

# **ATTACHMENT TO AGENDA ITEM**

**Ordinary Meeting**

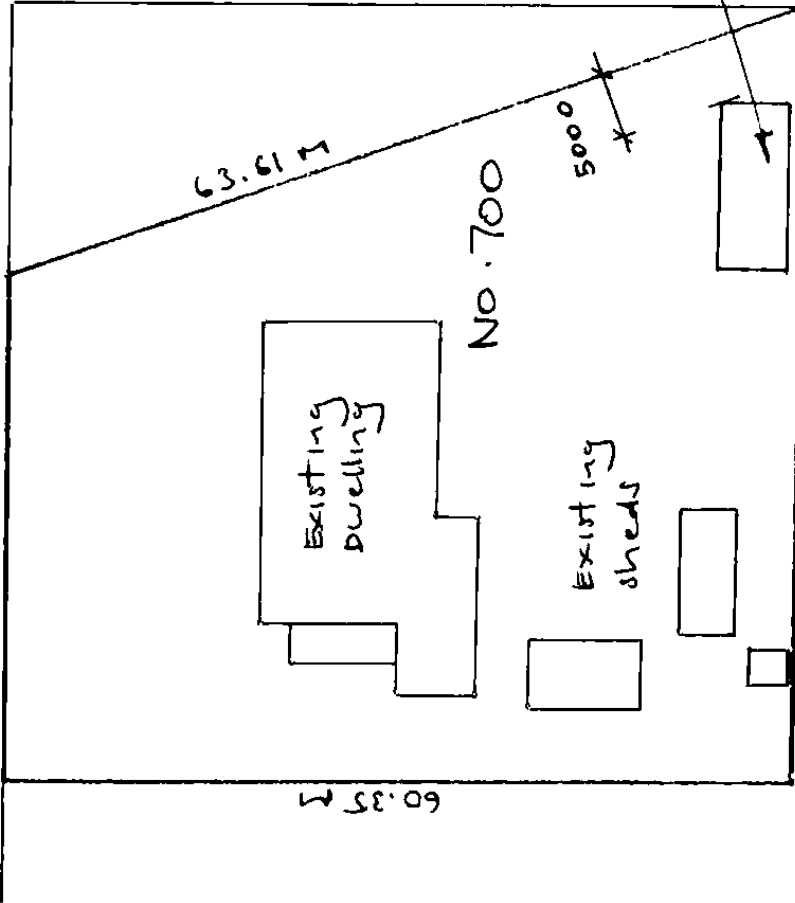
**16 September 2014**

<b>Agenda Item 9.7</b>	<b>Amendment to Planning Permit 2014-8 to Delete Condition Eight (Section 173 Agreement) at 700 Kyabram-Cooma Road, Kyabram South</b>	
<b>Attachment 1</b>	<b>Endorsed Site Plan planning permit 2014-8 .....</b>	<b>258</b>
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<b>Attachment 3</b>	<b>Previous Assessment 2014-8, adopted Council Report ..</b>	<b>263</b>

This document was printed from SPEAR on: 28/07/2014 11:41

FENAUGHTY ROAD

40.35 M



KYABRAM - COOMA ROAD

1000  
500

63.61 M

No. 700

5000

Existing Dwelling

Existing sheds

60.35 M

13000

SITE PLAN

PROPOSED SHED AT TOP KYABRAM-COOMA ROAD  
KYABRAM SOUTH

Endorsed by Patricia Ann Garraway on 28/07/2014 for planning permit 2014-8, Greater Shepparton City Council, page 1 of 1

Planning Permit 2014-8, issued on 20/06/2014, expires on 20/06/2016 by Andrew Charles Dainton (Greater Shepparton City Council). SPEAR Ref: S046311M

**PLANNING PERMIT**

**PERMIT NO:** 2014-8

**PLANNING SCHEME:** GREATER SHEPPARTON PLANNING SCHEME

**RESPONSIBLE AUTHORITY:** GREATER SHEPPARTON CITY COUNCIL

**ADDRESS OF THE LAND:** 700 Kyabram-Cooma Road KYABRAM SOUTH VIC 3620

**THE PERMIT ALLOWS:** Buildings and works for the construction of a domestic storage shed in the Farming Zone 1 within 5 metres of a side boundary and within 20 metres of a road in accordance with the endorsed Plans forming part of this Permit.

**THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:**

1. **Amended Site Plan Required**  
Before the development starts, an amended site plan showing the proposed shed being setback five meters for the eastern boundary 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 plan must be drawn to scale with dimensions and a minimum of two copies must be provided. The plan must be generally in accordance with the plans submitted with the application but modified as required above.
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. **Storage of Goods for Agricultural Purposes and Domestic Storage**  
The building must only be used the garaging of vehicles, and the storage of items associated with a dwelling on the land.  
  
