

CONFIRMED MINUTES

FOR THE

GREATER SHEPPARTON CITY COUNCIL

DEVELOPMENT HEARINGS PANEL

Meeting No. 02/2017

HELD ON

THURSDAY 30 MARCH 2017

AT 10.00AM

IN THE COUNCIL BOARDROOM
90 WELSFORD STREET

CHAIR

Councillor Dinny Adem

ACKNOWLEDGEMENT

Welcome everyone to Development Hearings Panel meeting number 2 for 2017.

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”.

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.

COMMITTEE MEMBERS PRESENT

Committee members present today are:

- Cr Dinny Adem (Chair),
- Johann Rajaratnam– Director Sustainable Development– Greater Shepparton City Council
- Elke Cummins – Acting Team Leader Strategic Planning – Greater Shepparton City Council
- Jorine Bothma – Manager Town Planning and Building – Moira Shire Council; and
- Cameron Fraser – Principal Planner – Strathbogie Shire Council

OFFICERS AND OTHERS PRESENT

The Planning Officers present for today’s hearing are:

- Ronan Murphy - Senior Planner
- Andrew Dainton – Principal Statutory Planner
- Tim Watson – Senior Planner

I would also like to acknowledge all other parties present today. Given we have a number of items for consideration today we will get you to introduce yourself when your turn comes to present.

APOLOGIES

Nil

CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

Minutes of DHP meeting No. 07/2016 – Monday 12 December. Minutes have been circulated

Moved by Johann Rajaratnam and seconded by Cameron Fraser that the minutes of the meeting held on 12 December 2016 be adopted.

Carried

DECLARATIONS OF CONFLICTS OF INTEREST

None declared

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 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).

MATTERS FOR CONSIDERATION

There are four items listed for consideration in this session of the DHP:

- The first item for consideration is planning permit application 2016-277 for earthworks for a raised pad and channel relocation at 545 Archer Road, Kialla.
- The second item for consideration is planning permit application 2016-189 for a multi lot low density residential subdivision at 10 Orchard Court and 275 Old Dookie Road, Grahamvale.
- The third item for consideration is planning permit application 2015-333/C for a requested amendment to the planning permit for a childcare centre at 617-619 Wyndham Street, Shepparton.
- The fourth item for consideration is planning permit application 2016-468 for the variation of a restrictive covenant at 2 Garley Nook, Shepparton North.

10. LATE REPORTS

None

11. NEXT MEETING

TBC

Meeting concluded at 11.47 am

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2016-468	2 Garley Nook, Shepparton North	variation of a restrictive covenant	65

Application Details:

Responsible Officer:	Ronan Murphy
Application Number:	2016-277
Applicants Name:	C R De Wys
Date Application Received:	1 July 2016
Statutory Days:	201
Land/Address:	545 Archer Road KIALLA VIC 3631
Zoning and Overlays:	Rural Living Zone Floodway Overlay Land Subject to Inundation Overlay
Why is a permit required (include Permit Triggers):	35.03-4 Earthworks in the Rural Living Zone which changes the rate of flow or discharge point across a property boundary 44.03-1 Earthworks in the Floodway Overlay 44.04-1 Earthworks in the Land Subject to Inundation Overlay
Are there any Restrictive Covenants on the title?	Nil

Proposal

Permission is sought for a number of earthworks on the land including the reinstatement of irrigation channels to the east, west and north of the site (approximately 2 metres from its current location) and the construction of a raised pad for the purposes of a storage for agricultural equipment.

The land is within the Rural Living Zone and is affected by the Floodway Overlay and Land Subject to Inundation Overlay.

This application has been made after enforcement action and the channel works and pad works have been undertaken.

A Planning Permit is required pursuant to the provisions of:

- Clause 35.03-4 of the Planning Scheme for earthworks which may change the rate of flow or the discharge point across a property boundary.
- Clause 44.03-1 earthworks in the Floodway Overlay;
- Clause 44.04-1 earthworks in the Land Subject to Inundation Overlay.

The proposal would have the following



The applicant provided the following levels plan:



This demonstrates that the pad is 114.85AHD and that the banks of the Farm Channel are between 114.52 and 114.55 on the eastern boundary (Hoopers Road) and that the channel area along the southern boundary are between 114.32 AHD on the southwestern boundary and 114.79AHD on the southeastern boundary.

Planning officers consider that the Goulburn Broken Catchment Management Authority is the appropriate authority in terms of the any potential off site effects associated with flooding.

The Catchment Management Authority have provided considered advises that the proposal would not have any off site impacts.

In light of this it is considered that the proposal achieves an acceptable planning outcome and therefore is recommending that a Notice of Decision to Grant a Planning Permit is issued.

Summary of Key Issues

The application comprises of earthworks in the Rural Living Zone.

The application was notified and 4 objections were received.

The objections related to the impact of the proposed earthworks on the water flows in the area.

A consultation meeting was undertaken with the objectors on 12 September 2016. The applicant was also invited to the mediation session but was unable to attend.

As a result of the mediation, no objections were withdrawn.

The application was referred to the Goulburn Broken Catchment Management Authority, who did not object to the proposal.

The application was referred to the Development Engineers who did not object to the proposal.

Arising from the mediation session the Council's Engineering undertook a detailed assessment of the proposal, including obtaining further advises from the Goulburn Broken Catchment Management Authority.

This further assessment concluded that that any increase in pad height above the 1% flood level cannot possibly reduce floodplain storage as it cannot rise above 114.4 m AHD (other than in an event greater than the 1 in 100 year flood)

Recommendation

Notice of Decision to Grant a Permit

That Council having caused notice of Planning Application No. **2016-277** 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 **35.03-4, 44.03-1 and 44.04-1** of the Greater Shepparton Planning Scheme in respect of the land known and described as **545 Archer Road KIALLA VIC 3631**, for the **earthworks for a raised pad in the Rural Living Zone** in accordance with the Notice of Decision and the endorsed plans.

Moved by Johann Rajaratnam

Seconded by Cameron Fraser

That Council having caused notice of Planning Application No. **2016-277** 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 **35.03-4, 44.03-1 and 44.04-1** of the Greater Shepparton Planning Scheme in respect of the land known and described as **545 Archer Road KIALLA VIC 3631**, for the **earthworks for a raised pad in the Rural Living Zone** in accordance with the Notice of Decision and the endorsed plans.

Amendment to the Notice of Decision is as follows:

Addition to condition 1. a) to read (see in red below)

- a) An earthworks plan to show the maximum height of the works and the amount of soil being removed from the land. **The plan must show a maximum height of works on the north eastern boundary not exceeding 114.52m AHD and 114.55 AHD on the north western boundary of the land to the satisfaction of the Responsible Authority.**

CARRIED

Subject Site & Locality

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

Date: **25/1/17**

Time: **14.39** pm

The site has a total area of **4.8 ha** and currently contains:

- An existing dwelling and associated shedding.

The main site/locality characteristics are:

- The land is within a Rural Living Zone land to the south east of Shepparton.

The Photos below show the existing site:





Permit/Site History

There is no planning permit history of the site.

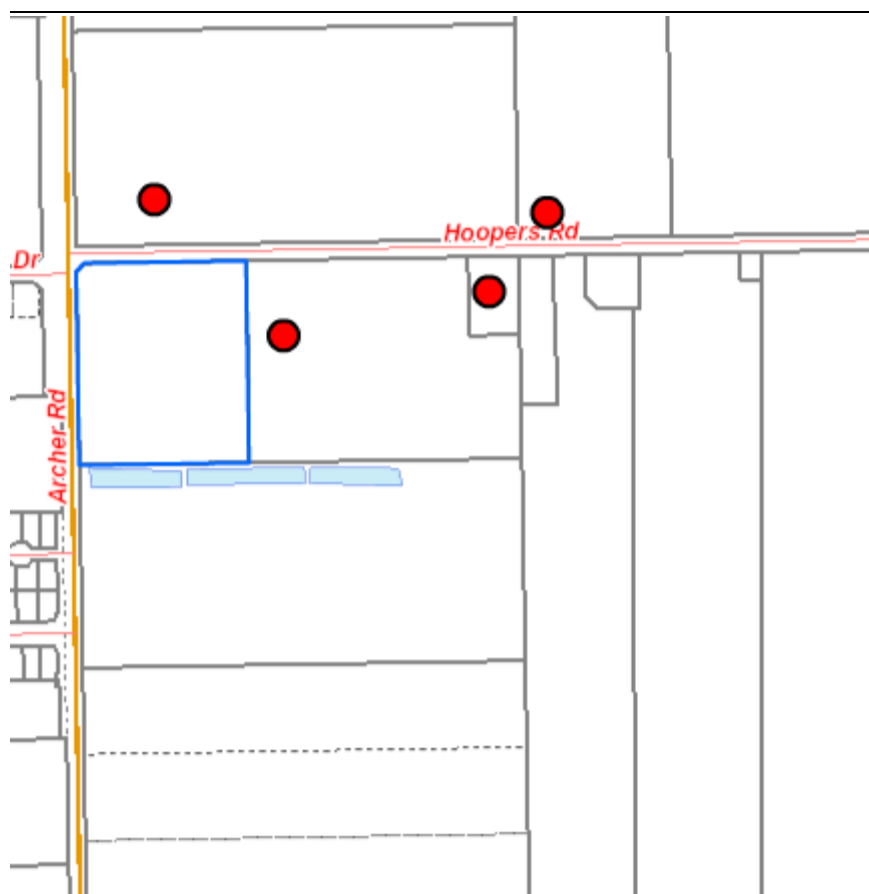
Further Information

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

Public Notification

The application was advertised pursuant to Section 52 of the *Planning and Environment Act 1987* with the following description **Earthworks for a raised pad in the Rural Living Zone***, by:

Sending notices to the owners and occupiers of adjoining land.



*earthworks in the Floodway Overlay and Land Subject to Inundation Overlay is exempt pursuant to the provisions of Clause 44.03-4 (Floodway Overlay) and 44.04-4 (Land Subject to Inundation Overlay).

Objections

The Council has received **4** objections to date. The key issues that were raised in the objections are.

- The proposal would have a detrimental impact on flood flows in the area.
- The application material is not clear in terms of the size of the proposed pad and number of entrances to the land.

Title Details

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

Consultation

Consultation was undertaken. Relevant aspects of consultation, included:

- Mediation meeting, chaired by an independent mediator undertaken on 12 September 2016. All of the objectors attended but the applicant was unable to attend.
- As a result of the mediation, no objections were withdrawn.

Referrals

External Referrals/Notices Required by the Planning Scheme:

Referrals/Notice	Advice/Response/Conditions
Section 55 Referrals	<p>Goulburn Broken Catchment Management Authority who stated: <i>Pursuant to Section 56 of the Planning and Environment Act 1987, the Goulburn Broken CMA does not object to the granting of a permit.</i></p> <p>A further response was received on 22/11/16 which stated:</p> <p><i>Please be advised that any increase in pad height above the 1% flood level cannot possibly reduce floodplain storage because cannot rise above 114.4 m AHD (other than in an event greater than the 1 in 100 year flood). If the material for the pads is obtained from the site, it will actually increase available flood storage.</i></p> <p><i>As the Authority has already approved the filling to 114.4 m AHD, no permission from this Authority is required to raise the pads above that level.</i></p>
Section 52 Notices	<p>Goulburn Murray Water</p> <p><i>Based on the information provided and in accordance with Section 56 (a) of the Planning and Environment Act 1987, GMW has no objection to this planning permit being granted.</i></p>

Internal Council Notices	Advice/Response/Conditions
Development Engineers	<p>(1) <i>Typically, floodwater storage capacity is reduced by raising land above flood levels. The 1% flood level of the proposed site is between 114.4 and 114.6. The proposed site is located in "LSIO" which has a lower risk of flooding; therefore, raise the pad with soil up to the flood level does not affect the floodwater storage. In the site levels plan, the pad is raised to 114.74-114.85 which is above the 1% flood level. The applicant should lower the pad level to 114.4-114.6, or a letter of approval from catchment management authority should be obtained.</i></p> <p>(2) <i>Having a shipping container or shed on site will increase the imperviousness and result in an increase of stormwater runoff. Therefore, on-site detention should be installed if the applicant wishes to increase the imperviousness on the proposed site.</i></p> <p>(3) <i>In the planning permit, "Reinstate irrigation channel across 2mtr from existing". It is not clear where exactly the applicant wants to reinstate. The location and dimension of the proposed irrigation channel should be shown on the plan.</i></p>

Assessment

The zoning of the land

The land is within the Rural Living Zone. The purpose of the Rural Living 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 residential use in a rural environment;*
- *To provide for agricultural land uses which do not adversely affect the amenity of surrounding land uses;*
- *To protect and enhance the natural resources, biodiversity and landscape and heritage values of the area;*

- *To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.*

A Planning Permit would be required pursuant to the provisions of Clause 33.03-4 for earthworks which changes the rate of flow or discharge across a property boundary.

Clause 33.03-5 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.*
- *Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses.*

The application was notified to surrounding properties and 4 objections were received. The major concerns included the impact of the proposal on flood waters in the area.

The application was referred to the Goulburn Broken Catchment Authority who did not object to the proposal. Further advice was sought from the Goulburn Broken Catchment Management Authority and the suitability of the proposal was reiterated. It is therefore considered that the proposal would comply with any regional catchment strategy for the land.

In light of the above, it is considered that the land is capable of accommodating the proposed development.

Agricultural issues

- *The capacity of the site to sustain the agricultural use.*
- *Any integrated land management plan prepared for the site.*
- *The potential for the future expansion of the use or development and the impact of this on adjoining and nearby agricultural and other land uses.*

The proposal would not have any agricultural impacts. The proposal would

Environmental issues

- *The impact on the natural physical features and resources of the area and in particular any impact caused by the proposal on soil and water quality and by the emission of noise, dust and odours.*
- *The impact of the use or development on the flora, fauna and landscape features of the locality.*
- *The need to protect and enhance the biodiversity of the area, including the need to retain 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.*

The proposal would comply in the following ways:

- The works would not have any impact on soil or water quality.
- The proposal would not have any impact on flora and fauna of the area.
- The proposal would not require any on site effluent disposal.

Design and siting issues

- *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 or development will require traffic management measures.*

The proposal would comply in the following ways:

- The raised pad is located to the rear of the existing shed on the land, facing Hoopers Road. The applicant has stated that they no longer wish to have a shipping container on the raised pad. In light of this, it is considered that the proposal would not have any impact on the character or appearance of the area.
- The works would not have any impact on infrastructure in the area.

In light of the above, it is considered that the proposal would comply with the provisions of the Rural Living Zone.

Relevant overlay provisions

Floodway Overlay

The purpose of the Floodway Overlay is:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To identify waterways, major floodpaths, drainage depressions and high hazard areas which have the greatest risk and frequency of being affected by flooding.*
- *To ensure that any development maintains the free passage and temporary storage of floodwater, minimises flood damage and is compatible with flood hazard, local drainage conditions and the minimisation of soil erosion, sedimentation and silting.*
- *To reflect any declarations under Division 4 of Part 10 of the Water Act, 1989 if a declaration has been made.*
- *To protect water quality and waterways as natural resources in accordance with the provisions of relevant State Environment Protection Policies, and particularly in accordance with Clauses 33 and 35 of the State Environment Protection Policy (Waters of Victoria).*
- *To ensure that development maintains or improves river and wetland health, waterway protection and flood plain health.*

A Planning Permit is required pursuant to the provisions of Clause 44.03-1 for earthworks in the Floodway Overlay. The application will be referred to the Goulburn Broken Catchment Management Authority.

