

CONFIRMED MINUTES

**FOR THE
GREATER SHEPPARTON CITY COUNCIL**

DEVELOPMENT HEARINGS PANEL

Meeting No. 01/2016

**HELD ON
THURSDAY 4 FEBRUARY 2016
AT 2.00PM**

**IN THE HUNTER ROOM
90 WELSFORD STREET**

**CHAIR
Councillor Dinny Adem**

1. ACKNOWLEDGEMENT

Welcome everyone to Development Hearings Panel meeting number 1 for 2016.

I would like to begin with an acknowledgement of the traditional owners of the land.

“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

I would like to advise all present today that:

- the proceeding is being minuted but not recorded.
- and 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

Committee members present today are:

- Cr Dinny Adem (Chair),
- Colin Kalms – Manager Planning
- Braydon Aitken – Team Leader Statutory Planning
- Michael MacDonagh – Team Leader Strategic Planning, and
- Jon Griffin –Team Leader Project Management Office and Development

4. OFFICERS AND OTHERS PRESENT

The Planning Officers present today are:

- Warwick Smith - Planner
- Tim Watson – Senior Statutory Planner

I would also like to acknowledge all other parties present today. Given we have a two items for consideration today we will get you to introduce yourself when your turn comes to present.

5. APOLOGIES

Johann Rajaratnam - Director Sustainable Development

6. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

Moved by Jon Griffin, and seconded by Braydon Aitken that the minutes of the meeting held on 10 December 2015 be adopted.

Carried

Moved by Michael MacDonagh, and seconded by Braydon Aitken that the minutes of the meeting held on 26 November 2015 be adopted.

Carried

7. DECLARATIONS OF CONFLICTS OF INTEREST

None

8. ORDER OF PROCEEDINGS

For those of you who are attending the DHP for the first time the process is as follows

- The DHP operates under Local Law No 2, with such modifications and adaptations as the DHP deems necessary for the orderly conduct of meetings.
- All DHP panel members have 1 vote at a meeting.
- Decisions of the DHP are by ordinary majority resolution. If a vote is tied the Chair of the DHP has the casting vote.
- The process for submitters to be heard by the Panel today shall be:
 - The planning officer to present the planning report recommendation
 - Any objector/s or representatives on behalf of the objectors present to make a submissions in support of their objection (should they wish to)
 - The applicant/applicant representative to present in support of the application
- The officer, objectors/submitters and applicant will be limited to three minutes per person unless granted a further 3 minute extension by the Chair (following a moved and seconded motion from the panel).

9. MATTERS FOR CONSIDERATION

There are two items formally listed for consideration today:

- The first item for consideration is planning permit application 2015-168 for a roofed structure at 7580 Goulburn Valley Highway, Kialla.
- The second item for consideration is planning permit application 2015-377, for a dwelling extension at 138-140 O'Reilly Road, Tatura.

10. LATE REPORTS

None

11. NEXT MEETING

To be determined

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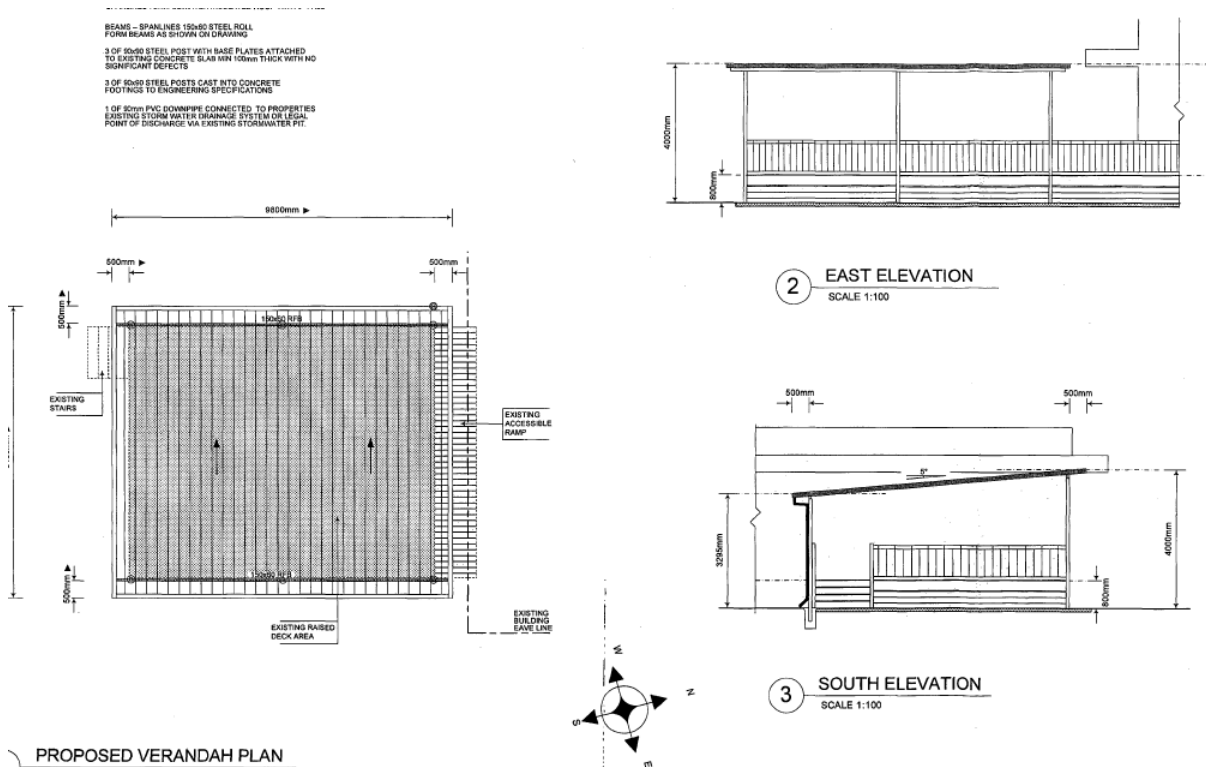
<u>Application No.</u>	<u>Subject Address:</u>	<u>Proposal:</u>	<u>Page No.</u>
2015-168	7580 Goulburn Valley Highway, Kialla	Buildings and works in the Special Use Zone 4 and Land Subject to Inundation Overlay for a roofed structure	3
2015-377	138-140 O'Reilly Road, Tatura	Buildings and works in the Land Subject to Inundation Overlay and Urban Floodway Zone for a dwelling extension	17

