decision 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 **360 Cornish Road ARDMONA VIC 3629**, for the **use and development of land for a dwelling in the Farming Zone 1** in accordance with the Notice of Decision and the endorsed plans.

### Carried

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## Subject Site & Locality

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

Date: **16/11/16**

The site has a total area of **6.47 hectares** and currently comprises:

- The land is mostly vacant and used for light grazing.
- An existing shed is located within the south east corner of the land adjacent to the existing access point, which is surfaced with crushed rock and provided with trafficable end-walls on the culvert.

The main site/locality characteristics are:

- The land abuts roads on the southern (Cornish) and western (Ardmona) boundaries.
- The land to the north is used for grazing and pasture propagation, with the associated dwelling accessed from Ardmona Road.
- The abutting land to the east form part of a GMW drain reserve. The land adjacent this is a small 1.2 hectare lot used for rural lifestyle purposes.
- Land further east and north east forms part of a large parcel used for orchard.
- The land to the south is used for an orchard an contains an existing dwelling setback from the road in the orchard.
- The allotments to the west are used for grazing and comprise single dwellings.

























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## Pre-Application Meeting Details

As there been a pre-application meeting ? **yes**

If yes with Whom? **Tim Watson.**

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## Permit/Site History

The history of the site includes:

- Planning permit 2013-213 was issued to allow for the construction for a farm shed.

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## Further Information

Is further information required for the application? **no**

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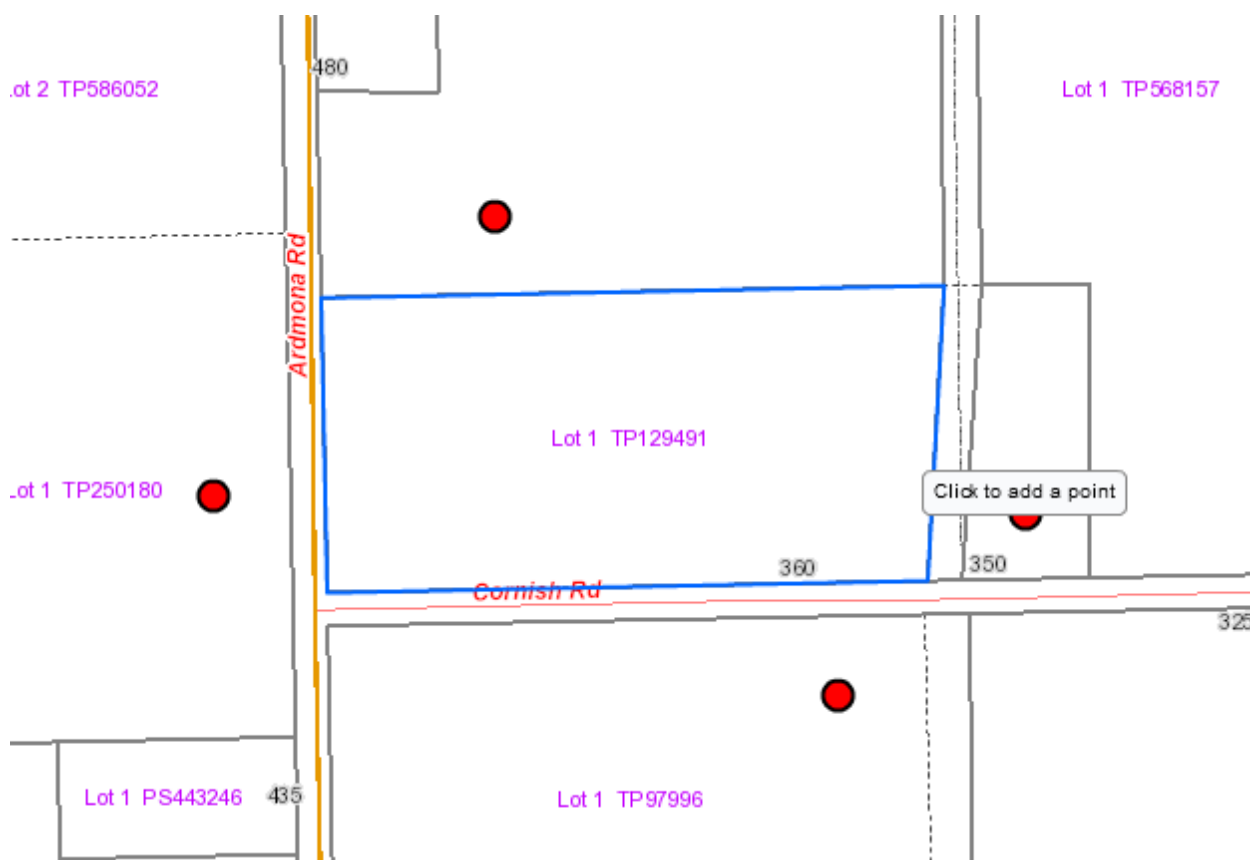
## Public Notification

The application was advertised pursuant to Section 52 of the *Planning and Environment Act 1987* with the following description **use and development of land for a dwelling in the Farming Zone 1**, by:

- Sending notices to the owners and occupiers of adjoining land.

- Placing a sign on site.

The applicant provided a signed declaration stating that the sign on site was displayed on the land between 6/10/16 and 24/10/16.



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## Objections

The Council has received 1 objection to date. The key issues that were raised in the objection are.

- The approval of the dwelling will prevent local farmers in the area carrying out their main uses of the land, which is farming.
- Housing is not required in this area, with people using this land able to travel from the nearby townships of Shepparton and Mooroopna.

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## Title Details

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

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## Consultation

Consultation was undertaken. Relevant aspects of consultation, included:

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### Application

- An initial discussion was held with the applicant prior to the application being made, where they were informed of the Farming Zone rules and what the assessment guidelines were for dwellings in the zone.
- The applicant informed that they intended to plant the site out for orchard and that the dwelling was required for their son who forms part of the business.
- The planning officer informed that based on this information Council would consider an application, however there was no guarantee that it would issue.
- Council officers meet and discussed with the applicant on multiple occasions after the application was notified, the process and identify what conditions council would likely impose on a permit should one issue, being restricting the permit to their name only and requiring certain works to be undertaken prior to the construction of a dwelling to guarantee agricultural investment.

### Objector

- The objector was contacted by phone by the responsible officer after the objection was made, so that the officer could gain a better understanding of the objector's concerns given the brief nature of the objection.
- The officer informed that the applicant intended to farm the land, was a farmer already and would if a permit was issued be required to undertake a number of works to ensure that agriculture investment was made. The email was sent to the objector following the conversation to confirm the details of the application.
- A second email was sent approximately a week later asking the objector whether they had had an opportunity to consider the information. (no response was received)
- Subsequent phone calls were made over the coming weeks with messages left, with no response received.

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## **Referrals to Authorities**

External Referrals Required by the Planning Scheme:

<b>Section 55 - Referrals Authority</b>	<b>List Planning clause triggering referral</b>	<b>Determining or Recommending</b>	<b>Advice/Response/Conditions</b>
The application was not referred to any authorities.	-	-	-

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## **Notice to Authorities**

External Notice to Authorities:



Section 52 - Notice Authority	Advice/Response/Conditions
Goulburn Murray Water	The application was notified to Goulburn Murray Water, who do not object to the issue of a permit subject to the following conditions: <ol style="list-style-type: none"> <li>a) All construction and ongoing activities must be in accordance with sediment control principles outlines in 'Construction Techniques for Sediment Pollution Control' (EPA, 1991).</li> <li>b) All wastewater from the dwelling must be treated and disposed of using an EPA approved system, installed, operated and maintained in compliance with the relevant EPA Code of Practice and Certificate of Approval.</li> <li>c) The wastewater disposal area must be located a minimum of 60 metres from Goulburn-Murray Water irrigations drains and channels, and from any dams.</li> <li>d) The wastewater disposal area must be kept free of stock, buildings, driveways and service trenching and must be planted with appropriate vegetation to maximise it performance. Stormwater must be diverted away. A reserve wastewater disposal field of equivalent size to the primary disposal field must be provided for use in the event that the primary field requires resting or has failed.</li> <li>e) No buildings or works may be erected or carried out within 30 metres of any Goulburn Murray Water surface infrastructure (including open irrigation channels and drains), 10 metres from any other structure (such as culverts, drainage inlets, subways, syphons), or 5 metres from any below surface infrastructure (including pipelines), located on any Goulburn Murray Water freehold, easements or reserves.</li> </ol>

Internal Notice:

Internal Council Notices	Advice/Response/Conditions
Health Department	The application was referred internally to the Council's Health Department, who do not object to the issue of a permit subject to the inclusion of the standard installation of a septic tank condition.

## Assessment

### The zoning of the land

Farming Zone 35.07 (schedule 1)

The purpose of the zone is:

- To provide for the use of land for agricultural land.
- To encourage the retention of productive agricultural land.
- To ensure that non-agricultural the need to uses, including dwellings, do not adversely affect the use of land for agriculture.
- To encourage the retention of employment and population to support rural communities.
- To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

A permit is required for the use of land for a dwelling if the land does not meet the minimum lot size (60 hectares) pursuant to clause 35.07-1. A permit was also required for the buildings and works associated with a section 2 use (dwelling) in the Farming Zone pursuant to clause 35.07-4.

#### Decision guidelines

##### General issues

- The State Planning Policy Framework and Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- Any regional catchment strategy and associated plan applying to the land.
- 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.
- How the use and development makes use of existing infrastructure and services.

##### Agricultural issues and impacts from non-agricultural uses

- Whether the use or development will support and enhance agricultural production.
- Whether the use or development will adversely affect soil quality or 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 capacity of the site to sustain the agricultural use.
- The agricultural qualities of the land, such as soil quality, access to water and access rural infrastructure.
- Any integrated land management plan prepared for the site.

##### Dwelling issues

- Whether the dwelling will result in the loss or fragmentation of productive agricultural 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.

#### Environmental issues

- The impact of the proposal on the natural physical features and resources of the area, in particular on soil and water quality.
- The impact of the use or development on the flora and fauna on the site and its surrounds.
- The need to protect and enhance the biodiversity of the area, including the retention of vegetation and faunal habitat and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge are.
- The location of on-site effluent disposal areas to minimise the impact of nutrient loads on waterways and native vegetation.

#### Design and sitting 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.
- The impact on the character and appearance of the area or features of architectural, historic or scientific significance or of natural scenic beauty or importance.
- The location and design of existing and proposed infrastructure including roads, gas, water, drainage, telecommunications and sewerage facilities.
- Whether the use and development will require traffic management measures.