Land Subject to Inundation Overlay

The purpose of the Land Subject to Inundation Overlay is:

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

- *To identify 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.*
- *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.*
- *To reflect any declaration under Division 4 of Part 10 of the Water Act, 1989 where a declaration has been made.*
- *To protect water quality in accordance with the provisions of relevant State Environment Protection Policies, particularly in accordance with Clauses 33 and 35 of the State Environment Protection Policy (Waters of Victoria).*
- *To ensure that development maintains or improves river and wetland health, waterway protection and flood plain health.*

The application was referred to the Goulburn Broken Catchment Management Authority.

The Goulburn Broken Catchment Management Authority who stated:

The 100-year ARI (1% AEP) flood levels have been declared for this area under provisions of the act. The declared '100-year ARI flood level for the location described above is 114.4 metres AHD, which was obtained from Goulburn Broken CMA Plan No 540222. Please note that declared flood level plans are available for many areas on the Goulburn Broken CMA's website: www.gbcma.vic.gov.au

Pursuant to Section 56 of the Planning and Environment Act 1987, the Goulburn Broken CMA does not object to the granting of a permit.

Whilst it is noted that the Goulburn Broken Catchment Management Authority responded with no objection, it was considered appropriate to get a supplementary response from the Catchment Management Authority. A response was received on 22 November 2016 which stated:

Please be advised that any increase in pad height above the 1% flood level cannot possibly reduce floodplain storage because cannot rise above 114.4 m AHD (other than in an event greater than the 1 in 100 year flood). If the material for the pads is obtained from the site, it will actually increase available flood storage.

As the Authority has already approved the filling to 114.4 m AHD, no permission from this Authority is required to raise the pads above that level.

In light of the responses set out above, it is considered that the proposal would not have any impact on the flood plain and would comply with the provisions of both the Floodway Overlay and the Land Subject to Inundation Overlay.

The State Planning Policy Framework (SPPF)

13.02-1 Floodplain Management

The objective of Clause 13.02-1 of the Planning Scheme is:

To assist the protection of:

- *Life, property and community infrastructure from flood hazard.*

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

The following strategies are set out:

- *Identify land affected by flooding, including floodway areas, as verified by the relevant floodplain management authority, in planning scheme maps. Land affected by flooding is land inundated by the 1 in 100 year flood event or as determined by the floodplain management authority.*
- *Avoid intensifying the impacts of flooding through inappropriately located uses and developments.*
- *Locate emergency and community facilities (including hospitals, ambulance stations, police stations, fire stations, residential aged care facilities, communication facilities, transport facilities, community shelters and schools) outside the 1 in 100 year floodplain and, where possible, at levels above the height of the probable maximum flood.*
- *Locate developments and uses which involve the storage or disposal of environmentally hazardous industrial and agricultural chemicals or wastes and other dangerous goods (including intensive animal industries and sewage treatment plants) must not be located on floodplains unless site design and management is such that potential contact between such substances and floodwaters is prevented, without affecting the flood carrying and flood storage functions of the floodplain.*

The application was referred to the Goulburn Broken Catchment Management who did not object to the proposal.

The Council's Development Engineers sought further advice from the Goulburn Broken Catchment Management Authority who stated the following:

Please be advised that any increase in pad height above the 1% flood level cannot possibly reduce floodplain storage because cannot rise above 114.4 m AHD (other than in an event greater than the 1 in 100 year flood). If the material for the pads is obtained from the site, it will actually increase available flood storage.

As the Authority has already approved the filling to 114.4 m AHD, no permission from this Authority is required to raise the pads above that level.

It is noted that the applicant has supplied a plan showing levels on the land. The plan shows that the raised pad is 114.85 AHD which would be

It is considered that the Goulburn Broken Catchment Management Authority is the appropriate authority to appraise impacts of proposals on the floodplain.

In this instance the Catchment Management Authority did not object to the proposal, therefore it is considered that the proposal would comply with the provisions of Clause 13.02-1 of the Planning Scheme.

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

21.04-1 Urban Consolidation and Growth

Clause 21.04-1 of the Planning Scheme sets out the approach to housing delivery and growth within the municipality.

To give effect to this the Planning Scheme sets out a number of residential investigation areas.

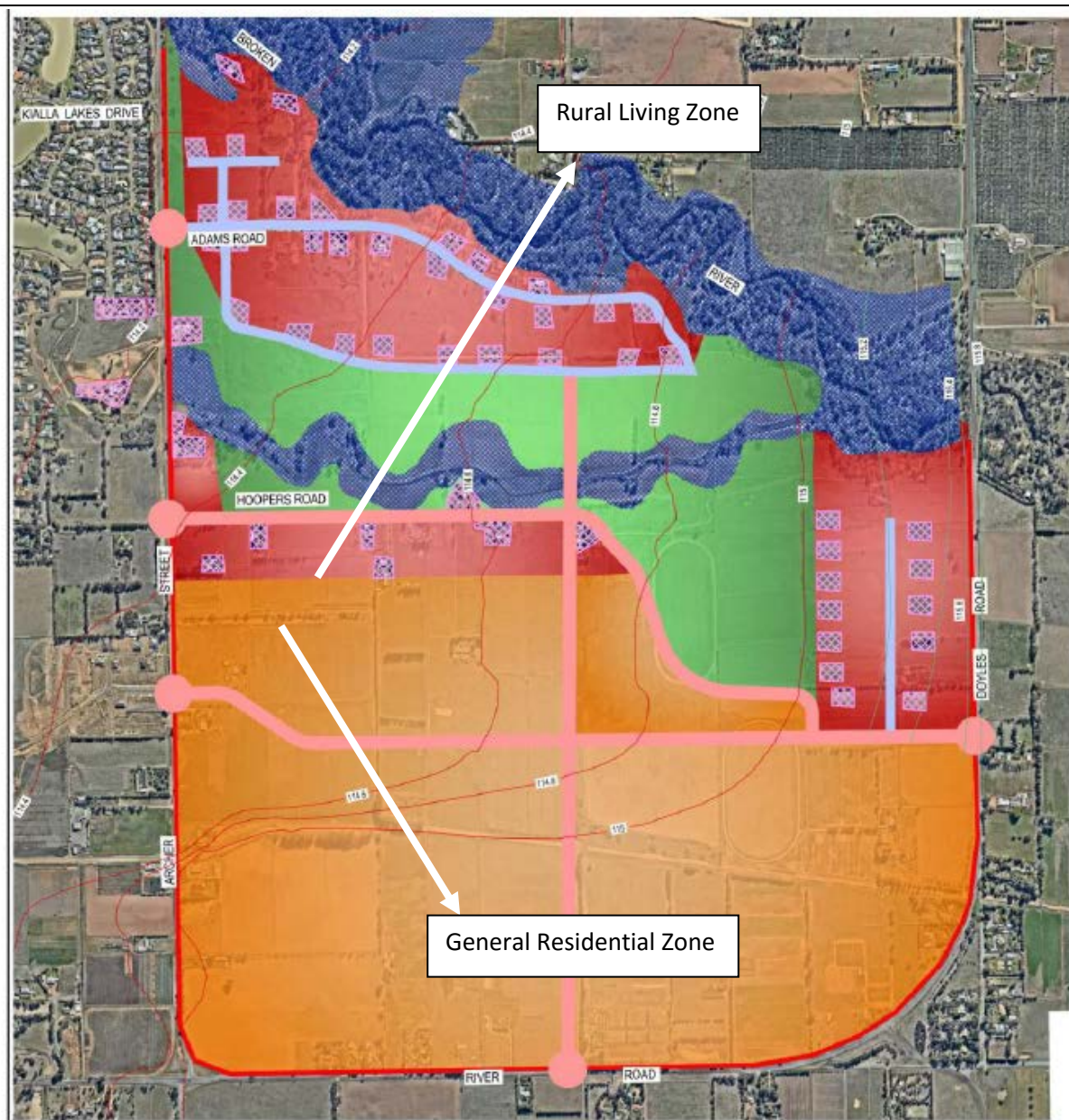
The land is identified as being within Investigation Area No.3.

Investigation area No. 3 is described as the area directly adjacent to the Kialla Lakes Estate though is significantly impacted by flooding. The potential to develop this land to a more intensive residential use is dependent on this issue being resolved.

The investigation has been completed and has demonstrated that Investigation Area 3 can be developed for residential purposes in the future (as shown below). Investigation Area 3 is considered to be a future residential growth corridor that will help to satisfy the future residential needs of the municipality.

The preparation of a PSP and DCP will be the subject of future budget bids and is likely to be undertaken in the medium term.

The investigation is shown below:



Clause 21.04-1 set out a number of policy guidelines which relate to the investigation areas.

When considering an application, the Council will be guided by the following provisions:

- *Whether new development leap-frogs existing non-residential development.*
- *The protection of strategic riparian areas and the provision of public access.*
- *Flexibility in lot sizes based on, diversity of lot sizes, the proximity of services and the character of the area.*
- *Provision for community services (DCP or Pre-Development Agreement).*
- *Residential development should generally be in accordance with the sequencing indicated on the Growth Management Plans in the GSHS. Growth occurring out of sequence may be considered provided that a development proposal satisfies the following conditions:*

- *It can be demonstrated that the land supply for the proposed type of development is being constricted elsewhere and that it is unlikely to become available within the designated sequencing.*
- *The proposed development does not impact on the achievement of the objectives and strategies of the GSHS.*
- *The development can be serviced and connected to sewer and drainage infrastructure in a timely and efficient manner to the satisfaction of the relevant service provider.*
- *The full cost of extending infrastructure out of sequence is paid for by the developer.*
- *The proposed development represents an exemplary development incorporating best practice standard and satisfying the objectives and strategies of the GSHS to a high degree.*

In response it is considered that the earthworks would not leap frog existing non-residential development, the earthworks would move and re-instate existing irrigation channels and provide for a raised pad for the storage of agricultural equipment. The earthworks would not have any impacts on existing non-residential development in the area.

The earthworks would not have any impact on riparian areas.

The earthworks would not have any impacts on any potential future residential development either on the land or any residential development in the surrounding area.

21.05-2 Floodplain and Drainage Management

The following objective is set out:

- *To recognise the constraints of the floodplain on the use and development of land.*

The following strategies are set out:

- *Discourage development and subdivision on land subject to flooding.*
- *Ensure that all new development maintains the free passage and temporary storage of floodwater, minimises flood damage is compatible with flood hazard and local drainage conditions, and minimises soil erosion, sedimentation and silting.*
- *Prevent tree removal to minimise loss of riparian vegetation as a result of development on the floodplain.*

It is noted that the Goulburn Broken Catchment Management Authority is the peak authority with regard to flooding in the municipality.

The Goulburn Broken Catchment Management Authority did not object to the proposal and have stated that the proposal would not have a detrimental impact on the flood plain.

It is noted that, in their original response, the Goulburn Broken Catchment Management Authority did not require any conditions to be included on a planning permit.

In light of this, it is considered that the proposal would comply with the provisions of Clause 21.05-2 of the Planning Scheme.

Relevant incorporated or reference documents

There are no incorporated or reference documents that relate to the proposal.

Other relevant adopted State policies or strategies policies

There are no other adopted State policies or strategies that relate to the proposal.

Relevant Planning Scheme amendments

C-195

Amendment C195 proposes to rezone approximately 474 hectares of land at Kialla, generally bound by Archer Road to the west, River Road to the south, Doyles Road to the east and the Broken River to the north from the Rural Living Zone to the Urban Growth Zone. The amendment also proposes to amend the Municipal Strategic Statement to provide interim guidance for planning permit applications until a Precinct Structure Plan (PSP) and Development Contributions Plan (DCP) are prepared and implemented.

This land was included in Investigation Area 3 as part of Amendment C93 that included the findings and recommendations of the *Greater Shepparton Housing Strategy 2011* in the Greater Shepparton Planning Scheme. The investigation has been completed and has demonstrated that Investigation Area 3 can be developed for residential purposes in the future. Investigation Area 3 is considered to be a future residential growth corridor that will help to satisfy the future residential needs of the municipality.

In essence, Amendment C195 seeks to allow land owners to excise existing dwellings while safeguarding the future residential role of the Investigation Area.

The preparation of a PSP and DCP will be the subject of future budget bids and is likely to be undertaken in the medium term.

Are there any significant social & economic effects?

There are no other significant social and economic effects that relate to the proposal.

Discuss any other relevant Acts that relate to the application?

There are no other 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 Charter of Human Rights and Responsibilities has been considered

Conclusion

It is considered that the proposal would achieve an acceptable planning outcome and it is recommended that a Notice of Decision to Grant a Planning Permit should issue.

Draft Notice Of Decision

APPLICATION NO: 2016-277
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: 545 ARCHER ROAD KIALLA VIC 3631

WHAT THE PERMIT WILL ALLOW: EARTHWORKS FOR A RAISED PAD AND CHANNEL RELOCATION IN THE RURAL LIVING ZONE, LAND SUBJECT TO INUNDATION OVERLAY AND FLOODWAY OVERLAY

WHAT WILL THE CONDITIONS OF THE PERMIT BE?

1. 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 three copies must be provided. Such plan must be generally in accordance with the plan submitted with the application but modified to show:

- a) An earthworks plan to show the maximum height of the works and the amount of soil being removed from the land.

2. Layout Not Altered

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

3. Engineering Conditions

1. Retention of Irrigation Water

The earthworks shall ensure that all irrigation water is retained within the property to the satisfaction of the responsible authority.

2. No Restriction Flows

The permitted earthworks shall not restrict the flow of water entering or leaving the land

3. No restriction to Drainage

The approved works must not cut off natural drainage from adjacent properties.

4. Restricted Outflows

The outflows are to be restricted to natural rainfall run-off only.

5. Modification with Future Schemes

The drainage system must be modified as and when required to accommodate any future drainage scheme implemented for the area.

4. 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.

5. Time for Starting and Completion

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

- a) the development is not completed within **two (2) years** of the date of this permit.

