

CONFIRMED MINUTES

**FOR THE
GREATER SHEPPARTON CITY COUNCIL**

DEVELOPMENT HEARINGS PANEL

Meeting No. 12/2013

**HELD ON
THURSDAY 12 SEPTEMBER 2013**

AT 9.59AM

**AT THE HUNTER ROOM
90 WELSFORD STREET**

**CHAIR
Johann Rajaratnam**

1. ACKNOWLEDGEMENT

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

2. COMMITTEE MEMBERS PRESENT

Johann Rajaratnam, Braydon Aitken, Ian Boyle, Jonathan Griffin and Councillor Michael Polan.

3. OFFICERS PRESENT

Tim Watson – Planner

Warwick Smith – Consultant Planner

4. APOLOGIES

Colin Kalms and Councillor Les Oroszvary.

5. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

- The unconfirmed minutes of the meeting held on 11 July 2013 could not be confirmed.
- Moved by Ian Boyle and seconded by Braydon Aitken that the minutes of the meeting held on 25 July 2013 be adopted.

Carried

6. DECLARATIONS OF CONFLICTS OF INTEREST

None

7. MATTERS FOR CONSIDERATION

Two items listed for consideration.

8. LATE REPORTS

None

9. NEXT MEETING

26 September 2013

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Application Details:

Responsible Officer:	Warwick Smith for Andrew Dainton
Application Number:	2013-133
Applicants Name:	JDK Cold Storage
Date Application Received:	15 May 2013
Statutory Days:	105 days at 12 September 2013
Land/Address:	15 Callister Street SHEPPARTON VIC 3630
Zoning and Overlays:	Business 4 Zone
Why is a permit required (include Permit Triggers):	Clause 34.02-1 - Use of land for Freezing and cool storage in the Commercial 2 Zone (C2Z) within a distance of 150m from land zoned Residential 1 Zone (R1Z)
Are there any Restrictive Covenants on the title?	No

Proposal

Use of existing warehouse at 15 Callister Street, Shepparton for Freezing and Cool Storage. The title of 15 Callister Street is 1.43ha but is part of a larger property holding that contains a cluster of warehouses and cool stores.

The physical change to the site is that an existing warehouse building would be converted to by installing three cooling fan units inside the eastern wall of the building. The coolant to be used by the cooling units is already piped around the site from an existing compressor/condenser plant that supplies a number of cool stores around the site.

The use is classified in the Greater Shepparton Planning Scheme as 'Freezing and cool storage'. The application proposes that the warehouse will be used for a cool room.

The applicant has informed that truck vehicle trips to and from the coolroom will be about half the number previously attending the warehouse building.

A noise assessment undertaken by Marshall Day Acoustics has concluded that the noise level from the new internal cooling units are within allowable noise limits at night by a large margin.

Summary of Key Issues

- The limited nature of the permission required being only conversion of an existing warehouse building to cool storage by installing cooling units. That the Warehouse use has been occurring at the site for many years and is as-of-right in the C2Z (previously B4Z). Other sheds around the very large site are already used for cool stores.
- There are five objections lodged to the application from surrounding residents or residential property owners with concerns over noise, and hazard from fire and ammonia gas.
- The cooling units to be installed within the existing building have been assessed as having no detrimental effect by noise at the closest dwellings. In addition there is no affect on the dwellings in the closest residential zone, which are located further south on

the west side of Callister Street within 150m of the land, and which were the trigger for the change of use to Freezing and Cool Storage needing planning permission. No objections were received from owners or occupiers of those dwellings.

- A noise assessment has been undertaken by Marshall Day Acoustics with the conclusion that the noise level from the new internal cooling units would be 31 dB level compared to 53 dB allowable to a residence at night. (i.e. 22dB lower which is roughly one quarter of the allowable level and unlikely to be audible outside a dwelling compared to the ambient noise level).
- The movement of trucks throughout the site and Callister Street already occurs for the existing cool stores and warehouses and will not be affected by this proposal to convert a warehouse to cool storage except that the number of movements is likely to decrease.
- The coolant used in the cooling units is from an existing compressor/condenser plant on an adjacent site, which will not be altered, and the coolant is already piped throughout the complex to supply existing coolstores. Any level of hazard from fire or ammonia gas that might exist at the site will not change by this proposal.
- The site was zoned Business 4 Zone when the application was lodged, and with the Minister's planning scheme amendment VC100 on 15 July 2013 is now zoned Commercial 2 Zone. Business 4 Zone, along with Business 3 Zone were amalgamated into an amended Commercial 2 Zone. Comparing the previous and existing zone provisions shows no material difference in permission required or decision guidelines.

Moved by Braydon Aitken and Seconded by Ian Boyle to amend the Notice of Decision.

CARRIED

Moved by Braydon Aitken and Seconded by Ian Boyle

That Council having caused notice of Planning Application No. **2013-133** 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 Clause 34.02 of the Greater Shepparton Planning Scheme in respect of the land known and described as **15 Callister Street SHEPPARTON VIC 3630**, for the **Use of land for freezing and cool storage (shed 2)** in accordance with the Notice of Decision and the endorsed plans.

CARRIED

Subject Site & Locality

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

Date: 4 July 2013 Time: 1.00pm

The site has a total area of 1.43ha and currently contains:

- Large warehouse buildings of which are visible from Callister Street and many of which are already operating as cool storage.
- Loading canopies
- Vehicle access from Callister and Smythe Streets

The main site/locality characteristics are:

- The land is an interface area with warehouse and light industrial uses on the east side of Callister Street and a mix of residential and light industry on the west side of Callister.

The Photos below show the existing site:



Access to Callister Street



View of Callister Street looking north



View within existing cool store which is being used to store cheese





Land between boundary of shed and rear fence



Existing loading bay looking east

Permit/Site History

The history of the site includes:

- 2000-486 was granted on 2 November 2000 and allowed the use and development for an extended warehouse.
- During the period between 1983 and 1987 there were three permits issued for 5 cool stores within this large cluster of warehouses and coolstores.

