

CONFIRMED MINUTES

**FOR THE
GREATER SHEPPARTON CITY COUNCIL**

DEVELOPMENT HEARINGS PANEL

Meeting No. 7/2013

**HELD ON
THURSDAY 13 JUNE 2013
AT 10.04AM**

**AT THE COUNCIL BOARD ROOM
90 WELSFORD STREET**

ACTING CHAIR

Jonathan Griffin

**COMMITTEE MEMBERS PRESENT: Councillor Michael Polan, Jonathan Griffin,
Braydon Aitken, Ian Boyle**

**OFFICERS: Andrew Dainton – Principal Statutory Planner
Steve Bugoss – Timer and Minute Taker
Janine Saxon – Assistant Timer and Minute Taker**

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. APOLOGIES

Johann Rajaratnam, Colin Kalms

3. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

The minutes of the meeting held on 9 May 2013 could not be confirmed

4. DECLARATIONS OF CONFLICTS OF INTEREST

None

5. RESOLUTION OF THE MEETING

Braydon Aitken moved a motion that the Committee approve the appointment of Jonathan Griffin as Acting Chairman for this meeting. The motion was seconded by Councillor Michael Polan. The resolution was put to the vote and passed by the committee.

6. MATTERS FOR CONSIDERATION

Two items listed for consideration.

7. LATE REPORTS

None

8. NEXT MEETING

27 June 2013

I N D E X

<u>Application No.</u>	<u>Subject Address:</u>	<u>Proposal:</u>	<u>Page No.</u>
2012-405	317 Maude Street, Shepparton	Use of land for a restaurant (café)	3
P173/1993	309 Midland Highway, Shepparton East	Extension of Time to Permit	31

Application Details:

Responsible Officer:	Andrew Dainton
Application Number:	2012-405
Applicants Name:	B Cerasi
Date Application Received:	13 December 2012
Statutory Days:	175
Land/Address:	317 Maude Street SHEPPARTON VIC 3630
Zoning and Overlays:	Residential 1 Zone Land Subject to Inundation Overlay Parking Overlay
Why is a permit required (include Permit Triggers):	Use of land in the R1Z under 32.01-1 Buildings and works associated with a section 2 use – 32.01-6 Buildings and works in the LSIO under 44.04-1
Are there any Restrictive Covenants on the title?	No

Proposal

The application proposes to change the use of a dwelling building to a café / coffee shop. The application states that the café will offer light lunches and morning / afternoon teas in a residential atmosphere. According to the submitted plans seating will be provided within the building and in the front garden area of the land.

The applicant has informed the proposed café will be open for trade seven days a week between 8am to 8pm. The proposed café will not serve alcohol or include any live music. The application has stated the capacity of the café will be 60 patrons.

The submitted plans provide an onsite loading bay, however no on site car parking is provided. Under the Parking Overlay, a permit condition can require the payment in lieu of onsite car parking to comply with the parking requirements. A permit condition requires the payment of \$37,674 (seven spaces) to achieve compliance with the parking requirements under the Parking Overlay.

The application was advertised by sign on site and letters to neighbours and four objections lodged. The objections largely relate to loss of residential amenity, service of alcohol and provision of parking. Two meetings were held between objectors, planning officers and the applicant to discuss the proposal. This included a formal objectors meeting which was chaired by Mr Peter O'Leary. These meetings allowed the objectors to better understand the application; however no objections were withdrawn as a result.

- The proposed café is a relatively modest use that is limited to hours of operation that exclude a dinner service. The use is not permitted to serve alcohol or have live music.
- It is considered a reasonable level of amenity is provided to the neighbourhood through conditions which limit hours of operation, disallow the service of alcohol and playing of live music, limit hours in which outdoor dining is permitted, control waste disposal, limit patron access to the side and rear of the building and limit the number of patrons on the land to 30 at any one time.
- The proposed café responds positively to policy relating to non-residential uses in a residential area as the land is on a high traffic road with on street car parking, within Shepparton's CBD and opposite the Park Lake motel.
- The application does not provide onsite car parking, however complies with the Parking Overlay by way of payment in lieu of onsite car parking. Based on observations of on street car parking in Maude Street it has been discovered that there is adequate capacity within the on street car parking to meet the uses parking demand.

Moved by Braydon Aitken and Seconded by Ian Boyle

Notice of Decision to Grant a Permit

That Council having caused notice of Planning Application No. 2012-405 to be given under Section 52 of the *Planning and Environment Act 1987* and having considered all the matters required under Section 60 of the *Planning and Environment Act 1987* and having considered the objections to the application, decides to Grant a Notice of Decision to Grant a Permit under the provisions of 32.01-1, 32.01-6 and 44.04-1 of the Greater Shepparton Planning Scheme in respect of the land known and described as 317 Maude Street Shepparton, for the use of land for a restaurant (cafe) in accordance with the Notice of Decision and the endorsed plans and additional conditions as follows:

Condition 3. Specific operation requirements

Additional clause 3. g) No more than 60 patrons at any one time

Condition 4. Operating Hours

Final paragraph to read as follows:

No trading is allowed on Sunday's or public holidays, unless otherwise agreed to in writing by the Responsible Authority.

CARRIED

Subject Site & Locality

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

Date: 5 June 2013 Time: 1.45pm

The site has a total area of 813 square metres and currently contains:

- an existing weatherboard dwelling with vehicle access from Maude Street
- the dwelling includes a small front setback with garden area

The main site/locality characteristics are:

- Maude Street is a wide road with on street car parking. Maude Street carries a significant amount of traffic of up to about 4000 vehicles per day (count taken just south of Swallow Street on 23 November 2011).
- On the western side of Maude Street is land within the R1Z used as part of the Park Lake motel complex.
- Abutting the site to the south is land within the applicant's control that is used for a dwelling.
- Abutting the site to the north is a three unit complex that has vehicle access to both Maude and Swallow Street.
- Abutting the site to the east is dwellings fronting onto Ware Court, which is a small residential court connecting to Swallow Street.
- Whilst inspecting the land there was 13 unoccupied car parking spaces between Swallow Street and Hayes Street

The Photos below show the existing site:



View of existing dwelling building on the land



View of land to be used for loading



Area of outdoor dining



Existing entry to the building



Nature strip abutting the land



Maude Street looking north



View of Maude Street looking south



Park Lake motel opposite the land

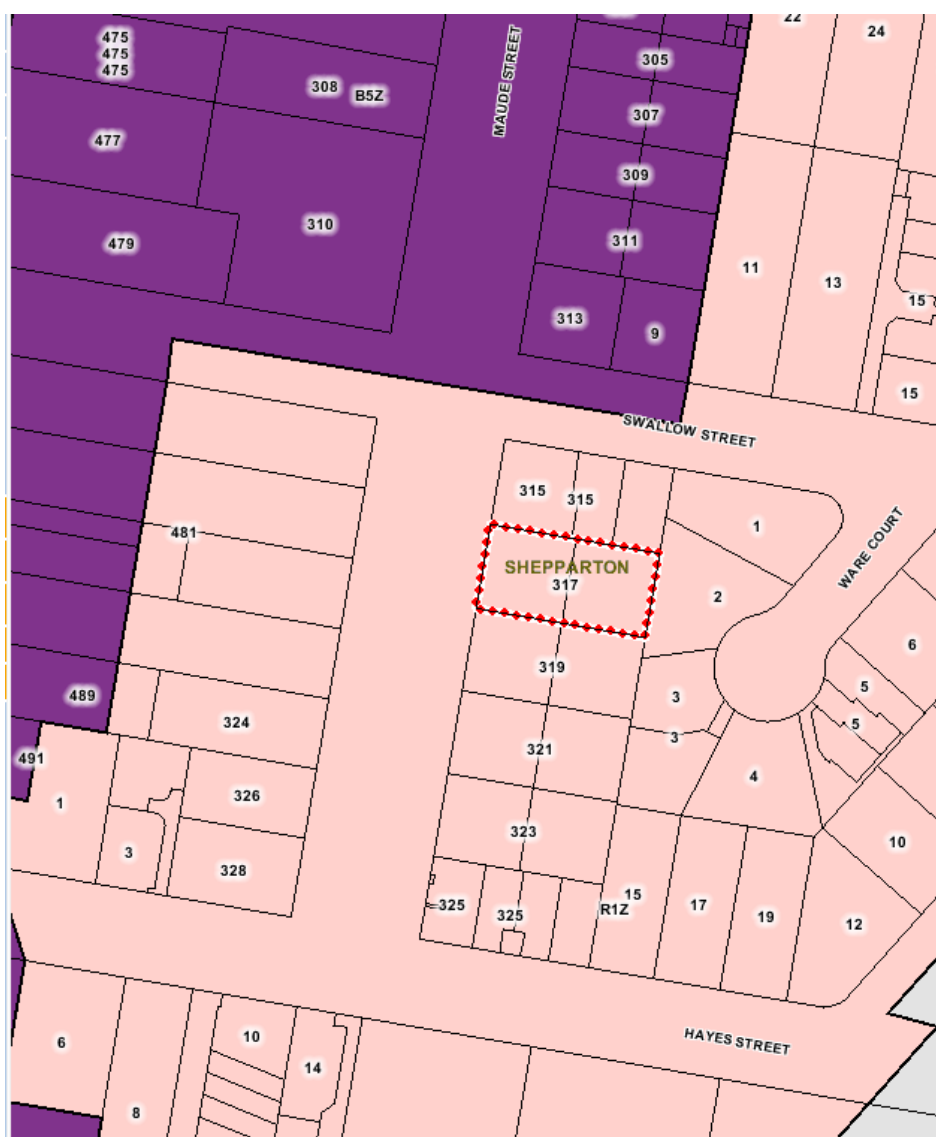


Swallow Street (to the north of the land)

Aerial Photo of the land and surrounds:



The location of the objectors are shown with a red dot. The below zoning plan shows that the objections from the northern side of Swallow Street are within a Business 5 Zone and the objectors on the southern side of Swallow Street are within a R1Z.



Permit/Site History

The history of the site includes:

- There is no relevant planning history to the land

Further Information

Was further information requested for this application?

A RFI was sent to the applicant on 2 January 2013 requesting the following:

- Written description of the proposed use including hours of operation, capacity of the venue and whether alcohol service is proposed
- Size of the building in square metres

- Removal of reference to convenience restaurant on the application form and submitted plans

The RFI included a lapse date of 11 February 2013.

The applicant submitted amended plans on 3 January 2013 and an emailed response on 17 January 2013 which informed the following:

- Proposed opening hours of 8am to 8pm Monday to Sunday
- Capacity of venue 30 to 60 persons
- No alcohol service is proposed

Based on the submission of this information the RFI was satisfactorily responded to before the lapse date.

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

Objections

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

- Noise from the proposed use
- Hours of operation
- Service of alcohol
- Patron access to the side and rear of the land
- Outdoor lighting
- Rubbish disposal and collection
- Access to car parking

In response to the objectors, the planning officer provided written acknowledgement to each objector.

A copy of the objections was also provided to the applicant who prepared a written response to the objections on 18 March 2013. A copy of the applicant's response was provided to the objectors on 21 March 2013.

On 15 May 2013 an objectors meeting was held and chaired by Mr Peter O'Leary. The purpose of this meeting was to provide an opportunity for all parties to meet and discuss the application in a controlled environment. The meeting was attended by three objectors, the applicant and planning officer.

During this meeting the objector's grounds were discussed and the applicant provided the following additional information:

- No evening meal service will be provided
- No seating will be provided to the side or rear of the café
- No takeaway sales will be undertaken including no takeaway coffee / tea sales
- Café will provide table service
- No persons will be living on the premise
- Speakers are proposed for low level music to outdoor seating
- Café capacity will be 60 patrons

Whilst the objectors meeting did not result in the withdrawal of any objections, the meeting did ensure the objectors were well informed of the application.

Officer's response to grounds of objection

The land is within a residential zone and the nearby neighbours should be provided with a reasonable level of residential amenity. It is considered the proposed hours of operation, of a seven day a week business is not in keeping with a residential area. It is considered permit conditions should restrict the hours to:

- 8am to 6pm – Monday to Friday
- 9am to 3pm – Saturday's (which allows for Saturday breakfast and lunch trade)
- No opening on Sunday's or public holidays

It is acknowledged that the applicant sought opening hours to 8pm. It is however considered that use should close at 6pm so as to not significantly interfere with nearby dwellings outside of office hours. Additionally as the applicant has informed no dinner service will be provided and the application is described as for 'light lunches and morning / afternoon teas' it is not necessary to open until 8pm.