Application Details:

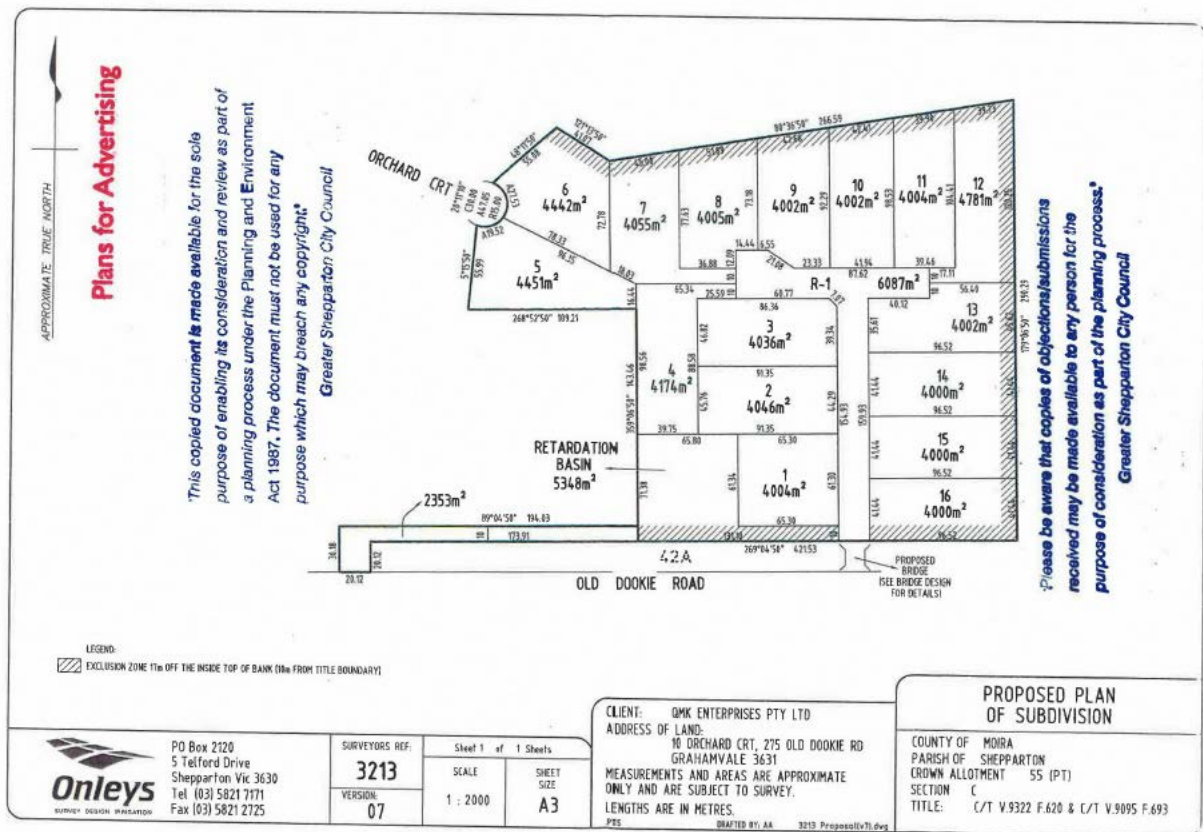
Responsible Officer:	Andrew Dainton
Application Number:	2016-189
Applicants Name:	Onley Consulting P/L
Date Application Received:	6 May 2016
Statutory Days:	85

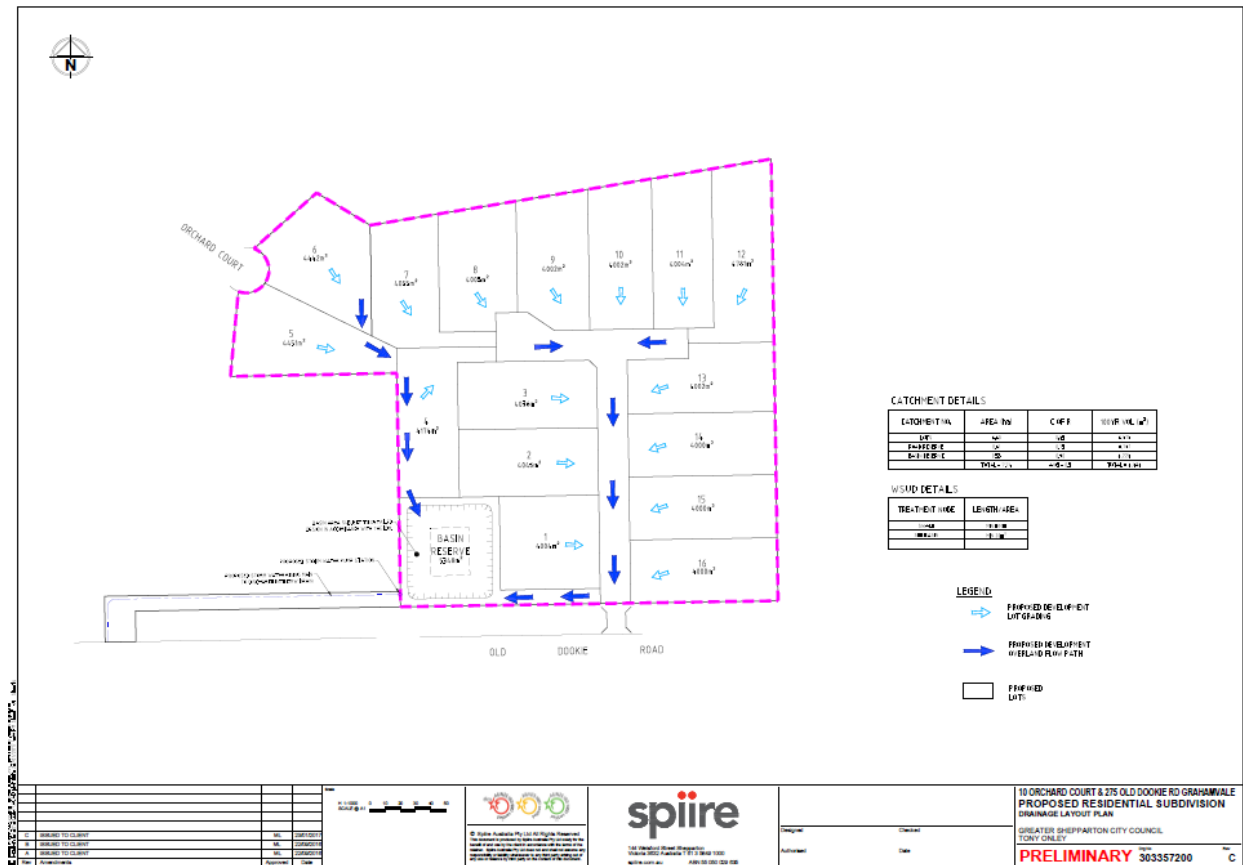
Land/Address:	10 Orchard Court and 275 Old Dookie Road GRAHAMVALE VIC 3631
Zoning and Overlays:	Low Density Residential Zone No overlays
Why is a permit required (include Permit Triggers):	32.03-3 Subdivision in LDRZ
Are there any Restrictive Covenants on the title?	Yes

Proposal

The application seeks planning permission for a 16 lot subdivision of the land. Vehicle access is proposed from Old Dookie Road to access 14 of the lots, the two remaining lots are to be access from Orchard Court.

A plan of the proposed subdivision is below.





Summary of Key Issues

- Planning scheme amendment C182 recently rezoned the land from Farming Zone to the LDRZ. As the land is not serviced by sewerage the minimum lot size in the LDRZ is 4000sqm
- Lot 10 on PS128818 (10 Orchard Court) contains a covenant. The covenant does not prohibit the subdivision of land nor is the covenant a single dwelling covenant. The C182 Panel considered the covenant and stated on page nine of the report the following:

Having reviewed the covenant, the Panel found no restrictions on future dwellings, other than a mandatory minimum size

Therefore the proposed subdivision is not prohibited by the covenant

- The application was advertised to neighbours and initially seven objections were lodged. Following discussions four of these objections were withdrawn leaving three objections which raise issues relating to drainage, road safety and loss of amenity
- Officers have considered the objections and subject to various conditions which address the objectors concerns officers are of the view that the objections do not warrant refusal of the application

- Council engaged a specialised drainage engineer to review the proposed drainage design. The engineer found that sufficient storage volume was proposed and the basin was located appropriately. The engineer did raise that the basin design could not be finalised until geo tech work had been undertaken, this testing will be undertaken during the detailed design phase and if unfavourable will require a redesign of the drainage solution
- Vehicle access to the land via Old Dookie Road requires the crossing of a drain and GMW channel. The proposed intersection design provides for a left turn lane into the subdivision to promote a safe road outcome. Currently the speed limit is 100km/h, permit conditions will require that an application be made to Vic Roads to reduce the speed limit to 80km/h
- Officers are satisfied with the proposed road layout which provides two courts given the dominate character of Dobson's Estate is its court bowl layout. Additionally the recent Red Byrne development is a court based layout with access from Old Dookie Road, to require this development to require a through road would be inconsistent decision making with the Red Byrne Court development
- Environmental Health Officers have reviewed the submitted LCA and found that subject to each lot being serviced by a waste water treatment plant acceptable effluent disposal outcomes are achieved
- Officers having considered the application against the relevant policy, LDRZ and decision guidelines are satisfied that the subdivision produces acceptable planning outcomes by:
 - Developing 4000sqm lots in an existing LDRZ which provides for housing choice within Greater Shepparton
 - Providing safe vehicle access to the land including the construction of a left turn lane
 - Drainage and effluent disposal services that are appropriately designed

Recommendation

Notice of Decision to Grant a Permit

That Council having caused notice of Planning Application No. 2016-189 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 32.03-3 of the Greater Shepparton Planning Scheme in respect of the land known and described as 10 Orchard Court and 275 Old Dookie Road Grahamvale, for the 16 lot low density residential subdivision in accordance with the Notice of Decision and the endorsed plans.

Moved by Johann Rajaratnam

Seconded by Jorine Bothma

That Council having caused notice of Planning Application No. 2016-189 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 32.03-3 of the Greater Shepparton Planning Scheme in respect of the land known and described as 10 Orchard Court and 275 Old Dookie Road Grahamvale, for the 16 lot low density residential subdivision in accordance with the Notice of Decision and the endorsed plans.

Amendment to the Notice of Decision is as follows:

Inclusion of a requirement in the Section 173 Agreement condition to allow for the ongoing maintenance of the land currently used as an access track to the rear of 2, 4 and 6 Cuthbert Court with the wording of this requirement to be drafted by planning Officers

CARRIED

Subject Site & Locality

An inspection of the site and the surrounding area has been undertaken on 19 May 2016 at 2:30 pm

The site has a total area of 7.98ha and currently contains:

- Vacant land previously used for orchard and grazing. An old packing shed incorporating a small cool storage room is located within the south-western corner of the land, with access from Old Dookie Road via a gravelled access track. Gated access to the northern part of the land exists from the eastern end of Orchard Court.

The main site/locality characteristics are:

- Existing low density residential subdivision of the Dobson's Estate exist to the north and west sides, although generally separated by a water supply channel. The channel also runs across the south boundary of the land physically separating the parcel from Old Dookie Road. Land further to the east is irrigated farm land. Land to the south of Old Dookie Road is farming land although there are a number of farm related dwellings and some dwellings on small lots previously subdivided from farm lots.

The Photos below show the existing site:



Looking from Orchard Court north along the property boundary



Looking directly east from Orchard Court



Excavator on eastern end of land removing orchard trees



Looking south into packing shed showing cool store on left side



Looking south into packing shed where grading and packing previously took place



Looking west at packing shed, showing old fuel drums and pallets.



View east from Orchard court across grazing land to current orchard being removed.



Looking from Orchard Court at gateway to the land.



Looking north-east from Orchard Court, with channel and Dobsons Estate lots to the left side.



Looking south-east from Orchard Court gateway, across land, and showing houses on south side of Old Dookie Road in the background.

Permit/Site History

The history of the site includes:

- Amendment C182 resulting in the site being rezoned to LDRZ on 18/2/16

Further Information

Was further information requested for this application?

Yes on 30 May 2016.

What additional information is required?

1. Recent Title search of Lot 2 on LP115406 including copy of any Agreements, restrictions or covenants on that title.
2. Certificate of Environmental Audit, with assurance that the workshop environs at 275 Old Dookie Road which was identified as an area of potential contamination meets the standards required for residential subdivision.
3. Evidence of the legal status of the Channel reserve along the southern boundary of the land, and any permission from the relevant authority that has been obtained to apply for and construct a road access to this estate across the channel reserve land.
4. Redesign of the subdivisional roads and lots to achieve the required close proximity (back to back) of the court head with the Orchard Court head, together with sufficient reservation width to achieve a pedestrian and emergency vehicle access of good design and amenity including landscaping and barriers to prevent everyday vehicle access

between the court heads. Note that all lots within the new subdivision are to obtain road access via the new internal road to Old Dookie Road, not to Orchard Court.

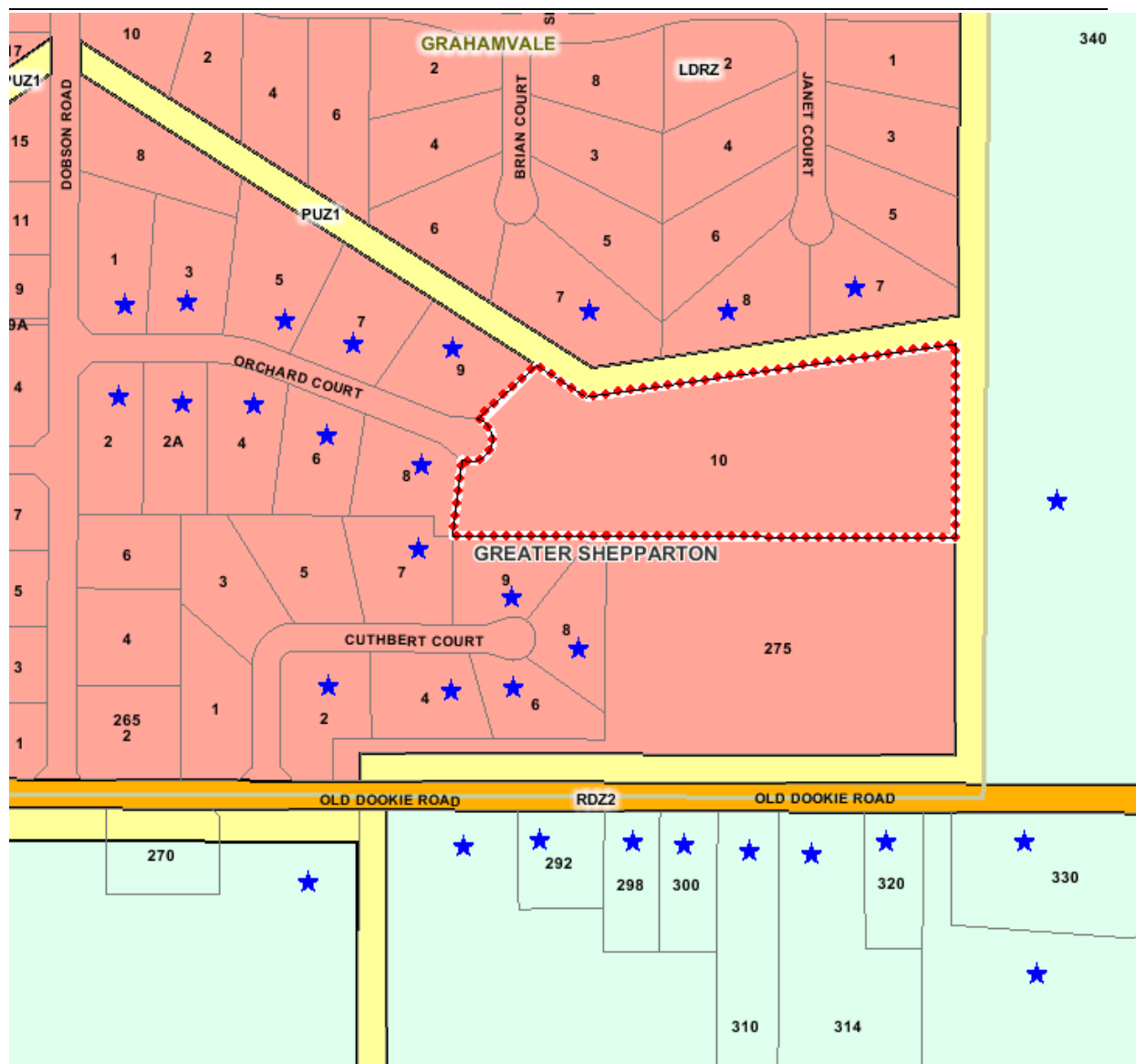
5. Traffic Impact Assessment Report (TIAR) for the two access roads intersecting with Old Dookie Road, as follows:
 - a. For the access road leading to the Retarding Basin sufficient design to show construction and maintenance vehicles can safely ingress and egress from Old Dookie Road, across the channel and into the access laneway with the width and dimensions available on title, and safety in relation to other access points in close proximity and the prevailing traffic conditions.
 - b. For the proposed access road to lots 1 to 16 sufficient design and analysis to show the required construction standards for safe ingress and egress for the Estate can be achieved. The design and safety analysis needs to take into account space needed for slowing and turning movements and the change in grades to account for crossing the channel, and what engineering works are required.
6. Consideration of plan restrictions that will be on title and Section 173 agreements to achieve required setbacks to adjacent lots and channels but provide choice in respect to using primary or secondary wastewater treatment systems with the space to accommodate either, and flexibility for arrangement of buildings and effluent fields within each lot without the need for amendment to permits or agreements.

What is the lapsed date? The initial lapse date was 29 July 2016 and was subsequently extended until 28 October 2016. A detailed response to the RFI was emailed to Council on 21 October 2016.