The building must not be used for accommodation.
4. **Rural Drainage**  
Prior to the use of the proposed shed, all stormwater and surface water drainage from the land, buildings and works must be connected to the legal point of discharge or retained on site to the satisfaction of the responsible authority.

This document is a copy only. The onus is on the reader to confirm status with the responsible authority.

PLANNING AND ENVIRONMENT REGULATIONS - FORM 4.4

Planning Permit 2014-8, issued on 20/06/2014, expires on 20/06/2016 by Andrew Charles Dainton (Greater Shepparton City Council). SPEAR Ref: S046311M

**5. Health Requirements**

Prior to the use of the proposed shed a first flush system must be installed on any water tank associated with shed. Water captured by the shed must not be used for human consumption.

**6. 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.

**7. Roads Access**

No additional access to the shed is permitted from Kyabram –Cooma Road.

**8. Section 173 Agreement**

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

- a) *That the owner acknowledges and accepts the possibility of nuisance from adjoining agricultural operations including animal husbandry, spray drift, agricultural machinery use, pumps, trucks and associated hours of operation.*

The said agreement is to be prepared by the Council. The 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. All fees associated with the documentation must be fully paid prior to execution and registration of the document by Council.

**9. Time for Starting and Completion**

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

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

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PLANNING AND ENVIRONMENT REGULATIONS - FORM 4.4

Planning Permit 2014-8, issued on 20/06/2014, expires on 20/06/2016 by Andrew Charles Dainton (Greater Shepparton City Council). SPEAR Ref: S046311M

**NOTATIONS**

**Building Approval Required**

Prior to the commencement of works approved by this permit, building approvals must be obtained.

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*PLANNING AND ENVIRONMENT REGULATIONS - FORM 4.4*





## 10. SUSTAINABLE DEVELOPMENT DIRECTORATE

### 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.

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

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

**Council Officers involved in producing this report**  
**Author: Graduate Statutory Planner**  
**Proof reader(s): Manager Planning**  
**Approved by: Director Sustainable Development**

#### **Executive Summary**

The application seeks approval to construct a domestic shed at 700 Kyabram – Cooma Road, Kyabram South within the following setbacks stated in the Farming Zone 1:

- five metres (m) from a boundary; and
- 20m from road.

The proposed shed is located five metres from the Kyabram-Cooma Road and one metre from the southern boundary.

- The shed has a dimension of 5m x 13m with an area of 65sqm.

The proposed shed is located on a lot of 3046sqm and is adjacent to an existing dwelling.

The subject land is also affect by the Land Subject to Inundation Overlay, however a planning permit is not required for a shed associated with an existing dwelling in this overlay.

The application was advertised to the neighbouring property owner who objected to the application. Grounds of objection included; no agricultural use associated with proposed shed, agricultural land being impeded upon, contamination of water collected on shed roof, maintenance of land between shed and boundary, flood water, runoff, overcrowding of built form on the lot, septic tank, use of shed as a dwelling and traffic concerns. No mediation was held as it was considered that the parties were unlikely to agree on an outcome.

Based on the Planning Department's assessment of the application it is concluded the application achieves acceptable planning outcomes for the following reasons:

- It is not unreasonable or unexpected to have or see a shed in a rural environment, particularly given it is associated with an existing dwelling;
- The proposed shed will not unreasonably impact on the existing or future agricultural uses of nearby land; and
- The site is significantly constrained by the size of the allotment and existing built form, making it difficult for the Farming Zone setbacks to be achieved. The site constraints also make the land incapable of supporting a sustainable agricultural use.



## 10. SUSTAINABLE DEVELOPMENT DIRECTORATE

### 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. (continued)

#### RECOMMENDATION

That in relation to Planning Application 2014-8, on the basis of the information before the Council and having considered all relevant matters as required by the *Planning and Environment Act 1987*, the Council resolves to issue a planning permit application 2014-8 subject to the following conditions:

1. **Amended Site Plan Required**

Before the development starts, an amended site plan showing the proposed shed being setback five meters for the eastern boundary 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 plan must be drawn to scale with dimensions and a minimum of two copies must be provided. The plan must be generally in accordance with the plans submitted with the application but modified as required above.

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. **Storage of Goods for Agricultural Purposes and Domestic Storage**

The building must only be used the garaging of vehicles, and the storage of items associated with a dwelling on the land.

The building must not be used for accommodation.

4. **Rural Drainage**

Prior to the use of the proposed shed, all stormwater and surface water drainage from the land, buildings and works must be connected to the legal point of discharge or retained on site to the satisfaction of the responsible authority.