Application Details:

Responsible Officer:	Andrew Dainton
Application Number:	2015-168
Applicants Name:	Shepparton Greyhound Racing Club
Date Application Received:	24 April 2015
Statutory Days:	264 days
Land/Address:	7580 Goulburn Valley Highway KIALLA VIC 3631
Zoning and Overlays:	Special Use Zone 4 Land Subject to Inundation Overlay
Why is a permit required (include Permit Triggers):	Buildings and works in the SUZ under 37.01-4 Buildings and works in the LSIO under 44.04-1
Are there any Restrictive Covenants on the title?	No, Crown Land Reserve

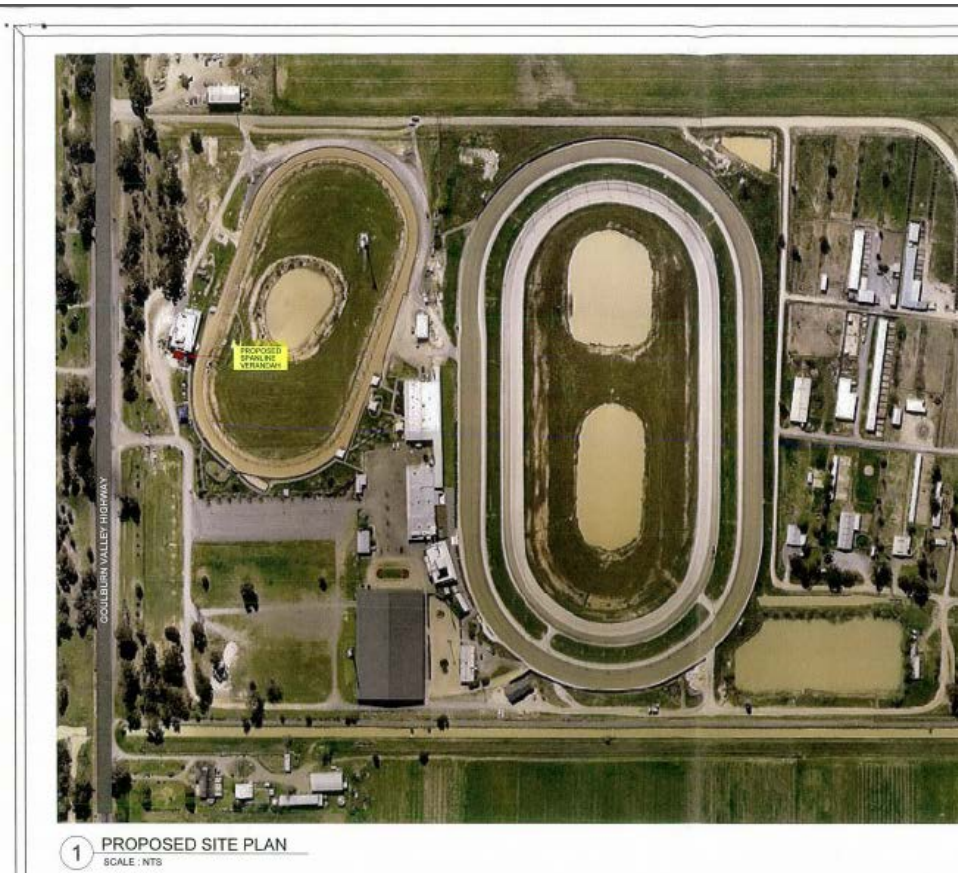
Proposal

The land is used for a Greyhound racing facility. This application seeks planning permission for an 83sqm roof structure over an existing viewing deck area. The deck is elevated 1.3m above ground and the skillion roof has a maximum height of 4m above the ground level.



The drawing above shows the proposed roof.

The aerial photo below shows the location of the deck and proposed roof.



The photo below shows the existing deck at the southern end of the pavilion building.



The application is accompanied by a letter of consent from DELWP to the application being made on Crown Land.

Summary of Key Issues

- The roof over an existing raised deck viewing area attached to the southern end of the greyhound racing pavilion is a minor development that is supported by the purpose of the Special Use Zone 4 and consistent with the Crown Land being reserved for Public Recreation and Racecourse.
- The proposal is satisfactory considering the relevant decision guidelines including for the zone, the Land Subject to Inundation Overlay, amenity and orderly planning.
- The objectors have not claimed or shown that the proposed roof will have any material detrimental effect on the objectors.
- The objectors have not made out any case whereby the proposed roof over an existing patron deck area should be prevented by the Crown land reserve being included in Investigation Area 1 under local planning policy.
- The inclusion of the reserve and surrounding land in Investigation Area 1 under local planning policy for housing is designed to resolve through a strategic planning process whether and how the surrounding Farming Zone land might make a contribution to the supply of housing in future given the significant issues and constraints of that land.

The constraints include infrastructure provision and flooding and the need to protect the long term use of Kialla Paceway by preventing land use conflict that could arise by amenity issues through proximity to the activities allowed and encouraged by the Special Use Zone.

The purpose or provisions of this local policy does not act to prevent permission for this minor, logical provision of a roof to an existing spectator deck as an enhancement of patron comfort.

