

# **CONFIRMED MINUTES**

**FOR THE  
GREATER SHEPPARTON CITY COUNCIL**

## **DEVELOPMENT HEARINGS PANEL**

**Meeting No. 6/2013**

**HELD ON  
THURSDAY 9 MAY 2013  
AT 10.03AM**

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

**CHAIR  
Johann Rajaratnam**

**COMMITTEE MEMBERS PRESENT: Councillor Les Oroszvary, Johann Rajaratnam, Colin Kalms,  
Braydon Aitken, Michael MacDonagh**

**OFFICERS: Tim Watson – Statutory Planner  
Steve Bugoss – 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**

Jonathan Griffin

## **3. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

Moved by Colin Kalms and seconded by Cr Les Oroszvary that the minutes of meeting held on 10 January 2013 be adopted.

Carried.

Moved by Braydon Aitken and seconded by Michael MacDonagh that the minutes of the meeting held on 24 April 2013 be adopted.

Carried.

## **4. DECLARATIONS OF CONFLICTS OF INTEREST**

None

## **5. MATTERS FOR CONSIDERATION**

One item listed for consideration.

## **6. LATE REPORTS**

None

## **7. NEXT MEETING**

23 May 2013

## INDEX

<u>Application No.</u>	<u>Subject Address:</u>	<u>Proposal:</u>	<u>Page No.</u>
2011-275/A	5225 Goulburn Valley Highway, Murchison East	Removal of condition 4 from the permit	3

## Amended Application Details:

Responsible Officer:	Tim Watson
Amended Permit Number:	2011-275/A
Applicants Name:	S Rieniets
Date Amendment Received:	5 April 2013
Statutory Days:	27
Land/Address:	5225 Goulburn Valley Highway MURCHISON EAST VIC 3610
Zoning and Overlays:	Farming Zone, part Land Subject to Inundation Overlay and part Floodway Overlay (neither overlay affects the proposed dwelling site)
Why was the amendment required?	The amendment proposes a different proposed dwelling location and the removal of condition 4 requiring consolidation.
Why is a permit required (include Permit Triggers):	35.07-1 – use of land for a dwelling in the Farming Zone which does not meet the specified allotment sizes. 35.07-4- buildings and works associated with a section 2 use (dwelling)
Are there any Restrictive Covenants on the title?	no

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## Proposal

The application to amend a planning permit has been made by a prospective purchaser of the land to alter the location of the proposed dwelling and remove condition 4.

The applicant has proposed to remove condition 4 requiring consolidation of the two allotments which comprise the land as they only intend to purchase one.

The applicant has provided information relating to a proposed agricultural activity for the land. The applicant has advised that they intend to breed first cross stock on the property on mostly dry land pasture.

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## Summary of Key Issues

- Initial application for planning permit 2011-275 was approved for use and development of land for a dwelling on 15 November 2011 subject to conditions.
- Application was made to amend planning permit to alter location of proposed dwelling and remove condition 4 requiring consolidation on 5 April 2013.
- The applicant was informed in writing on 12 April 2013, that the application did not meet an acceptable outcome when assessed against the Greater Shepparton Planning Scheme and would be recommended for refusal if not withdrawn by 26 April 2013.

## **Moved by Colin Kalms and Seconded by Michael MacDonagh**

That the Council having not caused notice of Amended Planning Application No. **2011-275/A** to be given under Section 52 of the *Planning and Environment Act 1987* and having considered all the matters required under Section 60 of the *Planning and Environment Act 1987* decides to refuse to Grant a Permit under the provisions of **35.07-1 and 35.07-4** of the Greater Shepparton Planning Scheme in respect of the land known and described as **5225 Goulburn Valley Highway MURCHISON EAST VIC 3610**, for the **Buildings and works associated with a section 2 use and within 100 metres of a designated floodplain in the Farming Zone.**