5. **Health Requirements**

Prior to the use of the proposed shed a first flush system must be installed on any water tank associated with shed.

6. **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;





## 10. SUSTAINABLE DEVELOPMENT DIRECTORATE

### 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. (continued)

- 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.

#### 7. Time for Starting and Completion

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

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

#### NOTATIONS

##### Building Approval Required

Prior to the commencement of works approved by this permit, building approval must be obtained.

#### **Moved by Cr Ryan Seconded by Cr Oroszvary**

That in relation to Planning Application 2014-8, on the basis of the information before the Council and having considered all relevant matters as required by the *Planning and Environment Act 1987*, the Council resolves to issue a planning permit application 2014-8 subject to the following conditions:

#### **1. Amended Site Plan Required**

Before the development starts, an amended site plan showing the proposed shed being setback five meters for the eastern boundary 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 plan must be drawn to scale with dimensions and a minimum of two copies must be provided. The plan must be generally in accordance with the plans submitted with the application but modified as required above.

#### **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. Storage of Goods for Agricultural Purposes and Domestic Storage**

The building must only be used for the garaging of vehicles, and the storage of items associated with a dwelling on the land.

The building must not be used for accommodation.



## 10. SUSTAINABLE DEVELOPMENT DIRECTORATE

### 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. (continued)

#### **4. Rural Drainage**

Prior to the use of the proposed shed, all stormwater and surface water drainage from the land, buildings and works must be connected to the legal point of discharge or retained on site to the satisfaction of the responsible authority.

#### **5. Health Requirements**

Prior to the use of the proposed shed a first flush system must be installed on any water tank associated with shed. Water captured by the shed must not be used for human consumption.

#### **6. 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.

#### **7. Road Access**

No additional access to the shed is permitted from Kyabram –Cooma Road.

#### **8 Section 173 Agreement**

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

- a) *That the owner acknowledges and accepts the possibility of nuisance from adjoining agricultural operations including animal husbandry, spray drift, agricultural machinery use, pumps, trucks and associated hours of operation.*

The said agreement is to be prepared by the Council. The 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. All fees associated with the documentation must be fully paid prior to execution and registration of the document by Council.

#### **9 Time for Starting and Completion**

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

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



## 10. SUSTAINABLE DEVELOPMENT DIRECTORATE

### 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. (continued)

#### NOTATIONS

##### Building Approval Required

Prior to the commencement of works approved by this permit, building approvals must be obtained.

**CARRIED.**

#### **Property Details**

Land/Address	700 Kyabram – Cooma Road, Kyabram South
Zones and Overlays	Farming Zone 1 Land Subject to Inundation Overlay
Why is a permit required	35.07-4 Buildings and works in the Farming Zone 1 within 5 metres of a side boundary and 20 metres from a road.

The subject land is located on the south west corner of the intersection of Fenaughty and Kyabram –Cooma Roads, and contains a dwelling and associated outbuildings. The subject land is in a rural area and is surrounded by agricultural land to the south and west of the parcel boundary.

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## 10. SUSTAINABLE DEVELOPMENT DIRECTORATE

### 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. (continued)



#### Proposal in Detail

The application proposes to construct a domestic shed within the following setbacks stated in the Farming Zone 1:

- five metres from a side boundary; and
- 20 metres from road.

The proposed sheds dimensions are 13m x 5m and has an area of is 65sqm.

The application was advertised by mail to the abutting neighbour who objected to the proposal within the notification period.

#### Summary of Key Issues

The key issues for this application are summarised in the executive summary, with more detail provided in the key issues section in the attachment to this report.



## 10. SUSTAINABLE DEVELOPMENT DIRECTORATE

### 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. (continued)

#### **Background**

Planning officer informed the applicant a planning permit was required for the proposed shed constructed within the setbacks of the Farming Zone.

#### **Assessment under the Planning and Environment Act**

A full assessment is provided in the officers report (attached).

The determinative issues in this application are described as:

- The offsite impact on agricultural land; and
- The impact on amenity of the Farming Zone.

#### Farming Zone 1

The purpose of the Farming Zone is to encourage retention of agricultural land, and ensure non-agricultural uses including dwellings do not adversely affect the current and future use of land for agriculture.

Officers consider that the proposed shed will not negatively impact on the current and future use of the surrounding land for agricultural production. It is envisaged that the proposed shed will assist in providing a buffer between the uses and assist in protecting the amenity of the residence.

#### State and Local Planning Policy

Clause 11.05-3, 14.01-1 and 21.04 provide a framework to assist in the protection and promotion of agricultural land protection and provide mitigation between conflicting land uses.