- The current application has no similarity to past Council decisions and the VCAT review *Hamilton v Greater Shepparton CC [2014] VCAT 1613 (29 December 2014)* referred to by the objectors. In both these proposals the Farming Zone and local policy provisions did not support the proposed changes in use and development and in review VCAT determined that the objectives of planning and lack of net community benefit weighed against the proposal. The above contrasts to this application for logical and minor addition to greyhound racing buildings entirely consistent with the purpose of the Special Use Zone 4 and local policy provisions specifically seeking to protect the long term operation of the racing facilities.
- The objective of supporting the continued operation of this public facility by facilitating a needed development achieves a net community benefit.

Recommendation

Notice of Decision to Grant a Permit

That Council having caused notice of Planning Application No. **2015-168** 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 issue a Notice of Decision to Grant a Permit under the provisions of **Clauses 37.01 and 44.04** of the Greater Shepparton Planning Scheme in respect of the land known and described as **7580 Goulburn Valley Highway KIALLA VIC 3631**, for the **construction of a steel skillion roof over an existing deck** in accordance with the Notice of Decision and the endorsed plans.

Discuss key Conditions (including Referral Authorities):

1. Layout of plans not to be altered without further permission
2. Roof drainage to Development Engineers requirements
3. Two years for commencement of development, Four years for completion

Moved by Colin Kalms

Seconded by Michael MacDonagh

That Council having caused notice of Planning Application No. **2015-168** 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 issue a Notice of Decision to Grant a Permit under the provisions of **Clauses 37.01 and 44.04** of the Greater Shepparton Planning Scheme in respect of the land known and described as **7580 Goulburn Valley Highway KIALLA VIC 3631**, for the **construction of a steel skillion roof over an existing deck** in accordance with the Notice of Decision and the endorsed plans.

Discuss key Conditions (including Referral Authorities):

1. Layout of plans not to be altered without further permission
2. Roof drainage to Development Engineers requirements
3. Two years for commencement of development, Four years for completion

CARRIED

Subject Site & Locality

An inspection of the site and the surrounding area has been undertaken. The site has a total area of 199,198 square metres and currently contains:

Kialla Paceway, which includes two harness racing tracks and associated facilities for spectators to the east of the site and Greyhound racing track and associated facilities to the west of the site.

The site is located on the east side of the Goulburn Valley Highway 7.5km to the south of Shepparton CBD. The adjoining land is rural in appearance with dwellings on small rural lots generally used for agriculture or hobby farms, and west of the highway opposite the site the land is being progressively developed for residential purposes.

Permit/Site History

The history of the site includes:

- Planning permit 2014-61 was issued on 14 April 2014 and allowed the construction of three shade sail structures.
- Planning permit 2012-93 was issued on 23 April 2012 and allowed for an on premise liquor licence
- Planning permit 2011-321 was issued on 28 November 2011 and allowed for the elevated viewing deck which is now proposed to be covered by a roof structure

Further Information

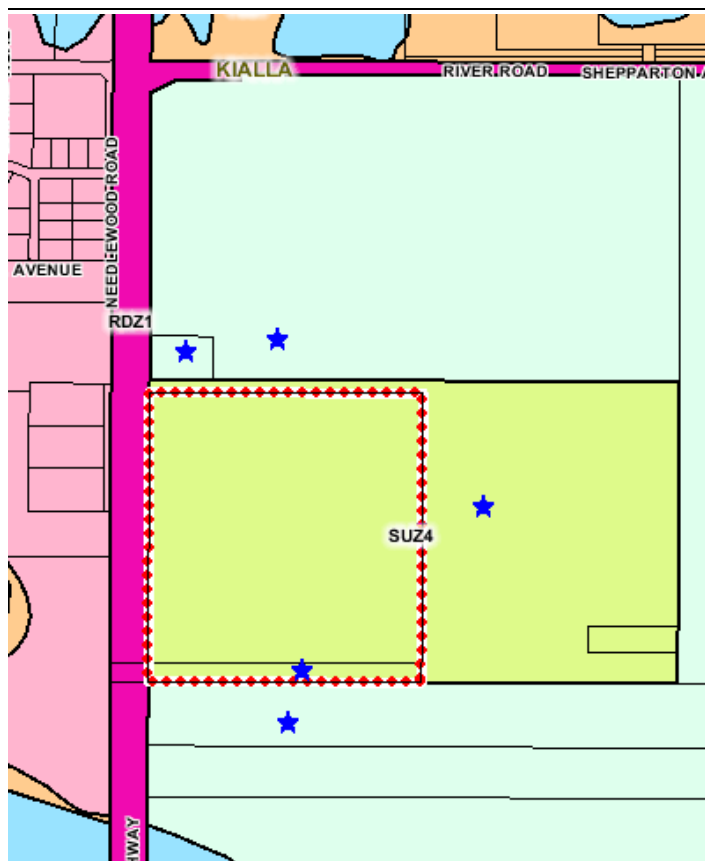
Further information was not requested for this application.

Public Notification

The application was advertised pursuant to Section 52 of the *Planning and Environment Act 1987* with the following description buildings and works for the construction of a roof structure over an existing viewing area, by:

Placing a sign on site.

Sending notices to the owners and occupiers of adjoining land as shown on the plan below.



The application for a building within LSIO was exempt from being advertised in accordance with Clause 44.04-4 of the planning scheme.

Objections

The Council has received two objections. The key issue that is raised in the objections is that the application should not be considered while the strategic planning process for Investigation Area 1 has not been completed. The objections cite previous decisions in relation to land surrounding the Crown land reserve and associated with the objectors which found that their proposed developments which sought permission for caravan parks and other accommodation was inappropriate in advance of the future use of Investigation Area 1 having been determined.

The objections are appropriately considered in detail in this report after setting out the zoning and policy provisions that apply to this land and the surrounding area.

