

ATTACHMENT TO AGENDA ITEM

Ordinary Meeting

20 May 2014

Agenda Item 10.5 **Buildings and works for a shed in the Farming Zone 1 within 5m from a side boundary and within 20m from a road.**

Attachment 1 **Delegates Report 553**

Delegates Report

Application Details:

Responsible Officer:	Sarah Van Meurs
Application Number:	2014-8
Applicants Name:	N F Gleeson
Date Application Received:	10 January 2014
Statutory Days:	80 (on the 31/03/2014)
Land/Address:	700 Kyabram-Cooma Road KYABRAM SOUTH VIC 3620
Zoning and Overlays:	Farming Zone 1 Land Subject to Inundation Overlay
Why is a permit required (include Permit Triggers):	35.07-4 Buildings and works in the Farming Zone 1 within 5 metres of a boundary and within 20 metres of a road.
Are there any Restrictive Covenants on the title?	No

Proposal

The application proposes the construction of a 65sqm shed at 700 Kyabram-Cooma Road, Kyabram South (the land). The land is 3046sqm in size and is developed with a dwelling.

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

Pursuant to Clause 35.07-4 of the Greater Shepparton Planning Scheme, a planning permit is required for buildings and works within the following setbacks:

- 5 metres from a boundary
- 20 metres from a road.

The Land Subject to Inundation Overlay did not trigger a planning permit for a shed associated with an existing dwelling.

The application was advertised and one objection was received. The objection related to the various issues including safety and amenity.

Planning officers have assessed the application inclusive of the grounds of objection and form the view that the application achieves acceptable outcomes for the following reasons:

- It is not unreasonable or unexpected to have or see a shed in a rural environment;
- The proposed shed will not unreasonably impact on the existing or future agricultural uses of nearby land; and
- Council's traffic engineers are satisfied the shed will not lead to unsafe road conditions.

Summary of Key Issues

- The application for planning permit was made for the construction of the shed within the Farming Zone 1. A planning permit is triggered as the location of the shed is within five metres of a side boundary and within 20 metres of a road being Kyabram-Cooma Road
- The application was advertised and an objection lodged.
- Officers have considered the grounds of objection and are of the view that the objection should not lead to the refusal of the application.
- It is considered that the land is within the FZ of which the primary purpose of the zone is to allow for agricultural uses, most of which do not require a permit. The objectors proposed future use of their land for horticulture is an as of right use which will not be prevented as a result of the proposed shed.

Subject Site & Locality

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

Date: **7 February 2014** Time: **2:53 pm**

The site has a total area of **3046** square metres and currently contains:

- Single story brick dwelling and associated outbuildings.

The main site/locality characteristics are:

- Rural, agricultural land

The Photos below show the existing site:



It is noted that the trees have been removed since the aerial photo has been taken. A planning permit was not required for the removal of native vegetation in accordance with the Table of exemptions listed in Clause 52.17-7 of the Greater Shepparton Planning Scheme.



Looking west from Kyabram-Cooma Road into the southern portion of the property. Proposed Shed to be located along the fence line.



Looking west from Kyabram-Cooma Road along the southern fence line.



Looking west into the property from Kyabram-Cooma Road.



Looking west from Kyabram-Cooma Road onto the site boundary.



Looking south from the intersection of Fenaughty Road and Kyabram-Cooma Road at the subject land. Proposed shed to be located to the rear of the site along fenced boundary.



Looking south from the intersection of Kyabram-Cooma Road.

Permit/Site History

The history of the site includes:

- 2014-21 Construction of a fence along the western and southern boundaries in the Land Subject to Inundation Overlay.

Further Information

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

Public Notification

The application has been advertised pursuant to Section 52 of the *Planning and Environment Act 1987*, by:

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

Objections

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

Grounds of objection	Officers Response
Does not support commercial agricultural production.	The land is essentially a rural residential lot within the FZ, which has lost its potential for agricultural production. Whilst this is an undesirable use of agricultural land, the use exists and is lawful and is it not unexpected or unreasonable for a small rural residential lot to seek permission for a storage shed.
Agricultural land being impeded upon by additional development.	The land is long lost to agriculture uses. The dwelling resulted in this loss and created the point of potential conflict, the proposed shed does not worsen this conflict. In fact the location of the shed may improve the situation as it creates a physical barrier between the abutting farm and existing dwelling on the land.
Spray drift from farm contaminating water collected on the shed roof	Spray drift is considered a normal and necessary farming practice. A condition should be included on the permit to install first flush system on any water tank connected to the shed, as required by health department, to ensure drinking water is not contaminated by any spray drift.
1 metre setback is too small for the applicant to be able to maintain land between the shed	It is not uncommon for sheds and other out buildings to be setback about one metre from