In addition to these trading hours it is considered appropriate to further limit the use of the outdoor dining areas further so as to minimise noise disturbance to neighbouring properties. It is recommended that permit conditions restrict the use of outdoor dining to not after 5pm Monday to Friday.

The applicant has informed in writing that the proposed use does not include the service of alcohol. It is also noted that the submitted application has not sought permission for a liquor licence. For clarity a permit condition will state that the use is not permitted to serve alcohol.

The applicant informed during the objectors meeting, that fencing will be erected to prevent patron access to the side and rear of the land.

Outdoor lighting can be controlled through the use of baffled lighting to prevent light spill to adjoining properties.

Permit conditions will require that the waste disposal area be located on the southern side of the land within a screened area. The siting and screening of the waste disposal area will minimise impacts such as odour on adjoining properties.

It is acknowledged that the proposed use is not provided on site car parking. However as the land is within the Parking Overlay, compliance with parking requirements can be achieved through the payment of lieu on site car parking.

Within Maude Street abutting the land is significant on street car parking, being on the sides and centre of the road. Additional on street car parking has recently been constructed in Sobraon Street which is about 200m to the north of the land.

Based on observations of on street car parking in Maude Street, it is deemed that there is adequate available on street car parking to cater for the parking demand of this use. Despite the proposal not providing onsite parking, the application is able to comply with its parking requirements by payment in lieu under the Parking Overlay.

Whilst the objections raise relevant grounds under the R1Z, particularly in terms of amenity, it is considered that subject to the inclusion of appropriate conditions, the application can achieve acceptable planning outcomes.

Title Details

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

Consultation

Consultation was undertaken and is described under the objections section of this report.

Referrals

External Referrals/Notices Required by the Planning Scheme:

Referrals/Notice	Advice/Response/Conditions
Section 55 Referrals	The application was referred to the CMA under clause 44.04-5. The CMA consented to the grant of a permit without requiring conditions.
Section 52 Notices	The application was notified to GVW who consented to the grant of a permit subject to a condition requiring a trade waste consent agreement with the water authority.

Internal Council Notices	Advice/Response/Conditions
Health	<p>The application was internally referred to the Council's EHO who consented to the grant of a permit subject to the following conditions:</p> <ol style="list-style-type: none">1. The applicant shall lodge with Council's Health Department detail plans demonstrating that the area of the building proposed to be used for storage, preparation and sale of food are adequate for the type of food to be sold at the premises and that the structure and fittings installed complies with the requirements of Food Standards Australia and New Zealand Food Safety Standards 3.2.3 – Food Premises and Equipment.2. Prior to commencing construction of any food preparation area, the owner must seek the advice of the Council's Environmental Health

	<p>Officer.</p> <ol style="list-style-type: none">3. Prior to commencing the business the applicant shall make application to the Council Health Department for the registration of the premises under the Food Act 1984.4. At the time of making application for registration under the Food Act 1984, the applicant shall lodge a copy of their food safety program as required by the Act and the name and accreditation details of their nominated Food Safety Supervisor.
--	---

Assessment

The zoning of the land

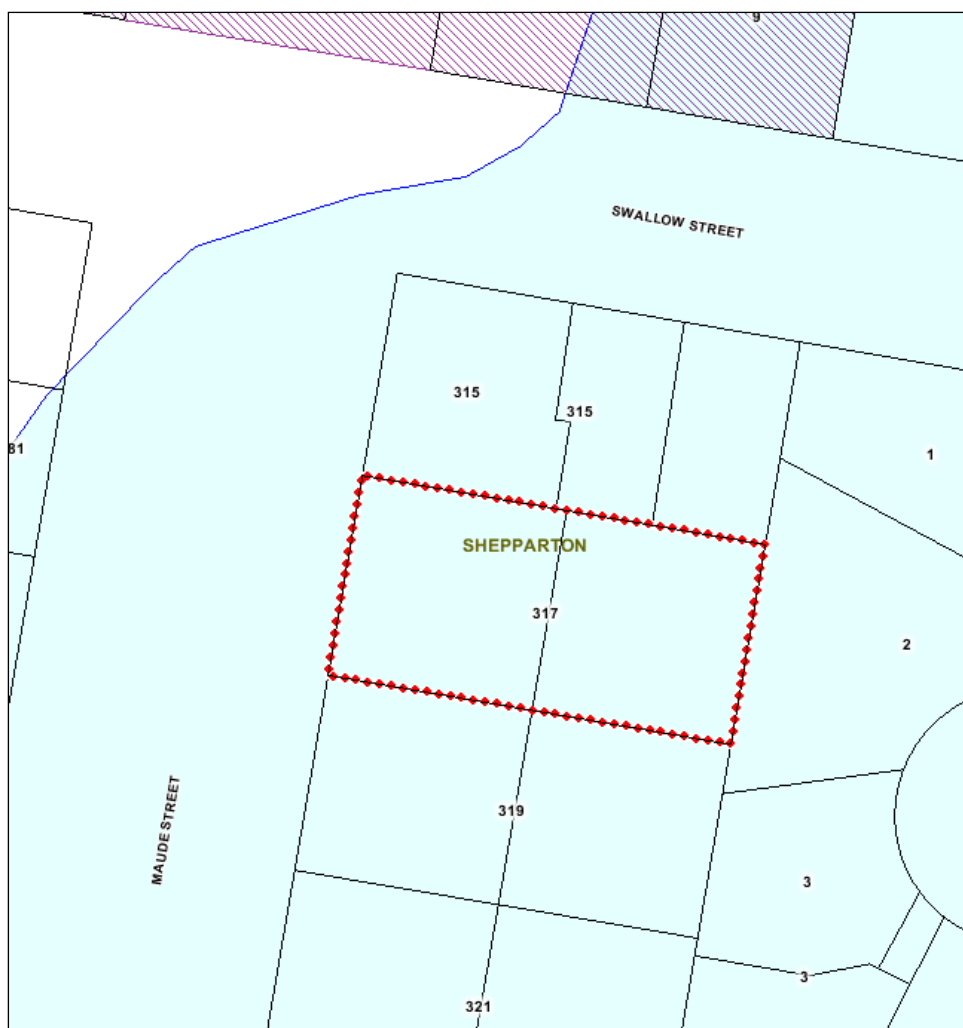
The land is within the R1Z.