Public Notification

The application was advertised pursuant to Section 52 of the *Planning and Environment Act 1987* with the following description subdivision of land into 16 low density residential lots, and a retarding basin, with new vehicle access to Old Dookie Road and Orchard Court, by:

- Sending notices to the owners and occupiers of adjoining land.
- Placing signs on site at both Orchard Court and the frontage to Old Dookie Road.



The applicant provided a signed declaration stating that the sign on site was displayed on the land between 5 November to 19 November 2016.

Objections

As a result of the public notice seven objections were initially lodged. Four objectors subsequently decided to withdraw their objections therefore three objections remain to the application.

Ground of Objection	Officers Response
Drainage solution is unacceptable	The proposed drainage solution is a pumped outfall which will see that other than in times of rain the basin be a dry basin.

	Council's expert drainage consultant has reviewed the proposal and found that the volume of the basin is larger than what is required by the IDM. Additionally the engineers have determined that basin location is sensible given the level of the land and length of rising main to outfall to the existing GMW drain.
Road Safety	<p>The applicant has incorporated within the subdivision design a left turn lane to allow for safer access to the land from Old Dookie Road. Additionally, permit conditions will require that an application be made to Vic Roads to reduce the speed limit from 100km/h to 80km/h.</p> <p>The submitted traffic report has concluded 'the traffic related issues should not form an impediment to the approval of this residential development'.</p>
Impacts on 314 Old Dookie Road including headlight glare, vehicle impact to the front yard of 314 Old Dookie Road. The owner of 314 Old Dookie Road is seeking installation of a concrete wall across the lands frontage to prevent out of control vehicles entering the land	<p>Officers agree that head light glare needs to be managed and will require the construction of a 2 metre high colourbond fence across the frontage of 314 Old Dookie Road.</p> <p>Officers also agree that protection should be provided to minimise the risk of vehicle collisions to 314 Old Dookie Road. Officers recommend that this be achieved by constructing a 2m high fence consisting of a 600mm concrete plinth and 1.4m high colourbond iron, resulting in a 2m high fence.</p>

Based on this assessment of the grounds of objections officers consider that the objections can be managed by conditions and as a result refusal of the application due to objections is not warranted.

Title Details

The titles do not contain Section 173 Agreement

10 Orchard Court contains a restrictive covenant; however the covenant does not prohibit subdivision of the land nor is it a one dwelling covenant.

The covenant requires dwelling be at least 130sqm in size and prohibits various non-residential land uses.

Consultation

Consultation was undertaken. Relevant aspects of consultation, included:

- A meeting was held with the Cuthbert Court objectors on 14 December 2016 to discuss the proposed subdivision. A number of issues were raised which largely related to the drainage design and the retention of existing water supply easements.

Referrals

External Referrals Required by the Planning Scheme:

Section 55 - Referrals Authority	List Planning clause triggering referral	Determining or Recommending	Advice/Response/Conditions
GVW	66.01	Determining	GVW consented to the proposed subdivision subject to a set of standard conditions.
Powercor	66.01	Determining	Powercor consented to the application subject to standard connection conditions.
CFA	66.01	Determining	CFA have reviewed the application and consent to the proposal subject to standard conditions relating to hydrants and roads.
APA	66.01	Determining	The gas authority consented to the application subject to conditions relating to the creation of easements associated with gas pipelines.

Notice to Authorities

External Notice to Authorities:

Section 52 - Notice Authority	Advice/Response/Conditions
GMW	GMW have reviewed the application including the LCA and consented to the application subject to a number of conditions all of which are appropriate.

Internal Notice:

Internal Council Notices	Advice/Response/Conditions
Development Engineers	Council's engineers have reviewed the proposed development and consented to the application subject to civil construction plans relating to roads and drainage.
Health Department	The EHO's have reviewed the Paul Williams land capability assessment and found that acceptable effluent disposal outcomes can be achieved subject to each lot being developed with a waste water treatment plant.

Assessment

The zoning of the land

LDRZ

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 low-density residential development on lots which, in the absence of reticulated sewerage, can treat and retain all wastewater.

Each lot must be at least 4000sqm in size as the land is not connected reticulated sewerage.

Decision guidelines are at 32.03-6 and includes:

General

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

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

Subdivision

- The protection and enhancement of the natural environment and character of the area including the retention of vegetation and faunal habitat and the need to plant vegetation along waterways, gullies, ridgelines and property boundaries.
- The availability and provision of utility services, including sewerage, water, drainage, electricity, gas and telecommunications.
- In the absence of reticulated sewerage:
 - The capability of the lot to treat and retain all wastewater in accordance with the State Environment Protection Policy (Waters of Victoria) under the Environment Protection Act 1970.
 - The benefits of restricting the size of lots to the minimum required to treat and retain all wastewater in accordance with the State Environment Protection Policy (Waters of Victoria).
 - The benefits of restricting the size of lots to generally no more than 2 hectares to enable lots to be efficiently maintained without the need for agricultural techniques and equipment.
- The relevant standards of Clauses 56.07-1 to 56.07-4.

Relevant overlay provisions

No Overlays

The State Planning Policy Framework (SPPF)

13.03-1 Use of contaminated and potentially contaminated land

Objective

To ensure that potentially contaminated land is suitable for its intended future use and development, and that contaminated land is used safely.

Strategies

Require applicants to provide adequate information on the potential for contamination to have adverse effects on the future land use, where the subject land is known to have been used for industry, mining or the storage of chemicals, gas, wastes or liquid fuel.

15.01-1 Urban design

Objective

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

15.01-3 Neighbourhood and subdivision design

Objective

Confirmed Minutes – Development Hearings Panel – 30 March 2017 HPERM M17/47668

To ensure the design of subdivisions achieves attractive, liveable, walkable, cyclable, diverse and sustainable neighbourhoods.

Strategy

In the development of new residential areas and in the redevelopment of existing areas, subdivision should be designed to create liveable and sustainable communities by:

- Contributing to an urban structure where networks of neighbourhoods are clustered to support larger activity centres on the regional public transport network.
- Creating compact neighbourhoods that have walkable distances between activities and where neighbourhood centres provide access to services and facilities to meet day to day needs.
- Creating a range of open spaces to meet a variety of needs with links to open space networks and regional parks where possible.
- Providing a range of lot sizes to suit a variety of dwelling and household types to meet the needs and aspirations of different groups of people.
- Contributing to reducing car dependence by allowing for:
 - Convenient and safe public transport.
 - Safe and attractive spaces and networks for walking and cycling.
 - Subdivision layouts that allow easy movement within and between neighbourhoods.
 - A convenient and safe road network.
- Creating a strong sense of place because neighbourhood development emphasises existing cultural heritage values, well designed and attractive built form, and landscape character.
- Protecting and enhancing native habitat.
- Environmentally friendly development that includes improved energy efficiency, water conservation, local management of stormwater and waste water treatment, less waste and reduced air pollution.
- Being accessible to people with disabilities.
- Developing activity centres that integrate housing, employment, shopping, recreation and community services, to provide a mix and level of activity that attracts people, creates a safe environment, stimulates interaction and provides a lively community focus.

15.01-5 Cultural identity and neighbourhood character

Objective

To recognise and protect cultural identity, neighbourhood character and sense of place.

Strategies

- Ensure development responds and contributes to existing sense of place and cultural identity.
- Ensure development recognises distinctive urban forms and layout and their relationship to landscape and vegetation.
- Ensure development responds to its context and reinforces special characteristics of local environment and place by emphasising:
 - The underlying natural landscape character.
 - The heritage values and built form that reflect community identity.
 - The values, needs and aspirations of the community.

19.03-2 Water supply, sewerage and drainage

Objective

Confirmed Minutes – Development Hearings Panel – 30 March 2017 HPERM M17/47668

To plan for the provision of water supply, sewerage and drainage services that efficiently and effectively meet State and community needs and protect the environment.

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

21.04-1 Urban Consolidation and Growth

Population forecasts predict that the population of the City of Greater Shepparton will grow from 59,202 persons in 2006 to 71,509 by 2026. It is expected that to accommodate this additional population, there will need to be a corresponding growth in the number of dwellings (a separate estimate suggests a further 9,100 dwellings will be required by 2031). At the same time, changing demographic trends such as an increase of persons aged 65 and over, smaller household sizes and an increase in non-Australian born persons will create demand for a broad range of housing types within the municipality.

Objectives - Urban Consolidation and Growth

- To contain urban growth to identified growth areas in order to protect higher quality and intact agricultural areas and achieve a more compact built up area.
- To encourage a variety of housing types, particularly in terms of tenure and price, to contribute to housing diversity and affordability.
- To provide a greater range of housing choices to attract more people to live in the Shepparton CBD which will support the vibrancy and economy of the CBD.
- To make better use of available land by allowing higher scale built form in appropriate locations within the CBD.
- To minimise the impacts of housing on the natural environment.
- To release land efficiently in terms of location, supply of services and infrastructure and in accordance with land capability.
- To support increased residential densities, such as 15 dwellings per hectare, in established areas and the conventional living growth areas.
- To increase the supply of medium density housing in appropriate locations.
- To provide land for small township expansion, subject to a supply and demand analysis.
- To coordinate the assessment, planning, development and servicing of identified investigation areas in an integrated manner.
- To ensure any small township expansion occurs without impacting on the long-term growth potential of urban centres or productive agricultural land.
- To ensure any small township expansion is dependent on land capability where no reticulated sewer is available.
- To balance the need to achieve urban consolidation with the need to respect and retain the valued characteristics of existing neighbourhoods.
- To ensure that land proposed for residential purposes is not contaminated.
- To ensure protection of ground water and natural systems.
- To ensure that provision is made for community infrastructure.

Strategies – Urban Consolidation and Growth

Greenfield Development – accommodate the remaining 8,190 dwellings in Greenfield locations with:

- 60% as conventional living (450 – 800 square metres).
- 20% as medium density housing (less than 450 square metres).
- 15% as low density living (2,000 – 8,000 square metres).
- 5% as rural living (2 – 8 hectares).

Officers Assessment

Permission is sought to subdivide the land into lots of 4000sqm or larger under the LDRZ. The submitted plan shows the creation of a 2353sqm lot which is the redundant vehicle access land to the orchard. Officers will require that this land be incorporated into a lot in the subdivision, to ensure that all lots created are larger than 4000sqm in size. If the 2353sqm lot were lot incorporated into a lot, the subdivision would be prohibited.

State policy directs that new subdivisions should promote design that leads to a safe, liveable and sustainable neighbourhoods.

As the land was previously used for horticulture, officers required a soil assessment be undertaken. Coffey concluded the following:

there were no locations sampled at which soil contamination concentrations exceeded the guideline values adopted for the protection of human health in a residential setting. There were some isolated locations identified where the adopted site guideline values for maintenance of ecosystems were exceeded, but these would not be expected to preclude use of the land for sensitive uses

The proposal includes a new intersection with Old Dookie Road. Officers required the submission of a traffic report to consider the safe design requirements of this intersection. Whilst not recommended by the traffic report, the intersection design includes a left turn lane, which is supported by officers.

The traffic report recommends that the intersection be illuminated and that the speed limit of Old Dookie Road be reduced from 100km/h to 80km/h. Officers agree with these recommendations and permit conditions will require that the design incorporate these road safety measures.

Servicing authorities require conditions that lots be connected to water, power and NBN. The land is not serviced by sewerage. As required by the LDRZ the application was accompanied by a LCA from Paul Williams and Associates. The LCA concludes that:

The proposed development at 10 Orchard Court and 275 Old Dookie Road, Grahamvale, is suitable for sustainable on-site effluent reuse / disposal

Council's EHO's undertook an assessment of the LCA and found that on site effluent disposal can be achieved subject to the following conditions:

- All lots be serviced by a waste water treatment plant
- The minimum effluent disposal area is 360sqm
- Dwellings are limited to four bedrooms plus a study
- Effluent disposal areas be setback at least 17 metres from the high water line of the GWM channel and three metres from adjoining property boundaries

The applicant has proposed a drainage solution which consists of a drainage basin with a pumped outfall to a GMW drain. The basin proposes 4485 cubic metres of storage; Council's consultant engineer has found that 4142 cubic metres of storage is the requirement. Officers are satisfied with the volume and are pleased that the basin storage has been over designed.

Council's assessment is that before the basin design is finalised that geo technical testing will need to be undertaken to determine the soil profile and water table level. If the testing is unfavourable further drainage design will be required to find an alternate drainage solution.

Council's consultant engineer has recommended that the drainage from lots five and six be via a pipe through lot four rather than overland flow. Permit conditions will require the implementation of this recommendation. Based on this independent expert drainage review officers are satisfied with the location and preliminary design of the drainage system.

The road layout of the proposed subdivision provides for two additional lots to Orchard Court and the new access to the land from Old Dookie Road to service the 14 remaining lots. Officers considered requiring connectivity from Orchard Court to Old Dookie Road, however decided connection was not required for the following reasons:

- The character of Dobsons Estate is that of a court based road network with single road connections to Old Dookie Road
- The proposed road layout is consistent with the recently approved Red Byrne Court subdivision to the west of the land
- The Orchard Court community were opposed to road connection into the subject site

Based on this assessment officers are satisfied that the proposed subdivision achieves acceptable planning outcomes.

Relevant Particular Provisions

Rescode is not triggered under the LDRZ; however the standards of 56.07-1 to 56.07-4 require consideration.

<p>Drinking water supply</p> <p><u>Objectives</u></p> <p>To reduce the use of drinking water.</p> <p>To provide an adequate, cost-effective supply of drinking water.</p> <p><u>Standard</u></p> <p>The supply of drinking water must be:</p> <ul style="list-style-type: none"> • Designed and constructed in accordance with the requirements and to the satisfaction of the relevant water authority. • Provided to the boundary of all lots in the subdivision to the satisfaction of the relevant water authority. 	<p>Complies</p> <p>Permit conditions will require that all lots be serviced with GVW water supply.</p>
<p>Reused and recycled water objective</p> <p><u>Objective</u></p> <p>To provide for the substitution of drinking</p>	<p>Complies</p> <p>GVW infrastructure will be provided to all lots</p>

<p>water for non-drinking purposes with reused and recycled water.</p> <p><u>Standard</u></p> <p>Reused and recycled water supply systems must be:</p> <ul style="list-style-type: none"> • Designed, constructed and managed in accordance with the requirements and to the satisfaction of the relevant water authority, Environment Protection Authority and Department of Health and Human Services. • Provided to the boundary of all lots in the subdivision where required by the relevant water authority. 	<p>to GVW's requirements.</p>
<p>Waste water management objective</p> <p><u>Objective</u></p> <p>To provide a waste water system that is adequate for the maintenance of public health and the management of effluent in an environmentally friendly manner.</p> <p><u>Standard</u></p> <p>Waste water systems must be:</p> <ul style="list-style-type: none"> • Designed, constructed and managed in accordance with the requirements and to the satisfaction of the relevant water authority and the Environment Protection Authority. • Consistent with any relevant approved domestic waste water management plan. <p>Reticulated waste water systems must be provided to the boundary of all lots in the subdivision where required by the relevant</p>	<p>Complies</p> <p>Council's EHO's have considered on site effluent disposal and decided that all of the proposed lots can be serviced by on site effluent disposal.</p>