Further Information

Was further information requested for this application? No.

Public Notification

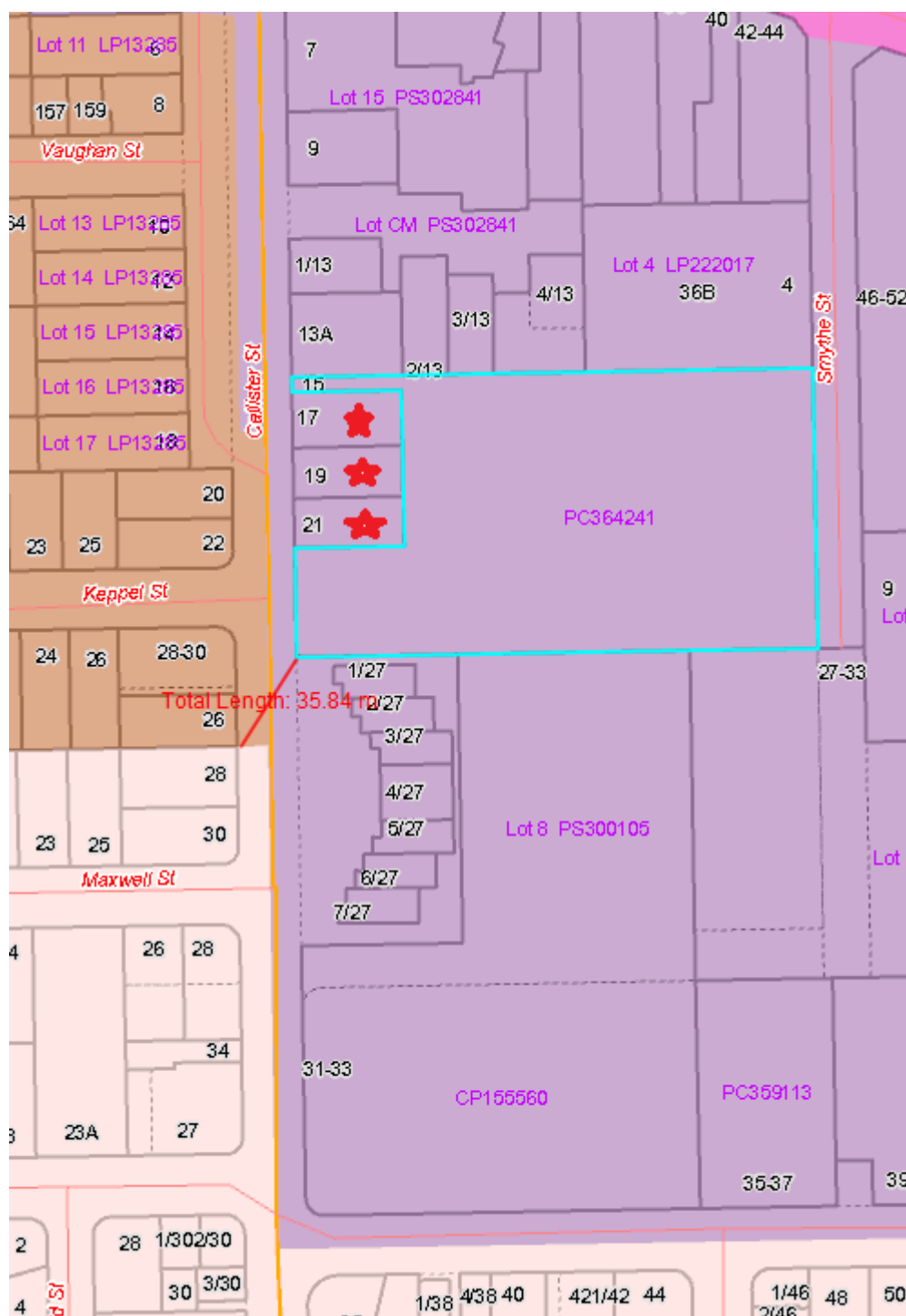
The application has been advertised pursuant to Section 52 of the *Planning and Environment Act 1987*, by:

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

The applicant provided a signed declaration stating the sign was displayed on the land.

Objections

The Council has received five objections to date. Three objections have come from the occupiers of three dwellings at 17, 19 and 21 Callister Street. Two objections have come from joint owners of 17 and 19 Callister Street. The location of the three dwellings is shown with red stars on the zoning map below, and the subject land containing the warehouse proposed as a coolstore is outlined in blue.



The key issues that were raised in the objections are.

- Freezer motor/condenser noise levels for 24 hours 7 days per week.
- Hazard from fire (toxic fumes), noting that a fire did occur in 1997 in Anspac building with resultant clean up and smell for some time afterwards.
- Hazard from ammonia gas leaks.
- Closest dwelling is 18m from Shed 2 which is tilt slab for half wall height and colorbond above to roof level.

- Effect on health and anxiety level of residents, some with asthma.
- Effect on quiet enjoyment of properties and on property values.
- Although residences are now in Commercial area they have continued to exist as residences

A site meeting was held on 4 July 2013 between the objectors, applicant and planning officer. During the site meeting the applicant allowed the objectors to view the existing cool store and explained the use. The objectors raised concern about noise generated from fork lifts and truck movements.

During the discussions it was established the trucks were entering the site from Callister Street rather than Smythe Street. The applicant agreed to inform the operators to enter from Symthe and exit to Callister as required by previous permits.

Mr Shaw (objector) stated the use was operating outside of the hours allowed by previous permits. The applicant informed that the hours of operation would be reviewed.

Whilst the meeting did not result in the removal of any objectors, the meeting ensured the objectors had a good understanding of the application.

Title Details

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

Consultation

Consultation was not undertaken.