Purposes of the zone are:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To provide for residential development at a range of densities with a variety of dwellings to meet the housing needs of all households.
- To encourage residential development that respects the neighbourhood character.
- In appropriate locations, to allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs.

Relevant overlay provisions

The land is within the LSIO as shown on the below plan.



The relevant purpose of the Land Subject to Inundation Overlay is:

To ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, is compatible with the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.

An application under this overlay is exempt from notice requirements and the application must be referred to the relevant floodplain manager, which is Goulburn Broken Catchment Management Authority. This referral occurred – see relevant section of report.

The CMA have informed that they consent to the grant of a permit therefore it is considered that the application complies with the LSIO.

Parking Overlay

Purposes to this overlay include:

- To implement the State Planning Policy Framework and Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To facilitate an appropriate provision of car parking spaces in an area.
- To identify areas and uses where local car parking rates apply.

- To identify areas where financial contributions are to be made for the provision of shared car parking.

45.09-6 allows:

A schedule to this overlay may allow a responsible authority to collect a financial contribution in accordance with the schedule as a way of meeting the car parking requirements that apply under this overlay or Clause 52.06.

Under the schedule to the PO a food and drink premise requires 3 on site car parking spaces to each 100sqm of leasable floor area.

Based on a floor area of 228sqm, the proposed use requires the provision of seven on site car parking spaces.

As the applicant has not provided any on site car parking spaces a permit condition will require the payment of \$37,674 under the PO to satisfy the parking requirements for the use. Based on the inclusion of this condition, it is deemed that the use complies with its parking obligations.

The Shepparton Central Business District Parking Precinct Plan prepared by Ratio at 2.2 of the report identifies parking projects under investigation and potential future projects. Of these projects the Council has completed the following parking projects:

- Vaughan Street / Welsford Street car park – 10 additional spaces
- Marungi Street centre of the road parking – 64 additional spaces
- Marungi Street car park - 24 additional spaces
- Hoskin Street car park – sealing of gravel car park

Additional parking projects not within this document have been completed at:

- Vaughan Street centre of road (east of Corio Street) – 22 additional spaces
- Sobraon Street centre of road – 38 additional spaces

In total parking projects within the CBD have provided an additional 158 car parking spaces, of which 38 of these spaces are free all day spaces within close proximity to the subject site.

The money collected under this permit will allow the Council to continue its program of developing parking infrastructure within the CBD.

The State Planning Policy Framework (SPPF)

11.05 Regional development

Objective

- *To promote the sustainable growth and development of regional Victoria through a network of settlements identified in the Regional Victoria Settlement Framework plan.*

- *Support sustainable development of the regional cities including Shepparton*
- *Guide the structure, functioning and character of each settlement taking into account municipal and regional contexts and frameworks.*
- *Balancing strategic objectives to achieve improved land-use and development outcomes at a regional, catchment and local level.*

13.02-1 Floodplain management

To assist the protection of:

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

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.*

Strategies

- *Locate commercial facilities in existing or planned activity centres.*

Car parking

Objective

- *To ensure an adequate supply of car parking that is appropriately designed and located.*
- *Allocate or require land to be set aside for car parking subject to the existing and potential modes of access including public transport, the demand for off-street car parking, road capacity and the potential for demand management of car parking.*
- *Encourage the efficient provision of car parking through the consolidation of car parking facilities.*

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

21.04-6 Non Residential Uses

Council acknowledges that there is a need to protect the amenity of existing and future residential areas. While a range of non residential uses in residential areas provide services to the local community, (including places of worship, schools, medical centres, display

homes, child care centres, cafes, restaurants, and the like), it is important to ensure that these uses do not have a negative impact on residential amenity through inappropriate location, unsympathetic design, and traffic impacts. Petrol stations and car washes in particular are discouraged in residential zones.

Objectives - Non residential uses

- To ensure that non residential uses are appropriately located.
- To allow complementary non-residential uses to be integrated into residential areas.
- To ensure that non residential uses are appropriately located having regard to:
 - The intensity and hours of operation of the proposed activity.
 - The siting and design of proposed buildings and works, including car parking areas and advertising signs and telecommunication facilities.
 - The location of access points.
- To ensure that the appearance and scale of non residential development in residential zones is consistent with nearby housing.

Strategies - Non residential uses

- Ensure non residential uses are located in areas that are appropriate to the intensity and scale of the proposed use and that will have minimal impact on the amenity of nearby residential properties.
- Ensure major facilities serving catchments beyond the local level are located in commercial areas or sited on roads which avoid the generation of additional through traffic on residential streets.
- Discourage service stations and car washes in residential areas.
- Ensure the siting and design of buildings and works (including car parking areas) responds to the surrounding housing and streetscape and includes features to reduce the noise, loss of privacy and to enhance the appearance of the development, including landscaping, screening, acoustic fencing.

21.06-4 Commercial/Activity Centres

- Provide for the continued growth of the Shepparton CBD as a multi-purpose retail, business, commercial, community, entertainment and tourism centre.

Officers Assessment

Use of Land

Food and drink premises is a section 2 use excluding convenience restaurant and takeaway food premises. Both of these types of food and drink premises must adjoin or have access to a road zone, as Maude Street is not a road zone these uses are prohibited in the R1Z.

The proposed business name is Red Truck Cafe which is described in the application as a cafe / coffee shop offering light lunches and morning and afternoon teas in a residential atmosphere.

Under clause 75.11 food and drink premises are nested with retail premises and include the following uses:

- Convenience restaurant (prohibited)
- Hotel
- Restaurant
- Take away food premises (prohibited)
- Tavern

The proposed use is clearly not a hotel or tavern.

Clause 74 defines a restaurant as:

Land used to prepare and sell food and drink, for consumption on the premises. It may include:

- entertainment and dancing; and
- the supply of liquor other than in association with the serving of meals, provided that tables and chairs are set out for at least 75% of patrons present on the premises at any one time. It does not include the sale of packaged liquor.