Title Details

The land is a Crown land Reserve for the purpose of Public Recreation and Racecourse. The title does not contain a Restrictive Covenant or Section 173 Agreement

Consultation

Consultation was not undertaken.

Referrals

External Referrals/Notices Required by the Planning Scheme:

Referrals/Notice	Advice/Response/Conditions
Section 55 Referrals	GBCMA as a Recommending Authority had no objection
Section 52 Notices	None required

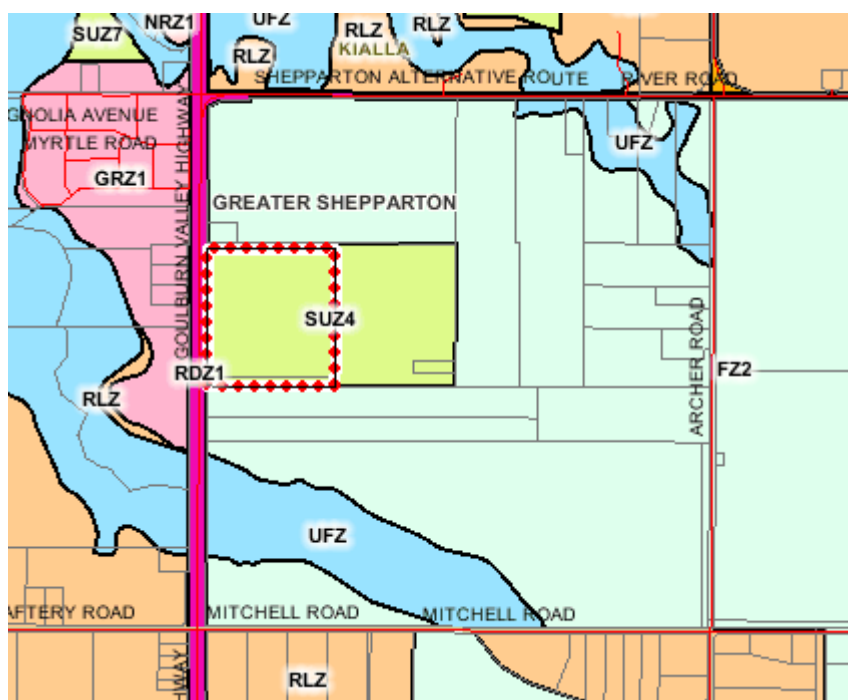
Internal Council Notices	Advice/Response/Conditions
Development Engineers	Usual Drainage condition

Assessment

The zoning of the land

The subject site is zoned Special Use Zone (Schedule 4). The purpose of the Special Use Zone is to recognise or provide for the use and development of land for specific purposes as identified in a schedule in this zone.

The zoning of the land and surrounds is shown below, with the western parcel of the Crown reserve shown outlined in red.



A permit for the proposed development is required pursuant to Clause 37.04-1 of the Planning Scheme (Buildings and Works). Any requirement in the schedule to this zone must be met.

Schedule 4 of the Special Use Zone relates to Kialla Paceway.

Purpose of Zone

- To provide for the use of the Kialla Paceway for horse racing and a range of entertainment, recreational, commercial and community activities.
- To encourage the multiple use of land and buildings within the Kialla Paceway in order to facilitate its usage throughout the year.
- To ensure that the combination of uses, their density, and the scale and character of any development do not prejudice the amenity of surrounding land.
- To ensure that the future use and development of the Kialla Paceway occurs in a planned and orderly manner.

Clause 3.0 includes the following decision guidelines to buildings and works applications.

Before deciding on an application to construct a building or construct or carry out works, the responsible authority must consider, as appropriate:

- *The movement of pedestrians and cyclists, and vehicles providing for supplies, waste removal, emergency services and public transport.*
- *The provision of car parking.*
- *The interface with adjoining zones, especially the relationship with residential areas.*
- *The streetscape, including the conservation of buildings, the treatment of the fronts and backs of buildings and their appurtenances, illumination of buildings or their immediate spaces and landscaping of land adjoining a road.*
- *The availability of and connection to services.*

Response

The proposed development is consistent with the purpose of the Special Use Zone and Schedule 4 and relevant decision guidelines in the following ways:

- The proposed roof will enhance the facilities at the site by providing weather protection over an existing raised deck for both viewing races and multiple use for outdoor entertaining with seating and tables.
- The proposed roof will not have a detrimental impact on the amenity of surrounding land. The roof is a relatively small structure over the existing elevated deck sympathetically designed to relate to the main two-storey greyhound racing building and is well distant from any adjacent land.
- Given the roof is a relatively minor addition and the location is within the cluster of spectator facilities supported by the zone purpose, and satisfies relevant decision guidelines this represents development proceeding in a planned and orderly manner.

Relevant overlay provisions

Land Subject to Inundation Overlay

Purpose of Overlay

Includes identifying land in a flood storage or flood fringe area affected by the 1 in 100 year flood, 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.

Buildings and works require permission unless an exemption applies in the overlay or the schedule to the overlay.

Response

The raised viewing area and grandstand already exists at this reserve and the proposed roof is the type of structure which is often exempted in other circumstances however no specific exemption exists in this instance. The roof will have no effect on storage or passage of floodwater or increase the hazard associated with flooding. GBCMA has considered the proposal and has no objection to permission being granted and has no conditions.

The State Planning Policy Framework (SPPF)

Clause 10.04 Objectives of Planning

Includes objectives to provide for the fair, orderly, economic and sustainable use, and development of land; to protect public utilities and other facilities for the benefit of the community; and to facilitate development in accordance with the objectives.

Clause 11 – Settlement

Planning is to facilitate sustainable development that takes full advantage of existing settlement patterns, and investment in transport and communication, water and sewerage and social facilities.

Clause 13 Floodplains

Achieve appropriate management of land affected by flooding.

Response

The application is consistent with the objectives of planning, and State Planning Policy on settlement and floodplains.