Referrals

External Referrals/Notices Required by the Planning Scheme:

Referrals/Notice	Advice/Response/Conditions
Section 55 Referrals	Clause 66 of the scheme did not require referral of the application.
Section 52 Notices	The application was not notified to any authorities.

Internal Council Notices	Advice/Response/Conditions
	The application was not internally referred to any authorities.

Assessment

The zoning of the land

The land is within the C2Z. The abutting objector's dwellings and land to the north and south of the site are all located in the C2Z. Land on the west side of Callister Street opposite the site is zoned IN3Z, and further to the south is zoned R1Z.

A relevant purposes of the C2Z are:

To encourage commercial areas for offices, appropriate manufacturing and industries, bulky goods retailing, other retail uses, and associated business and commercial services.

To ensure that uses do not affect the safety and amenity of adjacent, more sensitive uses.

Under clause 75.15 freezing and cool storage is nested under the warehouse group, and within store subgroup.

A warehouse is a section 1 use in the C2Z subject to the following condition:

Must not be a purpose shown with a Note 1 or Note 2 in the table to Clause 52.10.

The land must be at least the following distances from land (not a road) which is a residential zone, Business 5 Zone, Capital City Zone or Docklands Zone, land used for a hospital or an education centre or land in a Public Acquisition Overlay to be acquired for a hospital or an education centre:

- *The threshold distance, for a purpose listed in the table to Clause 52.10.*
- *30 metres, for a purpose not listed in the table to Clause 52.10.*

The relevant trigger above is underlined for reference. Under 52.10 the threshold distance for freezing and cool storage is 150m. As the nearest R1Z is about 35m from the warehouse, the use is a section 2 use under the B4Z.

Clause 34.02-2

Use of land

A use must not detrimentally affect the amenity of the neighbourhood, including through the:

- Transport of materials, goods or commodities to or from the land.
- Appearance of any building, works or materials.
- Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.

Relevant Decision guidelines

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.*

Use

- *The effect that existing uses may have on the proposed use.*
- *The drainage of the land.*
- *The availability of and connection to services.*
- *The effect of traffic to be generated on roads.*

- *The interim use of those parts of the land not required for the proposed use.*
- *If an industry or warehouse, the effect that the use may have on nearby existing or proposed residential areas or other uses which are sensitive to industrial off-site effects, having regard to any comments or directions of the referral authorities.*

Relevant overlay provisions

The land is not affected by any overlays.

The State Planning Policy Framework (SPPF)

11.05-1 Regional settlement networks

Support sustainable development of the regional cities and centres of Ararat, Bairnsdale, Benalla, Colac, Echuca, Hamilton, Horsham, Mildura, Portland, Sale, Shepparton, Swan Hill, Wangaratta, Warrnambool and Wodonga.

13.04-1 Noise abatement

Objective

To assist the control of noise effects on sensitive land uses.

Strategy

Ensure that development is not prejudiced and community amenity is not reduced by noise emissions, using a range of building design, urban design and land use separation techniques as appropriate to the land use functions and character of the area.

Policy guidelines

Planning must consider as relevant:

- State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2.*
- State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1 (in metropolitan Melbourne).*
- Interim Guidelines for Control of Noise from Industry in Country Victoria (Environment Protection Authority, 1989).*
- A Guide to the Reduction of Traffic Noise (VicRoads 2003).*

17.01 Commercial

17.01-1 Business

Objective

To encourage development which meet the communities' needs for retail, entertainment, office and other commercial services and provides net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities.

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

21.06-3 Manufacturing And Freight

The manufacturing sector is also an important component of the local economy and is closely linked to the agricultural sector through many national and international food processing and packaging companies. The strategic location of Shepparton and Mooroopna on the junction of the Midland Valley and Goulburn Valley Highways makes it an important freight collection and distribution centre, which contributes to the competitiveness of the agricultural and manufacturing base. Tatura is also an important manufacturing centre with three significant local employers. Council has adopted the *Strategic Review of Tatura Industrial Land (2011)* to provide a long term framework for land use planning in the township and to provide an economic development framework to guide investment and promote prosperity in the town.

Objectives - Manufacturing and Freight

- To sustain a growing and diverse industrial base.*
- To protect the existing industrial base in the urban areas of Shepparton, Mooroopna and Tatura.*

Strategies - Manufacturing and freight

Relevant strategies include:

- Consolidate existing major industrial zones within the new urban growth boundaries.*
- Identify industrial areas in logical areas adjacent to major transport routes, and separated from areas of environmental significance or high residential amenity.*
- Support the expansion of the industrial base in appropriate locations, such as land to the north of Wanganui Road, bounded by the proposed Goulburn Valley Highway Bypass; and land north of Gemini Crescent as shown on the Industrial Framework Plan; and land in Lemnos.*
- Promote and develop the Goulburn Valley Freight Logistic Centre (inland port).*
- Protect existing industries and facilitate their expansion.*
- Support new industries in established industrial zones, with access to infrastructure and constructed roads.*
- Support food related industries and value adding opportunities.*
- Encourage new value adding industries to locate in existing serviced industrial areas.*
- Protect the supply of future industrial land from encroachment of non industrial uses.*

Relevant Particular Provisions

52.10 Uses with adverse amenity potential

Purpose

To define those types of industries and warehouses which if not appropriately designed and located may cause offence or unacceptable risk to the neighbourhood.

Freezing and cool storage has a threshold distance of 150m with no notes. The nearest R1Z land is about 35m from the warehouse. The relevance of this clause is a trigger distance within which a permit is required and relevant adverse amenity potential should be carefully assessed on an individual basis.

Officer's responses to application

Section 31.02 is relevant to decisions about section 2 uses.

Because a use is in Section 2 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 State Planning Policy Framework, the Local Planning Policy Framework, the purpose and decision guidelines of the zone and any of the other decision guidelines in Clause 65.