Clause 74 includes no definition of a cafe.

In accordance with the below decision it is deemed that the proposed land use is properly characterised as a restaurant of which is a section 2 use in the R1Z.

Permit conditions will be included to prevent dancing; live entertainment and provision of take away food given the land is within a R1Z and not a B1Z. The use of these conditions will result in the use of land looking and feeling like a café as opposed to a restaurant.

In *Burbank Australia P/L v Wyndham* (201) VCAT 1315 Senior Member Byard considered how a cafe fits within the food and drink premise nesting.

Byard made the following comments at paragraphs 69 to 71:

I think the submission of the responsible authority in relation to characterisation is strongly supported, not only because "Restaurant" is a more specific version of "Food and drink premises", but also having regard to the legislative history of the definitions concerned. What I said about the concept of café, in the ordinary Australian English sense, coming within the definition of Restaurant, is not only supported the words of that definition, but is further supported by the history of and changes to the definitions of Restaurant and café. Under the MMPS there was a clear distinction between restaurant and café because, though both provided for meal consumption on the premises, a restaurant had to have entertainment or dancing. The change in status of those activities from mandatory, to constitute a restaurant; into an optional extra for a restaurant means that a café style use is now just as much within the defined land use "Restaurant" as any other restaurant. It is for that reason that the land use term "café" became redundant and does not appear in the VPP planning schemes. I do not think it viable to argue that these changes to definitions and omission of "Café" was inadvertent.

I therefore conclude that the submission of the responsible authority is correct in this respect, and that the correct land use characterisation of these Food and drink premises uses is as "Restaurants".

A simple use permission to use land for the purpose of Restaurant as defined would authorise dancing, entertainment and liquor. However, that can readily be excluded by the imposition of conditions. I think that is the correct way to proceed.

Residential Amenity

As the land is within a residential zone, the use to be an acceptable one must not unreasonable impact on the residential amenity of the area. Whilst the land is within a R1Z it is also within Shepparton's CBD and Parking Overlay. The area has characteristics of its place on the edge of Shepparton's CBD being centre road parking, commercial uses such as the Park Lake, and its close proximity to land within the B5Z. The B5Z on the northern side of Swallow Street is also within a DDO5 that allows buildings to 20.5m in height.

The vehicular traffic on Maude Street abutting the land is between 3534 to 3950 vehicles per day which in Shepparton's context is high for a residential street.

Given the context of the land, this area of Maude Street is within a residential area in Shepparton's CBD not a residential area in a suburban residential estate and should therefore expect a mix of residential and non-residential uses.

The application seeks consent for up to 60 patrons within the café. By comparison Lemon Tree café allows for 98 patrons, Fryers Café – 200 patrons, Teller 138 patrons and Tatura Pizza 55 patrons.

Whilst the applicant seeks less patrons than CBD cafes, it is considered 60 patrons is too high for a residential café. A permit condition will limit the number of patrons at the café to 30 to ensure the use operates as a modest residential café as opposed to a large drawing café (subject to compliance with the BCA).

Subject to the inclusion of appropriate conditions relating to hours of operation, use of outdoor dining area, service of no alcohol, no live music, no takeaway sales, baffled lighting and waste disposal it is considered the use will not have an unacceptable impact on the amenity of the area.

Locational Attributes

The land is on a through road that incorporates on street car parking and significant traffic movements. The local policy states that major facilities serving catchments beyond the local level are located in commercial areas or sited on roads which avoid the generation of additional through traffic on residential streets.

It is considered that the proposed café is not a major facility although it is likely it will draw from the local neighbourhood and CBD i.e. lunch trade. The land is appropriately located on a through CBD road that is highly accessible given its on street car parking.

The application proposes a modest café that is convenient to its local neighbourhood and the southern parts of the CBD. The location of the proposed café has positive location

attributes including its proximity to a significant CBD road, on street car parking and existing residential and commercial catchments.

Based on the above assessments it is considered the proposed use achieves acceptable planning outcomes for the following reasons:

- The inclusion of appropriate conditions can properly limit the intensity of the use so as to ensure the café respects the residential amenity of the area
- The land is location on a significant CBD road that includes on street car parking that results in a highly accessible site whilst limiting intrusion into nearby quieter residential streets
- The proposed café provides a complementary modest non-residential use to the neighbourhood that could provide a meeting place for the locality

Relevant Particular Provisions

52.06 Parking

52.06-2 states the following:

Before a new use commences the number of car parking spaces required under Clause 52.06-5 or in a schedule to the Parking Overlay must be provided to the satisfaction of the responsible authority in one or more of the following ways:

- on the land; or
- in accordance with a permit issued under Clause 52.06-3; or
- in accordance with a financial contribution requirement specified in a schedule to the Parking Overlay.

As set out under the PO section of this report, the use complies with its parking obligations by making a contribution under the PO.

52.34 – Bicycle Facilities

Under table 1 at 52.34-3 a restaurant requires 1 bicycle space to each 100sqm of floor area and 2 plus 1 to each 200 sqm of floor area available to the public if the floor area available to the public exceeds 400 sqm.

Based on floor area of 228sqm, the use requires the provision of 2 on site bicycle spaces. Permit conditions will be included to require the installation of 2 on site bicycle spaces in accordance with 52.34.

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 and development accords with the relevant provisions within the Greater Shepparton Planning Scheme as discussed previously in this report.

The proposed use and development does not conflict with the objectives of planning in Victoria.

- The proposed use and development will not have any substantial effect on the amenity of the area.

- The application does not propose the removal or destruction of native vegetation.

Relevant incorporated or reference documents

Shepparton Central Business District Parking Precinct Plan (April 2003).

Other relevant adopted State policies or strategies policies

The CBD strategy was adopted by the Council in October 2008.

The land is included within precinct 4 – peripheral residential.

Issues and Opportunities

Council's Greater Shepparton 2030 Strategy directs compact medium-density housing development to the area within 400m to 600m of the Shepparton CBD. The Council is currently undertaking a housing strategy which will support introduction of housing in the CBD and provide further detail as to where this type of development should occur. Residents on the periphery of and within an activity centre provide an important trade market for the centre. Intensifying the residential threshold of the area provides new and increased visitors to support CBD businesses and improves the viability of new activities such as cafes and restaurants.