<p>water authority.</p>	
<p>Urban run-off management objectives</p> <p><u>Objective</u></p> <p>To minimise damage to properties and inconvenience to residents from urban run-off.</p> <p>To ensure that the street operates adequately during major storm events and provides for public safety.</p> <p>To minimise increases in stormwater run-off and protect the environmental values and physical characteristics of receiving waters from degradation by urban run-off.</p> <p><u>Standard</u></p> <p>The urban stormwater management system must be:</p> <ul style="list-style-type: none"> • Designed and managed in accordance with the requirements and to the satisfaction of the relevant drainage authority. • Designed and managed in accordance with the requirements and to the satisfaction of the water authority where reuse of urban run-off is proposed. • Designed to meet the current best practice performance objectives for stormwater quality as contained in the Urban Stormwater – Best Practice Environmental Management Guidelines (Victorian Stormwater Committee 1999) as amended. • Designed to ensure that flows downstream of the subdivision site are restricted to predevelopment levels unless increased flows are approved by the relevant drainage authority and there are no detrimental 	<p>Complies</p> <p>Council's consulting engineer has reviewed the drainage requirements for the land and permit conditions will require the submission of detailed plans which show:</p> <ul style="list-style-type: none"> • On site retention basin to limit discharge to 1.2l/sec/ha • The basin will provide a pumped discharge to a GMW drain which the creation of associated easements • Investigation of overland flow paths to ensure the subdivision will not block or reduce any overland flows • Provision of WSUD within the subdivision

<p>downstream impacts. The stormwater management system should be integrated with the overall development plan including the street and public open space networks and landscape design.</p> <p>For all storm events up to and including the 20% Average Exceedence Probability (AEP) standard:</p> <ul style="list-style-type: none">• Stormwater flows should be contained within the drainage system to the requirements of the relevant authority.• Ponding on roads should not occur for longer than 1 hour after the cessation of rainfall. <p>For storm events greater than 20% AEP and up to and including 1% AEP standard:</p> <ul style="list-style-type: none">• Provision must be made for the safe and effective passage of stormwater flows.• All new lots should be free from inundation or to a lesser standard of flood protection where agreed by the relevant floodplain management authority.• Ensure that streets, footpaths and cycle paths that are subject to flooding meet the safety criteria $V_{ave} < 0.35 \text{ m}^2/\text{s}$ (where, d_a = average depth in metres and V_{ave} = average velocity in metres per second). <p>The design of the local drainage network should:</p> <ul style="list-style-type: none">• Ensure run-off is retarded to a standard required by the responsible drainage authority.• Ensure every lot is provided with	
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<p>drainage to a standard acceptable to the relevant drainage authority. Wherever possible, run-off should be directed to the front of the lot and discharged into the street drainage system or legal point of discharge.</p> <ul style="list-style-type: none">• Ensure that inlet and outlet structures take into account the effects of obstructions and debris build up. Any surcharge drainage pit should discharge into an overland flow in a safe and predetermined manner.• Include water sensitive urban design features to manage run-off in streets and public open space. Where such features are provided, an application must describe maintenance responsibilities, requirements and costs. <p>Any flood mitigation works must be designed and constructed in accordance with the requirements of the relevant floodplain management authority.</p>	
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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.*

65.02 Approval of an application to subdivide land

Before deciding on an application to subdivide land, the responsible authority must also consider, as appropriate:

- *The suitability of the land for subdivision.*
- *The existing use and possible future development of the land and nearby land.*
- *The availability of subdivided land in the locality, and the need for the creation of further lots.*
- *The effect of development on the use or development of other land which has a common means of drainage.*
- *The subdivision pattern having regard to the physical characteristics of the land including existing vegetation.*
- *The density of the proposed development.*
- *The area and dimensions of each lot in the subdivision.*
- *The layout of roads having regard to their function and relationship to existing roads.*
- *The movement of pedestrians and vehicles throughout the subdivision and the ease of access to all lots.*
- *The provision and location of reserves for public open space and other community facilities.*
- *The staging of the subdivision.*
- *The design and siting of buildings having regard to safety and the risk of spread of fire.*
- *The provision of off-street parking.*
- *The provision and location of common property.*
- *The functions of any body corporate.*
- *The availability and provision of utility services, including water, sewerage, drainage, electricity and gas.*
- *If the land is not sewered and no provision has been made for the land to be sewered, the capacity of the land to treat and retain all sewage and sullage within the boundaries of each lot.*
- *Whether, in relation to subdivision plans, native vegetation can be protected through subdivision and siting of open space areas.*

The proposed subdivision is on land appropriately zoned and is a logical extension to the existing Dobson's estate given the location of GMW channels. The lots are able to be serviced appropriately and the road construction is considered to achieve acceptable road safety outcomes.

Relevant incorporated or reference documents

IDM

Other relevant adopted State policies or strategies policies

There is no other relevant adopted state or strategic policies.

Relevant Planning Scheme amendments

C-182 rezoned the land from the Farming Zone to Low Density Residential Zone.

Are there any significant social & economic effects?

The application does not raise any significant social or economic effects.

Confirmed Minutes – Development Hearings Panel – 30 March 2017 HPERM M17/47668

Discuss any other relevant Acts that relate to the application?

Subdivision Act, 1988

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 has been considered in accordance with the P&E Act including the giving of public notice. Officers are therefore satisfied that the Charter has been complied with.

Conclusion

Officers having undertaken an assessment of the application and consulted with objectors have formed the view that the subdivision produces acceptable outcomes by providing an appropriately designed and serviced subdivision. Therefore it is recommended that a NOD to grant a permit be issued.

Draft Notice Of Decision

APPLICATION NO: 2016-189

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 ORCHARD COURT AND 275 OLD
DOOKIE ROAD GRAHAMVALE VIC 3631**

**WHAT THE PERMIT WILL ALLOW: 16 LOT LOW DENSITY RESIDENTIAL
SUBDIVISION**

WHAT WILL THE CONDITIONS OF THE PERMIT BE?

1. Amended Plans Required

Before the certification of the subdivision, 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 three copies (or as specified) must be provided. Such plan must be generally in accordance with the plan submitted with the application but modified to show:

- a) The 2353sqm lot being the redundant vehicle access to the orchard, be included within a proposed lot in the subdivision to ensure all lots created exceed the minimum lot size of 4000sqm
- b) A 1.8 metre high colourbond fencing on all basin reserve boundaries. The colourbond fencing should extend along the entire boundary of 8 Cuthbert Court
- c) A 2 metre high fence across the front boundary of 314 Old Dookie Road consisting of a 600mm concrete plinth with appropriately designed footings and 1.4 metre colour bond fence
- d) Drainage easement through lot four to drain lots five and six to the basin

2. Layout Not Altered

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

3. Section 173 Agreement

Before the issue of a Statement of Compliance, 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:

Effluent Disposal

- a) Only one dwelling is permitted to be constructed per lot, and the number of bedrooms for each dwelling shall be restricted to four plus a study. Please note that a bedroom can include any additional room shown on a house plan such as a study, library or sunroom that could be closed off with a door.
- b) All wastewater from any single dwelling must be treated to a minimum of 20mg/L Biological Oxygen Demand and 30mg/l Suspended Solids using an EPA approved

aerated wastewater treatment plant or equivalent. The system must be installed, operated and maintained in accordance with the EPA Code of Practice – Onsite Wastewater Management, Publication 891.4, July 2016, Australian Standard 1546.3 Certificate of Conformance and manufacturer's specifications.

- c) The owner must allocate and maintain an area of not less than 360m² to be set aside for the disposal of effluent via pressurised sub-surface irrigation. No buildings, works, paths, pools or any other structure is permitted in this area. The location of this area must comply with the EPA Code of Practice- Onsite Wastewater management Publication number 891.4, released 1 July 2016. The minimum effluent disposal area can only be varied with the written consent of the Council's Environmental Health Officer.
- d) The effluent disposal area must be setback 17m from the high water line from the full channel and 3m from the adjoining property boundaries.

Goulburn Murray Water

- e) Any future development adheres to the wastewater management requirements outlined within the Land Capability Assessment A131003 prepared by Paul Williams, February 2014. This includes the design, installation and maintenance of the wastewater management systems,
- f) No buildings are to be constructed within 17 metres of any GMW channels.

Agricultural Nuisance

That the owner and occupiers of lots 1 and lots 12 to 16 acknowledges and accepts the possibility of nuisance from nearby 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. Payment in Lieu of Open Space

Before the statement of compliance is issued under the *Subdivision Act 1988*, the owner must pay to the responsible authority a sum equivalent to three per cent of the site value of all land in the subdivision.

The owner must advise the Council, in writing, to undertake the property valuation and must pay the Council's reasonable costs and expenses to provide such a valuation for payment in lieu of the public open space contribution.

5. Creation of Water Supply Easements

Before the issue of statement of compliance, water supply easements must be created to formalise existing water supplies from the Goulburn Murray Water channel to 2 – 6 Cuthbert Court.

6. Detailed Construction Plan

Before any road, drainage or landscaping works associated with the development or subdivision start, detailed construction 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 include:

- a) fully sealed pavement with concrete edge strip;
- b) provision of a left turn lane into the proposed road from Old Dookie Road and lighting of the intersection;
- c) details of road works to Orchard Court;
- d) water sensitive urban design features;
- e) underground drains;
- f) site grading from the rear to the frontage of each lot;
- g) silt and erosion control measures;
- h) services and street lights and
- i) street trees

All road, drainage and landscaping works must be constructed in accordance with the endorsed plans.

Before the issue of the statement of compliance all works as shown on the endorsed construction plans must be completed to the satisfaction of the responsible authority.

7. Drainage Discharge Plan

Before the certification of the plan of subdivision, 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. The plans must be generally in accordance the Spiire drawing 303357200 Rev C. 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 in accordance with Council's Infrastructure Design Manual and include:

- a) how the land will be drained including piped drainage from lots 5 and 6 through lot 4 and the creation of associated drainage easement;
- b) provision of geo tech testing to confirm that the basin can be constructed in accordance with the Spiire design
- c) underground pipe drains conveying stormwater to the legal point of discharge;
- d) incorporation of water sensitive urban design in accordance with the "Urban Stormwater Best Practice Environmental Management Guidelines" 1999;
- e) provision of an electronic copy of the MUSIC model (or equivalent) demonstrating achievement of the required reduction of pollutant removal;
- f) a maximum discharge rate from the site of 1.2l/sec/ha with a pumped discharge;
- g) details of how the runoff from the land is to be retarded;

- h) a point of discharge and independent drainage of each lot;
- i) documentation demonstrating approval from the relevant authority for the legal point of discharge; and
- j) documentation demonstrating how drainage will be designed so neighbouring properties are not adversely affected by the development, including water flow to and from neighbouring properties

Before the issue of statement of compliance for the development, the works as shown on the endorsed drainage plan must be completed to the satisfaction of the responsible authority.

8. Construction of Works

Before the Statement of Compliance is issued under the *Subdivision Act 1988*, the owner must construct and complete road works, drainage and other civil works, in accordance with endorsed plans and specifications approved by the responsible authority and in accordance with the Infrastructure Design Manual. Road works, drainage and other civil works to be constructed must include:

- a) street and drainage in accordance with the approved construction drawings;
- b) planting of street trees or as otherwise agreed in writing by the responsible authority
- c) landscaping in accordance with the approved landscape plans;
- d) intersection and traffic control/mitigation measures;
- e) street lighting and signage;
- f) high stability permanent survey marks;
- g) 1.8m high colourbond abutting the basin as shown on the endorsed plans
- h) fencing of the front boundary of 314 Old Dookie Road as shown on the endorsed plans

to the satisfaction of the responsible authority.

Supervision Fees

Before the statement of compliance for each stage, the owner must make a payment comprising up to 2.5% of the value of the works, to the Responsible Authority being the costs of the Responsible Authority in supervising the works on the land.

Plan Checking Fee

Before the statement of compliance for each stage, the owner must make a payment comprising 0.75% of the value of the documented works to the Responsible Authority, for the checking of the engineering design of the works.

9. General Provision of Services

Before the issue of Statement of Compliance, reticulated water and electricity must be available to the satisfaction of the responsible authority.

Before the issue of Statement of Compliance, all reticulated services including telecommunications infrastructure shall be under grounded. Where possible all services

are to be provided within common trenches.

10. **Subdivision Development**

Form 13

Before a Statement of Compliance is issued under the *Subdivision Act 1988* by the responsible authority the owner must provide a completed Form 13.

Other Matters

Before a Statement of Compliance is issued under the *Subdivision Act 1988* the owner must provide to the satisfaction of the responsible authority

- a) an assets statement for each street;
- b) valuation of land in road reserve;
- c) street name plates;
- d) fire plugs in accordance with the Country Fire Authority requirements (generally at a maximum spacing of 120 m), at the subdivider's expense.

11. **Street/Road Name Allocation**

Before the plan of subdivision is certified under the *Subdivision Act 1988*, the owner must lodge an application to the Council's Street Naming Committee for the approval of any street names and street numbers on the plan of subdivision.

12. **Health Requirements**

- a) All waste water produced from the dwelling must be contained within the property boundaries via an on-site effluent disposal system in accordance with the Land Capability Assessment prepared by Paul Williams and Associates P/L Report No. A131003 dated February 2014.
- b) Prior to the issue of a statement of compliance the applicant must enter into an agreement under section 173 of the Act with the responsible authority providing for the following:
 - Only one dwelling is permitted to be constructed, and the number of bedrooms for each dwelling shall be restricted to four plus a study. Please note that a bedroom can include any additional room shown on a house plan such as a study, library or sunroom that could be closed off with a door.
 - All wastewater from any single dwelling must be treated to a minimum of 20mg/L Biological Oxygen Demand and 30mg/l Suspended Solids using an EPA approved aerated wastewater treatment plant or equivalent. The system must be installed, operated and maintained in accordance with the EPA Code of Practice – Onsite Wastewater Management, Publication 891.4, July 2016, Australian Standard 1546.3 Certificate of Conformance and manufacturer's specifications.
 - The owner must allocate and maintain an area of not less than 360m² to be set aside for the disposal of effluent via pressurised sub-surface irrigation.

No buildings, works, paths, pools or any other structure is permitted in this area. The location of this area must comply with the EPA Code of Practice- Onsite Wastewater management Publication number 891.4, released 1 July 2016. The minimum effluent disposal area can only be varied with the written consent of the Council's Environmental Health Officer.

- The effluent disposal area must be setback 17m from the high water line from the full channel and 3m from the adjoining property boundaries.
- c) Prior to the commencement of works for a proposed dwelling, the owner shall lodge with the Council an application to Install a Septic Tank System in accordance with the Code of Practice – Onsite Wastewater Management, Publication 891.4, July 2016.

The application to Install a Septic Tank System shall include:

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

13. Country Fire Authority Requirements

Hydrants

Prior to the issue of a Statement of Compliance under the *Subdivision Act 1988* the following requirements must be met to the satisfaction of the CFA:

- a) Above or below ground operable hydrants must be provided. The maximum distance between these hydrants must be no more than 200 metres apart. These distances must be measured around lot boundaries.
- b) The hydrants must be identified with marker posts and road reflectors as applicable to the satisfaction of the Country Fire Authority.

Note – CFA's requirements for identification of hydrants are specified in 'Identification of Street Hydrants for Firefighting Purposes' available under publications on the CFA web site (www.cfa.vic.gov.au)

Roads

- c) Roads must be constructed to a standard so that they are accessible in all weather conditions and capable of accommodating a vehicle of 15 tonnes for the trafficable road width.
- The average grade must be no more than 1 in 7 (14.4%) (8.1 degrees) with a maximum of no more than 1 in 5 (20%) (11.3 degrees) for no more than 50 meters. Dips must have no more than a 1 in 8 (12%) (7.1 degree) entry and exit angle.
 - Curves must have a minimum inner radius of 10 metres.

- d) Roads must have a minimum trafficable width of:
 - 5.5m if parking is prohibited on one or both sides of the road,
 - 7.3m where parking is allowable on both sides of the road.
- e) Provision shall be made at the end of all dead-end streets greater than 60m in length (whether or not created by staged construction) for turning a design vehicle to the satisfaction of the Responsible Authority.

14. APA

- a) Easements in favor of “Australian Gas Networks (VIC) Pty Ltd” must be created on the plan to the satisfaction of APT.
- b) The plan of subdivision submitted for certification must be referred to APT O&M Services Pty Ltd, in accordance with Section 8 of the Subdivision Act 1988.