The objectors' three dwellings abut the western boundary of the site and on the east side of Callister Street and are within the same C2Z as the subject site. There are also numerous dwellings fronting Callister Street which on the west side of Callister and are within the IN3Z. These dwellings on Callister Street are accessed via a service road and in turn setback from the main carriageways of Callister Street.

A plan showing nearby dwellings with a dot in residential and non-residential zones is below:

The most southern six dwelling shown with dots on the plan are in a residential zone.



The application proposes to use the land for freezing and cool storage. The proposal is to use the existing warehouse as a cool room for cheese. There will be associated truck movements although the applicant has submitted that the number of movements will be less than currently exists in association with the warehouse used for dry storage. The planning officer informed the applicant that offsite amenity impacts of the proposed use must be considered and measures implemented to reduce the uses impact.

In response to this applicant informed that the truck movements associated with the new use would reduce to about 15 per day as opposed to the 50 movements when operated as a transport terminal. The applicant also volunteered the following operating hours being 7am to 8pm. These operating hours will not allow loading of vehicles outside of these hours, which should ensure residents are not disturbed during sleeping hours by forklifts and heavy vehicles at this site. Such hours would be consistent to the operating hours applied to the last permit issued for conversion of shed 1 to a cool store. This permit 2013-17 was issued on 29 April 2013. There were no objections to that application. The acoustic report from Marshall Day Acoustics has been supplied as a result of being able to measure noise of

cooling units operating inside shed 1 with the same units being proposed for shed 2 (this application).

The Marshall Day report establishes the compliance of the cooling units installed in Shed 1. The report also considers the noise effect of this proposed application to shed 2. The report concludes as follows:

- Under noise regulations the night time noise limit is determined to be 53dB L_{eff} . (referred to as 53dB)
- There is no refrigeration equipment noise sources mounted externally to the cool store building (shed) envelope.
- Predicted noise levels of the cool store at the nearest affected property are estimated to be 31dB, which complies by a margin of 22dB. (every 10dB is effectively a doubling of noise).
- The noise consultant predicts that with the new cool store using the same cooling units mounted inside the east wall of the shed (3 units for shed 2 compared to 4 units for shed 1) the cumulative effect will still comply.

It is considered that a noise performance condition requiring a noise test within 3 months of commencing operation should be placed on any permit for application 2013-133 as was placed on permit 2013-17. Although unlikely, in the event that there is noise above allowable night time limits then noise attenuation can be required to ensure compliance.

It is considered that the land has an interface between commercial and residential land use, which results in neither the residential or commercial land having pristine residential / commercial rights. Therefore a balance needs to be found to allow both uses to reasonably operate.

It must also be considered that the extent of the permission sought is only to change warehouse storage to cool storage. The relevant matters to consider are what changes are likely to affect amenity, not to reconsider whether warehouse storage and associated transport movements should be permitted. Such use already exists and is as-of-right in the zone.

In relation to the objections received it is considered that the concerns about noise from cooling units have been adequately addressed by their location entirely within the east wall of the building, the noise measurements and predictions of the acoustic consultant and can be further addressed in proposed permit conditions.

Concerns expressed about fire or other hazards from the warehouse buildings themselves and the goods stored may be real concerns but are not changed by installing cooling units inside the warehouse. There are already quite a number of this complex of buildings that have been converted to cool storage over the last 30 years since 1983.

It is considered the following conditions of permit will achieve an acceptable amenity outcome:

- Limited hours of operation for deliveries and associated tasks to between 7am to 8pm
- Noise testing within three months of the operation of the fan assemblies to ensure compliance is achieved with the relevant noise guideline
- On going ability for the Council to require the applicant to submit noise testing should noise complaints be filed with the Council from nearby residents

(refer to NOD for full text of conditions)

It is considered the proposed use is acceptable in the B4Z for the following reasons:

- The proposed change of use re-uses a large vacant warehouse complex which has established and good vehicle access to Midland Highway and therefore connections to interstate highways.
- Vehicles access the site from Smythe Street and exit to Callister Street which ensures vehicles enter and exit the site in a forwards direction.
- Subject to the inclusion of appropriate conditions, the use does not unreasonable impact on existing residential uses in the C2Z or on the dwellings in the residential zone to the south of the land which were the trigger for needing permission for this change of use.
- The warehouse is in an area of established commercial uses of which generate commercial traffic on Callister Street, therefore the character of vehicle traffic on Callister Street is not changed by this use
- The application has been assessed in relation to the decision guidelines of clause 34.02, clause 65 and Section 60 of the Act, and is considered to achieve an acceptable outcome.

The decision guidelines of Clause 65

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 have been considered.
- The proposed use is supported having considered the objectives of planning in Victoria, particularly balancing fair, orderly, economic and sustainable use of land with securing a pleasant, efficient and safe living environment.
- The objections to the application have been considered with an assessment of likely noise, and adequate permit conditions to protect amenity.
- The proposed use accords with the purpose of the C2Z and other relevant provisions within the State Planning Policy Framework, and the Municipal Strategic Statement and Particular Provisions as discussed within this report.
- The proposed application is in accordance with orderly planning of the area, with desirable re-use of buildings in this important cluster of warehouse and cool stores.
- The proposed development will not have an unreasonable effect on the amenity of the area and further protection is provided by the inclusion of appropriate conditions.

- The application to install cooling units does not change the likelihood of fire hazard.

Relevant incorporated or reference documents

There are no relevant incorporated or reference documents to this proposal.

Other relevant adopted State policies or strategies policies

There is no relevant adopted state or strategic policies to this proposal.

Relevant Planning Scheme amendments

Am C100 changed the zone from B4Z to C2Z however there was no substantial effect to the consideration of this proposal.

Are there any significant social & economic effects?

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

Discuss any other relevant Acts that relate to the application?

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

The land is not within an area of cultural heritage sensitivity therefore the application does not need to be considered under the *Aboriginal Heritage Act*.

