



GREATER  
SHEPPARTON

# Existing Use Rights

## Checklist

Clause 63 of the Greater Shepparton Planning Scheme allows for the opportunity of existing use rights. An existing use right can be established for a lawful continuous use on a property or a certain section of land. Seeking to have an existing use right can be complicated, confusing and sometimes very difficult to prove. An existing use right can not be established without the required evidence being provided.

The following documents should be sought from the person claiming to hold existing use rights or, in order to assess a claim for existing use rights in respect of a parcel of land. It is up to the person claiming existing use rights to provide evidence that existing use rights exists.

***Please note that once the documentation is received, the Council may also obtain its own legal advice to ensure existing use rights have been achieved.***

### **General Documents/Evidence**

The following should be sought from the person claiming an existing use right in relation to the land in question:

- Certificate of title (along with any plans of subdivision and a cadastral plan, if necessary).
- Building permits and/or planning permits for any buildings, structures etc., along with any certificates of occupancy/Final Inspection.
- Copies of any leases or licences (eg. tenancy lease, mining licence, water licence, agricultural lease, licence, etc.).
- Aerial photographs of the subject land and its surrounds.
- Photographs (dated and with information regarding who took them and from what location they were taken).
- Previous tax forms lodged with the Australian Taxation Office (in which place of residence or business is completed).
- Statements (preferably statutory declarations) made by witnesses who can verify:
  - The land use. (These statements will need to be sufficiently specific about the use alleged to have been undertaken and the use having taken place on the subject land).
  - That, in accordance with clause 63.06 of the Greater Shepparton Planning Scheme, the use has not stopped for a continuous period of 2 years or for two or more periods which together total 2 years in any period of 3 years. If the use is seasonal, the existing use right will expire if the use does not take place for 2 years in succession.
- Annual rates notices showing who rates were levied upon and when (This will evidence relationship with subject land but not necessarily activities taking place on the land).

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In relation to a business:

- Documents lodged with the Australian Securities and Investments Commission, Consumer Affairs Victoria, ACCC etc.
- Receipts evidencing purchases made from suppliers over the years, to demonstrate operation of the business (note that this will not necessarily prove operation of the business from the subject land).

## **Documents/evidence specific to the head of claim under Clause 63 of the Greater Shepparton Planning Scheme**

The following additional documents will need to be obtained depending on which head of claim is being asserted to prove an existing use right.

*The use was lawfully carried out immediately before the approval date* (the date that the New Format Planning Scheme came into operation for Council being 29 July 1999).

- Copies of all relevant provisions of the previous planning schemes (including definitions for land use terms) to demonstrate that the use was lawful.
- Evidence (perhaps photos statements etc) as set out to prove that the use actually commenced before the approval date.

*A permit for the use has been granted immediately before the approval date and the use commences before the permit expires*

- Copy of the planning permit along with any associated documents (eg endorsed plans approved landscape plans etc).
- Evidence (photos statements etc. as set out above) to prove that the use actually commenced before the permit expired.

*A permit for the use has been granted under Clause 63.08 of the Planning Scheme and the use commences before the permit expires.*

- Copy of the planning permit, along with any associated documents (eg endorsed plans, approved landscape plans etc).
- Copies of all of the previous planning schemes (including definitions for land use terms) to demonstrate that the use was prohibited.

*Proof of continuous use for 15 years is established under Clause 63.11.*

Clause 63.11 states that:

“If, in relation to an application or proceeding under the Act or this scheme, including an application for a certificate of compliance under Section 97N of the Act, the extent of any existing use right for a period in excess of 15 years is in question, it is sufficient proof of the establishment of the existing use right if the use has been carried out continuously for 15 years prior to the date of the application or proceeding.

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An existing use right may be established under this clause even if the use did not comply with the scheme immediately prior to or during the 15 year period, unless either:

- At any time before or after the commencement of the 15 year period the use has been held to be unlawful by a decision of a court or a tribunal.
- During the 15 year period, the responsible authority has clearly and unambiguously given a written direction for the use to cease by reason of its non-compliance with the scheme.”

- Evidence (photos statements etc. as set out above) to prove that the use continued continuously for 15 years or more. If either of the above events took place to stop time running 15 years is to be calculated back from that event so the 15 or more years of use must be proven up to the date of that event.

*The use is a lawful continuation by a utility service provider or other private body of a use previously carried on by a Minister government department or public authority even where the continuation of the use is no longer for a public purpose.*

- Letter from the Minister, government department or public authority stating that that entity carried on a particular use on the subject land.
- Copies of all relevant provisions of the previous planning schemes (including definitions for land use terms) to demonstrate that the use by the Minister government department or public authority was lawful under the zoning of the Scheme (eg. in the Public Use Zone land can be used for a railway or a telecommunications facility provided certain conditions are met - zoning of land in this way may support a claim that the land was used for instance a railway station).

## **NOTE**

***The contents of each document provided to the Council will need to be analysed by a planning officer against the existing use right claimed. Obtaining documents themselves is not always sufficient proof that an existing use right exists. Just because certain documents exist, does not prove an existing use right exists, the Council has to be convinced that such use exists.***

***It will not be detrimental for an applicant to submit all of the documents in the checklist. Any document provided will be used solely to enable the Council to assess an existing use right claim on the balance of probabilities.***

***The Council may be able to make an assessment regarding the existence of existing use rights without having all of the listed documents.***

***The Council will exercise its discretion when making its assessment of which documents are necessary for each claim.***

Due to the complexity of the controls relating to existing use rights within the Greater Shepparton Planning Scheme, it is requested that you discuss your matter and which documents you are required to submit with a Planning Officer. An appointment can be made to meet with a planning officer by contacting the Council on (03) 5832 9700 or book online at <http://www.greatershepparton.com.au/bookings/>.

Please note that this checklist is for standard information/evidence required to establish existing use rights. Additional information may be required by the assessing planning officer or the Councils solicitor after the documents have been submitted.