#### Response

The applicant has in making their application informed that the purpose of the dwelling is to allow for the expansion of their farming operation and to provide a dwelling for their son. The applicant currently operates an orchard within the Ardmona locality and intends to plant the site out for orchard at significant cost which includes irrigation, earthworks, trellises and plants.

The agricultural works proposed for the land are supported by the purpose of the zone which encourages the use and retention of land for agriculture. The plantation of an orchard on land which is currently used for grazing significantly increases the agricultural output from the land helping to support the retention of employment and population in rural communities. The applicant has informed that these works are dependent on the application for a dwelling being granted. The proposed dwelling will be associated with an agricultural use and will be located close to a boundary of an abutting lot used for rural lifestyle purposes.

The application has been referred to the Council's Health Department, who do not object to the issue of a permit and are satisfied that the land is capable of disposing of effluent onsite.

As identified the proposed use and development of the land for a dwelling is to be associated with an agricultural use which reflects the uses of the wider locality. The proposed dwelling may not be compatible with the surrounding land uses for agriculture, however taking into account that the dwelling will form part of a farming operation it is considered to be acceptable.

The proposed dwelling will support the development of the land for a more intensive form of agriculture with a higher output than the existing grazing. The applicant has informed that they intend to undertake irrigation and earthworks required for the establishment of an orchard prior to starting works on a dwelling. These works and the costs associated with them indicate that the dwelling will form part of a real agricultural operation. The approval of a permit for a dwelling which will result in agricultural investment and will support and enhance agricultural production for the site.

The proposed dwelling which will result in the site being planted for orchard will allow for the expansion of an existing nearby horticultural operation within the locality, being the applicant's existing business. The intent of this guideline is to prevent the loss of agricultural land to non-agricultural uses, which could have otherwise been used for agricultural production. The development of the land for a dwelling will result as identified in the land being used for orchard, thus achieving the purpose of the zone.

The dwelling will result in a small loss of agricultural land for the building foot print and surrounding envelope including normal infrastructure (i.e. accessways, septic, ect). As a result of the dwelling the land will be put to orchard, resulting in a higher agricultural output for the remainder the land offsetting any loss of land to the dwelling and associated envelope.

The dwelling has the potential to be adversely impacted upon by agricultural activities on adjacent and nearby land. These impacts are mitigated through the location of the dwelling adjacent to the land to the east which is used for rural lifestyle purposes on a small allotment and that the occupants of the proposed dwelling will be undertaking a number of the agricultural activities themselves which would result in impacts (i.e. noise, odour, use of chemicals and farm machinery), thus having a good understanding in agricultural practices.

The proposal is unlikely to lead to a concentration or proliferation of dwellings within the locality.

The dwelling as identified will be located adjacent the existing dwelling on the land to the east, allowing for the overlapping of buffers, which will reduce the amount of agricultural land lost.

The proposed use and development of the land for a dwelling in the Farming Zone, will provide for improved agricultural outcomes through the establishment agricultural infrastructure and planting of orchard. The use of land for a dwelling associated with this agricultural enterprise is considered a compromise and an act of balancing competing objectives in allowing for increased production from the land. The dwelling will form part of the use, with the orchard operator to live on the land and the dwelling will be located to reduce impacts on surrounding agricultural operations. The dwelling is therefore considered acceptable under the guidelines of the Farming Zone.

#### **Relevant overlay provisions**

No planning overlays affect the subject land.

#### **The State Planning Policy Framework (SPPF)**

Hume Regional Growth 11.10

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Relevant objectives and strategies include:

- Avoid encroachment from rural residential settlement and other land uses that are non-complementary to agriculture in areas identified as strategic agricultural land and direct proposals for settlement to existing centres and townships.
- Support agricultural production through the protection and enhancement of infrastructure and strategic resources such as water and agricultural land, including areas of strategic agricultural land.



#### Agriculture 14.01

Relevant objectives and strategies include:

- To protect productive farmland which is of strategic significance in the local or regional context.
- Ensure that the State's Agricultural base is protected from the unplanned loss of productive agricultural land due to permanent changes of land use.
- In assessing rural development proposals, planning and responsible authorities must balance the potential off-site effects of rural land use proposals (such as soil degradation of soil or water quality and land salinization) which might affect productive agricultural land against the benefits of the proposals.
- To encourage sustainable agricultural land use.

#### Response

The proposed use and development of land for a dwelling in the Farming Zone will be associated with an agricultural use (orchard). The applicant has identified that there are a number of costs associated with the establishment of an orchard and that the dwelling will be used to accommodate their son who currently works within the business. The conversion of the land from grazing to orchard is supported by the above objectives which seek to increase

the agricultural output of the State. The importance of agriculture and high value products to the region is highlighted through the identification of the Shepparton Municipality as one of strategic agricultural importance on the map above. The approval of a dwelling which will encourage and assist this development is considered an acceptable balanced outcome where the need for a dwelling needs to be assessed.

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

Agriculture 21.06-1

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The land was identified in a Consolidation area in the Regional Rural Land Use Strategy being a reference document to the Scheme.

Consolidation areas being areas that support existing farming businesses to operate and expand. Consolidation areas typically include land with good soils and include many former closer settlement areas, but their lot sizes are no longer reflective of current farm sizes. Consolidation areas are considered to provide opportunities for development of growing agricultural enterprises that can, over time, expand and consolidate through a process of property restructure. In this regard 'consolidation' includes the consolidation of land or the consolidation of farming enterprises through acquisition of non-contiguous land to increase farm size. The development of additional dwellings threatens expanding agricultural enterprises and accordingly, new dwellings within these areas are discouraged. The use of re-subdivision and excisions within consolidation areas will be considered in recognition that the excision of a dwelling from a farm can provide businesses an opportunity to consolidate property holdings based on the value of land for agriculture.

Relevant objectives and strategies include:

- To facilitate growth of existing farm businesses.
- To facilitate growth of new agricultural investment.
- Encourage growth and expansion of existing farm businesses and new investment in 'growth' and 'consolidation' areas.
- Discourage land uses and development in the Farming Zone, Schedule 1 that would compromise the future agricultural use of the land, including farm related tourism

Response

The proposed dwelling is to provide support for an existing family operated orchard business looking to expand. The proposal as identified in this report is to plant the majority of the land for orchard which will include investment in irrigation infrastructure and trellis, with the dwelling to provide support to this new plantation.

The applicant has made clear in their application that they intend to undertake a number of the agricultural infrastructure works prior to starting works on the proposed dwelling, thus displaying a clear intent that the agricultural purpose of the land is primary. The applicant has however made the council aware that they do not intend to proceed with either the purchase of the land and plantation of orchard unless a guarantee that a dwelling can be constructed on the land.

Whilst a dwelling in the Farming Zone is typically discouraged on small lots by a wide range of policies the proposal which can be considered a trade-off and a balance of competing objectives will:

- Facilitate the growth of an existing farm business;
- Facilitate growth of new agricultural investment; and
- Encourage growth and expansion of existing farm business and new investment in a consolidation area.

Make the proposal acceptable.

#### Dwellings in Rural Areas 21.06-3

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Relevant objectives and strategies include:

- To discourage new dwellings unless it can be demonstrated that it is required for the agricultural use of the land.
- To ensure that new dwellings support rural activities and production and are not to meet lifestyle objectives, which may conflict with the rural use of the land.
- To avoid potential amenity impacts between rural activities and dwellings in rural areas.
- Discourage the establishment of dwellings not associated with or required for agricultural use of land.
- Discourage dwellings which are proposed to meet personal or financial circumstances or to create dwellings for 'rural lifestyle' purposes.
- Discourage the clustering of new dwellings unless they do not limit the productive use and development of surrounding land.

Policy Guidelines – dwellings in rural areas



An application for a dwelling in the Farming Zone, Schedule 1 and Schedule 2 should meet the following criteria:

- The dwelling is required for the operation of the rural use of land.
- The agricultural use is established on land prior to the construction of a dwelling (or an Integrated Land Management Plan under Clause 35.07-6 in place).
- The dwelling is located on a lot of at least 2ha in areas.
- The dwelling is located on a lot created after 1<sup>st</sup> January 1960.

Exercise of discretion

It is policy to:

- Discourage the construction of new dwellings on any land that is not suitable for the on-site disposal of septic tank effluent.
- Discourage the construction of new dwellings on any land with a water table within one metres of the surface when waste water is to be treated and retained on site.
- Require the application to enter into an agreement under section 173 of the Act to:
  - Ensure that the dwelling is used in conjunction with agricultural production;
  - Prevent the subdivision of the lot containing the dwelling where the proposed lot size is less than the minimum lot size for subdivision specified in the zone; and
  - Acknowledge the impacts of nearby agricultural activities.

Decision Guidelines

- The relationship between the proposed dwelling and the agricultural activity on the land.
- Evidence including an integrated land management plan under clause 35.07-6 (or similar) addressing the relationship between agricultural activities on the land and the proposed dwelling.
- The agricultural productive capacity or the agricultural potential of the land.
- The nature of the existing agricultural infrastructure and activity of the land and any new proposed agricultural infrastructure and activity at the land.

- The nature of the agricultural activities on the land and whether they require permanent and continuous care, supervision or security.
- The proposed sitting of the dwelling and whether it minimises impacts on existing and potential agricultural operations on nearby land.
- The lot size, context and physical characteristics of the land.
- Whether the dwelling will result in a rural living or rural residential outcome in the area.
- The planning history of the land.
- The potential for the land to be consolidated with other land to enhance agricultural productivity.
- Whether the planning scheme identifies a 'non-agricultural' future for the land and the implications of development on future development options.

### Response

The applicant has indicated that there is a clear agricultural intent for the land and that the dwelling proposed to be constructed on the land will be associated with the agricultural use. The location of the proposed dwelling close to the existing dwelling on the adjacent lot to the east, is considered an appropriate location so as to allow for the overlapping of buffers between two sensitive uses.

The planning officer has discussed the agricultural works required with the applicant who has broken them down into four stages being; earthworks, installation of irrigation infrastructure, construction of support trellis and planting of orchard. The applicant has agreed that should a permit issue they would not object to a condition on the permit preventing works on a dwelling starting prior to earthworks and irrigation infrastructure being installed. This will ensure that the agricultural use will occur, with the applicant unlikely to not follow through with the proposal after significant investment in infrastructure. Such measures will ensure that the dwelling will be associated with a more intensive agricultural use of the land and that the activity will proceed.

The site is suitable for the disposal of effluent onsite and has been consented to by the Council's Health Department.