### **For the following reasons:**

1. The proposed amendment to remove a condition 4, requiring consolidation does not provide an acceptable outcome or net community benefit in terms of the State and Local Planning Policy Frameworks, and
  - a. Is likely to impact on the continuation of primary production on nearby land;
  - b. The dwelling is not considered required to support the agricultural use of the land proposed on the 30 hectare allotment;
  - c. Does not increase the viability and sustainability of agriculture through consolidation of rural land holdings;
2. The application to amend does not adequately demonstrate that the proposed dwelling on the reduced allotment size is reasonably required for the operation of agricultural activity on the land as required by the Farming Zone.
3. The initial permit was approved based on information submitted by the applicant and consent to the consolidation condition.
4. The application does not comply with the Rural Regional Land Use Strategy (C121) which seeks to limit dwellings in the proposed Farming Zone 1 which are associated or required for the agricultural use of the land.

**CARRIED**

## Subject Site & Locality

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

Date: **22/4/13**

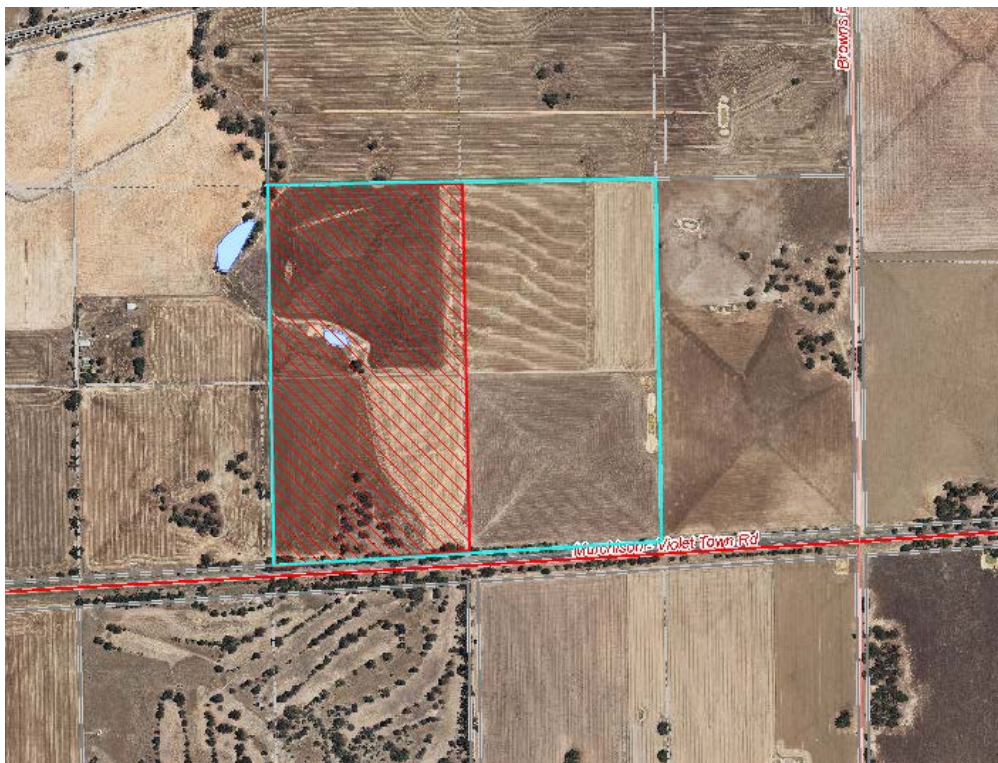
The site has a total area of **approximately 30 hectares** and currently contains:

- land used for agricultural purposes (cropping/grazing); and
- a small patch of existing vegetation on the southern boundary located along a depression as indicated by the application of the Land Floodway Overlay.

The main site/locality characteristics are:

- land used for dry land cropping and grazing purposes.
- There is only one dwelling within a kilometre radius of the proposed dwelling site located on the land abutting the western boundary.
- The existing Murchison Golf Course is located to the south of the land (the course does not appear to be frequently used nor irrigated).
- An existing piggery is located approximately 1300 metres to the west of the proposed dwelling site.