Medium-density housing should be appropriately designed to integrate into established residential areas and ensure ongoing residential amenity.

Vision

Medium-density housing integrated within established residential developments will maximise residential opportunities close to services and functions of the CBD and river. New infill development will demonstrate the application of ESD principles to its design and performance, acting as a catalyst for improvements to the existing established residential buildings.

Strategies

- Retain the high level of amenity of established residential areas surrounding the CBD.
- Encourage medium-density housing in the peripheral residential areas.
- Encourage higher built form to three storeys in Marungi Street to maximise opportunity for views to the river.

Key Actions

- Implement STEPS assessment for medium-density housing development.

- Implement appropriate zoning or policy guidance in the planning scheme to ensure appropriate scale of buildings in the residential areas.

Under the Housing Strategy of which is incorporated into clause 21.04 the land is within a substantial change area.

Substantial Change Areas

Substantial Change Areas are established residential areas that have significant capacity to accommodate substantial residential development. These areas will support increased housing diversity by encouraging a variety of housing types, styles and configurations in areas that are close to activity centres, public transport, employment opportunities and open space. Substantial Change Areas will support increased residential densities to maximise the amount of people who can take advantage of these desirable locations. It is expected that the character of these areas will change significantly in the future.

Substantial Change Areas have generally been designated in locations that:

- are in walking distance (800m) of a range of commercial, retail, employment, entertainment, and recreation opportunities;
- are within walking distance of public transport;
- have servicing capacity to support additional development;
- provide good opportunities to support increased housing diversity; and
- are generally free of major development constraints.

The strategies for managing residential development in Substantial Change Areas seek to:

- support a diversity of housing types, sizes, styles and designs;
- support (re)development at higher overall densities to maximise development opportunities;
- encourage lot consolidation to allow for larger scale development;
- encourage mixed-use developments which incorporate residential uses above commercial or retail uses;
- focus higher density development within or immediately adjacent to significant commercial areas;
- support the recommendations and strategies of the Shepparton CBD Structure Plan;
- encourage a high standard of design for new development and major renovations;
- support housing for people with special needs;
- discourage increased development intensity in areas where there is a significant environmental risk such as flooding and wildfire, unless an appropriate design response can be provided to the satisfaction of the Council; and
- ensure that development at the edges of the Substantial Change Area is sensitive to any adjoining Minimal or Incremental Change Areas.

Based on these two strategic documents it is clear the strategic intention for this area is high density development that could include mix use developments to cater for the higher populations within the area. These policies provide direction that the land and neighbourhood is an area of change to reflect its location of a residential area within Shepparton's CBD.

Relevant Planning Scheme amendments

The CBD strategy is currently being translated into an Activity Centre Zone, and the draft ACZ is being reviewed by DCPD.

The ACZ amendment is known as C92. It is acknowledged that the amendment is in its early stages and has not yet been exhibited.

Are there any significant social & economic effects?

It is not anticipated that the application will result in any social or economic effects.

Discuss any other relevant Acts that relate to the application?

The land is not within an area of cultural heritage sensitivity, therefore the application does not trigger the need for a CHMP.

The Council's EHO require the inclusion of permit conditions relating to the Food Act.

Conclusion

It is considered that the identified key issues having been addressed satisfactorily. The application satisfies State and Local Policy, zone and overlay purposes and requirements, particular provisions (Clause 52.06 – Car parking) and relevant decision guidelines.

In terms of policy, there will be a net community benefit by the provision of a local café that is consistent with the non-residential uses policy and is well located given the street is a residential area within Shepparton's CBD.

In respect to the objections, it is considered the use of appropriate conditions that place limitations on the use; allow the use to not unreasonably affect the amenity of the area.

Based on the assessment detailed in this report the proposed use and development represents an acceptable outcome for the site and precinct, and a net community benefit. A Notice of Decision to grant a Planning Permit should be issued subject to conditions as set out in the attached NOD.

Draft Notice Of Decision

APPLICATION NO: 2012-405

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: 317 MAUDE STREET SHEPPARTON VIC 3630

WHAT THE PERMIT WILL ALLOW: USE OF LAND FOR A RESTAURANT (CAFE)

WHAT WILL THE CONDITIONS OF THE PERMIT BE?

1. Amended Plans Required

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

- a) Upgraded concrete vehicle crossing
- b) Extend of garden seating not to continue to the rear of the front building line except for the shade sail
- c) Location of screened waste collection area on the southern side of the land to the rear of the building
- d) Removal of Food Premises Design and fit out notations from the plan
- e) Provision of two on site bicycle spaces

2. Layout Not Altered

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

3. Specific Operation Requirements

- a) The restaurant hereby permitted is not to operate as a convenience restaurant

or take away food premises as these uses are defined by the Greater Shepparton Planning Scheme

- b) No dancing or live entertainment is to be provided
- c) No liquor is to be sold or served
- d) No takeaway food or drink sales is allowed
- e) Garbage containers must at all times be stored out of view to the satisfaction of the responsible authority, with the exception of collection times
- f) The landscaping must be maintained to the satisfaction of the responsible authority

4. Operating Hours

The restaurant hereby permitted must not be open to the public except between 8.00am to 6.00pm Monday to Friday and Saturday's 9.00am to 3.00pm unless otherwise agreed in writing by the responsible authority.

No trading is allowed on Sunday's or public holidays.

5. Outdoor Dining

Outdoor dining must not occur after 5.00pm to the satisfaction of the responsible authority.

6. Delivery and Waste Collection

Before the use commences, the screened waste collection area as shown on the endorsed plans must be constructed to the satisfaction of the responsible authority.

Except with the consent of the responsible authority, delivery and waste collection times are restricted to 7.00am-7.00pm Monday to Saturday to the satisfaction of the responsible authority.

7. General Amenity

The use and/or development of the land must not adversely affect the amenity of the area, by way of:

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

to the satisfaction of the responsible authority.

8. 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.

9. Bicycle Spaces

Before the use commences, provision must be made for two bicycle spaces. Bicycle spaces must be designed, constructed and located in accordance with 52.34-4 to the satisfaction of the responsible authority.

10. Payment in Lieu of Car Spaces

Before the use begins a cash contribution of \$37,674 must be paid to the responsible authority in lieu of provisions for on-site parking in accordance with the approved (Parking Precinct Plan / Development Contributions Plan).