15. Powercor Requirements

- a) The Plan of Subdivision submitted for certification under the *Subdivision Act 1988* shall be referred to Powercor Australia Ltd in accordance with Section 8 of that Act.

The applicant shall:-

- b) Provide an electricity supply to all lots in the subdivision in accordance with Powercor’s requirements and standards, including the extension, augmentation or re-arrangement of any existing electricity supply system, as required by Powercor (A payment to cover the cost of such work will be required). In the event that a supply is not provided the applicant shall provide a written undertaking to Powercor Australia Ltd that prospective purchasers will be so informed.
- c) Where buildings or other installations exist on the land to be subdivided and are connected to the electricity supply, they shall be brought into compliance with the Service and Installation Rules issued by the Victorian Electricity Supply Industry. You shall arrange compliance through a Registered Electrical Contractor.
- d) Any buildings must comply with the clearances required by the Electricity Safety (Installations) Regulations.
- e) Any construction work must comply with Energy Safe Victoria’s “No Go Zone” rules.
- f) Set aside on the plan of subdivision for the use of Powercor Australia Ltd reserves and/or easements satisfactory to Powercor Australia Ltd where any electric substation (other than a pole mounted type) is required to service the subdivision.

Alternatively, at the discretion of Powercor Australia Ltd a lease(s) of the site(s) and for easements for associated powerlines, cables and access ways shall be provided. Such a lease shall be for a period of 30 years at a nominal rental with a right to extend the lease for a further 30 years. Powercor Australia Ltd will register such

leases on the title by way of a caveat prior to the registration of the plan of subdivision.

- g) Provide easements satisfactory to Powercor Australia Ltd, where easements have not been otherwise provided, for all existing Powercor Australia Ltd electric lines on the land and for any new powerlines required to service the lots and adjoining land, save for lines located, or to be located, on public roads set out on the plan. These easements shall show on the plan an easement(s) in favour of "Powercor Australia Ltd" for "Power Line" pursuant to Section 88 of the Electricity Industry Act 2000.
- h) Obtain for the use of Powercor Australia Ltd any other easement external to the subdivision required to service the lots.
- i) Adjust the position of any existing easement(s) for powerlines to accord with the position of the line(s) as determined by survey.
- j) Obtain Powercor Australia Ltd's approval for lot boundaries within any area affected by an easement for a powerline and for the construction of any works in such an area.
- k) Provide to Powercor Australia Ltd, a copy of the version of the plan of subdivision submitted for certification, which shows any amendments which have been required.

16. Goulburn Valley Region Water Corporation Requirements

- a) Payment of new customer contribution charges for water supply to the development, such amount being determined by the Corporation at the time of payment;
- b) Provision of a reticulated water supply and associated construction works to each allotment within the development, at the developer's expense, in accordance with standards of construction adopted by and to the satisfaction of the Goulburn Valley Region Water Corporation;
- c) Any existing water service that crosses any of the proposed allotment boundaries within the proposed development must be disconnected and re-located at the developer's expense, to be wholly within one allotment only and to the satisfaction of the Goulburn Valley Region Water Corporation;
- d) The operator under this permit shall be obliged to enter into an Agreement with Goulburn Valley Region Water Corporation relating to the design and construction of any sewerage or water works required. The form of such Agreement shall be to the satisfaction of Goulburn Valley Water. A copy of the format of the Agreement will be provided on request;
- e) The plan of subdivision lodged for certification is to be referred to the Goulburn Valley Region Water Corporation pursuant to Section 8(1) of the Subdivision Act, 1988.

17. Goulburn Murray Water Requirements

- a) Any Plan of Subdivision lodged for certification must be referred to Goulburn-Murray Rural Water Corporation pursuant to Section 8(1)(a) of the Subdivision Act.

- b) Prior to Statement of Compliance being issued, the owner shall enter into an Agreement with the Responsible Authority and Goulburn Murray Water under Section 173 of the Planning and Environment Act ensuring that:
- Any future development adheres to the wastewater management requirements outlined within the Land Capability Assessment A131003 prepared by Paul Williams, February 2014. This includes the design, installation and maintenance of the wastewater management systems,
 - No buildings are to be constructed within 17 metres of any GMW channels.
- c) All works within the subdivision must be done in accordance with EPA Publication 960 "Doing It Right on Subdivisions, Temporary Environmental Protection Measures for Subdivision Construction Sites", September 2004.
- d) Council shall take responsibility for all drainage from the subdivision. The development area is to be added to the Council's Special Charge for drainage. The developer is required to obtain a letter from Council confirming their agreement to this, prior to the Issue of Statement of Compliance.
- e) For subdivision of property holding delivery shares the applicant must either:
- make application to Goulburn Murray Water pursuant to sections 224 and 229 of the Water Act 1989 to: terminate the delivery shares in relation to the property; make a declaration that the property cease to be a serviced property (to effect excision from the district); and trade or transfer any Water Share in relation to the property;
- Or, alternatively
- demonstrate to Goulburn Murray Water reasonable satisfaction the means by which a Goulburn Murray Water water supply will be metered and delivered to the lots created by the subdivision, bearing in mind requirements for water use licences and annual use limits.

18. Telecommunications Referral Condition

The owner of the land must enter into an agreement with:

- A telecommunications network or service provider for the provision of telecommunication services to each lot shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time; and
- A suitably qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

Before the issue of a Statement of Compliance for any stage of the subdivision under the Subdivision Act 1988, the owner of the land must provide written confirmation from:

- A telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's

requirements and relevant legislation at the time; and

- A suitably qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

19. Time for Starting and Completing a Subdivision

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

- a) the subdivision is not started (certification) within **two (2)** years of the date of this permit;
- b) the subdivision is not completed (statement of compliance) within **five (5)** years of the date of certification.

Amended Application Details:

Responsible Officer:	Andrew Dainton
Amended Permit Number:	2015-333/C
Applicants Name:	SAB Holdings Pty Ltd
Date Amendment Received:	14 September 2016
Statutory Days:	48
Land/Address:	615-619 Wyndham Street SHEPPARTON VIC 3630
Zoning and Overlays:	Neighbourhood Residential Zone Floodway Overlay Land Subject to Inundation Overlay
Why was the amendment required?	To defer road works as required by condition 14 of the permit
Why is a permit required (include Permit Triggers):	Use of land for a child care centre under 32.09-1 Subdivision of land in the NRZ under 32.09-2 Buildings and works associated with a section 2 use under 32.09-7 Buildings and works in the FO under 44.03-1 Subdivision in the FO under 44.03-2 Buildings and works in the LSIO under 44.04-1 Subdivision in the LSIO under 44.04-2 Creation of a carriageway easement under 52.02 Creation of access to a RDZ1 under 52.29 Subdivision of land adjacent to a RDZ1 under 52.29
Are there any Restrictive Covenants on the title?	No

Proposal

Planning permit 2015-333/B was issued on 10 November 2015 and allowed the following:

use and develop land for a child care centre, buildings and works in the Floodway Overlay and Land Subject to Inundation Overlay, creation of access to a Road Zone Category 1, a two lot subdivision and creation of a carriageway easement

Condition 14 of the permit was included at the request of Vic Roads who are a determining referral authority. Vic Roads required, before the occupation of the child care centre, road works be undertaken which included the relocation of the service road exit to Wyndham Street.

This amended application seeks permission to defer the construction of these roads works to allow the occupation of the child care centre before the completion of the road works. The application documents state that the road works will be completed by the end of December 2016.

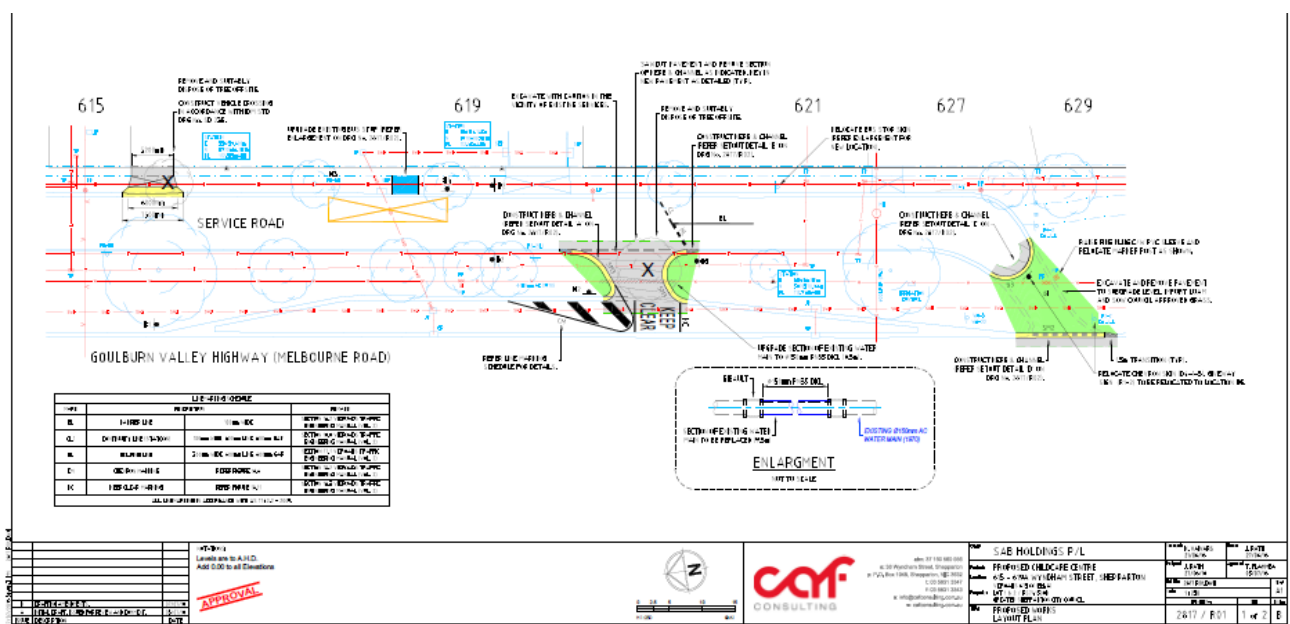
Vic Roads having considered the amended application decided to object to the grant of an amended permit for the following reason:

- *The proposed use of the site is premature and the current access is incompatible with the safe operation of Goulburn Valley Highway and public safety.*

As Vic Roads are a determining referral authority, the amended application must be refused.

Given that the child care centre has been occupied without completing the required road works, planning officers have commenced enforcement proceedings against the permit holder.

Road Works Plans



Recommendation

Refusal

That the Council having not caused notice of Amended Planning Application No. 2015-333/C 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 the Greater Shepparton Planning Scheme in respect of the land known and described as 615-619 Wyndham Street SHEPPARTON VIC 3630, for the to defer the road works under condition 14.

For the following reason:

Vic Roads

The proposed use of the site is premature and the current access is incompatible with the safe operation of Goulburn Valley Highway and public safety.

Moved by Johann Rajaratnam

Seconded by Cameron Fraser

That the Council having not caused notice of Amended Planning Application No. 2015-333/C 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 the Greater Shepparton Planning Scheme in respect of the land known and described as 615-619 Wyndham Street SHEPPARTON VIC 3630, for the to defer the road works under condition 14.

For the following reason:

Vic Roads

The proposed use of the site is premature and the current access is incompatible with the safe operation of Goulburn Valley Highway and public safety.

CARRIED

Permit/Site History

The history of the site includes:

- Planning permit 2015-333 was initially issued on 10 November 2015 with the following Vic Roads condition:
Prior to commencement of use of the access to the Goulburn Valley Highway service lane:
 - *A Road Safety Audit (RSA) is to be conducted and submitted to VicRoads, the Audit may be endorsed by the Roads Corporation and will then form part of the permit.*
 - *All recommendations of the Road Safety Audit must be completed to the satisfaction of and at no cost to the Roads Corporation*
- On 15 December 2015 a safety review of the proposed access was submitted. On 12 January 2016 Vic Roads informed the permit holder by letter that the road safety audit was not approved for the following reasons:
 - *Trafficworks highlighted a significant underestimation in the original traffic report of the proposed developments traffic generation demand attempting to perform a U-Turn at the median opening opposite Kennedy Road and the Goulburn Valley Highway (Wyndham St). Paffrath identified a 5% demand on U-Turn northbound volumes whilst Trafficworks re-assessed to a 45% demand attempting this manoeuvre. This variation significantly increases the potential for a conflict between north and southbound traffic, development proposal traffic and through traffic attempting to access the commercial properties to the west of the subject site.*
 - *The Risk Assessment, Section 2.3.4, has identified the overall risk rating of extreme. Measures suggested by Trafficworks to minimise this risk included a U-Turn ban, signage installation at the median opening and an inclusion in the Childcare Centre operational policy an agreement for all parents not to attempt a U-Turn movement. Implementing a U-Turn ban and signage could possibly disadvantage access to the surrounding commercial business and is considered inappropriate whilst signing an internal policy is not enforceable.*
 - *The Road Safety Audit has not included the Applicant/Owners comments to the conclusion of the report, to date VicRoads have not received this submission.*
- On 14 January 2016 the permit is amended to allow the creation of a carriageway easement
- On 27 January 2016 the permit is amended to alter Vic Roads conditions to require road works to the service road before the building is occupied
- On 12 July 2016 the permit holder submits road works plans as required by Vic Roads. Council forwarded the plans to Vic Roads on the same day.
- On 14 September 2016 the permit holder files an application to defer road works under condition 14 to allow the child care centre to open before the completion of road works

Further Information

Was further information requested for this application? Yes. Vic Roads requested the following information on 22 September 2016.

The measures proposed by the applicant which will mitigate the risk resulting on the Goulburn Valley Highway from the traffic generated by this development until such time that the proposed mitigation works recommended in Trafficworks Functional Layout Plan 153630-FLT-01 (Issue P2) are completed? The applicant must advise then the mitigating works identified in the Trafficworks Functional Layout Plan will be completed noting that VicRoads require this work to be completed within a reasonable timeframe.

On 26 September 2016 the permit holder provided a response to the request directly to Vic Roads. The response provided a template undertaking for users of the child care centre to sign in relation to traffic movements from the land. The provision of this additional information satisfied the request for information and allowed Vic Roads to provide their referral response.

Public Notification

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

- The initial permit provided permission for alteration to access to a RDZ1 which was advertised and no objections were lodged in relation to access. This amended application sought permission to defer the approved road works, it is considered that Vic Roads acting as the expert government agency would determine if the delay of works was likely to result in an unsafe road environment.
-

Objections

The Council has received no objections from neighbours.

Title Details

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

Consultation

Consultation was not undertaken.

Referrals

The application was referred to Vic Roads under 52.29 as a determining referral authority.

Vic Roads acting a determining referral authority objected to the amended application, therefore Council must refuse to grant the amended permit.

Conclusion

The application to delay the road works has been referred to Vic Roads who have objected to the grant of an amended permit. As Vic Roads are a determining referral authority officers must recommended that no amended permit grant.

Furthermore as the child care centre has been occupied before the completion of the road works enforcement proceedings have been commenced to ensure compliance with the permit is obtained.

REFUSAL TO GRANT AN AMENDMENT TO A PERMIT

PERMIT NO: 2015-333/C

PLANNING SCHEME: GREATER SHEPPARTON PLANNING SCHEME

RESPONSIBLE AUTHORITY: GREATER SHEPPARTON CITY COUNCIL

ADDRESS OF THE LAND: 615-619 Wyndham Street SHEPPARTON VIC
3630

PERMIT FOR WHICH AMENDMENT WAS SOUGHT: Permit No: 2015-333/B

WHAT HAS BEEN REFUSED?