The applicant will be required to enter into a section 173 Agreement as per the requirements of the Scheme.

There will be a clear and established relationship between the orchard and the dwelling, with the applicant already operating an orchard and wanting to expand the business to include his son.

The land has the capacity and infrastructure to support the proposed agricultural use, with a water channel and water wheel provided in the south west corner of the land.

It is difficult to determine if/whenever a dwelling is required to support a an agricultural use. The proposed dwelling will result in an improved agricultural outcome for the region. The dwelling approval will allow for the applicant to have the security they need to expand their orchard business whilst providing accommodation on farm to their son who will become an important part of the business through family succession.

No non-agricultural future is identified for the land, nor is there any significant planning history for the land other than the approval of an agricultural shed.

### **Relevant Particular Provisions**

There are no relevant Particular Provisions that relate to this application for a planning permit.

### **The decision guidelines of Clause 65**

Because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this clause.

### **65.01 Approval of an application or plan**

Before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate:

- The matters set out in Section 60 of the Act.
- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The purpose of the zone, overlay or other provision.
- Any matter required to be considered in the zone, overlay or other provision.
- The orderly planning of the area.
- The effect on the amenity of the area.
- The proximity of the land to any public land.
- Factors likely to cause or contribute to land degradation, salinity or reduce water quality.
- Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.
- The extent and character of native vegetation and the likelihood of its destruction.
- Whether native vegetation is to be or can be protected, planted or allowed to regenerate.

- The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.

### Response

The matters to be considered under the Act and relevant guidelines have been addressed in this report.

The application for the use and development of the land for a dwelling will result in investment in agricultural practise, with improved outputs from the land. The application provides that for the security to make these investments they need to know that a dwelling for their son (who is already part of the operation) can be constructed on the land.

In balancing the objective of the Farming Zone, State and local planning policies which support agricultural investment and increased output from such activities whilst discouraging dwellings unless need, the proposal is considered to be acceptable. The proposal will result in a dwelling being constructed on a 6.47 hectares lot, however the dwelling will result in improved agricultural outcomes from the land and the dwelling will be associated with the use and not constructed for lifestyle purposes.

### **Relevant incorporated or reference documents**

The Rural Regional Land Use Strategy which was adopted by Council as a reference document formed a key basis form minimum lot sizes in the Farming Zone and the writing of the Local Planning Policy.

The key provisions of this document have been addressed under the Local Planning Policy assessment with the objectives, strategies and guidelines drawn from this document.

### **Other relevant adopted State policies or strategies policies**

There are no other relevant adopted State or Strategic Policies that relate to this application for a planning permit.

### **Relevant Planning Scheme amendments**

There are no relevant Planning Scheme Amendments that relate to this application for a planning permit

### **Are there any significant social & economic effects?**

There are no relevant significant social or economic effects that relate to this application for a planning permit.

### **Discuss any other relevant Acts that relate to the application?**

There are no other relevant Acts that relate to this application for a planning permit.

## **The Aboriginal Heritage Act 2006**

The *Aboriginal Heritage Act 2006* provides protection for all Aboriginal places, objects and human remains in Victoria, regardless of their inclusion on the Victorian Aboriginal Heritage Register or land tenure.

The *Aboriginal Heritage Act 2006* introduces a requirement to prepare a Cultural Heritage Management Plan (CHMP) if all or part of the activity is a listed high impact activity, resulting in significant ground disturbance, and all or part of the activity area is an area of cultural heritage sensitivity, which has not been subject to significant ground disturbance.

The 'Area of Cultural Heritage Sensitivity in Victoria' does not include the land within an area of cultural heritage sensitivity; therefore the proposed use does not trigger the need for a CHMP.

## **Charter of Human Rights and Responsibilities**

The Charter of Human Rights and Responsibilities has been considered when assessing this application for a planning permit and it is not considered that the application impinges on the Charter.

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## **Conclusion**

The matters to be considered under the Act and relevant guidelines have been addressed in this report.

The application for the use and development of the land for a dwelling will result in investment in agricultural practise, with improved outputs from the land. The application provides that for the security to make these investments they need to know that a dwelling for their son (who is already part of the operation) can be constructed on the land.

In balancing the objective of the Farming Zone, State and local planning policies which support agricultural investment and increased output from such activities whilst discouraging dwellings unless need, the proposal is considered to be acceptable. The proposal will result in a dwelling being constructed on a 6.47 hectares lot, however the dwelling will result in improved agricultural outcomes from the land and the dwelling will be associated with the use and not constructed for lifestyle purposes.

It is therefore recommend that a notice of decision to issue a planning permit be approved, subject to conditions.

# Draft Notice Of Decision

**APPLICATION NO:** 2016-396

**PLANNING SCHEME:** GREATER SHEPPARTON PLANNING SCHEME

**RESPONSIBLE AUTHORITY:** GREATER SHEPPARTON CITY COUNCIL

**THE RESPONSIBLE AUTHORITY HAS DECIDED TO GRANT A PERMIT.**

**THE PERMIT HAS NOT BEEN ISSUED.**

**ADDRESS OF THE LAND:** 360 CORNISH ROAD ARDMONA VIC 3629

**WHAT THE PERMIT WILL ALLOW:** USE AND DEVELOPMENT OF LAND FOR A DWELLING IN THE FARMING ZONE 1

## WHAT WILL THE CONDITIONS OF THE PERMIT BE?

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1. **Layout Not Altered**

The use and development as shown on the endorsed plans must not be altered without the written consent of the responsible authority.

2. **Amended Plans Required**

Before the development starts, amended plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and a minimum of two copies must be provided. The plans must be generally in accordance with the plan submitted with the application but modified to show:

- a) Fully dimensioned site layout showing the position and size of the dwelling, associated shed, access driveways, and effluent envelope, with offset distances to boundaries and between the buildings and to the effluent envelope;
- b) Floor plan and elevations of the dwelling, showing an appearance compatible with the rural setting and visual amenity of the location, indicating materials and external finishes;
- c) The proposed area of orchard and the required irrigation works.

**3. Section 173 Agreement**

Before the occupation of the dwelling, the owner must enter into an agreement with the responsible authority, pursuant to Section 173 of the *Planning and Environment Act 1987*. This agreement must be registered on the title to the land pursuant to Section 181 of the *Planning and Environment Act 1987*. The owner must pay the reasonable costs of the preparation, execution and registration of the section 173 agreement. The agreement must provide that:

- a) The dwelling may not be subdivided from the lot in the future, and the lot may not be subdivided to increase the number of lots, by excision or otherwise, unless each lot created complies with the minimum lot size required for the zone at that time.**
- b) That the owner acknowledges and accepts the possibility of nuisance from adjoining agricultural operations including animal husbandry, spray drift, agricultural machinery use, pumps, trucks and associated hours of operation.**

The said agreement is to be prepared by Council. Council will undertake to have the agreement prepared upon written notification from the applicant. All costs associated with the preparation and registration of the agreement shall be borne by the applicant including Council's administration fee. All fees associated with the documentation must be fully paid prior to execution and registration of the document by Council.

**4. Connection to Services and Access**

Before the dwelling hereby permitted is occupied:

- a) Access to the dwelling must be provided via an all-weather road with dimensions adequate to accommodate emergency vehicles.
- b) The existing vehicle crossings providing access to the land must be upgraded to a standard to the satisfaction of the responsible authority. Vehicle crossing(s) must be constructed at the owner's expense.

The crossover must be constructed in accordance with Council's Infrastructure Design Manual Drawings (SD255), which includes sealing.

- c) All stormwater and surface water drainage from the land, buildings and works, must be retained on site or directed to the legal point of discharge to the satisfaction of the responsible authority and Goulburn Murray Water. Effluent and/or polluted water must not be discharged to Council's stormwater drainage system from the land.
- d) The dwelling must be connected to a reticulated potable water supply or have an alternative potable water supply with adequate storage for domestic use as well as for fire fighting purposes.
- e) The dwelling must be connected to a reticulated electricity supply or have an alternative energy source.

to the satisfaction of the Responsible Authority.

**5. Permission to act on Permit**

The use and development component (use and development of land for a

dwelling) of this permit can only be acted upon with the land under the ownership of the permit applicant (S Fichera).

This permit will have no force of effect if acted upon with the land in any other ownership than that of the applicant (S Fichera or associated partnership).

**6. Construction of Irrigation Infrastructure**

Prior to the commencement of work for the dwelling approved by this permit commencing, the irrigation infrastructure as shown on the submitted plan must be constructed and installed to the satisfaction of the Responsible Authority.

**7. Construction Phase**

All activities associated with the construction of the development permitted by this permit must be carried out to the satisfaction of the Responsible Authority and all care must be taken to minimise the effect of such activities on the amenity of the locality, including:

- a) Avoiding the transport of mud onto roads;
- b) Minimising the generation of dust during earthworks or vehicles accessing site;
- c) The retention of all silt and sediment on the site during the construction phase, in accordance with the sediment control principles outlined in Construction Techniques for Sediment Pollution Control (EPA, 1991); and
- d) Maintaining a neat and tidy site.

**8. Health Requirements**

Prior to the commencement of works for the proposed dwelling the owner must lodge with the Council an application to Install a Septic Tank System in accordance with the Code of Practice – Onsite Wastewater Management, Publication 891.3, February 2013.

The application to install a Septic Tank System must include:

- 1) The application form provided by the Council completed, signed and dated by the owner.
- 2) A floor plan of the proposed dwelling.
- 3) A site plan indicating the location of the effluent disposal area / reserve area.
- 4) The design of the effluent disposal system including instructions for installation and working drawings.
- 5) The current application fee.

**9. Goulburn Murray Water Requirements**

- a) All construction and ongoing activities must be in accordance with sediment control principles outlines in 'Construction Techniques for Sediment Pollution



Control' (EPA, 1991).

- b) All wastewater from the dwelling must be treated and disposed of using an EPA approved system, installed, operated and maintained in compliance with the relevant EPA Code of Practice and Certificate of Approval.
- c) The wastewater disposal area must be located a minimum of 60 metres from Goulburn-Murray Water irrigations drains and channels, and from any dams.
- d) The wastewater disposal area must be kept free of stock, buildings, driveways and service trenching and must be planted with appropriate vegetation to maximise its performance. Stormwater must be diverted away. A reserve wastewater disposal field of equivalent size to the primary disposal field must be provided for use in the event that the primary field requires resting or has failed.
- e) No buildings or works may be erected or carried out within 30 metres of any Goulburn Murray Water surface infrastructure (including open irrigation channels and drains), 10 metres from any other structure (such as culverts, drainage inlets, subways, syphons), or 5 metres from any below surface infrastructure (including pipelines), located on any Goulburn Murray Water freehold, easements or reserves.

