

# **CONFIRMED MINUTES**

**FOR THE  
GREATER SHEPPARTON CITY COUNCIL**

## **DEVELOPMENT HEARINGS PANEL**

**Meeting No. 1/2014**

**HELD ON  
WEDNESDAY 15 OCTOBER 2014  
AT 3.04PM**

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

**CHAIR  
Councillor Dinny Adem**

## **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. RECORDING OF PROCEEDINGS**

The Chairperson advised the hearing that:

- the proceeding is being minuted but not recorded.
- that out of courtesy for all other attendees Any recording devices should be turned off during the course of the hearing, unless the Chair has been formally advised that a party wishes to record proceedings.

## **3. COMMITTEE MEMBERS PRESENT**

Councillor Dinny Adem, Colin Kalms, Jonathan Griffin and Braydon Aitken.

## **4. OFFICERS PRESENT**

Andrew Dainton – Principal Statutory Planner.

## **5. APOLOGIES**

Johann Rajaratnam, Ian Boyle and Michael MacDonagh.

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

- Moved by Braydon Aitken, and seconded by Colin Kalms that the minutes of the meeting held on 28 November 2013 be adopted.

Carried

## **7. DECLARATIONS OF CONFLICTS OF INTEREST**

None

**8. MATTERS FOR CONSIDERATION**

One item listed for consideration.

**9. LATE REPORTS**

None.

**10. NEXT MEETING**

To be advised.

## I N D E X

<b><u>Application No.</u></b>	<b><u>Subject Address:</u></b>	<b><u>Proposal:</u></b>	<b><u>Page No.</u></b>
2014-149	265 Excelsior Avenue, Ardmona	Use and development of the land for a dwelling	3

## Application Details:

Responsible Officer:	Andrew Dainton
Application Number:	2014-149
Applicants Name:	S Diamond
Date Application Received:	2 June 2014
Statutory Days:	106
Land/Address:	265 Excelsior Avenue Ardmona
Zoning and Overlays:	Farming Zone 1 Land Subject to Inundation Overlay Part Public Acquisition Overlay 7
Why is a permit required (include Permit Triggers):	Use of land for a dwelling in the FZ under 35.07-1 Buildings and works in the FZ under 35.07-4 Buildings and works in the LSIO under 44.04-1
Are there any Restrictive Covenants on the title?	No

## Proposal

The application seeks planning approval to use and develop land at 265 Excelsior Avenue, Ardmona (the land) for a dwelling. The land is 5152sqm in size.

The land is within the Farming Zone 1 (FZ), Land Subject to Inundation Overlay (LSIO) and part Public Acquisition Overlay 7 (PAO).

Council's Planning Scheme clearly sets out that dwellings should not be allowed in the FZ unless the dwelling is related to an agricultural land use. This proposal seeks to develop land in the FZ as a rural residential dwelling lot which is contrary to the outcomes sought in the Greater Shepparton Planning Scheme.

In assessing the application, Council's Rural Strategy includes the land in a consolidation area. Within the consolidation area the Rural Strategy states that new dwellings are not required to support agricultural growth and therefore should be discouraged.

When this application is assessed against the planning scheme, it is apparent that the protection of agricultural land is paramount. As such existing small lots in the FZ should not be permitted to be developed for dwellings. These lots should remain undeveloped and overtime be returned to agricultural production.

Dwellings unrelated to an agricultural use can result in conflict between appropriately located productive agricultural uses and rural residential dwellings. This conflict can lead to farmers being forced to alter agricultural practices to avoid neighbourly disputes. This is considered to be unacceptable in the eyes of the planning scheme, as intensive agricultural uses are expected and encouraged in the FZ.

Whilst it is acknowledged the hardship this policy can cause to individual small lot owners, the economic wellbeing of the area is largely based on a viable and profitable agricultural sector. Therefore officers recommend that this application be refused.