and boundary.	property boundaries. Given there is an existing solid boundary fence this one metre area should not be detrimental to neighbouring land.
Height of grass around property leading to threat of fire. The proposed building increases development and therefore provides an additional building that may be at risk.	It is true to say that any additional building could lead to fire risk. Despite this, the Building Code of Australia includes design measures to manage the risk of fire of which this shed will be required to comply with.
Impede flow of flood water	Planning permit was not required under the LSIO. A drainage condition will be required should a permit issue.
Stormwater runoff	A drainage condition will be required should a permit issue to ensure appropriate runoff.
Over crowding of built form on the lot, suggest structures to be demolished in order to construct the proposed shed. Amenity of the Farming Zone – ‘openness’	It is considered that the proposed shed would not have a detrimental impact on the visual amenity of the area as it is not unexpected to see a shed in a rural area. It should also be noted that the site is enclosed by a large colourbond fence.
Out-dated septic tank may have insufficient disposal area. Proposed building may reduce disposal area resulting in sewerage entering neighbouring property.	The application was referred to the Councils Health Department who did not object to the proposal.
Possibility for the shed to be used as a dwelling	The application is for a shed. A condition will be included on the permit restricting the use of the shed to storage only.
Traffic Concern <ul style="list-style-type: none"> • Obscure view of traffic in both directions • School pick up and drop off at the intersection • Glare from the proposed shed • Slow moving vehicles entering and exiting Fenaughty Road. • Construction of shed blocking sight lines 	The application was referred to the Councils Traffic Engineer who required the shed to be setback five metres from the eastern boundary. This will be included as a Condition on the Permit.

It is noted that that the applicant has responded to grounds of the objection. This has been considered as part of the application.

Title Details

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

Consultation

Consultation was undertaken. Relevant aspects of consultation, included:

- The building permit application was referred to Planning Department. Planning officers then notified the applicant via telephone that a planning permit was required for the proposed shed.
- Upon advertisement the notified neighbour contacted the Planning Department who advised he wanted to make an objection. The objector asked to be provided with the relevant guidelines in which an application for a shed in the Farming Zone within a setback of 5 metre of a boundary and within 20 metres within a local road. The Planning Department provided the neighbour with a list of the relevant policies and decision guidelines on 16 January 2014 in which the application will be assessed under.
- The neighbour provided a formal objection in writing received in office on 30 January 2014. The objection outlines issues as stated above.
- The objection was forwarded onto the applicant by the Planning Department on 3 February 2014 providing the applicant with the opportunity to respond to the objection.
- The applicant provided a response to the objection which was received in Council on 11 February 2014. The applicant does not believe that his proposal will impeded on the use of the objector's land for agricultural purposes. The applicant has sought a timely decision on the matter and did not wish to proceed with mediation.
- Mediation was not carried out between the two parties given the known history between the two parties it was considered that an mutually agreed outcome would not be able to be reached.

Referrals

External Referrals/Notices Required by the Planning Scheme:

Referrals/Notice	Advice/Response/Conditions
Section 55 Referrals	No Section 55 referrals in accordance with the Greater Shepparton Planning Scheme.
Section 52 Notices	No Section 52 notices required in accordance with the Greater Shepparton Planning Scheme.

Internal Council Notices	Advice/Response/Conditions
Councils Health Department	
Councils Traffic Engineering Department	The application was referred to the Councils Traffic Engineering Department who did not object to the proposal subject to the shed being 5 metres setback from the eastern boundary.

Assessment

The zoning of the land

35.07 Farming Zone

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

A permit was required pursuant to Clause 35.07-4 of the Planning Scheme for buildings and works within:

- 5 metres from a boundary, or
- 20 metres from a road.

35.07-6 Decision guidelines

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

General issues

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

Agricultural issues and the impacts from non-agricultural uses

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

- The capacity of the site to sustain the agricultural use.
- The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure.
- Any integrated land management plan prepared for the site.

Design and siting issues

- The need to locate buildings in one area to avoid any adverse impacts on surrounding agricultural uses and to minimise the loss of productive agricultural land.
- The impact of the siting, design, height, bulk, colours and materials to be used, on the natural environment, major roads, vistas and water features and the measures to be undertaken to minimise any adverse impacts.
- The impact on the character and appearance of the area or features of architectural, historic or scientific significance or of natural scenic beauty or importance.
- The location and design of existing and proposed infrastructure including roads, gas, water, drainage, telecommunications and sewerage facilities.
- Whether the use and development will require traffic management measures.

Response:

The State and Local Planning Policy Framework are addressed under other sections within this report.

The application was referred to the Councils Health Department who did not object to the proposal. The disposal of effluent is not relevant for this application as the proposed shed is not located on the existing septic lines and no upgrades are required.

The existing use of the land for a dwelling has been lawfully established. Whilst it is noted that the proposal does not support agricultural use in the Farming Zone, the proposed shed is ancillary to the lawfully established use of the land for a dwelling. The shed is considered suitable for the land in enabling the habitant of the dwelling to have storage for domestic needs.

The subject land is on a small allotment and is unlikely it would ever be able to accommodate any agricultural use. Therefore it considered that the proposed shed would not be removing any land from agricultural production.

The abutting property is currently used for cropping. The neighbour has indicated his intention to plant hazelnut trees on the abutting land. The placement of the proposed shed is not expected to limit the operation and expansion of current or future farming practice on the land. The proposed shed is considered to act as a buffer between the two uses. A condition placed on the planning permit to install a first flush system on any drinking water

collected from the shed roof will assist in managing potential water contamination caused by spray drift.