#### **10. Time for Starting and Completion**

This permit will expire if one of the following circumstances applies:

- a) the development and use are not started within **two (2) years** of the date of this permit;
- b) the development is not completed within **four (4) years** of the date of this permit.

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# Development Hearings Delegates Report

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## Application Details:

Responsible Officer:	Sarah Van Meurs
Application Number:	2016-229
Applicant Name:	L S Splatt
Date Received:	02-Jun-2016
Statutory Days:	72 on 7/12/2016
Land/Address:	830-840 Toolamba Road TOOLAMBA VIC 3614
Zoning & Overlays:	Farming Zone 1 Adjoins Road Zone Category 1
Why is a permit required (include Permit Triggers):	35.07-1 Extend the use of the land for a cool store (830 Toolamba Road). 35.07-4 Buildings and works for a gravel hardstand area in the Farming Zone 1 associated with a Section 2 Use (rural industry – cool store). 52.05-10 Business identification signage in the FZ1 52.06-3 reduction of car parking associated with the extension of the use. 52.29 Alteration to access to a Road Zone Category 1.
Are there any Restrictive Covenants on the title?	No
Is a CHMP required?	No
Was the correct application fee paid?	Yes - \$687.85 paid

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## Proposal

The application is a result of an enforcement file whereby the use of the land for a cool store (controlled atmosphere/smart fresh store) located at 840 Toolamba Road has extended to 830 Toolamba Road, Toolamba.

Whilst no planning permit exists for the site, the use of the land for a cool store at 840 Toolamba is considered to have existing use rights, despite being intensified in recent years (discussed in detail in the particular provisions section of this report) and therefore the use component of the application relates to the extension of the use onto 830 Toolamba Road only.

830 Toolamba Road, had been previously developed for a dwelling. The dwelling has since been completely removed from the site and a gravel hardstand area has been developed to allow truck parking in association with the existing cool store use on 840 Toolamba Road.

A permit is required in accordance 35.07-1 and 35.07-4 to extend the use of the land for rural industry (cool store, controlled atmosphere/smart fresh store) and works associated

with a section 2 use for a hard stand area for the purpose of truck parking in the Farming Zone 1.

A planning permit is required pursuant to 52.05 for the display of business identification signage in the Farming Zone 1. Signage will need to comply with allowable dimensions of signage in the FZ1 (ie a maximum of 3sqm).

A permit is also required pursuant to Clause 52.06-3 for a reduction in car parking associated with industry.

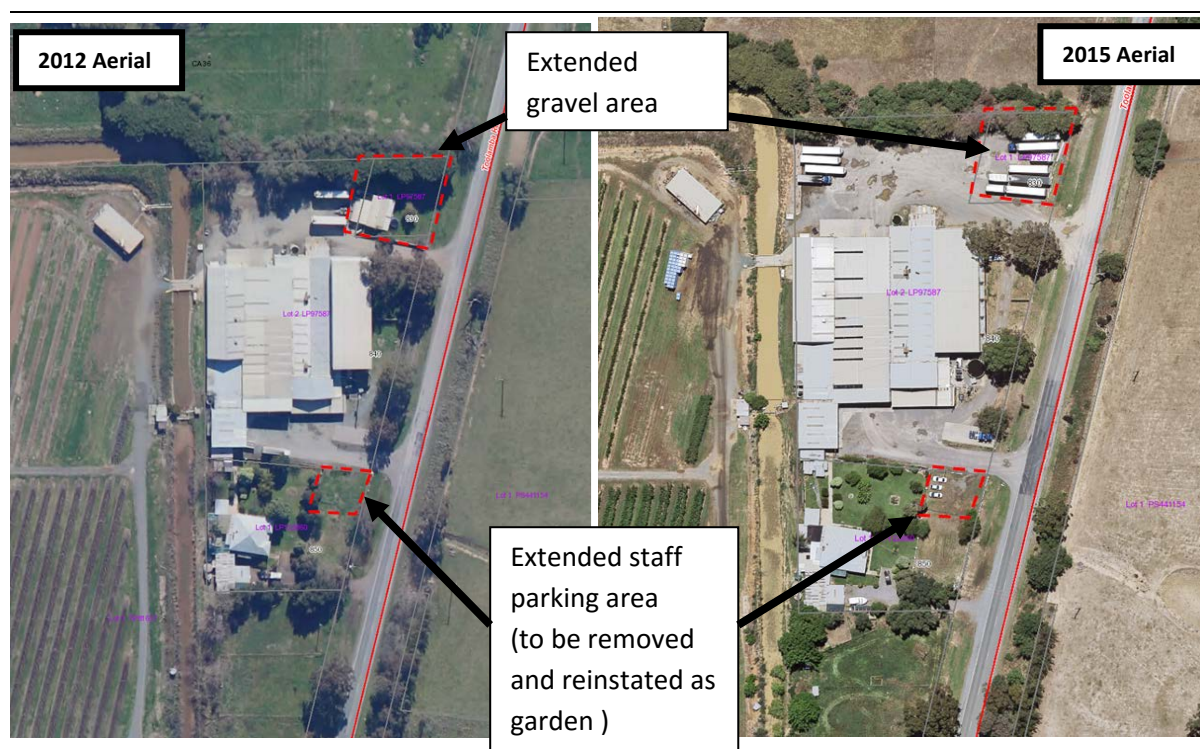
The application was notified to Vicroads who did not object subject to upgrades to the road and access arrangement. Given the access is required to be upgraded, planning permission is also required in accordance with Clause 52.29 of the scheme.

It is noted a portion of land to the front of an existing dwelling at 850 Toolamba Road has been fenced off and signed to allow for a visitor car parking associated with the cool store use which is accessed from 840 Toolamba Road.

The applicant has not applied for the extension of use or for the development of car parking and specifically notes in the Traffic Report forming part of the application that 850 operates independently and does not form part of the cool store operation.

It will therefore be requested that all signage to the visitor car park be removed, and the land be appropriately fenced to ensure that the visitor park is no longer used.

The below aerials show the changes to the site.



830 and 840 Toolamba Road are currently within separate titles. Given the application proposes to operate over both parcels it is recommended that a condition be included to consolidate the land titles.

The operation of the site is seasonal whereby off season runs from June to November and peak season from December to May. The applicant has submitted a traffic report stating the following information regarding seasonal operations:

- 4 trucks based at the site during off peak with an increase to 6 during peak season;
- 10 movements (5 in and 5 out) in off peak season and up to 20 vehicle movements (10 in and 10 out) occur per day in peak. It is estimated that 50% are semi's and 50% B doubles.
- No other trucks visit the site for other purposes than local fruit processing and transport functions.
- Site employs approximately 10 staff in off peak season and 12 to 15 staff (including truck drivers in peak). Staff cars are parked under the awning along the south side of the cool store.

## Summary of Key Issues

The application is retrospective and proposes the extension of a cool store (controlled atmosphere/smart fresh store use) to 830 Toolamba Road, Toolamba and associated works for a gravel hardstand area for truck parking.

The application also seeks retrospective permission for business identification signage in the Farming Zone 1.

A reduction of car parking associated with the extension of the use is also required.

It is considered that 840 Toolamba Road has existing use rights for a cool store.

The application was advertised and one objection was received.

The application was notified to Vicroads, who did not object subject to conditions being placed on the permit in relation to vehicle access. Therefore permission for alteration to Road Zone Category 1 access is required under Clause 52.29 and has been included in this permit.

The application was referred to the Engineers who did not object or provide any conditions to be included in the permit.

The application was internally referred to the Councils Environmental Health Department who did not object subject to conditions being included on the permit.

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## Recommendation

### Notice of Decision to Grant a Permit

That Council having caused notice of Planning Application No. **2016-229** 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* and having considered the objections to the application, decides to Grant a Notice of Decision to Grant a Permit under the provisions of **35.07-1, 35.07-4, 52.05-10, 52.06-3 and 52.29** of the Greater Shepparton Planning Scheme in respect of the land known and described as **830 and 840 Toolamba Road TOOLAMBA VIC 3614**, for the **Extension of use Rural Industry (Cool store – controlled atmosphere and smart fresh store) and works to extend a gravel surface and erect and display business identification signage in the Farming Zone 1 and reduction of car parking and alteration to access to a Road Zone Category 1** in accordance with the Notice of Decision and the endorsed plans.

## **Moved by Colin Kalms and Seconded by Jorine Bothma**

That the request for a deferment by the applicant on medical grounds be dismissed and that the matter should be heard by the Panel.

## **Moved by Colin Kalms**

## **Seconded by Jorine Bothma**

That Council having caused notice of Planning Application No. **2016-229** 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* and having considered the objections to the application, decides to Grant a Notice of Decision to Grant a Permit under the provisions of **35.07-1, 35.07-4, 52.05-10, 52.06-3 and 52.29** of the Greater Shepparton Planning Scheme in respect of the land known and described as **830 and 840 Toolamba Road TOOLAMBA VIC 3614**, for the **Extension of use Rural Industry (Cool store – controlled atmosphere and smart fresh store) and works to extend a gravel surface and erect and display business identification signage in the Farming Zone 1 and reduction of car parking and alteration to access to a Road Zone Category 1** in accordance with the Notice of Decision and the endorsed plans with amendment to the Notice of Decision are as follows:

Condition **4. Noise Control** b) to be amended to read:

- b) In the event of unreasonable noise being generated by activities conducted on from the subject land and being established by Council planning officers as likely to be causing a disturbance to nearby property, then further noise testing by a suitably qualified acoustic consultant must be undertaken at the expense of the landowner/applicant to assess whether activities on the site are breaching the EPA permissible noise levels and to advise what measures must be implemented to minimise the problem to the satisfaction of the responsible authority.

**Carried**

## Subject Site & Locality

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

Date: **5 July 2016**                      Time: **11:30** am

The site has a total area of **13247** square metres and currently contains:

- Cool store, gravel hard stand area.

The main site/locality characteristics are:

- Bounded by GMW channel to the west, Orchard to the west, Road Zone Category 1 to the east (Toolamba Road),
- Character of the area is typically agricultural farmland and associated rural dwellings.

The Photos below show the existing site:



Looking south along Toolamba Road.



Looking at the subject land from Toolamba Road.





Looking at the portion of the site that was previously a dwelling (830 Toolamba Road).



Looking at the northern access to the site (signage has since been removed).