The Photos below show the existing site:



Red hatched area indicates 30 hectare allotment, with blue line illustrating existing property two titles.

## Permit/Site History

The history of the site includes:

- Planning permit 2011-275 issued 15 November 2011 for the use and development of the land for a dwelling.

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## Further Information

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

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## Public Notification

The application was not advertised pursuant to Section 52 of the *Planning and Environment Act 1987* as the Council's Planning Department advised the application for an amendment would be refused on policy. The Planning Department did therefore not see the need to prolong the process with public notification.

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## Objections

The Council has received **no** objections to date, as the application was not advertised.

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## Title Details

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

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## Consultation

Consultation was undertaken. Relevant aspects of consultation, included:

- A pre-application discussion with the prospective purchaser of the land who was informed what would be required to amend the permit.
- The applicant provided the planning officer with a brief description of how the land would be used for grazing and fodder production.
- The planning officer advised that the Council's Planning Department were unlikely to support an application to amend the permit to remove the consolidation condition based on policy objectives.
- The applicant advised they still intended to make application and questioned what information would need to be submitted in support.
- A letter was forwarded to the applicant providing details of the information required and how the Council's Planning Department would assess the application.

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## Referrals

External Referrals/Notices Required by the Planning Scheme:

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

Internal Council Notices	Advice/Response/Conditions
Nil	Nil
Nil	Nil

## **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 250ha (Broadacre Farming in the Schedule to clause 35.07), 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, particularly dwellings, do not adversely affect the use of land for agriculture;
- Encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision; and
- Protect and enhance natural resources and the biodiversity of the area.

### 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.
- 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.

### 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 proposed use (dwelling) is not compatible with abutting land uses with the predominate use of land for agriculture being broad acre cropping and grazing with limited a limited number of dwellings. The amendment will create a small dwelling allotment of 30 hectares.

### **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.

#### Response

It is not considered that the proposed dwelling is required to support the current agricultural activities on the land and furthermore the proposed enhancements are not considered enough justification to remove a small portion of land from agricultural production. The area of land to be removed would include an appropriate access way to the dwelling and a septic disposal area. This area should a dwelling be approved on the proposed site in the middle of the property, would remove land from agricultural production.

#### **Dwelling issues**

- Whether the dwelling will result in the loss or fragmentation of productive agricultural land.
- Whether the dwelling is reasonably required for the operation of the agricultural activity conducted on the 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 considered that the proposed dwelling is reasonably required for the agricultural activity on the land. The land is currently used for cropping with the proposed grazing on a reduced amount of land not considered to reasonably require a dwelling.

The removal of the consolidation condition would reduce the land size to approximately 30 hectares in a predominately agricultural locality with a limited number of dwellings. Given the agricultural activities on the surrounding land including a piggery, sprays and odour have the potential to adversely affect the inhabitants of the dwelling.

The proposed dwelling will not lead to a proliferation of dwellings within the locality, given the very small number of dwellings within a significant distance of the land. The approval of a dwelling however has the potential to set a precedent for dwellings to be approved on smaller allotments for grazing purposes only. Given the number of small old titles within the locality, this has the potential to create a rural living situation in what would currently be considered a solely agricultural region.

#### **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.

### Response

The proposed amended location of the dwelling is to be in the middle of an existing paddock which is indicated on aerial photographs and from a site inspection as land that is still viably used for agriculture. Furthermore the dwelling envelope would extend into paddocks, with gardens and outbuildings further reducing the amount of land which can be viably farmed.

### **Relevant overlay provisions**

The land is partially affected by the Land Subject to Inundation Overlay and Floodway Overlay. The overlays were not considered in the assessment of this application as neither overlay affects the proposed dwelling site.