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

Clause 21.04 Settlement.

21.04-1 Urban Consolidation and Growth

Investigation Areas

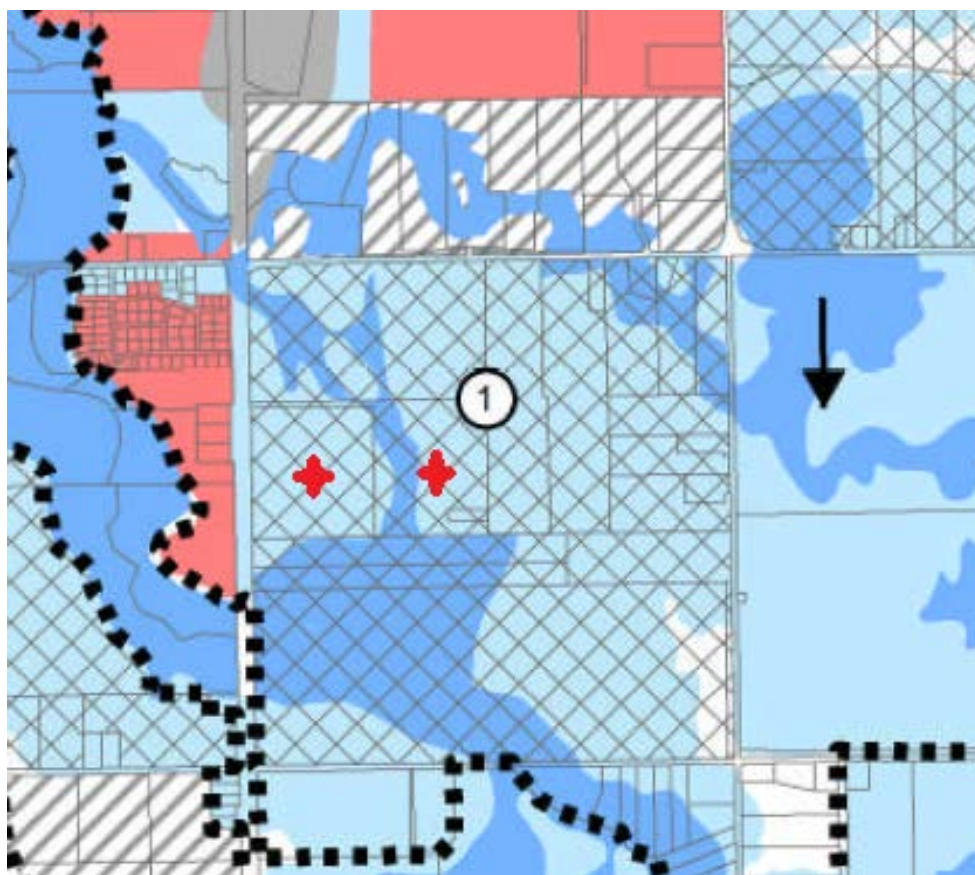
Several Investigation Areas have been identified within the Framework Plans. These areas represent land which has potential to be rezoned to a higher density residential use due to the proximity to services and/or growth areas. The areas however presently have significant issues or constraints such as environmental, flooding, infrastructure and/or land use conflicts. The relevant issues will need to be resolved on a site-by-site basis through a more detailed analysis to determine the potential for higher density development and any subsequent changes to the Framework Plans.

These areas (which are nominated with the corresponding number on the Framework Plans) are:

- *Investigation Area 1 – Kialla Paceway and Shepparton Greyhound Racing environs. This area surrounds and includes the greyhound and trotting facilities and is directly adjacent to the Shepparton South Growth Corridor. There is potential to extend services to this land. However, future residential development within this area will be dependent on amenity*

issues such as lighting, noise, odour and dust being addressed to ensure that the long term interests of the racing facilities are protected.

A section of the Kialla and Shepparton South Framework Plan is shown below, with the addition of the two large Crown Land Reserve parcels being indicated with red stars.



Legend

- ■ ■ ■ Settlement Boundary
- ➔ Long Term Future Growth
- /// Potential Low Density
- ⋯ Potential Rural Living
- ◇◇◇◇ Investigation Area
- Urban Growth Areas
- ▨ Development Plan Overlay
- Public Acquisition Overlay
- Environmental Significance Overlay
- Flood Overlay
- Land Subject to inundation Overlay

Response

The current zoning of the Crown Land Public Recreation and Racecourse reserve is Special Use Zone 4 which has purposes set out to govern the existing and continued use as Kialla Paceway. The surrounding land is zoned Farming Zone 2. The purpose of Investigation Area 1 is that the land surrounding the Kialla Paceway and Shepparton Greyhound Racing has been identified in the Framework Plans as potentially having a future low density residential use subject to significant issues or constraints. In the case of the land surrounding Kialla paceway the issues and constraints are infrastructure provision and flooding constraints and potential land use conflict where the development of the land surrounding the Crown land reserve is dependent on addressing amenity issues to ensure that the long term interests of the racing facilities are protected.

This local policy has affected decision making at 215 Mitchell Road, Kialla where the development proposal has been found by Council and on review by VCAT to be premature while the future use of the area surrounding the Kialla Paceway has not been resolved in a co-ordinated manner. It is clear that the local policy is designed to plan for the appropriate use of the land around the racing reserve in a way that compliments and protects the continued operation of the Paceway in the long term and not to constrain obvious amenity improvements for patrons viewing greyhound racing as proposed by the current application.

21.05-2 Floodplain and Drainage Management

Sound floodplain management is the means by which the economic, social and environmental risks associated with floodplain use and development can be minimised.