Looking at the southern access to the site.



Looking at the southern access of the site and the visitor parking and signage directing vehicles to visitor parking on 850 Toolamba Road.



Looking east from inside the site at the extended area (830 Toolamba Road).

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## Pre-Application Meeting Details

Has there been a pre-application meeting ? **Yes**

If yes with Whom? **Enforcement Officer, Robert Duncan**

Date of Meeting? **21 March 2016**

What advice was given by the Council Officer? **Planning permit application lodged**

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## Permit/Site History

The history of the site includes:

- There is no relevant planning permit history for the site.
- 7903 – Building permit for an extension to the loading bay, proposed storage shed 4/1/1989. The building permit plan submitted shows that the land has been established for the use of a cool store.

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## Further Information

Is further information required for the application? **Yes, informal request sent**

What additional information is required?

**Full recent copy of title for all properties;**

**Traffic impact assessment, which should include the number of turning movements into and out of the site per day and the type of vehicles (trucks);**

**Information addressing the following:**

- **Number of trucks visiting the site per day (if this is seasonal please specify)**
- **Number of trucks visiting the site per day for the purpose of delivering or picking up fruit associated with the controlled atmosphere storage onsite;**
- **Number of trucks visiting the site per day for other purposes (please specify)**
- **Length of stay for trucks visiting the site;**
- **Number of staff on the site at any given time;**
- **Maximum number of truck and trailers to be stored on the site at any given time;**
- **Internal truck movements on the site.**

What date was the information requested?: **8/7/2016**

When was the information requested by? **19/8/2016 (note this was not a lapse date as information was informally requested).**

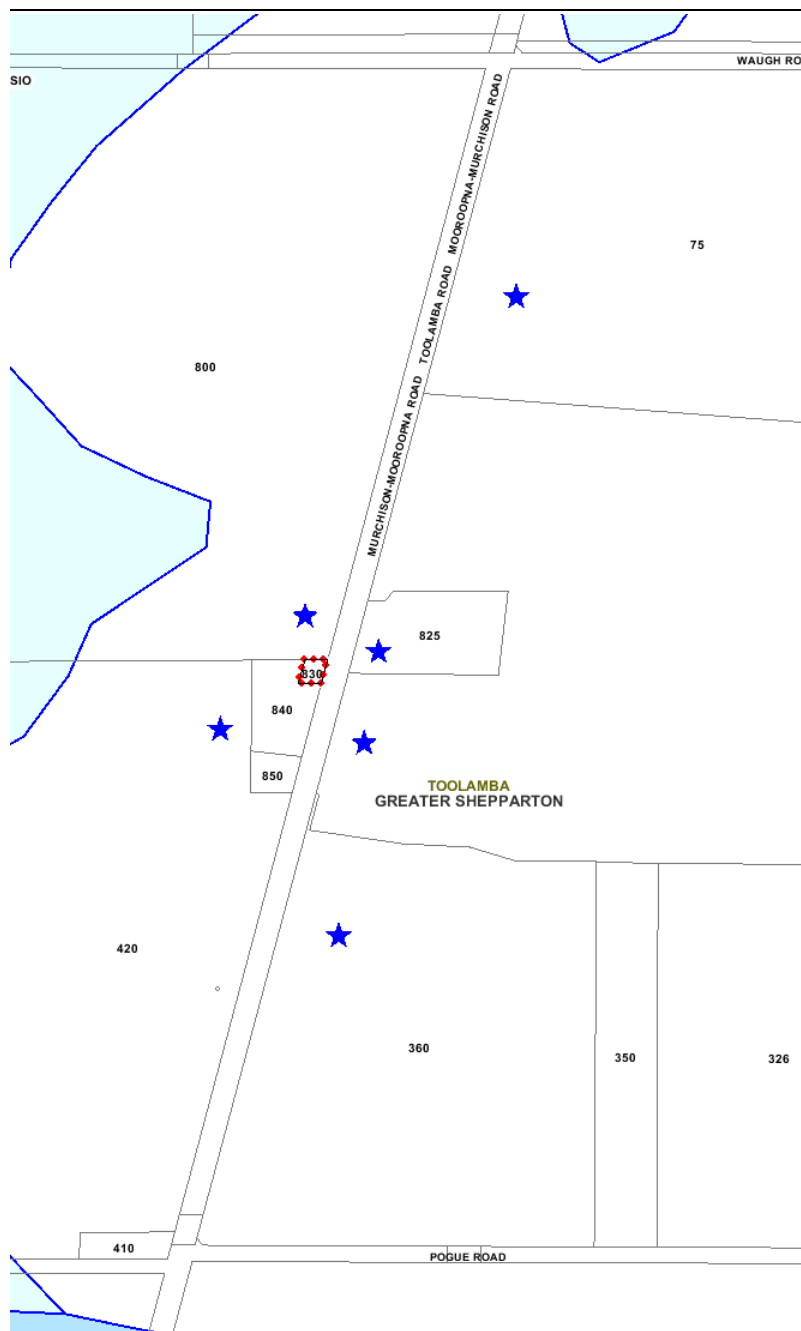
What date was the information received?: **25/8/2016**

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## **Public Notification**

The application was advertised pursuant to Section 52 of the *Planning and Environment Act 1987* with the following description **Use of the land for a transport terminal and works to extend hard stand surface associated with a Section 2 use (transport terminal and cool store) in the Farming Zone 1, erect and display business identification signage and alteration to access to a Road Zone Category 1, by:**

- **Sending notices to the owners and occupiers of adjoining land.**



Application also sent to Jenny Davey, Business Manager Toolamba Primary School.

It is noted that the application was incorrectly advertised. When the application was submitted it was thought that the use had altered to a transport terminal and a permit was required for alteration to access to a road zone. Since the application was advertised, it has been determined that the operation has existing use rights for a cool store and that the use has intensified. No change of use has occurred.

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The reduction of car parking associated with the extension of the use was also not advertised.

It was decided not to re-advertise the application as permissions required for the application are not considered to cause any further detriment to the surrounding properties.

The extension of the existing use of a cool store on t830 Toolamba Road is considered to be of lesser impact than was originally advertised (to include an additional use of the land for a transport depot) and therefore will not cause any additional detriment.

The reduction of car parking is considered to be appropriate as discussed in the provisions section of this report. It is also noted that the land is currently operating and that there has been no complaints received by the Planning Department with regard to car parking in the area. The objection received by the Planning Department also did not raise any issues with offsite car parking impacts.

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## Objections

The Council has received **one** objection to date. The key issues that were raised in the objections are outlined in the table below.

<b>Objectors concerns:</b>	<b>Officers Response:</b>
Noise from trucks and activity including refrigerator trucks, truck braking, forklifts  Concerns with hours of operation	The applicant has stated that the hours of operation are from 6:00am to rarely after 8:00 pm in the peak time.  Given the operation of the land will be from 6:00 am to 8:00 pm, the breaking noise and refrigerator truck noise will be eliminated during the majority of night time hours (with the exception of 6:00 am to 7:00 am).  Given that existing use rights apply to the majority of the land, the planning department do not have control over the hours of operation, and cannot require a condition restricting hours.
Size of the operation makes it industrial not agricultural use	The use of the 840 Toolamba Road has been established as a rural industry (cool store) and is considered to have existing use rights. There is no change to the use of the land, only the expansion of the use to allow



	<p>for additional truck parking on 830 Toolamba Road requires permission. The use supports the agricultural production in the region, and is considered to comply with the purpose of the zone.</p>
<p>Floodlight spill into neighbouring property</p>	<p>The applicant has not applied for development of lights. A planning permit is required for buildings and works associated with a Section 2 Use in the Farming Zone 1. The planning enforcement officer will be notified and relevant action will be undertaken.</p>
<p>Increased traffic</p> <p>Turning trucks impact on traffic movement and safety</p> <p>No turning lane to accommodate B doubles, no signage to indicate trucks are turning, no line markings, no road lighting and the entrance is obscured by trees</p> <p>Trucks parking on the side of the road</p> <p>Deteriorating road condition</p> <p>Accident that has occurred to the front of the site.</p>	<p>The applicant prepared a traffic impact assessment report (TIAR). The assessment stated that due to the nature of the proposal (extension of operation onto 830 Toolamba Road) an upgrade to the access to the site was not warranted.</p> <p>Despite this the TIAR also stated that if this was an application for a new use (ie. did not have the benefit of existing use rights) it is likely that the site establishment should be accompanied by</p> <ul style="list-style-type: none"> <li>• Paved and sealed driveways from the edge of carriageway to the property boundary</li> <li>• Widening of Toolamba Road at the site entry to provide: <ul style="list-style-type: none"> <li>○ A Type BAR right turn passing lane;</li> <li>○ Type BAL sealed shoulder left turn provision.</li> </ul> </li> </ul> <p>The application was notified to VicRoads who provided conditions for relevant upgrades to be made to Toolamba Road and</p>

	<p>access to the property.</p> <p>Given that VicRoads are the road authority, the Planning Department have included their conditions.</p>
<p>Operation of business without any informal or formal notice (change of use since was owned and operated by Costas)</p>	<p>The application has been assessed by officers and it is considered the applicant is operating within the existing use rights. The permit application seeks retrospective permission (due to planning enforcement) for the extension of this operation onto 830 Toolamba Road of which notice has been given.</p>
<p>3 neighbouring residential properties within 200m</p>	<p>The majority of the land has the benefit of existing use rights. Whilst the extension of the use to 830 Toolamba Road does allow additional trucks to be parked on the site, the amenity impact of the trucks on dwellings would be considered marginal compared to existing use being carried out on 840 Toolamba Road.</p>

## Title Details

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

## Consultation

Consultation was undertaken. Relevant aspects of consultation, included:

- Pre-application meeting;
- Site meeting regarding the use and development carried out on the land.
- Meeting with objectors to discuss the application on 23/11/2016.