Conclusion

The conversion of existing warehouse storage to cool storage by installing three internal cooling units which has triggered the need for planning permission is a reasonable outcome and should be supported considering

- State and local planning policy supports the commercial re-use of the substantial investment in this cluster of warehouse/coolstore buildings
- Policy concerns about amenity to nearby sensitive land uses have been adequately addressed with favourable noise assessment of the cooling units and finding that the objectors concerns should not be realised in the proposed operation
- Other objectors' concerns over hazards associated with commercial storage are not changed by the proposed cool units
- Performance conditions can be placed on the permission to protect amenity in relation to hours of operation and noise.
- The proposal is in accordance with the zone purpose and decision guidelines, State and Local Planning Policy and the decision guidelines of Clause 65.

Draft Notice Of Decision

APPLICATION NO: 2013-133

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: 15 CALLISTER STREET SHEPPARTON
VIC 3630

WHAT THE PERMIT WILL ALLOW: USE OF LAND FOR FREEZING AND COOL STORAGE (SHED 2) IN THE COMMERCIAL 2 ZONE

WHAT WILL THE CONDITIONS OF THE PERMIT BE?

1. Layout Not Altered

The use including the position of the cooling units on the inside eastern wall of the building as shown on the endorsed plans must not be altered without the written consent of the responsible authority.

2. Operational Plan

Prior to the commencement of use an operational plan must be submitted for approval, that outlines the vehicle access arrangements to the site for the use, and loading and unloading arrangements, including any proposed works to reduce the noise impact of the operation.

3. Noise Testing

Within three months of the use commencing, an acoustic report must be submitted to the responsible authority giving details of noise measurements to achieve compliance with the NIRV or later replacement policies in respect of the three adjacent dwellings in the Commercial 2 Zone and the closest dwelling in a residential zone, and if necessary, to recommend additional measures (physical construction and/or operation modifications) required to ensure compliance. Such measures must then be implemented as soon as practical to the satisfaction of the responsible authority.

4. Noise Control

Noise levels emanating from the premises must not exceed those required to be met under State Environment Protection Policy Noise from Industry in Regional Victoria

(NIRV).

In the event of complaints from a nearby property of disturbance from noise caused by the cooling units allowed by this permit, then within one month of a request by the responsible authority or such reasonable further time that may be granted by the responsible authority in writing in the event that one month is impractical, an acoustic report must be submitted to the responsible authority giving details of noise measurements to achieve compliance with the NIRV or later replacement policies, and if necessary, to recommend additional measures (physical construction and/or operation modifications) required to ensure compliance.

Such recommended measures that are required by the responsible authority to be undertaken by the permit holder must then be implemented as soon as practical to the satisfaction of the responsible authority.

Security Alarms

Before the building is occupied, any security alarm installed on the premises must be fitted with a cut off device limiting any sounding of the alarm to a maximum duration of 10 minutes, with no repeat sounding until manually reset and or silently wired to a security firm or the Victoria Police.

5. Hours of Operation

The loading and unloading of vehicles, use of fork lifts, movement of product within the complex, general maintenance of vehicles and equipment and other activities associated with the use of the permitted Freezing and cooling storage building may only operate between the hours of 7.00am to 8.00pm to the satisfaction of the responsible authority.

The above operation must be in accordance with the approved operational plan forming part of this permit.

6. General Amenity

The use of the land must not adversely affect the amenity of the area, by way of:

- a) processes carried on the land;
- b) the transportation of materials, goods or commodities to or from the land;
- c) the appearance of any buildings, works or materials;
- d) the emission of noise, artificial light, vibration, smell, fumes, smoke, vapor, steam, soot, ash, dust, waste water, waste products, grit, or oil;
- e) the presence of vermin,
- f) hours of operation

to the satisfaction of the responsible authority.

7. Control of Lightspill

Before the use commences, external lighting must be designed, baffled and located so as to prevent any unreasonable adverse effect on adjoining land to the satisfaction of

the responsible authority.

8. Time for Starting

This permit will expire if the use is not started within ***two (2) years*** of the date of this permit.

Application Details:

Responsible Officer:	Tim Watson
Application Number:	2013-146
Applicants Name:	R Russo and P Russo
Date Application Received:	30 May 2013
Statutory Days:	
Land/Address:	6305 Midland Highway TATURA VIC 3616
Zoning and Overlays:	Farming Zone, abuts a Road Zone (category 1) and no overlays
Why is a permit required (include Permit Triggers):	35.07-1 – use of land for a dwelling in the Farming Zone. 35.07-4 – buildings and works associated with a section 2 use and within certain setbacks identified within the clause.
Are there any Restrictive Covenants on the title?	

Proposal

The application proposes the use and development of the land for a dwelling in the Farming Zone.

Summary of Key Issues

- The application proposes the use and development of the land for a dwelling in the Farming Zone on an allotment 1.883 hectare in area.
- The application was advertised to abutting and adjacent neighbours with one objection received from the notification period.
- The application was referred internally to the Council's Health Department who do not object to the issue of a permit
- The new Farming Zone and provisions under Amendment C121 were introduced during the assessment of this application.
- The application relies the existing character and context of the locality for support, rather than an agricultural emphasis.

Moved by Braydon Aitken and Seconded by Jonathan Griffin to amend the Notice of Decision.

CARRIED

Moved by Braydon Aitken and Seconded by Jonathan Griffin

That Council having caused notice of Planning Application No. **2013-146** to be given under Section 52 of the *Planning and Environment Act 1987* and having considered all the matters required under Section 60 of the *Planning and Environment Act 1987* and having considered the objections to the application, decides to Grant a Notice of Decision to Grant a Permit under the provisions of **35.07-1 and 35.07-4** of the Greater Shepparton Planning Scheme in respect of the land known and described as **6305 Midland Highway TATURA VIC 3616**, for the **use and development of the land for a dwelling in the Farming Zone** in accordance with the Notice of Decision and the endorsed plans.