Relevant Particular Provisions

None applicable

The decision guidelines of Clause 65

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

65.01 Approval of an application or plan

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.*
- *The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *The purpose of the zone, overlay or other provision.*
- *Any matter required to be considered in the zone, overlay or other provision.*
- *The orderly planning of the area.*
- *The effect on the amenity of the area.*
- *The proximity of the land to any public land.*

- *Factors likely to cause or contribute to land degradation, salinity or reduce water quality.*
- *Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.*
- *The extent and character of native vegetation and the likelihood of its destruction.*
- *Whether native vegetation is to be or can be protected, planted or allowed to regenerate.*
- *The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.*

Response

The proposed development complies with the Decision Guidelines set out in Clause 65 in the following ways:

- The proposed development complies with the purpose of the Special Use Zone and Schedule 4 of the Special Use Zone. The proposed development will not have a negative impact on the FO and LSIO.
- It is considered that the proposed development complies with the orderly planning of the area. The development is supported by the zone provisions. The local policy for housing that includes the land in the Investigation Area 1 does not indicate that a permit should not be granted for this roof. The roof does not alter any impact the facility has on the amenity of surrounding land and is irrelevant to any investigation to determine the appropriate form and location of housing or other development within the Investigation Area 1.
- The proposed development is on a Crown land reserve with access from Goulburn Valley Highway and is not in close proximity to any other public land.
- The proposed development will not cause any land degradation, salinity and will not reduce water quality.
- The proposed development will not have an impact on the quality of stormwater within the site.
- The proposed development will not have an impact on native vegetation.
- The proposed development will not have increase the degree of flood, erosion or fire hazard.

Relevant incorporated or reference documents

Local Floodplain Development Plan – Precinct of Honeysuckle Creek and Seven Creeks (2003)

Other relevant adopted State policies or strategies policies

None applicable to this application

Relevant Planning Scheme amendments

None applicable to this application

Are there any significant social & economic effects?

None applicable to this application

Discuss any other relevant Acts that relate to the application?

None applicable to this application

The Aboriginal Heritage Act 2006

The 'Area of Cultural Heritage Sensitivity in Victoria' does not include the land within an area of cultural heritage sensitivity; therefore the proposed use does not trigger the need for a CHMP.

Charter of Human Rights and Responsibilities

The process of consideration and decision-making in respect of the application has given proper consideration to and is compatible with the requirements of the Charter of Human Rights and Responsibilities.

Conclusion

Having considered all the matters required by Clause 65 including State and local planning policy, zone and overlay requirements, and all decision guidelines, it is considered that granting permission for a roof as weather protection over an existing deck at the Greyhound Racing facility will produce an acceptable outcome and a Notice of Decision to grant a planning permit should be issued subject to standard conditions including for drainage.

Draft Notice Of Decision

APPLICATION NO: 2015-168
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: 7580 GOULBURN VALLEY HIGHWAY KIALLA VIC
3631

WHAT THE PERMIT WILL ALLOW: BUILDINGS AND WORKS IN THE SPECIAL USE
ZONE 4 AND LAND SUBJECT TO INUNDATION
OVERLAY FOR A ROOFED STRUCTURE

WHAT WILL THE CONDITIONS OF THE PERMIT BE?

1. Layout Not Altered

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

2. Urban Drainage

Before the development is completed the roof drainage must be connected to the legal point of discharge to the satisfaction of the responsible authority.

3. Time for Starting and Completion

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

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

Application Details:

Responsible Officer:	Tim Watson
Application Number:	2015-377
Applicants Name:	Bruce Mactier Building Design
Date Application Received:	8 October 2015
Statutory Days:	105 (20/1/16)
Land/Address:	138-140 O'Reilly Road TATURA VIC 3616
Zoning and Overlays:	Pt. Low Density Residential Zone Pt. Floodway Overlay Pt. Land Subject to Inundation Overlay
Why is a permit required (include Permit Triggers):	44.04-1 buildings and works in the Land Subject to Inundation 37.03-2 – buildings and works in the Urban Floodway Zone
Are there any Restrictive Covenants on the title?	no

Proposal

The application for a planning permit proposes the extension to an existing dwelling in the Land Subject to Inundation Overlay and Urban Floodway Zone.

The officer in undertaking their initial assessment was unable to determine whether the dwelling extension was located within the Urban Floodway Zone. The application was therefore forwarded to the GBCMA under the section 55 referral process. The GBCMA determined that the dwelling extension would extend into the Urban Floodway Zone.

As a permit is also required under the Urban Floodway Zone, the application is not exempt from notice.

The application would allow for the extension of the dwelling use into the Urban Floodway Zone, a prohibited use in the Zone.

The planning officer has determined not to advertise the application as the GBCMA have objected and the officer will recommend refusal based on this and the extension being prohibited.

Summary of Key Issues

- The application for a planning permit proposes a dwelling extension at the rear of the existing dwelling to provide for an outdoor living area.
- The application was referred to the GBCMA, who have objected the proposal.
- The application proposes the extension of the dwelling into the Urban Floodway Zone, which would create a situation of a prohibited use (dwelling) in the zone.

- A letter was forwarded to the applicant requesting amendments or withdrawal of the application.
 - A meeting with the landowner was undertaken in regards to the above.
 - No changes to the application have been made
-

Recommendation

Refusal

That the Council having not caused notice of Planning Application No. **2015-377** 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 **Urban Floodway Zone** of the Greater Shepparton Planning Scheme in respect of the land known and described as **138-140 O'Reilly Road TATURA VIC 3616**, for the **buildings and works in the Land Subject to Inundation Overlay for a dwelling extension**.

Reasons for Refusal:

Greater Shepparton City Council

1. The dwelling extension will extend the use of the land for a dwelling into the Urban Floodway Zoned land, a dwelling being a prohibited use in the Urban Floodway Zone pursuant to clause 37.03-1

Goulburn Broken Catchment Management Authority

1. It is a prohibited use within the Urban Floodway Zone.
2. The Proposal is discouraged within the State Planning Policy Framework and Local Planning Policy Framework of the Council's Planning Scheme.
3. The proposal is not consistent with the planning scheme's incorporated document Greater Shepparton Floodplain Development Plan – Precinct of Mosquito Depression, October 2006.
4. The proposal is not consistent with the Victoria Planning Provisions Practice Note Applying for a *Planning Permit under the Flood Provisions* (DOI, 2000).
5. Long-term cumulative impacts of such proposals.