The DHP should also note that the Regional Growth Plan within State Planning Policy identifies the land within an area of strategic agricultural land. The planning scheme seeks to avoid encroachment from rural residential dwellings within areas of strategic agricultural land. Based on this State policy officers recommend that the permit is refused.

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## Summary of Key Issues

- The application seeks planning permission to use and develop the land for a dwelling in the Farming Zone 1. The application was advertised to neighbours and no objections were lodged, one letter of support was received.
- The application was referred to the Goulburn Broken Catchment Management Authority and Vic Roads, both authorities consented to the grant of a planning permit subject to conditions.
- State and Local Planning Policy is clear that small lots in the FZ1 should not be developed with rural lifestyle dwellings given the potential for conflict between agricultural and residential land uses, loss of agricultural land and the setting of an undesirable precedent of permitting small lots to be developed with dwellings.
- Council's Rural Strategy specifically discourages the approval of applications such as this by stating that *no new dwellings are required to support agricultural growth*. As this proposal is unrelated to any form of agriculture officers recommend that the application be refused.

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## Recommendation

### Refusal

That Council having caused notice of Planning Application No. 2014-149 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 in respect of the land known and described as 265 Excelsior Avenue Ardmona, for the to use and develop the land for a dwelling.

### For the following reasons:

- a) The proposed use and development for a dwelling on the subject land of 5152sqm does not provide an acceptable outcome or a net community benefit in terms of the State and Local Planning Policy Frameworks and the purpose and decision guidelines of the Farming Zone, and
  - is likely to impact on the continuation of primary production now or into the future on adjacent land, with particular regard to land values;
  - removes land from agricultural production, and has the potential to limit the use of adjacent land;

- has considerable potential for conflict between the ongoing farming activities and the rural living use;
  - sets a precedent in the area for adjacent small lots to be converted to rural living use;
  - will lead to a proliferation of residential uses on the west side of Excelsior Avenue and impacts on the productive capacity of the surrounding good quality agricultural land and the economic base of the Municipality
- b) The application does not adequately demonstrate that the proposed dwelling is reasonably required for the operation of agricultural activity on the land.
- c) The application does not comply with the Rural Regional Land Use Strategy (C121) which seeks to limit dwellings in the Farming Zone 1 which are not associated or required for the agricultural use of the land.
- d) The land is outside of the settlement boundary of Mooroopna and is not identified for future rural residential development in The Housing Strategy

## **Moved by Colin Kalms**

## **Seconded by Braydon Aitken**

That Council having caused notice of Planning Application No. 2014-149 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 in respect of the land known and described as 265 Excelsior Avenue Ardmona, for the to use and develop the land for a dwelling.

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- b) The application does not adequately demonstrate that the proposed dwelling is reasonably required for the operation of agricultural activity on the land.
- c) The application does not comply with the Rural Regional Land Use Strategy (C121) which seeks to limit dwellings in the Farming Zone 1 which are not associated or required for the agricultural use of the land.
- d) The land is outside of the settlement boundary of Mooroopna and is not identified for future rural residential development in The Housing Strategy

**Lost.**



## **Moved by Councillor Dinny Adem**

## **Seconded by Jonathan Griffin**

That Council having caused notice of Planning Application No. 2014-149 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 Grant a Permit in respect of the land known and described as 265 Excelsior Avenue Ardmona, for the to use and develop the land for a dwelling.