11. Urban Vehicle Crossing Requirements

Before the use begins the existing vehicular crossing shall be upgraded to be sealed with a concrete surface in accordance with the endorsed plan to the satisfaction of the responsible authority.

12. Health Requirements

- a) The applicant shall lodge with Council's Health Department detail plans demonstrating that the area of the building proposed to be used for storage, preparation and sale of food are adequate for the type of food to be sold at the premises and that the structure and fittings installed complies with the requirements of Food Standards Australia and New Zealand Food Safety Standards 3.2.3 – Food Premises and Equipment.
- b) Prior to commencing construction of any food preparation area, the owner must seek the advice of the Council's Environmental Health Officer.
- c) Prior to commencing the business the applicant shall make application to the Council Health Department for the registration of the premises under the Food Act 1984.
- d) At the time of making application for registration under the Food Act 1984, the applicant shall lodge a copy of their food safety program as required by the Act and the name and accreditation details of their nominated Food Safety Supervisor.

13. Goulburn Valley Region Water Corporation Requirements

Discharge of trade waste from the development shall be subject to a Trade Waste

Consent Agreement.

The owner and or occupier is required to submit a completed Trade Waste Application, and install the required pre-treatment facility to the satisfaction of Goulburn Valley Water's Trade Waste Section, before approval to discharge trade waste from the development into the Corporation's sewer is granted;

14. 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.

The responsible authority may extend the periods referred to if a request is made in writing before the permit expires or within three (3) months afterwards.

Development Hearing Panel Report – Extension of Time

PURSUANT TO SECTION 69 OF THE *PLANNING AND ENVIRONMENT ACT 1987*

Application Details:

Responsible Officer:	Andrew Dainton
Application Number:	P173/1993
Applicant Name:	D'Agostino Engineering
Permit expiry date	31 May 2013
Date extension request received:	17 May 2013
Land/Address:	309 Midland Highway, Shepparton East
Zoning & Overlays:	Industrial 1 Zone (IN1Z) Land Subject to Inundation Overlay (LSIO)
Why was a permit required at the time of issue (include Permit Triggers):	To use and develop the land for a road house, service station, public toilet, bus terminal under the provisions of the Shepparton Shire Planning Scheme

Proposal

In accordance with Section 69(1) of the *Planning and Environment Act 1987* an application for extension of time to the above planning permit has been made to extend the completion date of the permit for two years.

The applicant has informed the status of the development is as follows:

Earth and drainage works are near complete. Road access and road widening incorporating left and right turn lane has been completed to Vic Roads condition and signed off by Vic Roads. Foundation footing has commenced with all the hold down bolts and reo on site, steel and beams currently in the workshop

The application informs that the extension is required 'to allow enough time to sort out the problems that Council has caused by removing 600mm drainage pipes and replacing with 450mm pipes without approval'

The application was first approved on 8 February 1994 under the Shepparton Shire Planning Scheme. In the preceding 19 years there have been numerous correspondences. A brief history of the application from the Council files is compiled:

- 16 November 1993 – Application lodged
- 8 February 1994 – P173/1993 issued (the original permit is not on the Council's file)

- 23 February 1998 – P173/1993 approved with new date of 23 February 1998
- 12 February 1998 – Permit extended until 8 February 2000
- 20 March 2000 – Permit amended to extend expiry date to 23 February 2002 and allow variations to endorsed plans
- 11 May 2004 – Council refused to extend permit
- 16 June 2004 – VCAT order that the completion date of the permit be extended until 4 June 2006
- 12 October 2006 – VCAT orders the Council to approve plans under condition 6 of the permit (drainage plans)
- 17 January 2007 – Council refuse to endorse landscape plans
- 11 April 2007 – Council approve signage plans
- 26 April 2007 – Council extend completion date of the permit until 4 June 2008
- 19 July 2007 – Council approve colour scheme plan
- 8 May 2008 – Council extend completion date of permit until 4 June 2009
- 10 September 2008 – VCAT order that the Council endorse amended drainage plans
- 24 October 2008 – Council endorse landscape and effluent disposal plans
- 24 October 2008 – Council advise applicant that all conditions of the permit have been complied with to allow commencement of works on stage 1 (service station)
- 27 October 2008 – Council endorse amended drainage plans as ordered by VCAT on 10 September 2008
- 28 June 2009 – Council extend completion date of permit until 4 June 2010
- 13 April 2010 – Council approved amended signage plans
- 31 May 2010 – Building permit issued for service station
- 29 June 2010 – Applicant applies for an extension of time seeking an additional five years
- 9 September 2010 – Council extend completion date until 31 May 2013, which is the same completion date of the building permit for the service station. Vic Roads comments were sought on the extension application, however no response was received
- 18 April 2012 – Council building officers inspect two footings and deem the footings acceptable.
- 17 May 2013 – Applicant applies for a permit extension for two years

- 31 May 2013 – Vic Roads object to a further extension of the permit

Planning Considerations

The responsible authority may consider the following in accordance with *Kantor & Ors v Murrindindi Shire Council 18 AATR 285 at 313 and Juric v Banyule CC VCAT 396 (4 June 2002)*:

▪ **WHETHER THERE HAS BEEN A CHANGE OF PLANNING POLICY.**

Since the issue of the permit in 1994 under the Highway Commercial – Industrial Zone there have been changes in planning policy, including new format planning schemes, Council amalgamations, introduction of an Infrastructure Design Manual and plans to duplicate the Midland Highway abutting the land.

▪ **WHETHER THE LANDOWNER IS SEEKING TO ‘WAREHOUSE’ THE PERMIT.**

It is acknowledged that throughout the life of this permit there has been significant delays in preparing and endorsing plans.

Since the permit extension in 2010, the applicant has had a build ready development i.e. plans were endorsed and building permit issued. In this period (more than 30 months), the applicant has undertaken relevantly minor works including, earthworks, drainage and the pouring of two footings.

So minor are the works undertaken when viewed from the street, the site does not appear as a working building site, nor is there any significant building on the land i.e. no slab has been poured. Photos of the land are below:

Site photos of 309 Midland Highway, Shepparton East by Andrew Dainton on 27 May 2013



View of the land from Doyles Road



View of the land from Doyle's Road



View of the land from the Midland Highway



View of the land from the Midland Highway

After such a considerable amount of time, the lack of building activity over the last 30 months indicates that the applicant is not pursuing the development with any urgency. It is however acknowledged that the applicant is slowly moving the development towards completion.