Moved by Braydon Aitken

Seconded by Michael MacDonagh

Refusal

That the Council having not caused notice of Planning Application No. **2015-377** 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 **Urban Floodway Zone** of the Greater Shepparton Planning Scheme in respect of the land known and described as **138-140 O'Reilly Road TATURA VIC 3616**, for the **buildings and works in the Land Subject to Inundation Overlay for a dwelling extension**.

Reasons for Refusal:

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4. The proposal is not consistent with the Victoria Planning Provisions Practice Note Applying for a *Planning Permit under the Flood Provisions* (DOI, 2000).
5. Long-term cumulative impacts of such proposals.

CARRIED

Subject Site & Locality

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

Date: **19/1/16**

The site has a total area of **4277** square metres and currently contains:

- An existing single storey dwelling.
- A domestic shed is located to the south east of the dwelling which was recently constructed. It appears that at least part of this shed is located in the UFZ.
- It was noted on site that a colour-bond fence has been constructed around the rear of the dwelling yard to approximately the middle of the allotment. This fence is located in the UFZ and would have required planning permission for which none was sought.

The main site/locality characteristics are:

- Dwelling located on similar sized allotments.
- The allotments on the southern side of O'Reilly Road are dissected by the urban Floodway Zone.

The Photos below show the existing site:





Permit/Site History

The history of the site includes:

- Planning permit 2014 approved buildings and works for a dwelling in the Land Subject to Inundation Overlay.

Further Information

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

Public Notification

As the GBCMA have confirmed that the proposal is within the UFZ and would create a prohibited use, the officer did not see the need to advertise an application which would be refused.

Objections

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

Title Details

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

Consultation

Consultation was undertaken. Relevant aspects of consultation, included:

- Forwarding letter to the applicant informing that the application would need to be withdrawn or it would be refused.
- A meeting was undertaken with the landowner in which they were informed as to why the extension was prohibited.
- The landowner has queried why the shed was able to be constructed in the Urban Floodway Zone (UFZ). Officers informed that it should not have been and have arranged for a building inspector the check. The Building Inspector informed that it appeared to be very close to being in the UFZ but could not confirm one way or another without a survey being undertaken. Based on aerial photography and zoning maps it would appear at least part of the shed is in the UFZ.

Referrals

External Referrals/Notices Required by the Planning Scheme:

Referrals/Notice	Advice/Response/Conditions
Section 55 Referrals	<p>The application was referred to the Goulburn Broken Catchment Management Authority, who are identified as a recommending authority under the Planning Scheme. The authority provided the following response:</p> <p>The authority's aerial photography indicates that the southern walls of the dwelling are essentially on the edge of the Urban Floodway Zone. However the proposed extension (approximately 120 sqm) is south of the dwelling and entirely</p>

	<p>within the Urban Floodway Zone.</p> <p>Submitted drawings also indicate an existing shed sited entirely within the Urban Floodway Zone, for which the Goulburn Broken CMA does not have a record of referral.</p> <p>In light of the above information, and pursuant to Section 56 of the <i>Planning and Environment Act 1987</i>, the Goulburn Broken CMA objects to the granting of a permit on the following grounds:</p> <ol style="list-style-type: none"> 1. It is a prohibited use within the Urban Floodway Zone. 2. The Proposal is discouraged within the State Planning Policy Framework and Local Planning Policy Framework of the Council's Planning Scheme. 3. The proposal is not consistent with the planning scheme's incorporated document Greater Shepparton Floodplain Development Plan – Precinct of Mosquito Depression, October 2006. 4. The proposal is not consistent with the Victoria Planning Provisions Practice Note Applying for a <i>Planning Permit under the Flood Provisions</i> (DOI, 2000). 5. Long-term cumulative impacts of such proposals.
Section 52 Notices	The application for a planning permit was not notified to any authorities.

Internal Council Notices	Advice/Response/Conditions
No internal referrals were required	-
-	-

Assessment

The zoning of the land

Low Density Residential Zone 32.03

The purpose of the zone is:

- To implement the State Planning Policy Framework and Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To provide for low-density residential development on lots which, in the absence of reticulated sewerage, can treat and retain all wastewater.

A permit was not triggered under the zone for the proposed extension and therefore the provisions of the zone have not been considered in this report.

Urban Floodway Zone 37.03

The purpose of the zone is:

- To implement the State Planning Policy Framework and Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

- To identify waterways, major floodpaths, drainage depressions and high hazard areas within urban areas which have the greatest risk and frequency of being affected by flooding.
- To ensure that any development maintains the free passage and temporary storage of floodwater, minimises flood damage and is compatible with flood hazard, local drainage conditions and minimisation of soil erosion, sedimentation and silting.
- To reflect any declarations under Division 4 of Part 10 of the Water Act, 1989.
- To protect water quality and waterways as natural resources in accordance with the provisions of relevant State Environment Protection Policies, and particularly in accordance with Clauses 33 and 35 of the State Environment Protection Policy (Waters of Victoria).

The use of the land for a dwelling in the Urban Floodway Zone is a prohibited use.

Response

The Goulburn Broken Catchment management Authority have confirmed that the proposed dwelling extension is to be located within the Urban Floodway Zone.

This clarification from the GBCMA raises the issue that the extension will be used in conjunction with the use of the existing building for a dwelling, dwelling being a prohibited use in the Urban Floodway Zone. The dwelling which as identified by the GBCMA response is located on the boundary between the two zones but not located within the Urban Floodway Zone was constructed in 2014. The use of the land prior to this date was vacant, thus the dwelling located on the allotment has not had the time in which to establish an existing use right on the land zoned Urban Floodway for the purposes of a dwelling.