### **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

It is not considered that the proposed dwelling application satisfies the objectives and policy of the State Planning Policy Framework. The proposal is not considered to achieve an acceptable outcome through the use of the land for a dwelling to provide for the increase of agricultural productivity. As noted, the potential for the dwelling to be adversely affected by

surrounding agricultural uses is high given the reasonably small size of the property and predominate agricultural uses of the surrounding land.

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

**Clause 21.04-3 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.

**Objectives – Dwellings in Rural areas**

- To ensure that dwellings in rural areas are required to support the agricultural use of the land.
- To discourage the development of dwellings which are unrelated to farming.
- To ensure that the use of a dwelling on a rural lot does not prejudice surrounding agricultural activities.
- To prevent the construction of dwellings on small and inappropriate lots in rural areas.

**Clause 21.06 – Economic Development objectives include:**

- To protect rural land for productive agricultural purposes.

**Response**

It is not considered that the proposed dwelling is required to support the proposed agricultural use of the land. The proposed dwelling has the potential to impact on surrounding agricultural land uses given the proximity to the boundary and the reasonably small size of the allotment. The proposal does not protect productive agricultural land with the proposed placement of the dwelling within a paddock currently used for agricultural production.

**Relevant Particular Provisions**

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

### **The decision guidelines of Clause 65**

The relevant decision guidelines of Clause 65 have been considered and addressed when assessing this application. The guidelines of the State Planning Policy Framework, Local Planning Policy Framework and Farming Zone are not met as discussed within this report.

### **Relevant incorporated or reference documents**

The Rural Regional Land Use Strategy.

### **Other relevant adopted State policies or strategies policies**

There are no other relevant 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 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.

### **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 amended application?**

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

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## **Conclusion**

The proposal to amend a planning permit to remove a condition requiring consolidation is not considered an acceptable outcome. The application was initially approved based on the information submitted by the applicant that the land would be associated with a larger farming enterprise and that they consented to the consolidation condition.

The proposed amendment to remove the condition will allow for the dwelling to be constructed on a 30 hectare allotment. The proposed agricultural use put forward by the applicant/prospective purchaser is not considered to justification that a dwelling is reasonably required to conduct the activity. The proposed dwelling has the potential to result in the loss of agricultural land with the use adversely impacting on the expansion of surrounding agricultural enterprises.

# DRAFT REFUSAL TO GRANT AN AMENDMENT TO A PERMIT

**PERMIT NO:** 2011-275/A(AMENDED)  
**PLANNING SCHEME:** GREATER SHEPPARTON PLANNING SCHEME  
**RESPONSIBLE AUTHORITY:** GREATER SHEPPARTON CITY COUNCIL  
**ADDRESS OF THE LAND:** 5225 Goulburn Valley Highway MURCHISON  
EAST VIC 3610

**PERMIT FOR WHICH AMENDMENT WAS SOUGHT:** Permit No: **2011-275**

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**WHAT HAS BEEN REFUSED?**

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

Amendment to plans and to remove condition 4 requiring consolidation

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**WHAT ARE THE REASONS FOR REFUSAL?**

1. The proposed amendment to remove a condition 4, requiring consolidation does not provide an acceptable outcome or net community benefit in terms of the State and Local Planning Policy Frameworks, and
  - a) Is likely to impact on the continuation of primary production on nearby land;
  - b) The dwelling is not considered required to support the agricultural use of the land proposed on the 30 hectare allotment;
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2. The application to amend does not adequately demonstrate that the proposed dwelling on the reduced allotment size is reasonably required for the operation of agricultural activity on the land as required by the Farming Zone.
3. The initial permit was approved based on information submitted by the applicant and consent to the consolidation condition.
4. The application does not comply with the Rural Regional Land Use Strategy (C121) which seeks to limit dwellings in the proposed Farming Zone 1 which are associated or required for the agricultural use of the land.

Meeting closed at 10.10AM