The proposed shed is located 1 metre from the boundary. A colour bond 2 metre high fence has been constructed along the southern and western side of the boundary. The addition of a shed is unlikely to impact on the amenity of the area as the site is already enclosed by a fence and it is not uncommon to see sheds in the Farming Zone.

In VCAT case, *Vegh v Yarra Ranges SC (2010)* the Member, Glynn, noted that being able to partly see a water tank and rural outbuildings in a rural living area are also acceptable visual features in such landscape.

The application has been referred to the Councils Traffic Engineers who have requested that the shed be setback a minimum of 5m from the road. This will enable better sightlines from the intersection of Fenaughty and Kyabram – Cooma Road, Kyabram South.

Relevant overlay provisions

44.04 Land Subject to Inundation Overlay

The subject land is in the Land Subject to Inundation Overlay. The purpose of the 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.

A planning permit is not required for buildings and works for a domestic shed adjacent to an existing dwelling as per the Schedule to the Land Subject to Inundation Overlay.

The State Planning Policy Framework (SPPF)

11.05-3 Rural Productivity

Objective

To manage land use change and development in rural areas to promote agriculture and rural production.

Strategies

Prevent inappropriately dispersed urban activities in rural areas. Limit new housing development in rural areas, including:

- Directing housing growth into existing settlements.
- Discouraging development of isolated small lots in the rural zones from use for single dwellings, rural living or other incompatible uses.
- Encouraging consolidation of existing isolated small lots in rural zones.
- Restructure old and inappropriate subdivisions.

Response:

The use of the dwelling exists and is lawful. It not unexpected or unreasonable for a small rural residential lot to seek permission for a domestic storage shed.

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

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

Relevant Strategies

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

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

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

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

Planning for rural land use should consider:

- land capability; and

- the potential impacts of land use and development on the spread of plant and animal pests from areas of known infestation into agricultural areas.

Response:

Given the size of the land and lawfully established use of the land for a residence is considered that the land would not be capable for any viable agricultural practice.

The proposed shed is unlikely to detrimentally impact on the continuation of agricultural practices on the surrounding land as discussed above, and is envisaged would act as a physical buffer between the residential use of the land and surrounding agricultural land.

The proposed shed is not expected to increase risk of spread of plant and animal pests into the agricultural land given the use of the land for a residence is existing.

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

21.04-3 Rural Residential

Objectives

To provide land for rural residential purposes, without impacting on the long-term growth potential of urban centres or productive agricultural land, subject to a supply and demand analysis.

To recognise and make provisions for the potential conflicts at the urban/rural interface.

Relevant Strategies

- Protect the amenity of rural residential land by discouraging uses with the potential to create a nuisance.
- Protect productive agricultural land from encroachment of urban growth except in designated growth areas.
- Ensure that residential developments provide a buffer to existing agricultural uses, particularly orchards.

Response:

Whilst the land is not zoned Rural Residential, the land has essentially been established as rural residential allotment and has existing land use rights for that purpose.

As identified earlier in this report, the subject land does not remove any land from agricultural production. It is not envisaged to create any additional points of conflict between the two uses. The shed provides a buffer between the residential use and the use of the land for agriculture.

Relevant Particular Provisions

There are no relevant particular provisions that relate to the application.

The decision guidelines of Clause 65**65.01 Approval of an application or plan**

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

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

Response:

The application complies in the following ways:

- The relevant matters set out in Section 60 of the Act have been considered. The application accords with the relevant provisions in the Greater Shepparton Planning Scheme, complies with the objectives of planning in Victoria and does not cause and will not be significantly affected by environmental impacts.
- The application is generally in accordance with the purpose of the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The proposed application generally is in accordance with the relevant purposes of the Farming Zone 1 and other provisions.

- All relevant matters have been considered in accordance with the zone, and other provisions as above.
- The proposal is generally in accordance with the orderly planning of the area.
- The surrounding area is rural in character. The proposed shed is appropriately designed and is not expected to be detrimental to the amenity of the area.
- The subject land is not in close proximity to any public land.
- The proposed shed is not expected to contribute to land degradation, salinity or reduce water quality.
- A condition on permit will ensure the appropriate management of drainage of stormwater within and exiting the site.
- The proposed shed would not have any detrimental impact on native vegetation.
- The degree of flood, erosion or fire hazard associated with the use of the land would be minimal.

Relevant incorporated or reference documents

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

Other relevant adopted State policies or strategies policies

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

Relevant Planning Scheme amendments

There are no relevant Planning Scheme amendments that relate to the application.

Are there any significant social & economic effects?

There are no relevant social and economic effects that relate to the application.

Discuss any other relevant Acts that relate to the application?

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

Conclusion

The application for a planning permit is for the buildings and works of a shed and is not envisaged to result in any detrimental impacts to the surrounding land. The application is considered to achieve an acceptable outcome when assessed against the relevant policies of the Greater Shepparton Planning Scheme and it is therefore recommended that the application for a planning permit be approved subject to conditions.