The changes to the permit that have been refused are as follows:

Amend condition 14 to allow deferral of the road works until December 2016

WHAT ARE THE REASONS FOR REFUSAL?

Vic Roads

The proposed use of the site is premature and the current access is incompatible with safe operation of Goulburn Valley Highway and public safety.

Application Details:

Responsible Officer:	Tim Watson
Application Number:	2016-468
Applicant Name:	M Talarico and D M M Talarico
Date Received:	22 November 2016
Land/Address:	2 Garley Nook, Shepparton North
Zoning & Overlays:	Low Density Residential Zone Development Contributions Plan Overlay (DCPO1) Development Plan Overlay (DPO4) Environmental Significance Overlay (ESO1)
Why is a permit required (include Permit Triggers):	52.02 – a permit is required before a person proceeds under Section 23 of the Subdivision Act
Are there any Restrictive Covenants on the title?	Yes
Is a CHMP required?	No
Was the correct application fee paid?	Yes

Proposal

Planning permission has been sought to vary a condition of the covenant which applies to the land.

It was proposed to vary the covenant by revising paragraph (ii) as follows (changes in bold):

- ii. Erect on the land hereby transferred any building other than one private dwelling house with the usual outbuildings **per lot**; and such dwelling house shall not be of modern standard design and 160 square metres within the outer walls thereof calculated by excluding the area of all carport, garages, fences, pergolas and verandahs.

The applicant after a discussion with the planning officer amended their application prior to notice to provide the follow proposal to vary the covenant by varying paragraph (ii) as follows (changes in bold):

- ii. Erect on the land hereby transferred any building other than one private dwelling house with the usual outbuildings **per lot (either existing or subsequently created by subdivision)**; and such dwelling house shall not be of modern standard design and 160 square metres within the outer walls thereof calculated by excluding the area of all carport, garages, fences, pergolas and verandahs.

Summary of Key Issues

- The application for a planning permit proposes to vary a restrictive covenant under clause 52.02 to allow for more than one dwelling on the original parent allotment at the address 2 Garley Nook Shepparton North.

- The application was publically advertised including notice to all beneficiaries of the covenant.
- Two objections were received which related to loss in character of the housing estate, establish a precedent for other properties to undertake variations to the covenant, decrease in property values and drainage.
- The officer is satisfied that from a strategic planning assessment against the relevant policies that the application is acceptable, however when the objections are assessed against the mandatory decision guidelines of section 60(2) of the Planning and Environment Act 1987 the proposal is not acceptable.
- The officer cannot be satisfied from an assessment of the objections against the mandatory guidelines that the proposal will not result in a loss of neighbourhood character or that beneficiaries will not suffer any material detriment.
- These guidelines are not discretionary and if a responsible authority cannot be satisfied that they are met, the application must be refused.

Recommendation

Refusal

That the Council having caused notice of Planning Application No. **2016-468** 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 **52.02** of the Greater Shepparton Planning Scheme in respect of the land known and described as **195 Numurkah Road SHEPPARTON VIC 3630**, for the **Variation to the restrictive covenant created in instrument T949975Q by varying paragraph (ii)**.

Moved by Johann Rajaratnam

Seconded by Cameron Fraser

That the Council having caused notice of Planning Application No. **2016-468** 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 **52.02** of the Greater Shepparton Planning Scheme in respect of the land known and described as **195 Numurkah Road SHEPPARTON VIC 3630**, for the **Variation to the restrictive covenant created in instrument T949975Q by varying paragraph (ii)**.

CARRIED

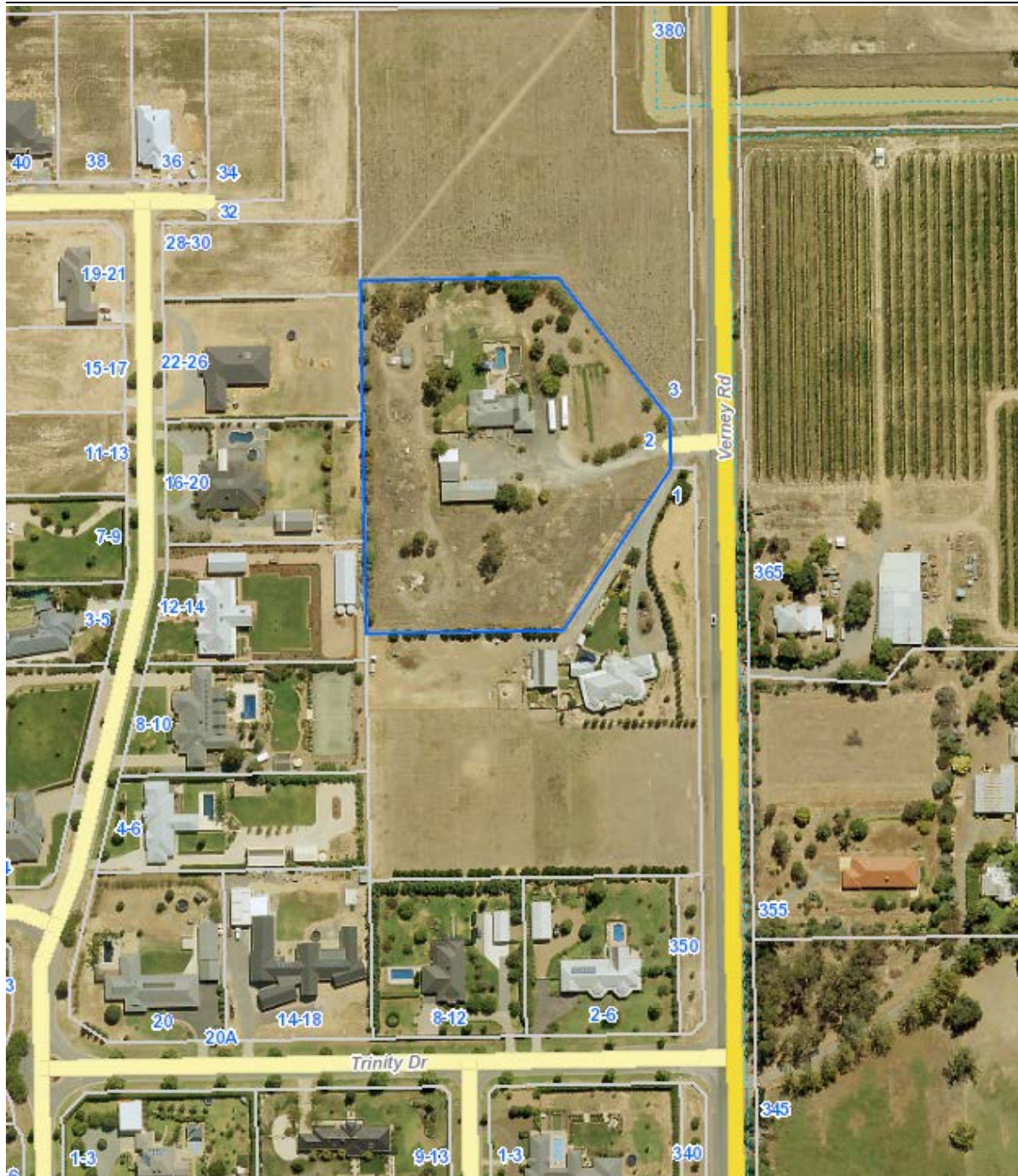
Subject Site & Locality

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

Date: **2/2/17**

The site has a total area of **1.5 hectares** and currently comprises:

- A single storey dwelling, sheds, swimming pool and landscaped area around the dwelling.
- The remainder of the land is not watered and contains scattered trees and appeared to have been slashed.
- Access to the site is provided by a small asphalt sealed area (Garley Nook) from Verney Road, which also provides access to 1 and 3 Garley Nook.
- The land abuts similar sized allotment to the north and south being 1 and 3 Garley Nook.
- 1 Garley Nook comprises an existing dwelling and the normal associated outbuilding with the remainder of the land used to graze a couple of horses.
- The land at 3 Garley Nook is vacant and undeveloped.
- The land to the rear of the site comprises the rear of allotments which are part of the Grammar Park Estate with allotment sizes of approximately 4000 sqm.
- The land adjacent the site's eastern boundary comprises small rural lots in the Farming Zone with some scattered orchard and light grazing.



Pre-Application Meeting Details

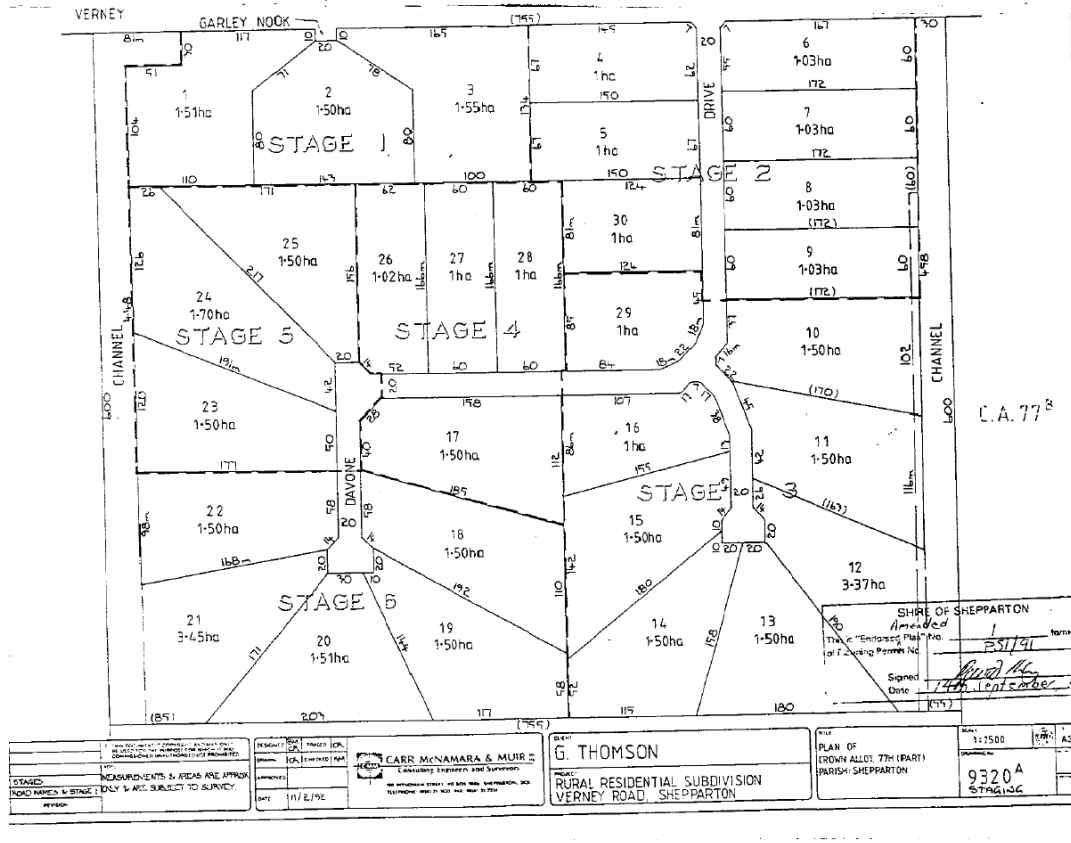
Has there been a pre-application meeting? No

Permit/Site History

The history of the site includes:

Site and Zoning History

- Planning permit P51/91 was approved by the Shepparton Shire and allowed a 30 lot subdivision of the land, with plan below showing the original approved proposed plan of subdivision.



- Stage 1 of the subdivision was for three lots being 1, 2 and 3 Garley Nook.
- Prior to the introduction of the new format planning scheme, L78 rezoned the land to allow lot sizes between 1200 sqm to 1800 sqm.
- The 'new format' planning scheme was introduced in 1999 and applied the LDRZ to the subject land. This had the effect of restricting the minimum lot size for subdivision to 4,000 square metres.
- In August 2001 Council approved a Development Plan (Ref: DP2001-8) for the subject land proposing 74 residential lots. A planning permit (Ref: 2001-139) reflecting the Development Plan was subsequently approved by Council soon afterwards.
- This resulted in the lots to the east of the subject land affected by the same covenant and being beneficiaries of the covenant being significantly smaller in area (approximately 4000 sqm).
- Amendment C11 to the Greater Shepparton Planning Scheme was approved in November 2003 and implemented the strategic directions for the city contained within the *City of Greater Shepparton Strategy Plan 1996*. In particular this strategy sets out the

future growth of Shepparton as expressed in the *Shepparton North and South Growth Corridors Outline Development Plan*.

- Amendment C-68 approved the re-zoning of land further west to Residential 1, which was subsequently re-zoned General Residential 1 as part of the State Government's residential zones reform.

Planning Permit 2011-341

Planning permit 2011-341 approved the variation to restrictive covenant T949975Q burdening Lot 2 on PS309020Y by adding the following clause:

(ix) Notwithstanding anything herein before contained to the contrary with respect to lot 2 on PS309020Y:

1. paragraph (v) above shall not apply; and
2. paragraph (vii) shall be varied by deleting the words:
“...or for the purpose of parking, storing or garaging thereon any articulated motor car or any heavy vehicle as defined in the Road Safety Act or the regulations thereto.”

The application proposed to vary the covenant:

- to delete the restriction regarding no further subdivision; and
- later the restriction preventing the parking of heavy vehicles to allow for the parking of one bus.

The covenant was varied to allow subdivision, and the overnight parking of one school bus driven during the day by the resident of the dwelling.

There was one objection to the original application that sought to remove the whole provision relating to a bus or transport depot, and after clarification of the concern and the applicant's intention, the application was amended to continue to restrict a transport or bus depot, and the objection was withdrawn.

The permit was approved on 22 March 2012 and Statement of Compliance issued on 24 May 2012.

Planning permit application 2013-218

A Planning Permit application was made on 20 August 2013 for a three (3) lot subdivision and the variation to a Restrictive Covenant. The variation sought to remove the clause that restricted the land to one dwelling only. A copy of the proposed plan of subdivision is provided below.

The application was withdrawn after a number of discussions between council officers, the objector, who has objected to the current application and the applicant. The application was withdrawn after the applicant was informed by council officers that the application would not be approved based on the s.60(2) tests.

An application was also made to amend the Shepparton North Growth Corridor Development Plan to reduce the minimum size of land for subdivision from 4,000 to 2,000m² as reticulation is available.