CARRIED

Subject Site & Locality

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

Date: **6/6/13**

The site has a total area of **1.883 hectares** and currently contains:

- An existing dwelling which has been damaged by fire and vandals.
- The dwelling is not currently lived in and the applicant has advised that it was last used for a dwelling in September 2011. It is not considered that the land contains existing use rights with not enough evidence provided by the applicant and the dwelling being partially burnt.
- The existing dwelling is located on the southern boundary of the allotment and surrounded by an existing stand of vegetation.
- The remainder of the land is vacant, however maintained to a reasonable standard, with observations made that the soil had been turned recently while on site.

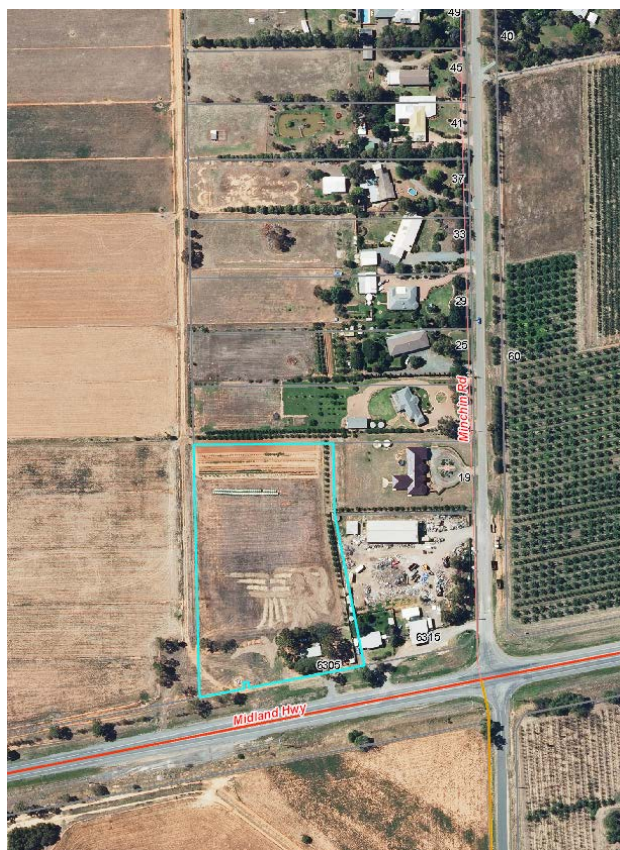
The main site/locality characteristics are:

- The land abutting western boundary form part of a larger dairy farming business from which the subject land was excised. The dairy and associated agricultural sheds are located approximately 1.16 km to the north of the proposed dwelling site.
- The land to the north comprises 15 x .8 hectare allotments all used for rural living purposes, with a rural living character observed from Minchin road of which they all abut.
- The land adjacent to the south is used for agricultural activities, the land having been levelled for pasture propagation.
- The land abutting the eastern boundary is in two allotments, the northern one being used for a dwelling and approximately .4 of a hectare in size.
- The southern one is currently used by a scrap metal yard, which has been requested to relocate in accordance with a Council resolution, with no permit in place to allow for the use to continue to operate. It is possibly under the new Farming Zone for an application

to be made to use this land for Industry, with impacts of the surrounding uses to be assessed at the time under the application process.

The Photos below show the existing site:





Permit/Site History

The history of the site includes:

- Planning permit 2007-127 was issued for a re-subdivision of three allotments into two. A small dwelling allotment was created (6305 Midland Highway) and the balance was created for agriculture with an area of 61.83 hectares. The application when assessed was considered to achieve an acceptable planning outcome, through the consolidation of rural land holdings, even though a small dwelling allotment was created.

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.
- Placing a sign on site.

Objections

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

- Should a permit grant for the proposed dwelling there is likely to be complaints raised from the occupant of the proposed dwelling regarding the objectors rental property

abutting the eastern boundary used for a scrap metal business. Complaints would result from the noise dust and traffic created by this business.

Title Details

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

- The agreement on title was registered as part of a condition required by planning permit 2007-127 for the re-subdivision of the land. The agreement contains two conditions which are as follows:
 - Following the subdivision allowed by the permit, neither lot may be further subdivided so as to increase the number of lots comprising the land from the two allowed by the permit; and
 - The occupier of Lot 1 on the Plan may be subjected to nuisance from agricultural activities on adjoining or nearby land, including animal husbandry, spray drift, and the use of agricultural machinery such as pumps and trucks and the associated hours of operation of such equipment.

Should a permit grant neither of these conditions would be breached by the use and development of the land for a dwelling. No subdivision is proposed as part of this application. Should the dwelling be approved it is likely a similar condition would have been included on the permit requiring that the applicant enter in a section 173 agreement requiring that occupants acknowledge offsite agricultural impacts, should the agreement not have been in place

Consultation

Consultation was undertaken. Relevant aspects of consultation, included:

- Discussion were conducted with both the objector and applicant for this application:

Applicant

- An site inspection with the applicant was conduct in which Council officers were advised of the proposed location of the dwelling and were shown the condition of the existing dwelling which was last lived in on a permanent basis on September 2011 as advised by the applicant. The existing dwelling however had been used by squatters since that date.

Objector

- The meeting was held with the objector in which their objection was provided to Council. The objector was advised of the process and that should the application proceed to the Development Hearings Panel and they would be notified in the mail.
- It was noted to the objector that the existing 173 agreement would be required to be amended should a permit grant, which required that the inhabitants acknowledge not just agricultural impacts but also any impacts from permissible uses under the planning scheme.

Referrals

External Referrals/Notices Required by the Planning Scheme:

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

Internal Council Notices	Advice/Response/Conditions
Health Department	The application for a planning permit was referred internally to the Council's Health Department, who do not object to the issue of a planning permit subject to the inclusion of a condition requiring that the applicant lodge an application to install a septic tank system with Council prior to works on the dwelling commencing.