## Referrals

Referrals Required by the Planning Scheme:

Section 55 – Referrals Authority	List Planning clause triggering referral	Determining or Recommending	Advice/Response/Conditions
Clause 66 does not require referral of the	N/A	N/A	N/A

application			
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## Notice to Authorities

External Notice to Authorities:

Section 52 – Notice Authority	Advice/Response/Conditions
Vic Roads	<p>The application was notified to VicRoads who did not object subject conditions being included on the permit. The conditions require an upgrade to the access to the site. It is noted that due to the conditions required, a planning permit will also be required pursuant to Clause 52.29 to alter an access to a Road Zone Category 1.</p> <p><b>Conditions:</b></p> <ol style="list-style-type: none"> <li>1. <i>Access to subject land shall be in accordance with the plan appended to the application.</i></li> <li>2. <i>Within three months of the issuing a permit for the use and development the subject land for a transport terminal the applicant shall construct the following mitigating works on the Toolamba Road to the satisfaction of and at no cost to Roads Corporation as follows:</i> <ol style="list-style-type: none"> <li>a. <i>BAR right turn treatment and BAL left turn treatment at the southern access to the site located approximately 130 metres south of the northern boundary of the subject land.</i></li> <li>b. <i>Construct and seal the northern access to site located approximately 40 metres south of the northern boundary in accordance with VicRoads Standard Drawing SD2065 Truck Access to Rural Properties Type B.</i></li> <li>c. <i>Installation of “No Entry” signs as follows:</i> <ol style="list-style-type: none"> <li>i. <i>At the southern access facing towards the subject land to prevent vehicles exiting the subject land at this location.</i></li> <li>ii. <i>At the northern access facing the Toolamba Road to prevent vehicles entering the subject land at this location.</i></li> </ol> </li> </ol> </li> <li>3. <i>Driveways must be maintained in a fit and proper state so as not to compromise the ability of vehicles to enter and exit the site in a safe manner or compromise operational efficiency of the road or public safety (eg. By spilling gravel onto the roadway).</i></li> </ol>

	<p><b>Planning Notes:</b></p> <ol style="list-style-type: none"> <li>1. <i>Separate consent for works within the road reserve and the specifications of these works will be required under the Road Management Act.</i></li> <li>2. <i>It should be noted that the consent application will be treated as a developer funded application which requires fees and detailed plans.</i></li> </ol>
GMW	<p>The application was notified to Goulburn Murray Water who did not object subject to the following conditions:</p> <ol style="list-style-type: none"> <li>a) All construction and ongoing activities must be in accordance with sediment control principles outlined in 'Construction Techniques for Sediment Pollution Control' (EPA, 1991).</li> <li>b) No works are to be constructed on G-MW easement, freehold or reserve without approval. It is the responsibility of the proponent to locate the easement or reserve boundary.</li> <li>c) The boundary of the lot from existing bridge to the north west corner of the property is to be fenced with a 1.8m high colourbond or equivalent approved security fence on the easement or reserve boundary adjacent G-MW's channel.</li> <li>d) The stormwater drainage system for the development must incorporated measures to enhance stormwater discharge quality from the site and protect downstream waterways.</li> </ol>

Internal Notice:

Internal Council Notices	Advice/Response/Conditions
Development Engineers	The Engineering did not provide any conditions to be included on the permit. It is considered appropriate that a drainage plan be provided for the site.
Environmental Health Department	<p>The Health Department did not object to the application subject to the following condition being included on the permit:</p> <ol style="list-style-type: none"> <li>a) Prior to commencing the business the applicant shall make application to the Council Health Department for the registration of the premises under the Food Act 1984.</li> </ol> <p>It is noted that the condition has been complied with and therefore is not required to be included on the permit.</p>

## Assessment

The zoning of the land  
 Farming Zone 1

### Purpose

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To provide for the use of land for agriculture.*
- *To encourage the retention of productive agricultural land.*
- *To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.*
- *To encourage the retention of employment and population to support rural communities.*
- *To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.*

A planning permit is required for the extension of the use of the land for a cool store to 830 Toolamba Road and retrospective works to expand an existing hard stand surface in the FZ1.

### **35.07-6 Decision guidelines**

*Before deciding on an application to use or subdivide land, construct a building or construct or carry out works, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:*

#### **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 to the land.*
- *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.*
- *How the use and development makes use of existing infrastructure and services.*

#### **Agricultural issues and the impacts from non-agricultural uses**

- *Whether the use or development will support and enhance agricultural production.*
- *Whether the use or development will adversely affect soil quality or 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 capacity of the site to sustain the agricultural use.*
- *The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure.*
- *Any integrated land management plan prepared for the site.*

#### **Environmental issues**

- *The impact of the proposal on the natural physical features and resources of the area, in particular on soil and water quality.*
- *The impact of the use or development on the flora and fauna on the site and its surrounds.*

- *The need to protect and enhance the biodiversity of the area, including the retention of vegetation and faunal habitat and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge area.*
- *The location of on-site effluent disposal areas to minimise the impact of nutrient loads on waterways and native vegetation.*

### **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.*
- *The impact on the character and appearance of the area or features of architectural, historic or scientific significance or of natural scenic beauty or importance.*
- *The location and design of existing and proposed infrastructure including roads, gas, water, drainage, telecommunications and sewerage facilities.*
- *Whether the use and development will require traffic management measures.*

### **Response:**

The proposed extension of use allows additional trucks and turning movements on the land associated with an existing cool store. It is therefore considered the application supports and enhances agricultural production by providing expansion of an existing rural industry.

The proposal is currently in operation and does not impact or limit the operation of expansion of adjoining and nearby agricultural uses.

The proposal is considered to bring the land back into a use which supports agricultural production within the region, given it was previously developed and used for a small lot dwelling unrelated to agriculture.

The extension to hard stand area is not likely to impact on the environment, given the site was previously developed for dwelling.

### **Relevant overlay provisions**

No Overlays affect the subject land.

### **The State Planning Policy Framework (SPPF)**

#### **14.01-1 Protection of agricultural land**

##### **Objective**

*To protect productive farmland which is of strategic significance in the local or regional context.*

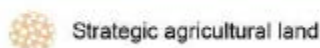
##### **Strategies**

*Ensure that the State's agricultural base is protected from the unplanned loss of productive agricultural land due to permanent changes of land use.*

## Map 6 – Hume Regional Growth Plan



### ECONOMIC DEVELOPMENT



Strategic agricultural land

The Shepparton region is identified in the State policy as being strategic agricultural land. The proposal supports the agricultural sector by providing appropriate storage for fresh produce within the region. The proposal seeks to extend the use to an area previously used for a small lot dwelling and therefore it is considered that the land has already been lost to agricultural use, and that the proposal makes better use of the land for the purpose of rural industry.

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

#### 21.06-1 Agriculture

*Irrigated primary production and the processing of that product underpin the municipality and the Region's economy. The level of production is nationally important and the region is responsible for significant parts of the nation's milk production, deciduous canned fruit production, stone fruit crop and tomato processing production.*

*The region's workforce is heavily dependent on the agricultural sector with many people directly involved in agricultural production on farms, and an estimated similar number involved directly and indirectly in the processing and transport of that product.*

### **Objectives - Agriculture**

- *To ensure that agriculture is and remains the major economic driver in the region.*
- *To facilitate growth of existing farm businesses.*
- *To facilitate growth of new agricultural investment.*
- *To provide for small scale, specialized agriculture.*

### **Strategies - Agriculture**

- *Discourage non-agricultural development in rural areas except where development is dependent on a rural location, and cannot be accommodated within existing industrial or business zoned land.*
- *Encourage value adding and new enterprises for agricultural production.*
- *Discourage non-agricultural uses on rural land other than rural based industry.*
- *Discourage non-agricultural development in rural areas except where development is dependent on a rural location, and cannot be accommodated within existing industrial or business zoned land.*
- *Signs for industrial and commercial development in rural areas will be strictly limited in size and number.*

### **Response:**

Local policy sets out the importance that the agricultural sector has to the region's economy, and provides objectives and strategies to ensure it is protected. The proposal supports the existing rural industry use that is being carried out on the adjoining land by providing additional area for truck parking and internal site management and removing a sensitive use (dwelling) from the land.

### **21.06-4 Industry**

*In the past few decades, Shepparton has developed a critical mass of manufacturing-based employment that has further strengthened its role within the region and is now an important component of the local economy. Owing to the presence of a number of significant national and international food processing and packaging companies within the municipality, the agricultural, food processing and manufacturing sectors are all closely interlinked.*

### **Amenity Objectives**

- *To minimise any impact on the amenity and safety of surrounding land uses from traffic, noise and emissions generated by industrial land uses.*
- *To ensure appropriate standards of health, safety and amenity are provided by new and existing industries.*
- *To ensure a high standard of urban design and landscaping is achieved to improve the amenity and appearance of industrial areas.*

### **Policy Guidelines – Industrial Development in Rural Areas**

*It is policy to:*

*Discourage industrial use and development (other than rural industry) in rural areas, except where:*

- *It is unable to be accommodated in existing industrial zoned areas;*
- *It does not compromise the surrounding existing and future agricultural practices;*



- *It adds value to the agricultural base of the municipality; and*
- *It is a rural-based enterprise; or*
- *It provides for the reuse of existing large scale packing sheds and cool stores.*

Response:

The proposal seeks to extend an existing rural industry of which has already been lawfully established. The extension is considered appropriate for the zone as it supports agricultural production in the region of which is considered an important component of the local economy. This is further justified through a number of letters submitted with the application from local growers and businesses around the region which provide support for the application.

As stated previously as the majority of the land has the benefit of existing use rights, the Planning Department only have discretion on the impact of the extended area.

A traffic report has been submitted with the proposal of which concludes the extension does not warrant upgrades to Toolamba Road and access points. The report stated that if the use was new, the following traffic measures would be required.

- *Paved and sealed driveways from the edge of carriageway to the property boundary*
- *Widening of Toolamba Road at the site entry to provide:*
  - *A Type BAR right turn passing lane;*
  - *Type BAL sealed shoulder left turn provision.*

The application was notified to VicRoads who did not object subject to upgrades to Toolamba Road and the access to the site as discussed in the notification section of this report.

Given the extended area relies on the existing access points to the land (from 840 Toolamba Road) and provides additional area for vehicle parking, it is considered that the access would be impacted on due to the proposal. Therefore it considered not unreasonable to require conditions regarding access and traffic safety.

As the use is existing restriction on hours and noise is considered outside of the scope of what proposed as part of this permit. Despite this, EPA noise controls will apply regardless. A condition on permit will require the operation is conducted in accordance with EPA permissible noise levels.

It is considered that landscaping is not required in this instance as site is not within an identified industrial area.

As mentioned previously the proposed expansion of the use will not impact on the surrounding agricultural land uses, and supports the fruit and vegetable production within the region.