Further Information

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

Public Notification

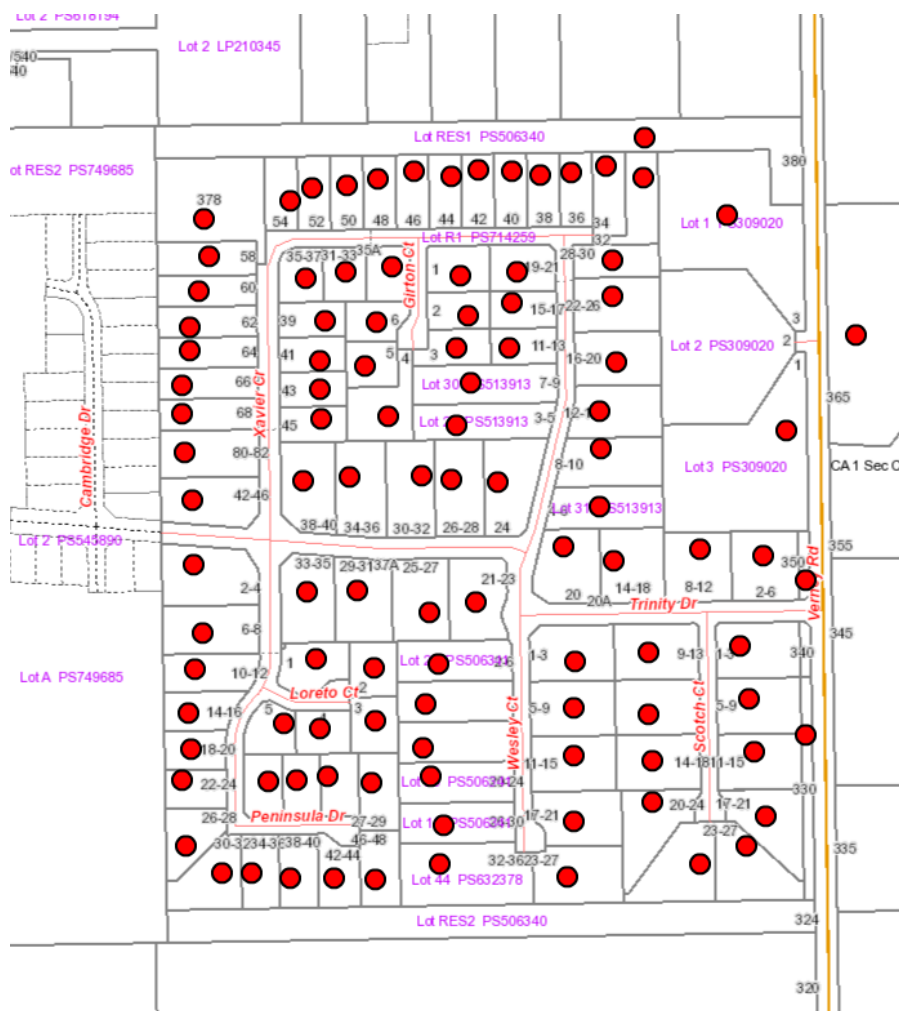
The application was advertised pursuant to Section 52 of the *Planning and Environment Act 1987* with the following description **variation to the restrictive covenant created in instrument T949975Q by varying paragraph (ii) as follows (changes in bold)**:

Erect on the land hereby transferred any building other than one private dwelling house with the usual outbuildings **per lot (either existing or subsequently created by subdivision)**; and such dwelling house shall not be of modern standard design and 160 square metres within the outer walls thereof calculated by excluding the area of all carport, garages, fences, pergolas and verandahs., by:

- Sending notices to the owners and occupiers of adjoining land.
- Placing a sign on site.

Notice in Newspaper (Tuesday 6 December 2016)

The applicant provided a signed declaration stating that the sign on site was displayed on the land between 10 December 2016 and 27 December 2016.



Objections

The Council has received **2** objections to date. The key issues that were raised in the objections are.

- The variation of the covenant will establish a precedent allowing others to follow therefore creating a potential for the area to lose its prestige and value;
- The covenant ensures that the locality is developed in a certain way according to the covenant which ensures the locality holds its value and this standard must be withheld.
- The development of the land will result in excess waste water on the objectors land and an increase in traffic.

- The objector bought their land knowing that the covenant covered no further subdivision on the allotments around them.
-

Title Details

Covenant T949975Q & Variation of covenant AJ706429X

The covenant was application to the subject land at the time of the Transfer from Garley Nominees (the Developer). It covenants the transferee and subsequent owners to not without the previous consent in writing of the transferor:

- i. Erect on the land any building that has previously been erected or use any second hand material whatsoever in the erection of any building on the land hereby transferred;
- ii. Erect on the land hereby transferred any building other than one dwelling house and associated outbuildings of specified attributes;
- iii. Erect on the land any building other than one private dwelling house of specified external materials;
- iv. Erect on the land any fencing other than specified;
- v. Subdivide the land;
- vi. Carry on any commercial or business activities;
- vii. Use the land for a transport depot or the parking of certain vehicles;
- viii. Use any outbuilding or other specified items for residential accommodation.

In 2012 clause (vii) was varied and clause (v) – preventing subdivision was made inapplicable for the subject land by instrument AJ706429X.

Agreement Under Section 12(2)(c) Subdivision Act 1988 T654006S

This agreement was entered into by the developer at the request of the Council and Goulburn Valley Water. The agreement provides for the augmentation of a water main in Verney Road as part of Stage 1 and allows three new water tapping's into the existing main to service the three lots on PS 309020Y.

The agreement also requires that any subdivision of lots of an area less than 1 hectare must be connected to reticulated sewerage.

Agreement under Section 17(2)(c) Subdivision Act 1988 T654006S

This agreement provides for the same provisions as the above agreement.

Consultation

Consultation was undertaken. Relevant aspects of consultation, included:

- A discussion with the consultant acting for the landowner in which the Council officer informed that there had been objections to the proposal and that Council officers were likely based on the objections to recommend that the application be refused.

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.	-	-	-

Assessment

In the assessment of the removal of a covenant a two step approach needs to be taken which in broad terms is as follows:

- The applicant must demonstrate that the removal or variation of the covenant will result in a planning permit benefit, or at least a net planning benefit; and
- The applicant must demonstrate on the balance of probabilities that each of the tests specified in s.60(2) (a) to (d) is satisfied or, as the tribunal described it in *Pletes v City of Knox* (1993) 10 AATR 155, that there is an “unlikelihood” that any of the specified consequences will result.

The assessment below has therefore been divided into two sections, an assessment against the planning policy and planning merits of the proposal and an assessment against the guidelines set out in *Section 60(2) of the Planning and Environment Act 1987*.

Planning Assessment

The applicant has not provided with the application any proposal or indication as to the purpose for the variation of the covenant, however it is clear from previous applications made with the Council’s Planning Department both approved and withdrawn that the intent is to subdivide the land for residential purposes.

The land is zoned Low Density Residential and affected by the Development Contributions Plan Overlay (DCPO1), Development Plan Overlay (DPO4) and Environmental Significance Overlay (ESO1).

No permit is required under the zone or any of the overlays to vary the covenant.

The land forms part of a larger Shepparton North Growth Corridor and a Development plan has been prepared and approved for the land. Clause 11.05-1 of the State Planning Policy Framework (SPPF) identifies Shepparton as a major regional city where urban growth should be directed. The Hume Regional Growth Plan at clause 11.10-3 further supports this, again recognising Shepparton as a regional city where growth and development should be

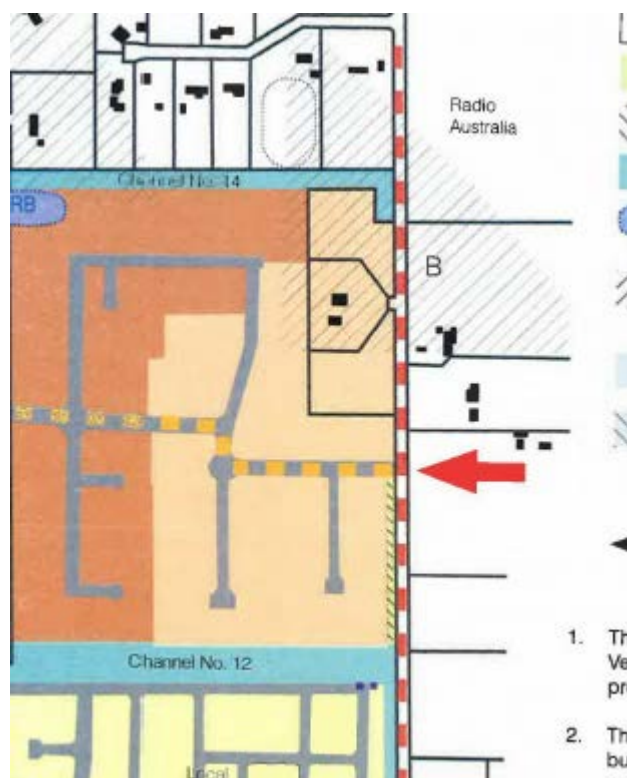
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supported. Other policies throughout the SPPF in 'Housing' further bolster the view that the supply of housing should be increased in existing urban areas in appropriate locations.

The plans in Municipal Strategic Statement (MSS) at 'Settlement' clearly identify the subject land within the urban growth boundary. The policy in the MSS identifies that through the Greater Shepparton Housing Strategy (2011) the Northern Corridor between Verney Road and the Goulburn Valley Highway is one of the areas that will cater for a significant amount of the residential growth within the municipality.

The purpose of the Low Density Residential Zone is to provide for low-density residential development on lots which, in the absence of reticulated sewerage can treat and retain all wastewater. The site is not serviced by sewer, with the minimum lot sizes allowable on the land, subject to a permit 4000 sqm, creating a potential yield from the subject land of 3 lots. The land abuts lots of similar size to the north and south however the majority of the lots which have been developed in the same housing estate to the west are 4000 sqm lots. The development of the land for additional housing in line with the lot restrictions would be generally supported by the zone and its guidelines.

A Development Plan has been prepared for the land and approved as part of the Shepparton North Growth Corridor. The plan shows the allotment on the Development Plan as an existing allotment when approved, however the colour indicated on the plan is accompanied by a legend which identifies the land as "*Residential (4000m2 minimum lot size)*". The development plan therefore definitely recognises that the land may be developed for lots to a minimum size of 4000 sqm. A copy of a section of this plan is as follows:



The Environmental Significance Overlay does not provide any specific guidance over residential development other than that development that might be incompatible with or adversely affected by the operation of the station should be restricted in its close proximity. The authority responsible for the overlay has not raised concern to date over the residential development on surrounding land also affected by the overlay.

Clause 52.02 of the planning scheme was the permit trigger, with a planning permit required prior to a person proceeding to vary a restriction under Section 23 of the *Subdivision Act 1988*. The purpose of the provision is to enable the removal and variation of an easement or restrictions to enable a use or development that complies with the planning scheme after the interests of affected people have been considered. Similarly the only decision guideline of the provision provides that in addition to the decision guidelines in clause 65, the responsible authority must consider the interests of affected people.

Assuming it is the intention that the landowner wishes to develop the land for additional lots for Low Density Residential purposes as indicated by previous planning permit applications, the planning benefit when assessed against the Planning Scheme requirements is considered to be acceptable. This conclusion is drawn from the clear direction which the planning scheme provides strategically for residential development and the size of the allotments in the Low Density Residential Zone.

Decision Guidelines under Section 60(2) Assessment

Section 60(2) of the Planning and Environment Act provides:

*The responsible authority must not grant a permit which allows the removal or variation of a restriction (within the meaning of the **Subdivision Act 1998**) unless it is satisfied that the owner of any land benefited by the restriction (other than an owner who, before or after the making of the application for the permit but not more than three months before its making, has consented in writing to the grant of the permit) will be unlikely to suffer –*

- a) *Financial loss; or*
- b) *Loss of amenity; or*
- c) *Loss arising from change to the character of the neighbourhood; or*
- d) *Any other material detriment –*

as a consequence of the removal or variation of the restriction.

To assist in understanding the assessment against s.60(2), the following commentary has been drawn from the Victorian Planning Reports.

In terms of tests under s.60(2), the Tribunal has determined that:

- The works ‘satisfied’ and ‘unlikely’ impart a ‘notion of balance between probabilities’ so does not mean ‘definitely (*Russell v City of Caulfield* (1992), cited in *Abriola v City of Preston* (1992));
- The words ‘material detriment’ in s.60(2)(d) apply equally to the matters set out in sub-sections (a), (b) and (c);
- Material detriment was taken to mean ‘real’ or ‘not fanciful’ in *Stokes v City of Caulfield & Ors* (1992), whilst in *Abriola* the Tribunal followed the earlier ruling, meaning “important detriment, detriment of much consequence ... (not trivial or inconsequential detriment”); and
- The detriment must be a consequence of removal of the covenant.

The Council has received two objections to the proposed variation from owner/occupiers of properties at 25-27 Trinity Drive, Shepparton North and 1 Garley Nook, Shepparton North after advertising the application to all beneficiaries of the covenant and through a notice placed in the Shepparton News.

The objection from **25-27 Trinity Drive, Shepparton North** raises the concern that any sort of variation to the covenant could set a precedent for others to follow, which would lead to the deterioration of the standard set and maintained by the covenant for the housing estate through subsequent development proposals. Such development is raised as a matter which would impact on the character of the estate and result in a possible financial loss.

The tribunal found in *Jacobs Thomas & Associates v City of Stonnington and Ors* (1995) that the removal of the covenant per se could not give rise to a detriment, even a perceived detriment, only the possibility of detriment from subsequent development and use of the land (this application was for the removal of a single dwelling covenant).

That the land at 25-27 Trinity Drive, Shepparton North will suffer any detriment against the tests determined under s.60(2) is very difficult to determine. The property does not share a boundary with the subject land or even a street. The property only just meets the minimum lot size for a non sewerred lot in the Low Density Residential Zone of 4000 sqm and is surrounded by similar sized or larger lots to the east, north and south. The land to the west however is within the General Residential Zone, with one of the abutting lots with an approximate area of 2200 sqm.

The land to which the covenant is to be varied is currently 1.5 hectares in area and future development and subdivision if the covenant was to be varied would be subject to the zone controls which would prevent lots less than 4000 sqm. Furthermore the variation to the covenant would be so that any future lots would still be bound by the restriction of 1 single dwelling per lot. Such a proposal would reflect the neighbourhood character already established within the Grammar Park Estate.

The objection from **1 Garley Nook, Shepparton North** in-avertedly raises concern that the variation to the covenant would lead to development which would result in excess waste

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water on their land and an increase in traffic. The objector then clearly states in their objection that “*bought our block knowing the covenant covered no further subdivision on blocks around us*”.

Despite the objection identifying that proposal to vary the covenant will lead to further subdivision on allotments abutting the objector’s, it is clear that they see the covenant as a form of protection against further development of the land and the character of the locality. The responsible authority therefore cannot be satisfied that the owner of the land at 1 Garley Nook, on the balance of probabilities will be unlikely to suffer from loss arising from change to the character of the neighbourhood. Furthermore despite the absence of a proposed development proposal which would provide objector’s with the benefit of understanding the purpose of the variation, the responsible authority cannot be satisfied that the objector will be unlikely suffer any other material detriment as a consequence of the variation of the covenant. This being drainage issues which may arise as part of subsequent development, if a variation was allowed.

Based on the assessment of the objections against the s.60(2) guidelines, the officers cannot be satisfied that the that the owner of land benefitted by the covenant will be unlikely to suffer loss arising from the change to the character of the neighbourhood or any material detriment as a consequence of the removal of the covenant.

Relevant incorporated or reference documents

The Shepparton North and South Growth Corridors, Development Contributions Plans – December 2002 (updated October 2003)

Other relevant adopted State policies or strategies policies

There is 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?

Subdivision Act 1988.

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.

Conclusion

Based on the assessment of the objections against the s.60(2) guidelines, officers cannot be satisfied that the that the owner of land benefitted by the covenant will be unlikely to suffer loss arising from the change to the character of the neighbourhood or any material detriment as a consequence of the removal of the covenant.

The officer therefore recommends that the application be refused.

DRAFT
REFUSAL TO GRANT A PERMIT

APPLICATION NO: 2016-468

PLANNING SCHEME: GREATER SHEPPARTON PLANNING SCHEME

RESPONSIBLE AUTHORITY: GREATER SHEPPARTON CITY COUNCIL

ADDRESS OF THE LAND: 2 Garley Nook SHEPPARTON NORTH VIC 3631

WHAT HAS BEEN REFUSED: **Variation to the restrictive covenant created in instrument T949975Q by varying paragraph (ii) as follows (changes in bold):**

Erect on the land hereby transferred any building other than one private dwelling house with the usual outbuildings **per lot (either existing or subsequently created by subdivision)**; and such dwelling house shall not be of modern standard design and 160 square metres within the outer walls thereof calculated by excluding the area of all carport, garages, fences, pergolas and verandahs.

WHAT ARE THE REASONS FOR THE REFUSAL?

1. The Responsible Authority is not satisfied that the beneficiaries of the covenant and particularly the objector at 2 Garley Nook, Shepparton North will be unlikely to suffer financial loss, loss of amenity, loss arising from change to the character of neighbourhood or any other material detriment as a consequence of the variation of the restrictive covenants.