Given the size of the land and lawfully established use of the land for a residence, it is considered that the land would not be capable for any viable agricultural practice. Therefore it is 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 that it is 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 one metre from the side boundary. A colour bond two 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.



## 10. SUSTAINABLE DEVELOPMENT DIRECTORATE

### 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. (continued)

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

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

Council Plan

Goal 2 – Enhancing the Environment (Natural)

The Strategy aims to ensure that development applications take into account the importance of agricultural land to the Greater Shepparton community and its economy.

The proposal is consistent with the Council Plan as it does not detrimentally impact on, or impede on viable agricultural land.

#### **Risk Management**

Risks	Likelihood	Consequence	Rating	Mitigation Action
Incorrect notification	A	5	low	The application has been properly advertised which allowed objections to be lodged with the Council. This objector will be informed of the Council's decision and made party to any future VCAT review.
Traffic	A	5	low	Comments from Council's Traffic Engineer inform that the setback of the shed is appropriately setback as to not impede on sightlines from the intersection of Fenaughty and Kyabram –Cooma Roads and will not result in unsafe traffic outcomes.

#### **Policy Considerations**

There are no conflicts with the Council's Planning Policies.



## 10. SUSTAINABLE DEVELOPMENT DIRECTORATE

### 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. (continued)

#### **Financial Implications**

In the event of an application for review by the Victorian Civil and Administrative Tribunal (VCAT), each respective party will be required to bear its own costs.

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

The responsible authority's decision may be subject to an application for review by VCAT.

#### **Cultural Heritage**

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.

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

The proposed shed is not expected to cause any detrimental environmental or sustainability impacts.

#### **Social Implications**

This application does not raise any significant social issues that influence the planning officer's view for the following reason:

- The objections to the application relate to various of issues which can be controlled through permit conditions.

#### **Economic Impacts**

There are no economic impacts associated with this application.

#### **Referrals/Public Notice**

The application was advertised to the neighbouring property who objected to the proposal. The key issues raised in the objection is summarised in the following table:



## 10. SUSTAINABLE DEVELOPMENT DIRECTORATE

### 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. (continued)

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 officers consider that it is not unexpected or unreasonable for a small rural residential lot to seek permission for a domestic shed.
Agricultural land being impeded upon by additional development.	The land is long lost to agriculture uses. The lawful development of a dwelling resulted in this loss and created a new use for the site. The proposed shed does not alter the established existing use. The location of the shed may assist in improving the amenity of the area 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 requiring the installation of a first flush system on any water tank connected to the shed will ensure drinking water is not contaminated by any spray drift.
One metre setback is too small for the applicant to be able to maintain land between the shed and boundary.	It is not uncommon for sheds and other out buildings to be setback about one metre from property boundaries. Given there is an existing solid boundary fence, it is considered that the one metre setback will 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 increase fire risk. Despite this, the Building Code of Australia includes design measures to manage the risk of fire. The proposed shed will be required to comply with these provisions.
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.





## 10. SUSTAINABLE DEVELOPMENT DIRECTORATE

### 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. (continued)

Grounds of objection	Officers Response
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"> <li>• Obscure view of traffic in both directions</li> <li>• School pick up and drop off at the intersection</li> <li>• Glare from the proposed shed</li> <li>• Slow moving vehicles entering and exiting Fenaughty Road.</li> <li>• Construction of shed blocking sight lines</li> </ul>	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.

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

#### **Strategic Links**

##### a) Greater Shepparton 2030 Strategy

Economic Development – Agriculture and Rural Land identifies conflicts between residential development in rural areas. The strategy discourages housing on old and inappropriate lots and where amenity may be negatively impacted by farming and related activities, or where housing may inhibit rural activities.

As the dwelling is existing, it is considered that the proposed shed will assist in buffering conflicting land uses.



## 10. SUSTAINABLE DEVELOPMENT DIRECTORATE

### 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. (continued)

#### **Options for Consideration**

The decision on planning permit 2014-8 for the buildings and works for a shed within a 20m setback from a road and 5m setback from a boundary of which the options are:

- a) Approve a Notice of Decision to grant a permit subject to conditions (attached); or
- b) Grant a Notice of Refusal with appropriate grounds of refusal.

#### **Conclusion**

The proposed application is for the construction of a domestic shed within the following setback in the Farming Zone:

- Five metres from a boundary; and
- 20 metres from a road.

The application received one objection from the neighbouring property. The application has been reviewed by the Planning Department against the relevant policies and it is considered that proposed shed achieves an acceptable planning outcome when assessed against the relevant policies and objectives of the Greater Shepparton Planning Scheme. It is therefore recommended that a Notice of Decision to grant a planning permit is issued subject to conditions.

#### **Attachments**

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