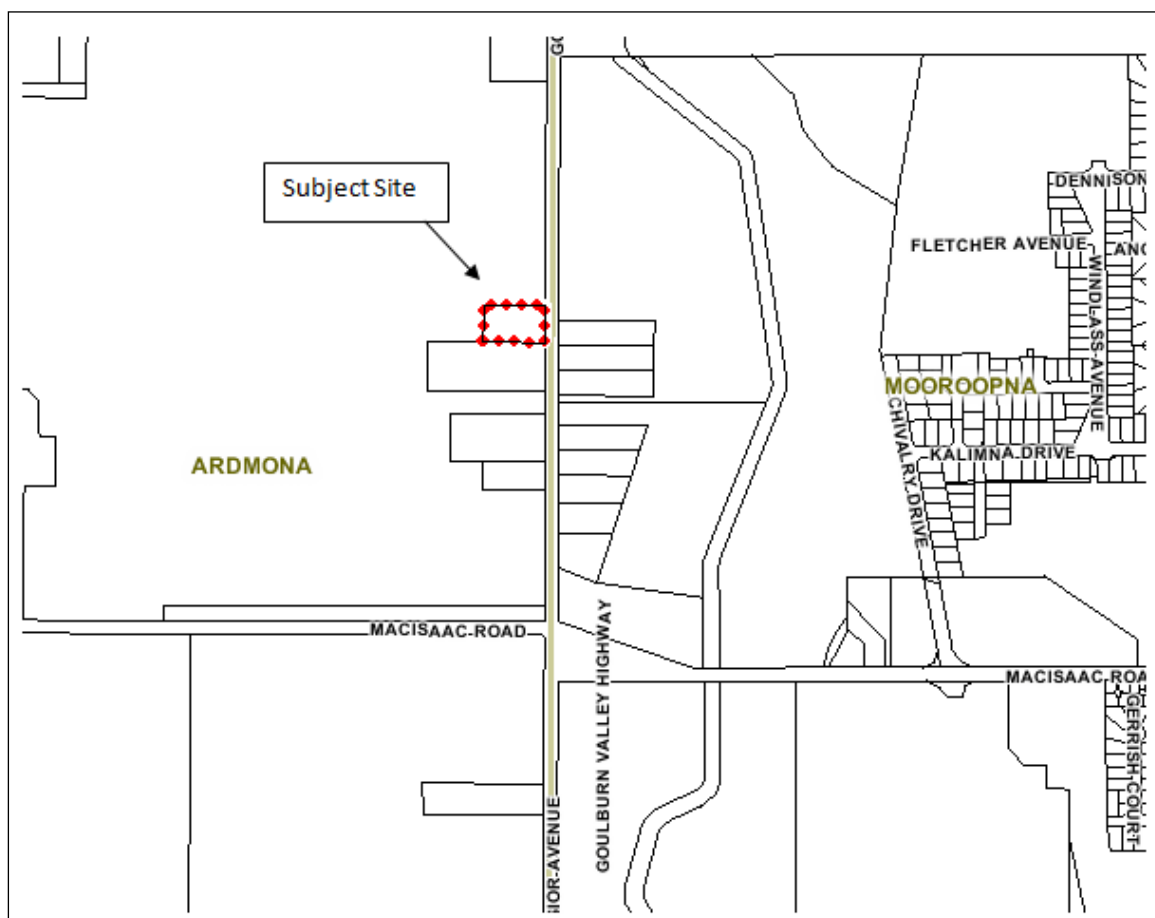
The permit conditions will be generally in accordance with the conditions set out in Planning Permit 2006-452, but to be updated with the conditions set out by VicRoads, the Goulburn Broken Catchment Authority and Goulburn Murray Water in their relative responses. All other conditions remain the same as stated in Planning Permit 2006-452 other than the removal of the requirement for a Section 173 Agreement, as it already exists on the land

**CARRIED**

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## **Subject Site & Locality**

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



The site has a total area of 5152 square metres and currently contains:

- vacant land

The main site/locality characteristics are:

- the east side of Excelsior Avenue is developed with a number of dwellings on small lots
- the west side of Excelsior Avenue is developed with three dwellings
- abutting the land is agricultural land that remains within production
- the future Shepparton Bypass alignment affects the front part of the land however the proposed alignment is generally located to the east of the land

The Photos below show the existing site:







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## Permit/Site History

The history of the site includes:

- Planning permit 1999-578 was issued on 4 October 1999 under the Rural Zone and allowed the land to be used and developed for a dwelling, the permit has since expired.
- The applicant purchased the land in November 2006.
- Planning permit 2006-452 was issued on 18 December 2006 under the Farming Zone and allowed the land to be used and developed for a dwelling.
- The applicant did not act on planning permit 2006-452 and therefore applied to extend the start date of the permit. Planning officers on 27 November 2008 refused to extend the starting date of 2006-452. Council's refusal to extend the start date was not appealed to VCAT.
- As required by 2006-452 the permit holder entered into a section 173 agreement relating to accepting agricultural nuisance associated with a dwelling.
- A pre-application meeting was held on 25 March 2014 in regards to a new application for a dwelling permit. At the meeting officers informed the landowners of the content of the scheme and the unlikelihood of getting planning support for a dwelling on the land.

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## 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 on site was erected between 24 June to 7 July 2014.

No objections were lodged against the application.

Council did receive a letter of support for the proposed application from a neighbouring property.

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## Title Details

The title does not contain a Restrictive Covenant.

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## Consultation

Consultation was not undertaken.

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## Referrals

External Referrals Required by the Planning Scheme:

Section 55 - Referrals Authority	List Planning clause triggering referral	Determining or Recommending	Response
Goulburn Broken CMA	44.04-5	Recommending	Consents to proposal subject to the dwelling being constructed above the flood level
Vic Roads	45.01-3	Determining	Consents to proposal subject to conditions relating to acoustic treatment of the dwelling and being setback at least 50m from the proposed alignment of the Shepparton Bypass. Should a permit issue, amended plans must be required showing setbacks as required by Vic Roads.

External Notice to Authorities:

Section 52 - Notice Authority	Response
GMW	Consented subject to standard conditions.

Council's Environmental Health Officers consented to the proposal subject to the dwelling be serviced with a septic tank.

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## Assessment

A planning permit is required to use and develop land for a dwelling in the FZ.

The planning scheme is clear that rural land within the municipality is of strategic importance to the state of Victoria as a food bowl.

Policy references include:

Clause	Strategy	Officer's Comment
<p><u>State Policy</u></p> <p>11.05-3</p>	<p>Discouraging development of isolated small lots in the rural zones from use for single dwellings, rural living or other incompatible uses.</p>	<p>The proposal seeks to develop a small lot on the edge of Mooroopna for a dwelling. Whilst the lot is not isolated in terms of distance to Mooroopna, the lot is isolated in the sense that the land is on the western side of the proposed Shepparton by-pass, outside of the limit of urban growth for Mooroopna and is within a productive farming district.</p> <p>The land is inappropriate for a dwelling given its location and the need to avoid potential conflict with existing or future agricultural uses.</p>
<p>11.10 – Hume Growth Plan</p>	<p>The plan states the land is 'strategic agricultural land'</p>	<p>Given the land is within an irrigation district which is developed with intensive agricultural uses including horticulture and dairy, the land has been designated as strategic agricultural land.</p> <p>Strategic agricultural land needs to be maintained for farming uses and not be permanently removed from agriculture by allowing non farming uses such as a dwelling on a small lot.</p> <p>It is important to not allow the creation of additional rural residential dwelling lots to ensure potential conflict between agricultural uses and dwelling lots is minimised.</p>
<p>11.10-1</p>	<p>Support agricultural production through the protection and enhancement of infrastructure and strategic resources such as water and agricultural land, including areas of strategic agricultural land.</p>	<p>As the land is within an important agricultural area which forms part of a significant food bowl, existing agricultural land should be protected and retained for agricultural production.</p> <p>Additionally agricultural production</p>