## Relevant Particular Provisions

### 52.05 Advertising signs

#### **Purpose**

- *To regulate the display of signs and associated structures.*
- *To provide for signs that are compatible with the amenity and visual appearance of an area, including the existing or desired future character.*
- *To ensure signs do not contribute to excessive visual clutter or visual disorder.*
- *To ensure that signs do not cause loss of amenity or adversely affect the natural or built environment or the safety, appearance or efficiency of a road.*

The application seeks retrospective permission for business identification signage. It is noted that the signage currently displayed appears to exceed 3 sqm and therefore would be prohibited. Should the application be approved, plans will be required to be submitted to ensure signage complies. Current signage is as per below:





### 52.05-3 Decision guidelines

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

- *The character of the area including:*
  - *The sensitivity of the area in terms of the natural environment, heritage values, waterways and open space, rural landscape or residential character.*
  - *The compatibility of the proposed sign with the existing or desired future character of the area in which it is proposed to be located.*
  - *The cumulative impact of signs on the character of an area or route, including the need to avoid visual disorder or clutter of signs.*
  - *The consistency with any identifiable outdoor advertising theme in the area.*
- *Impacts on views and vistas:*
  - *The potential to obscure or compromise important views from the public realm.*
  - *The potential to dominate the skyline.*
  - *The potential to impact on the quality of significant public views.*
  - *The potential to impede views to existing signs.*
- *The relationship to the streetscape, setting or landscape:*
  - *The proportion, scale and form of the proposed sign relative to the streetscape, setting or landscape.*
  - *The position of the sign, including the extent to which it protrudes above existing buildings or landscape and natural elements.*
  - *The ability to screen unsightly built or other elements.*

- *The ability to reduce the number of signs by rationalising or simplifying signs.*
  - *The ability to include landscaping to reduce the visual impact of parts of the sign structure.*
- *The relationship to the site and building:*
  - *The scale and form of the sign relative to the scale, proportion and any other significant characteristics of the host site and host building.*
  - *The extent to which the sign displays innovation relative to the host site and host building.*
  - *The extent to which the sign requires the removal of vegetation or includes new landscaping.*
- *The impact of structures associated with the sign:*
  - *The extent to which associated structures integrate with the sign.*
  - *The potential of associated structures to impact any important or significant features of the building, site, streetscape, setting or landscape, views and vistas or area.*
- *The impact of any illumination:*
  - *The impact of glare and illumination on the safety of pedestrians and vehicles.*
  - *The impact of illumination on the amenity of nearby residents and the amenity of the area.*
  - *The potential to control illumination temporally or in terms of intensity.*
- *The impact of any logo box associated with the sign:*
  - *The extent to which the logo box forms an integral part of the sign through its position, lighting and any structures used to attach the logo box to the sign.*
  - *The suitability of the size of the logo box in relation to its identification purpose and the size of the sign.*
  - *The need for identification and the opportunities for adequate identification on the site or locality.*
- *The impact on road safety. A sign is a safety hazard if the sign:*
  - *Obstructs a driver's line of sight at an intersection, curve or point of egress from an adjacent property.*
  - *Obstructs a driver's view of a traffic control device, or is likely to create a confusing or dominating background which might reduce the clarity or effectiveness of a traffic control device.*
  - *Could dazzle or distract drivers due to its size, design or colouring, or it being illuminated, reflective, animated or flashing.*
  - *Is at a location where particular concentration is required, such as a high pedestrian volume intersection.*
  - *Is likely to be mistaken for a traffic control device, because it contains red, green or yellow lighting, or has red circles, octagons, crosses, triangles or arrows.*
  - *Requires close study from a moving or stationary vehicle in a location where the vehicle would be unprotected from passing traffic.*
  - *Invites drivers to turn where there is fast moving traffic or the sign is so close to the turning point that there is no time to signal and turn safely.*
  - *Is within 100 metres of a rural railway crossing.*
  - *Has insufficient clearance from vehicles on the carriageway.*
  - *Could mislead drivers or be mistaken as an instruction to drivers.*

Response:

The character of the area is rural, with a range of established agricultural uses such as dairying, cropping and orchards. It is not unreasonable or uncommon for a business to have business identification signage, and is considered to be an integral part of identifying the business.

There are no significant views or vistas in the area that signage on the subject land will obscure.

Due to size of the site, it is not unreasonable to have more than one sign identifying the business. Signage is existing, however the applicant will be required to demonstrate it complies with signage requirements or provide new signage that complies (ie. no larger than 3sqm) via a condition on permit requiring amended signage plans to be submitted. No vegetation has been removed to allow for the signage in its current location.

The signs are not proposed to be illuminated, nor does the sign contain a logo box.

The signage is appropriately setback from the road within the property boundary and does not impact on drivers sightlines. No illumination is proposed and therefore is unlikely to distract or dazzle drivers. The sign contains a clear message of the company's name is easily identifiable and is unlikely to be mistaken for a traffic signal or mislead drivers.

#### **52.06 Car parking**

Rural industry is nested under industry under Clause 75.05. As there is no specified car parking rate for rural industry, the industry rate has been applied at per the car parking spaced required by Clause 52.06-5.

Industry requires 2.9 spaces to each 100 sqm of net floor area.

Pursuant to Clause 52.06-2 the provision of car spaces must be addressed before a new use commences or the site area for an existing use is extended.

The proposed use has been extended onto a parcel of land approximately 1146 sqm. Therefore 33 car spaces are required to be provided with the extended use.

The applicant has not provided a car parking plan. Based on the applicants description of parking and onsite visits, it is noted that the current parking (apart from the vehicles parked under the awning) would provide some interference with internal truck movements on the land.

*Before granting a permit to reduce the number of spaces, the responsible authority must consider the following, as appropriate:*

- *The Car Parking Demand Assessment.*
- *Any relevant local planning policy or incorporated plan.*
- *The availability of alternative car parking in the locality of the land, including:*
- *Efficiencies gained from the consolidation of shared car parking spaces.*
- *Public car parks intended to serve the land.*
- *On street parking in non residential zones.*

- *Streets in residential zones specifically managed for non-residential parking.*
- *On street parking in residential zones in the locality of the land that is intended to be for residential use.*
- *The practicality of providing car parking on the site, particularly for lots of less than 300 square metres.*
- *Any adverse economic impact a shortfall of parking may have on the economic viability of any nearby activity centre.*
- *The future growth and development of any nearby activity centre.*
- *Any car parking deficiency associated with the existing use of the land.*
- *Any credit that should be allowed for car parking spaces provided on common land or by a Special Charge Scheme or cash-in-lieu payment.*
- *Local traffic management in the locality of the land.*
- *The impact of fewer car parking spaces on local amenity, including pedestrian amenity and the amenity of nearby residential areas.*
- *The need to create safe, functional and attractive parking areas.*
- *Access to or provision of alternative transport modes to and from the land.*
- *The equity of reducing the car parking requirement having regard to any historic contributions by existing businesses.*
- *The character of the surrounding area and whether reducing the car parking provision would result in a quality/positive urban design outcome.*
- *Any other matter specified in a schedule to the Parking Overlay.*
- *Any other relevant consideration.*

Response:

The applicant has stated during peak times a maximum number of staff would be 15 (including truck drivers). Therefore it is considered in order to meet this demand, a minimum of 15 spaces should be provided.

The current configuration of car parking based on the applicants report and site visits undertaken, is informal and in some circumstances impede on truck turning movements on the site as shown in the TIAR.

It is considered that there is sufficient space on site to allow 15 spaces to be provided.

A condition on permit will require the applicant to provide a site plan demonstrating a minimum of 15 car parks can be provide without impacting on truck movements on the site.

The reduction of car parking is therefore considered appropriate subject to compliance with a condition on permit providing car parking plans and setting aside this land to be used appropriately for car parking only.

## **52.29 Land Adjacent to a Road Zone Category 1**

### **Purpose**

*To ensure appropriate access to identified roads.*

*To ensure appropriate subdivision of land adjacent to identified roads.*

The application (including the TIAR) was notified to VicRoads who required access to and from the site to be upgraded. The upgrade of the access required by VicRoads is considered to alter the access, and therefore required permission under Clause 52.29.

### **Decision guidelines**

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

- *The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *The views of the relevant road authority.*
- *The effect of the proposal on the operation of the road and on public safety.*
- *Any policy made by the relevant road authority pursuant to Schedule 2, Clause 3 of the Road Management Act 2004 regarding access between a controlled access road and adjacent land.*

### **Response:**

The authority did not object to the application subject to providing conditions requiring specific upgrades to Toolamba Road and access to allow for safer turning movements will ensure that the access and egress to the site is conducted in a safer manner. Given the authority did not object and subject to compliance with the conditions the application is considered to be appropriate in terms of traffic impact and safety.

## **63 Existing Use Rights**

### **63.01 Extent of existing use rights**

#### **Extent of existing use rights**

*An existing use right is established in relation to use of land under this scheme if any of the following apply:*

- *The use was lawfully carried out immediately before the approval date.*
- *A permit for the use had been granted immediately before the approval date and the use commences before the permit expires.*
- *A permit for the use has been granted under Clause 63.08 and the use commences before the permit expires.*
- *Proof of continuous use for 15 years is established under Clause 63.11.*
- *The use is a lawful continuation by a utility service provider or other private body of a use previously carried on by a Minister, government department or public authority, even where the continuation of the use is no longer for a public purpose.*

#### **63.11 Proof of continuous use**

*If, in relation to an application or proceeding under the Act or this scheme, including an application for a certificate of compliance under Section 97N of the Act, the extent of any existing use right for a period in excess of 15 years is in question, it is sufficient proof of the establishment of the existing use right if the use has been carried out continuously for 15 years prior to the date of the application or proceeding.*

*An existing use right may be established under this clause even if the use did not comply with the scheme immediately prior to or during the 15 year period, unless either:*

- *At any time before or after commencement of the 15 year period the use has been held to be unlawful by a decision of a court or tribunal.*
- *During the 15 year period, the responsible authority has clearly and unambiguously given a written direction for the use to cease by reason of its non-compliance with the scheme.*

Response:

The aerials earlier in this report show the development of the land over time, whereby a dwelling has been removed the north-eastern portion of land (830 Toolamba Road, Toolamba) and have been replaced with a hard stand area which enables additional truck parking.

The planning permit seeks retrospective permission to extend the use to 830 Toolamba Road and for works carried out on the land.

840 Toolamba Road, Toolamba has been established for a cool store. There are no existing planning permits issued for the use of the land for a cool store, however in 1989 a building permit was issued for an extension to the existing shedding whereby the endorsed plans clearly show the land developed for a cool store.

Therefore the Planning Department acknowledge that the use has been established prior to 1989. Given the particularly long period that the use has existed, existing use rights may be relied upon subject to Clause 63.11 (15 year rule) and 63.06 which outlines expiry of existing use rights.