Provided the above the officer must also conclude that the extension of the dwelling into the Urban Floodway Zone is a prohibited use and the Council does not have the discretion to consider the application.

Relevant overlay provisions

Land Subject to Inundation Overlay 44.04

The purpose of the overlay is:

- To identify land in a flood storage or flood fringe area affected by the 1 in 100 year flood or any other area determined by the floodplain management authority.
- 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.

- To reflect any declaration under Division 4 of Part 10 of the Water Act, 1989 where a declaration has been made.
- To protect water quality in accordance with the provisions of relevant State Environment Protection Policies, particularly in accordance with Clauses 33 and 35 of the State Environment Protection Policy (Waters of Victoria).
- To ensure that development maintains or improves river and wetland health, waterway protection and flood plain health.

A permit is required for buildings and works in the overlay pursuant to clause 44.04-1.

Decision Guidelines

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and Local Planning Policies.
- Any local floodplain development plan.
- Any comments of the relevant floodplain management authority.
- The existing use and development of the land.
- Whether the proposed use or development could be located on flood-free land or land with a lesser flood hazard outside this overlay.
- The susceptibility of the development to flooding and flood damage.
- The potential flood risk to life, health and safety associated with the development.
Flood risk factors to consider include:
 - o The frequency, duration, extent, depth and velocity of flooding of the site and access way.
 - o The flood warning time available.
 - o The danger to the occupants of the development, other floodplain residents and emergency personnel if the site or accessway is flooded.
- The effect of the development on redirecting or obstructing floodwater, stormwater or drainage water and the effect of the development on reducing flood storage and increasing flood levels and flow velocities.

- The effect of the development on river health values including wetlands, natural habitat, stream stability, erosion, environmental flows, water quality and sites of scientific significance.

Response

As the proposed development has been determined to be within the Urban Floodway Zone, the Land Subject to Inundation Overlay does not affected the area where the dwelling extension is to be located.

The State Planning Policy Framework (SPPF) Floodplain Management 13.02-1

Relevant objectives include to assist the protection of:

- Life, property and community infrastructure from flood hazard.
- The natural flood carrying capacity of rivers, streams and floodways.
- The flood storage function of floodplains and waterways.
- Floodplain areas of environmental significance or of importance.

Response

As identified the dwelling extension is to be located within the Urban Floodway Zone, with the GBCMA objecting to the proposal.

It has been identified that the extension is prohibited under the provisions of the urban Floodway Zone.

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

Relevant objectives and Strategies include:

- To recognise the constraints of the floodplain on the use and development of the land.
- Discourage development and subdivision on land subject to flooding
- Ensure that all new development maintains the free passage and temporary storage of floodwater, minimises flood damage, is compatible with flood hazard and local drainage conditions, and minimises soil erosion, sedimentation and silting.
- Prevent tree removal to minimise loss of riparian vegetation as a result of development on the floodplain.

Response

As identified the dwelling extension is to be located within the Urban Floodway Zone, with the GBCMA objecting to the proposal.

It has been identified that the extension is prohibited under the provisions of the Urban Floodway Zone.

Relevant Particular Provisions

There are no relevant Particular Provisions that relate to this application for a planning permit.

The decision guidelines of Clause 65

The relevant Decision Guidelines of Clause 65 have been considered and addressed in undertaking the assessment for this application and are addressed under other sections in this report.

Relevant incorporated or reference documents

Greater Shepparton Floodplain Development Management Plan – Precinct of Mosquito Depression, October 2006

The Goulburn Broken Catchment Management Authority identify that the proposal is not consistent with the incorporated document.

Other relevant adopted State policies or strategies policies

There are no other relevant State or strategic policies that relate to this application for a planning permit.

Relevant Planning Scheme amendments

There are no relevant Planning Scheme Amendments that relate to this application for a planning permit.

Are there any significant social & economic effects?

There are no relevant significant social or economic effects that relate to this application for a planning permit.

Discuss any other relevant Acts that relate to the application?

There are no other relevant Acts that relate to this application for a planning permit.

Conclusion

The application has been objected to by the Goulburn Broken Catchment Management Authority who are a recommending Authority and the application extends the use of the land for a dwelling into the Urban Floodway Zone creating a prohibited use. For these reasons it is recommended that the application for a planning permit be refused.

REFUSAL TO GRANT A PERMIT

APPLICATION NO:	2015-377
PLANNING SCHEME:	GREATER SHEPPARTON PLANNING SCHEME
RESPONSIBLE AUTHORITY:	GREATER SHEPPARTON CITY COUNCIL
ADDRESS OF THE LAND:	138-140 O'Reilly Road TATURA VIC 3616
WHAT HAS BEEN REFUSED:	Buildings and works in the Land Subject to Inundation Overlay and Urban Floodway Zone for a dwelling extension

WHAT ARE THE REASONS FOR THE REFUSAL?

Greater Shepparton City Council

1. The dwelling extension will extend the use of the land for a dwelling into the Urban Floodway Zoned land, a dwelling being a prohibited use in the Urban Floodway Zone pursuant to clause 37.03-1

Goulburn Broken Catchment Management Authority

1. It is a prohibited use within the Urban Floodway Zone.
2. The Proposal is discouraged within the State Planning Policy Framework and Local Planning Policy Framework of the Council's Planning Scheme.
3. The proposal is not consistent with the planning scheme's incorporated document Greater Shepparton Floodplain Development Plan – Precinct of Mosquito Depression, October 2006.
4. The proposal is not consistent with the Victoria Planning Provisions Practice Note Applying for a *Planning Permit under the Flood Provisions* (DOI, 2000).
5. Long-term cumulative impacts of such proposals.