Assessment

The zoning of the land

Clause 35.07 (Farming Zone) requires a permit for use and development of a dwelling on a lot of less than 40 hectares, and for Buildings and works associated with a section 2 use.

Farming Zone – Clause 35.07

The purpose of the Farming Zone is to:

- Provide for the use of land for agriculture;
- Encourage the retention of productive agricultural land;
- Ensure that non-agricultural uses, 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
- Encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

Farming Zone Decision Guidelines

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

General issues

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

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

Response

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

It is considered that the subject land has the capability to dispose effluent onsite given the size of the property.

The surrounding land uses consist of a mixture of rural lifestyle allotments, dairy farm and a scrap metal recycling yard. The recycling yard is currently looking to relocate, with no current planning permissions in place to allow for the use to operate. The proposed use is considered to be compatible with the lifestyle allotments, however could create conflict between both the agricultural and industrial uses. Appropriate setbacks from boundaries and buffers provided through vegetation may help to resolve this matter and an amended section 173 agreement which acknowledges offsite impacts from all permissible uses.

Agricultural issues

- Whether the use or development will support and enhance agricultural production.
- Whether the use or development will permanently remove land from agricultural production.
- The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.
- The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure.
- Any integrated land management plan prepared for the site.

Response

The applicant has not provided any justification as to how a dwelling would support or enhance the agricultural activities on the land, with the dwelling to be used for rural living purposes. The existing dwelling will not remove any land from existing agricultural production. The proposed use has the potential to impact on the abutting agricultural use, however with the dairy located to the north and the abutting paddock used for grazing, it is envisaged that the majority of the detrimental impacts of the dairy will be located away from the proposed dwelling.

Dwelling issues

- Whether the dwelling will result in the loss or fragmentation of productive agricultural land.
- Whether the dwelling will be adversely affected by agricultural activities on adjacent and nearby land due to dust, noise, odour, use of chemicals and farm machinery, traffic and hours of operation.
- Whether the dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural uses.

- The potential for the proposal to lead to a concentration or proliferation of dwellings in the area and the impact of this on the use of the land for agriculture.

Response

It is not envisaged that the dwelling will result in the loss or fragmentation of productive agricultural land with the site previously subdivided and used for a rural lifestyle allotment. The proposed dwelling has the potential to be impacted by abutting agricultural industries on the land abutting the western boundary. The existing 173 agreement on title and the use of buffer would assist any occupant in dwelling in being aware of the impacts and would reduce the effects of these.

It is not envisaged that the dwelling would limit the operation or expansion of the adjoining agricultural activities. The abutting agricultural activity (dairy) has most of the infrastructure and hence the most intensive activities located to the north on Minchin Road, with the abutting paddock used for grazing. It is not envisaged that dairy would seek to expand onto the subject allotment given the size and that it was only recently subdivided from the agricultural land. The subdivision of which resulted in a reduction in the number of allotments through the consolidation of rural holdings supported by the policy with the negative being the creation of the subject dwelling allotment.

The significant proliferation of dwellings and the low density residential situation that this has created to the north of the land has provided justification for the proposal. The land on which the dwelling is proposed is the last in the sequence on which a dwelling would be reasonably considered in the Farming Zone on a small allotment within this locality.

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 development will require traffic management measures.

Response

The dwelling will need to be located to prevent occupants being adversely impacted by the Midland Highway, the abutting farming uses and the existing scrap metal yard which is currently being managed by the Council's Planning Department through an enforcement file as a use without planning permission. The placement of the dwelling will not be impacted loss of agricultural land with the use of the land after the subdivision being used for rural living purposes.

Relevant overlay provisions

The subject land is not affected by any overlays.

The State Planning Policy Framework (SPPF)

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

The objective for agriculture in this Clause is:

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

It is State policy:

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

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

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

Response

The proposed dwelling will not remove any productive land from agricultural production, with the land currently not in agricultural production and unlikely to be. The dwelling has the potential to adversely impact the abutting agricultural, however as identified this can be remedied with the use of buffers and setbacks.

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

Clause 21.06-3 Dwellings in Rural Areas

While it is acknowledged that a dwelling will often be needed to properly farm land, these must be limited to those that genuinely relate to agricultural production. The number of dwellings that a farm can economically sustain relates to its rural land capability, the labour needs of the farming practice, the intensity of the farm activity and the volume of rural output. Development of houses at a density greater than is required for the rural use of land can give rise to conflicts with legitimate farming practices. Isolated dwellings in the

rural areas have the potential to disrupt agricultural activities and should not impinge on the appropriate use of farming land.

The RRLUS identified new categories of Farming Zone and has included objectives and policies for each with respect to rural dwellings with the following relevant to this application.

Objectives - Dwellings in rural areas

- To discourage new dwellings unless it can be demonstrated that it is required for the agricultural use of the land.
- To ensure that new dwellings support rural activities and production and are not to meet lifestyle objectives which may conflict with the rural use of the land.
- To avoid potential amenity impacts between rural activities and dwellings in rural areas.

Strategies - Dwellings in rural areas

- Discourage the establishment of dwellings not associated with or required for the agricultural use of the land.
- Discourage dwellings which are proposed to meet personal or financial circumstances or to create dwellings for 'rural lifestyle' purposes.
- Discourage the clustering of new dwellings unless they do not limit the productive use and development of surrounding land.