There is no evidence to suggest that the use or the overall intent of the use has stopped in this period indicating that the existing use of the land has occurred continuously for more than 15 years.

The intensity of the use has clearly varied since the change of ownership; whereby it appears there has been an increase in truck numbers going to and from the site and hours of operation. The overall purpose of the use on the site (840 Toolamba Road) for a cool store has not altered.

Commonly established planning grounds have specified that the intensification of a use does not necessarily mean that the use has changed or altered in any way. In this particular circumstance whereby the number of trucks and hours may have increased the intent of the land has remained the same (for the purpose of a rural store).

Given the above, it is considered despite the use intensifying, existing use rights would apply to the 840 Toolamba Road, and no separate use permission is required.

As previously mentioned, the use has expanded to the previous dwelling site (830 Toolamba Road). It is noted that the access to the dwelling was shared with the cool store site. Despite the shared access, the applicant has not provided any evidence or justification that the use of the dwelling was ancillary to the use of the cool store. It therefore cannot be assumed that existing use rights can be applied to the dwelling site.



### **The decision guidelines of Clause 65**

*Because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this clause.*

#### **65.01 Approval of an application or plan**

*Before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate:*

- *The matters set out in Section 60 of the Act.*
- *The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *The purpose of the zone, overlay or other provision.*
- *Any matter required to be considered in the zone, overlay or other provision.*
- *The orderly planning of the area.*
- *The effect on the amenity of the area.*
- *The proximity of the land to any public land.*
- *Factors likely to cause or contribute to land degradation, salinity or reduce water quality.*
- *Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.*
- *The extent and character of native vegetation and the likelihood of its destruction.*
- *Whether native vegetation is to be or can be protected, planted or allowed to regenerate.*
- *The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.*

#### **Response:**

The decision guidelines of Clause 65 and relevant Greater Shepparton Planning Scheme policy have been addressed in the report. The proposal for the extension to the cool store area is considered to be generally in accordance with the Farming Zone of which supports agricultural use.

The proposal is considered orderly, as the expansion onto an adjoining property is logical, and makes use of the existing infrastructure by providing a larger area for internal operations associated with the cools store (truck parking and turning movements).

Goulburn Murray Water have provided conditions regarding stormwater. Subject to compliance it is not expected that the proposal will result in water quality within and exiting the site.

No native vegetation has been removed as a result of the extension or signage.

#### **Relevant incorporated or reference documents**

The Rural Land Use Strategy

#### **Other relevant adopted State policies or strategies policies**

There are no relevant adopted State policies or strategies that relate to the application.

#### **Relevant Planning Scheme amendments**

There are no relevant Planning Scheme amendments that relate to the application.

#### **Are there any significant social & economic effects?**

There are no significant social and economic effects that relate to the application.

#### **Discuss any other relevant Acts that relate to the application?**

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

#### **The Aboriginal Heritage Act 2006**

The *Aboriginal Heritage Act 2006* provides protection for all Aboriginal places, objects and human remains in Victoria, regardless of their inclusion on the Victorian Aboriginal Heritage Register or land tenure.

The *Aboriginal Heritage Act 2006* introduces a requirement to prepare a Cultural Heritage Management Plan (CHMP) if all or part of the activity is a listed high impact activity, resulting in significant ground disturbance, and all or part of the activity area is an area of cultural heritage sensitivity, which has not been subject to significant ground disturbance.

The 'Area of Cultural Heritage Sensitivity in Victoria' does not include the land within an area of cultural heritage sensitivity; therefore the proposed use does not trigger the need for a CHMP.

#### **Charter of Human Rights and Responsibilities**

The application is not envisaged to impinge on the Charter of Human Rights and Responsibilities.

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## **Conclusion**

The application is considered (extension to the use of a cool store onto adjacent land, development of hardstand surface, business identification signage in the Farming Zone 1 and reduction in car parking) is considered to provide an acceptable planning outcome for the area. The application complies with the purpose of the zone and provides additional area to allow for internal site functions. It is therefore recommended that the planning permit be approved subject to conditions.

# Draft Notice Of Decision

**APPLICATION NO:** 2016-229

**PLANNING SCHEME:** GREATER SHEPPARTON PLANNING SCHEME

**RESPONSIBLE AUTHORITY:** GREATER SHEPPARTON CITY COUNCIL

**THE RESPONSIBLE AUTHORITY HAS DECIDED TO GRANT A PERMIT.**

**THE PERMIT HAS NOT BEEN ISSUED.**

**ADDRESS OF THE LAND:** 830 AND 840 TOOLAMBA ROAD  
TOOLAMBA VIC 3614

**WHAT THE PERMIT WILL ALLOW:**

- EXTEND THE USE OF THE LAND FOR A COOL STORE (CONTROLLED ATMOSPHERE AND SMART FRESH STORAGE) IN THE FARMING ZONE 1
- WORKS TO CONSTRUCT A GRAVEL HARDSTAND AREA ASSOCIATED WITH A SECTION 2 USE IN THE FARMING ZONE 1
- ERECT AND DISPLAY BUSINESS IDENTIFICATION SIGNAGE IN THE FARMING ZONE 1
- REDUCTION OF CAR PARKING
- ALTERATION TO ACCESS IN A ROAD ZONE CATEGORY 1

## WHAT WILL THE CONDITIONS OF THE PERMIT BE?

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### 1. Amended Plans Required

Within one month of the date of the permit, amended plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions.

- a) A site plan showing the overall layout, including the extension of the use into 830 Toolamba Road, Toolamba ;
- b) a minimum of 15 car spaces to be provided on the land. The car parks must not impact on truck movements within the site.

Within three months of the date of the permit the areas set aside for parking must be

constructed in accordance with the endorsed plan to the satisfaction of the responsible authority.

**2. Layout Not Altered**

The use and development as shown on the endorsed plans must not be altered without the written consent of the responsible authority.

**3. Drainage Discharge Plan**

Within one month of the date of the permit, a drainage plan with computations prepared by a suitably qualified person to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and include:

- a) how the land will be drained;
- b) the location of the legal point of discharge;
- c) any requirements showing compliance with the Goulburn Murray Water conditions

Within three months of the date of the permit all drainage works required by the drainage plan must be completed to the satisfaction of the responsible authority.

**4. Noise Control**

- a) The uses hereby permitted must be conducted such that noise levels generated do not exceed permissible noise levels established in accordance with *Noise from Industry in Regional Victoria (NIRV; EPA Publication 1411, 2011)* or as amended.
- b) In the event of unreasonable noise being generated by activities conducted on from the subject land and being established by Council planning officers as likely to be causing a disturbance to nearby property, then further noise testing by a suitably qualified acoustic consultant must be undertaken to assess whether activities on the site are breaching the EPA permissible noise levels and to advise what measures must be implemented to minimise the problem to the satisfaction of the responsible authority.

**5. General Amenity**

The use and development of the land must not adversely affect the amenity of the area, by way of:

- a) processes carried on the land;
- b) the transportation of materials, goods or commodities to or from the land;
- c) the appearance of any buildings, works or materials;
- d) the emission of noise, artificial light, vibration, smell, fumes, smoke, vapor,

steam, soot, ash, dust, waste water, waste products, grit, or oil;

e) the presence of vermin, or otherwise.

to the satisfaction of the responsible authority.

**6. Consolidation**

Within one month of the date of the permit, 830 and 840 Toolamba Road, Toolamba (lots 1 and 2 on LP97587) must be consolidated into one lot.

**7. Advertising Signs - Amended Plans**

Within one month of the date of the permit, full details of the business identification signs to be displayed on site are to be submitted and approved by the Responsible Authority. The total area of the business identification signage must not exceed 3 square metres. Details of the proposed signage to be provided must include the following:

- a) Dimensions;
- b) type and location of all signs to be placed on the site;
- c) any illumination of signage and
- d) wording and colour scheme of the sign.

**8. Signs Not Altered**

The sign/s to be erected must be in accordance with the endorsed plan and must not be altered or modified without the prior written approval of the Responsible Authority.

**9. No additional signs**

No additional signs, including flags, banners, bunting, streamers, sandwich-boards, windvanes or other devices considered to be used as advertising media shall be erected on the site without the prior written approval of the Responsible Authority.

**10. Sign Permit Expiry**

This permit will expire if the signs permitted by this permit are not erected within (1) year from the date hereof. This permit will lapse after 15 years from the date this permit is issued subject to the written consent of the Responsible Authority.

**11. VicRoads Requirements**

- a) Access to subject land shall be in accordance with the plan appended to the application.
- b) Within three months of the issuing a permit for the use and development the subject land for a transport terminal the applicant shall construct the following

mitigating works on the Toolamba Road to the satisfaction of and at no cost to Roads Corporation as follows:

- a. BAR right turn treatment and BAL left turn treatment at the southern access to the site located approximately 130 metres south of the northern boundary of the subject land.
- b. Construct and seal the northern access to site located approximately 40 metres south of the northern boundary in accordance with VicRoads Standard Drawing SD2065 Truck Access to Rural Properties Type B.
- c. Installation of "No Entry" signs as follows:
  - o At the southern access facing towards the subject land to prevent vehicles exiting the subject land at this location.
  - o At the northern access facing the Toolamba Road to prevent vehicles entering the subject land at this location.
- c) Driveways must be maintained in a fit and proper state so as not to compromise the ability of vehicles to enter and exit the site in a safe manner or compromise operational efficiency of the road or public safety (eg. by spilling gravel onto the roadway).

## 12. Goulburn Murray Water Requirements

- a) All construction and ongoing activities must be in accordance with sediment control principles outlined in 'Construction Techniques for Sediment Pollution Control' (EPA, 1991).
- b) No works are to be constructed on G-MW easement, freehold or reserve without approval. It is the responsibility of the proponent to locate the easement or reserve boundary.
- c) The boundary of the lot from existing bridge to the north west corner of the property is to be fenced with a 1.8m high colourbond or equivalent approved security fence on the easement or reserve boundary adjacent G-MW's channel.
- d) The stormwater drainage system for the development must incorporate measures to enhance stormwater discharge quality from the site and protect downstream waterways.

## 13. Time for Starting and Completion

This permit will expire if one of the following circumstances applies:

- a) the development and use are not started within **two (2) years** of the date of this permit;
- b) the development is not completed within **four (4) years** of the date of this permit.

## **NOTATIONS**

### **VicRoads**

- a) Separate consent for works within the road reserve and the specifications of these works will be required under the Road Management Act.
- b) It should be noted that the consent application will be treated as a developer funded application which requires fees and detailed plans.