		should not be put at risk by introducing more dwellings on small lots that are unrelated to farming.
14.01-1	To protect productive farmland which is of strategic significance in the local or regional context.	<p>Within the locality, particularly on the west side of Excelsior Avenue, land is used for productive agricultural uses including orchards, cropping, grazing of cattle and rural industry.</p> <p>Whilst it is acknowledged that on the east side of Excelsior Avenue are a number of dwellings, the same development has not occurred on the west side of Excelsior Avenue.</p> <p>Additionally the dwellings on the east side of Excelsior Avenue are within a Public Acquisition Overlay for the future Shepparton By pass which could result in the land being acquired by Vic Roads.</p> <p>It is considered that the subject land is not lost to agriculture i.e. if the land was to remain undeveloped the land could be consolidated back into an agricultural holding, therefore a dwelling should not be allowed.</p>
<u>Local Policy</u>		
21.06-1	To ensure that agriculture is and remains the major economic driver in the region.	<p>Agricultural production is estimated to be worth \$1.2 billion annually (RRLUS p.3) for the region.</p> <p>One pressure facing agricultural development is conflicting land uses such as dwellings.</p> <p>Therefore it is important that this application is refused to ensure agriculture is not limited as a result of the dwelling.</p>



21.06-3	<p>To discourage new dwellings unless it can be demonstrated that it is required for the agricultural use of the land.</p> <p>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.</p> <p>To avoid potential amenity impacts between rural activities and dwellings in rural areas.</p>	<p>Council's local policy seeks to discourage dwellings in rural areas unless the dwelling is associated with a farming use.</p> <p>This application seeks to develop a small lot that is entirely un-associated with agriculture to create a rural lifestyle dwelling lot. The outcome sought by the permit applicant is expressly discouraged by Council's local policy.</p> <p>An impact of a dwelling being allowed on the land would result in conflict between existing or future agricultural uses and a dwelling lot. Such a conflict could detrimentally impact on agriculture production which is an unacceptable outcome.</p>
<p><u>Farming Zone</u></p> <p>35.07</p>	<p>To provide for the use of land for agriculture.</p> <p>To encourage the retention of productive agricultural land.</p> <p>To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.</p> <p>To encourage the retention of employment and population to support rural communities.</p>	<p>The thrust of the FZ is to allow for the retention and development of agricultural areas for food production and other associated uses.</p> <p>The FZ generally seeks to prevent development approvals that would detrimentally impact on agricultural activities such as is proposed.</p> <p>Therefore officers recommend that no permit issue for the proposed dwelling.</p>
35.07-6	<u>Dwelling Issues</u>	The Greater Shepparton Planning Scheme requires that the cumulative effects of rural residential development

	<p>Whether the dwelling will result in the loss or fragmentation of productive agricultural land.</p> <p>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.</p> <p>Whether the dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural uses.</p> <p>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.</p>	<p>are considered.</p> <p>Allowing all small FZ lots in the municipality to be developed for dwelling would negatively impact on agricultural uses.</p> <p>Therefore officers recommend no permit issue.</p> <p>Officers are aware that there is another similar sized vacant lot on the west side of Excelsior Avenue that could be developed for a dwelling if this application were to be approved. To prevent proliferation of dwellings on the west side of Excelsior Avenue, officers recommend that no permit should issue.</p> <p>If allowed, the dwelling is likely to be impacted upon by existing and future agricultural uses. This conflict could lead to complaint from the dwelling occupants which may result in agricultural practices having to change as a result of an inappropriately located dwelling. This would be an undesirable agricultural outcome. To ensure the dwelling would not impact on the operation of agricultural uses, officers recommend that no permit should issue.</p>
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Council's Rural Regional Land Use Strategy includes the land within a consolidation area. The following comment is made about dwellings in consolidation areas;

*No – new dwellings are not required to support agricultural growth (P. 108 RRLUS)*

As set out above and by Member Bennett in *Polvere v Greater Shepparton (2009)*, *this is not a municipality where the Planning Scheme is unclear or ambiguous about what Council (and*

*the community) are trying to achieve within the rural areas. Every approval of a dwelling on a small lot has the cumulative potential to undermine local policy, which throughout has a theme of limiting houses on existing small lots.*

Member Bennett went onto make the following relevant comments about small undeveloped lots in the rural areas.