Policy Guidelines - Dwellings in rural areas

When considering an application for a dwelling in the Farming Zone 1 (FZ1) and Farming Zone 2 (FZ2), Council will be guided by the following provisions:

- the dwelling is required for the operation of the rural use of the land;
- the agricultural use must have been established on the land prior to the construction of a dwelling (or an Integrated Land Management Plan under Clause 35.07-6 must be in place);
- the dwelling lot must be at least 2ha in area;
- the dwelling lot must have been created after 1st January 1960;
- the construction of new dwellings is discouraged on any land that is not suitable for the on-site disposal of septic tank effluent;
- the construction of new dwellings is discouraged on any land with a water table within one metre of the surface when waste water is to be treated and retained on site;
- the approval is conditional upon the applicant entering into an agreement under section 173 of the Act to:
 - ensure that the dwelling is used in conjunction with agricultural production; and
 - prevent the subdivision of the lot containing the dwelling where the proposed lot size is less than the minimum lot size for subdivision specified in the zone; and
- acknowledge the impacts of nearby agricultural activities.

Response

The proposed dwelling will not be related to a farming activity. As identified the existing character of the area and the cluster of dwellings to the north of the land provide leverage to the use of the dwelling be granted on the subject land. It is not considered that the dwelling will inhibit the agricultural activities of the abutting land to the west with setback provided and

the main infrastructure for the dairy being located further to the north. The use of the existing 173 agreement will suffice in meeting the requirement identified by the local policy with slight variances in wording not considered significant to result in a new one being prepared.

Relevant Particular Provisions

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

The decision guidelines of Clause 65

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

It is considered that the proposal would not impact on the orderly planning of the locality, with a previous subdivision to create the subject allotment in 2007 meeting the objectives of the time. The small allotment should the dwelling be approved would complete the area identified as more of a low density character than farming.

Relevant incorporated or reference documents

The Rural Regional Land Use Strategy.

Other relevant adopted State policies or strategies policies

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

Relevant Planning Scheme amendments

Planning Scheme amendment C121 proposes an amendment to the Farming Zone and Local Planning Policies. The amendment was approved by the Minister for planning on 27 July 2013, however is yet to be gazetted (27/8/13). The amendment amends the schedule to the Farming Zone to re-classifies the zone into three areas which relate to the minimum lot size required for the use of land for a dwelling as of right and lot sizes for subdivision.

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

Planning Scheme amendment VC103 proposes changes to the Farming Zone. Changes included are amendments to the use table, purpose of the zone, permit triggers and decision guidelines. The amendment is to be gazetted on 5 September 2013.

The changes will not impact the permit triggers for the proposed use, however changes to the purpose of the zone and removal of one of the decision guidelines are favourable of the proposal. The purpose of the zone now includes the statement "to encourage the retention of employment and population to support rural communities. The approval of the dwelling could

be considered to be achieving this purpose with an increased population, with the construction of a dwelling.

The policies of both amendments have been considered and addressed in the assessment of this application with a decision likely to be made after gazettal of both amendments.

Are there any significant social & economic effects?

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

Discuss any other relevant Acts that relate to the application?

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

Conclusion

The application for the use and development of the land for a dwelling in the Farming Zone is considered achieve and acceptable planning outcomes. The application relies on the following key factors in not being associated with an agricultural use in the Farming Zone:

- The land is imbedded in an area with a low density/rural living character;
- The land until recently was used for the purposes of a dwelling; and
- The small allotment was created with dwelling as part of a re-subdivision which lead to rural allotment consolidation a path supported by the previous and current local policy and Planning Scheme Decision guidelines.

For these factors and the matters addressed in the report under the decision guidelines it is recommended that application be approved.

Notice Of Decision

APPLICATION NO: 2013-146

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: 6305 MIDLAND HIGHWAY TATURA VIC 3616

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

WHAT WILL THE CONDITIONS OF THE PERMIT BE?

1. Layout Not Altered

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

2. Amended Plans Required

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

- a) An amended site plan showing the dwelling setback at least 100 metres from the southern boundary and at least 50 metres from the eastern boundary; and
- b) A landscape buffer along the western boundary of the land.
- c) A notation on the plan which shows the removal of any existing structures on the land.

3. Section 173 Agreement

Prior to the occupation of the dwelling, the owner must lodge with the responsible authority, pursuant to Section 178A of the Planning and Environment Act 1987 a request to amend the existing Section 173 Agreement condition 2(b) on the land to provide that:

- a) **The occupier of Lot 1 on the Plan may be subjected to nuisance from agricultural activities and other permissible uses under the Planning Scheme on adjoining or nearby land, including animal husbandry, spray drift and the use of agricultural machinery such as pumps and trucks and**

the associated hours of operation of such equipment.

This amended agreement must be recorded 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 and must provide consent from all parties to the agreement for the amendment

The said amended agreement is to be prepared by the Council. The Council will undertake to have the amended agreement prepared upon written notification from the applicant. All costs associated with the preparation and recording 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.

4. Connection to Services and Access

Before the dwelling hereby permitted is occupied:

- a) Access to the dwelling must be provided via an all-weather road with dimensions adequate to accommodate emergency vehicles.
- b) Vehicle crossings providing access to the land must be constructed at a location and of dimensions and standard to the satisfaction of the responsible authority. Vehicle crossing(s) must be constructed at the owner's expense.
- c) All stormwater and surface water drainage from the land, buildings and works, must be retained on site or directed to the legal point of discharge to the satisfaction of the responsible authority and Goulburn Murray Water. Effluent and/or polluted water must not be discharged to Council's stormwater drainage system from the land.
- d) The dwelling must be connected to a reticulated potable water supply or have an alternative potable water supply with adequate storage for domestic use as well as for fire fighting purposes.
- e) The dwelling must be connected to a reticulated electricity supply or have an alternative energy source.
- f) The landscape buffer as shown on the endorsed plans must be planted to the satisfaction of the responsible authority.

to the satisfaction of the Responsible Authority.

5. 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.

6. Health Requirements

Prior to the commencement of works for the 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 891.3, February 2013.

The application to Install a Septic Tank System shall include:

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

7. Time for Starting and Completion

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

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

NOTATIONS

Building Approval Required

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

Meeting closed at 11.01 AM