For context the development was commenced on 26 November 2001 (para 7 P1313/2004) by road access and drainage works in the road reserve, installation of power and telecommunications.

Now in 2013, 12 years later, the development has not achieved completion nor has it undertaken substantial commencement i.e. no slab has been poured.

▪ **INTERVENING CIRCUMSTANCES BEARING ON GRANT OR REFUSAL OF THE EXTENSION.**

As set out within this report, the application did experience delays in obtaining endorsed plans. It is also acknowledged that in recent times access to finance has been difficult for developers to obtain. Despite this, the applicant has had an opportunity since the last extension to substantially complete the development without interference from the Council's planning department.

▪ **THE TOTAL ELAPSE OF TIME AND WHETHER THE TIME LIMIT ORIGINALLY IMPOSED WAS ADEQUATE.**

Even with the delays in obtaining the necessary approvals, 19 years is a sufficient period of time to complete this development.

▪ **THE ECONOMIC BURDEN IMPOSED ON THE LANDOWNER BY THE PERMIT.**

The applicant has certainly expended significant financial resources in pursuing this development through planning, engineering and legal fees.

- **THE PROBABILITY OF A FRESH PERMIT ISSUING SHOULD A FRESH APPLICATION BE MADE.**

Given the land is within an IN1Z, the use is as of right and the land is relatively remote from residential zones, it is likely that a fresh permit would issue for buildings and works on the land for a service station. Given the passage of time, it is likely that a fresh permit would require substantially different conditions relating to construction drawings, vehicle access and possibility design to comply with 52.12.

Below is a table of the relevant permit triggers under the scheme.

Project Component	Provision	Use	Buildings and Works
Service Station	Industrial 1 Zone	A planning permit is not required	A planning permit is required and is exempt from notice
	Land Subject to Inundation Overlay		A planning permit is required and is exempt from notice
	Signage (52.05)		A planning permit is required
	Parking (52.06)		A planning permit is required if a reduction is sought
	Service Station (52.12)		A planning permit is required to vary requirements
	Access to Road Zone 1 (52.29)		A planning permit is required and referral triggered to Vic Roads

Discussion

The previous extension to the completion date was deliberately consistent with the building permit which expired on 31 May 2013. The purpose of this extension was to provide the applicant with a significant period of time (more than 30 months) to complete the development.

Importantly within this period there was no need for the applicant to obtain any further consent from the planning department, the applicant had the necessary approvals in hand to complete the development.

During this 30 month period the applicant failed to substantially commence the development. The applicant undertook earthworks, drainage and poured two footings. The endorsed building drawings show a total of 15 footings; therefore 13 of the 15 footings remain unconstructed.

There is no slab or structure on the land. Importantly, the refusal to extend the completion date does not result in a half or even a quarter constructed building on the land to becoming an eyesore over time. If there were a partly constructed building on the land, it would be everyone's interest to see the building completed. In this case the refusal to extend the permit does not result in a partial constructed building being left on the land.

In terms of drainage, when drainage plans have been previously reviewed and approved Goulburn Murray Water were the owners of the drainage system. In August 2008 an agreement between GMW and the Council resulted in the ownership of the drainage transferring to the Council. As a result of this the discharge rate increases from 1.2l/sec/ha to 64l/sec/ha under the Infrastructure Design Manual. This increased discharge rate is in the applicants favour and in turn means the approved development continues to be acceptable in terms of drainage considerations.

The application to extend the completion date was provided to Vic Roads for comment. Vic Roads informed the planning department in writing on 31 May 2013 that Vic Roads objects to the further extension of the permit for the following reasons:

- 1. The road infrastructure adjacent to the site has changed, and will continue to change, to cater for traffic demands in the intervening twenty years since the permit was first issued.*
- 2. Design standards and policies have changed over the same period, and the planning scheme itself has evolved from the Shire of Shepparton planning scheme to the Greater Shepparton Planning Scheme. There was significant reform to the planning system in Victoria in the 1990s, and this may have consequential impact on the permit that was originally issued in 1993.*
- 3. Further planning for the adjoining road infrastructure may impact on the site, and this planning should be considered in any response to proposals for the site.*
- 4. The applicant has had sufficient time to commence the development in a meaningful way over the past twenty years. From the evidence of similar developments, a two year period is sufficient to bring a service station development to completion. It is*

submitted that the applicant has demonstrated that the application should no longer be considered to be active, and hence the extension should be refused.

5. *The continuing extension of the permit does not allow for orderly planning of the area, and may therefore create undue influence on safe and coherent traffic management at the intersection of the two important arterial roads for a development that has stalled for twenty years.*

It is considered appropriate to refuse to extend the completion date of the permit for the following reasons:

- The permit was issued in 1993 under the former Council and Shire of Shepparton Planning Scheme. Since the grant of the permit development standards have changed and should be brought up to current standards
- The development of the site has not substantially commenced even though the applicant has had 30 months of unobstructed time (i.e. all approvals were in hand) to complete the development. Within this time the application has undertaken relatively minor works being earthworks, drainage and the pouring of two footings
- Vic Roads being the road authority for both Doyles Road and the Midland Highway have opposed a further extension of time

Moved by Braydon Aitken and Seconded by Councillor Michael Polan

The Council position at VCAT will be to not grant the extension of time to the planning permit for the following reasons:

- The permit was issued in 1993 under the former Council and Shire of Shepparton Planning Scheme. Since the grant of the permit development standards have changed in terms of vehicle access and should be updated to reflect current standards
- The development of the site has not substantially commenced even though the applicant has had 30 months of unobstructed time (i.e. all approvals were in hand) to complete the development
- Vic Roads being the road authority for both Doyles Road and the Midland Highway have opposed a further extension of time

CARRIED

- Mr D'Agostino requested a copy of the documentation of discussions between Greater Shepparton City Council and VicRoads in relation to the upgrade along Doyles Road.
 - Mr D'Agostino requested a copy of the recorded transcript of the meeting.
-

Meeting closed at 11.34AM