*The small lot size and the existence of many small lots in the area does not in itself justify converting the land for rural residential or rural living purposes. If that were the case then thousands upon thousands of small Crown Allotments and other small lots (such as the ones on this property created in 1988 and 1993) in the Farming Zone across Victoria (and many hundreds around Shepparton) could potentially accommodate dwellings without any regard to strategic planning considerations that seek to direct dwellings into specified areas.*

*The existence across Victoria of thousands upon thousands of small, often poorly sited crown allotments and small lots is a major planning issue in terms of preventing inappropriate incremental development in rural areas, remote from services and often with significant land management problems. The irrigation areas around Shepparton are no exception and Council has attempted through local policies to limit the widespread use of such lots for hobby farm and rural living purposes. Local policy set out above provides clear directions about the use of small rural lots and it is for these broad strategic land use reasons that I have rejected a dwelling on this lot.*

Based on the relevant planning scheme provisions and review of previous VCAT decisions it is recommended that no planning permit should issue for the following reasons:

- a) The proposed use and development for a dwelling on the subject land of 5152sqm does not provide an acceptable outcome or a net community benefit in terms of the State and Local Planning Policy Frameworks and the purpose and decision guidelines of the Farming Zone, and
  - is likely to impact on the continuation of primary production now or into the future on adjacent land, with particular regard to land values;
  - takes land out of agricultural production, and has the potential to limit the use of adjacent land;
  - has considerable potential for conflict between the ongoing farming activities and the rural living use;
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- b) The application does not adequately demonstrate that the proposed dwelling is reasonably required for the operation of agricultural activity on the land.
- c) The application does not comply with the Rural Regional Land Use Strategy (C121) which seeks to limit dwellings in the Farming Zone 1 which are not associated or required for the agricultural use of the land.
- d) The land is outside of the settlement boundary of Mooroopna and is not identified for future rural residential development in The Housing Strategy

## **Cultural Heritage**

The *Aboriginal Heritage Act 2006* provides protection for all Aboriginal places, objects and human remains in Victoria, regardless of their inclusion on the Victorian Aboriginal Heritage Register or land tenure.

The *Aboriginal Heritage Act 2006* introduces a requirement to prepare a Cultural Heritage Management Plan (CHMP) if all or part of the activity is a listed high impact activity, resulting in significant ground disturbance, and all or part of the activity area is an area of cultural heritage sensitivity, which has not been subject to significant ground disturbance.

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

## **Strategic Links**

### **a) Greater Shepparton 2030 Strategy (GS2030)**

#### **Agriculture and Rural Land**

Regarded as the “Food Bowl of Australia”, the agricultural sector in Greater Shepparton, and the Goulburn Valley region in general, is a vital component of the regional, State and national economies.

#### **5.1.14 Fragmentation of Rural Land**

Rural landowners wish to excise small house lots. These excisions have a cumulative negative impact on the viability of remaining farmland. GSCC must control this phenomenon through assessment criteria for genuine restructuring purposes.

The replacement of smaller orchards with rural residential development creates potential rural/residential interface issues of spray drift, heavy traffic, noise etc.

The key objectives for Agriculture are as follows:

**Objective 1:** To protect the productive agricultural land base and the valuable regional resource of irrigated land.

**Objective 2:** To support developing and emerging agribusinesses and their increasing requirement for high technical infrastructure.

**Objective 3:** To develop and promote the municipality as a regional centre for food and primary industry research and development.

**Objective 4:** To ensure the sustainable development of business in strategic locations and to minimise conflicts at the urban fringe/agricultural land interface.

The GS2030 strategy like the Planning Scheme objectives largely relate to the protection

and development of farm land for agricultural uses. The strategy identifies the negative impacts of introducing dwellings on small lots into agricultural areas and warns against it.

Like the Rural Strategy and Planning Scheme GS2030 offers no support for this application.

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## **Conclusion**

Officers have assessed the application against the planning scheme and Council's policies and found that the application achieves unacceptable planning outcomes. It is also concluded that the net community benefit lies in protecting agricultural land from conflicting land uses such as is proposed. Therefore officers recommend that no permit issue.

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Meeting closed at 3.46 PM