

AGENDA

FOR THE
GREATER SHEPPARTON CITY COUNCIL

ORDINARY COUNCIL MEETING

TO BE HELD ON
TUESDAY 21 February 2012
AT 1.00PM

IN THE COUNCIL BOARD ROOM
90 WELSFORD STREET

COUNCILLORS:

Cr Michael Polan (Mayor)
Cr Chris Hazelman (Deputy Mayor)
Cr Cherie Crawford
Cr Geoff Dobson
Cr Jenny Houlihan
Cr Milvan Muto
Cr Kevin Ryan

VISION

GREATER SHEPPARTON
AS THE FOOD BOWL OF AUSTRALIA,
A SUSTAINABLE, INNOVATIVE
AND DIVERSE COMMUNITY
GREATER FUTURE

A G E N D A
FOR THE
ORDINARY COUNCIL MEETING
TO BE HELD ON
TUESDAY 21 February 2012 AT 1.00PM

CHAIR
CR MICHAEL POLAN

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PRESENT:

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

3. DECLARATIONS OF CONFLICTS OF INTEREST

4. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

RECOMMENDATION

That the Minutes of the Ordinary Council Meeting held on 17 January 2012 as circulated, be adopted.

5. MANAGEMENT REPORTS

FROM THE ASSET DEVELOPMENT DEPARTMENT

5.1 Contract No. 1364 – Rehabilitation of the Murchison Landfill

Disclosures of conflicts of interest in relation to advice provided in this report

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Summary

With the establishment of a transfer station at Murchison during 2011 the existing landfill site has now been closed. This contract is for the rehabilitation of the former Murchison landfill. Works will involve re-shaping the existing landfill mound to facilitate drainage and the establishment of grass. A compacted clay cap will then be constructed over the mound to keep rainwater out. The area will finally be top soiled and planted out with native grasses. All works will be performed in accordance with current Environmental Protection Authority (EPA) best practice guidelines.

RECOMMENDATION

That the Council:

1. Accept the tender submitted by Pearse Earthmoving Pty Ltd of Congupna, Victoria for Contract No. 1364 Rehabilitation of the Murchison Landfill for the Lump Sum price of \$282,933.25 (including GST).
2. Authorise the Chief Executive Officer to sign and seal the contract documents.

Contract Details

The contract is a lump sum contract not subject to price adjustment for rise and fall in prices. Works are programmed to commence during March 2012 and subject to weather should be completed within three months.

Tenders

Two tenders were received at the closing time of 4pm on the 14 December 2011.

1. Pearse Earthmoving Pty Ltd
2. Mawson Constructions Shepparton Pty Ltd

Tenders are listed in order of price, lowest to highest.

Tender Assessment

Tenders were assessed by:

- Graeme Long – Manager Waste Services
- Matthew Glavina – Environmental Officer Waste Services

Tenders were evaluated using the following criteria:

Criteria	Weighting
Price	70 per cent
Integrated Management System	10 per cent
Previous Relevant Experience, and Capability of Organisations	10 per cent
Prices Supplied For Additional Work	10 per cent

5. MANAGEMENT REPORTS

5.1 Contract No. 1364 – Rehabilitation of the Murchison Landfill (Continued)

The Engineers estimate is \$345,526 including GST

After applying the evaluation criteria outlined in the tender document, the tender submitted by Pearce Earthmoving Pty Ltd for the lump sum price of \$282,933.25 (including GST) was found to offer the best value to the Council.

A separate confidential tender evaluation report has been provided to all councillors.

Risk Management

A risk assessment has been performed and all identified risks except the weather have been assessed as low. Risks associated with the project development and contractor management are controlled through existing internal procedures. This project also has a high level of earthwork control requiring independent soil engineers to monitor works on site continually.

Inclement weather that could cause delay of the project has been assessed as moderate. This risk has been mitigated as much as possible by programming works during the autumn when severe rainfall is not expected.

This project requires a small number of native trees that have established themselves on the landfill mound to be removed. A planning permit is required to remove these trees. The permit process is currently well advanced however a delay with the issue of the permit would set back the work schedule.

All landfill operations must comply with the Environment Protection Act. Proposed works are in accordance with EPA guidelines and completion of this project will satisfy the Council's landfill rehabilitation obligations associated with this landfill. The Council will however still have post landfill closure maintenance obligations under the EPA guidelines.

Policy Implications

There are no policy implications with this project

Best Value Implications

The project has been developed in accordance with Best Value principles.

Financial Implications

In the 2011/2012 mid-year budget \$340,000 (excluding GST) has been allowed to complete this project. This amount will cover the contract sum, contingency, fencing, soil testing and purchase of soil.

Victorian Charter of Human Rights and Responsibilities Act 2006 Implications

This proposal does not limit any of the human rights provided for under the Victorian *Charter of Human Rights and Responsibilities Act 2006*.

Community Consultation

This project has been through the normal Council budget process which provides for community comment. No comments were received regarding this project.

Legal/Statutory Implications

This project requires a planning permit and is subject to EPA best practice guidelines. The implications of these two requirements are discussed under Risk Management.

5. MANAGEMENT REPORTS

5.1 Contract No. 1364 – Rehabilitation of the Murchison Landfill (Continued)

Strategic Links

a) Greater Shepparton 2030 Strategy

The required works are in accordance with the GS 2030 Strategy under Infrastructure, Urban Rural Services, Objective 1 – To provide sustainable infrastructure to support the growth and development of the municipality.

b) Council Plan

The required works are consistent with the Council Plan under “Environment” – Promote and demonstrate environmental sustainability.

c) Other strategic links

The works are consistent with the Council’s Waste Management Strategy

Attachments

Nil.

5. MANAGEMENT REPORTS

FROM THE COMMUNITY DEVELOPMENT DEPARTMENT

5.2 Greater Shepparton Women's Charter Alliance

Disclosures of conflicts of interest in relation to advice provided in this report

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Summary

Greater Shepparton City Council endorsed the Victorian Local Government Women's Charter and nominated Cr Jenny Houlihan as Charter Champion to steer the development of a Greater Shepparton 3 x 3 Local Government Women's Charter Action Plan to promote more active citizenship and way forward in Greater Shepparton. The Action Plan, which has been developed by an internal working group, has identified the need to establish a Greater Shepparton Women's Charter Alliance Advisory Committee, in accordance with the proposed Terms of Reference.

The Greater Shepparton Women's Charter Alliance Advisory Committee will be made up of interested Council staff and community members to consider the three key areas identified in the Action Plan: gender equity, diversity and active citizenship. These key areas should create innovative ways to encourage leadership roles for women in all aspects of Council and community decision making processes.

It is proposed that the Greater Shepparton Women's Charter Alliance Advisory Committee form in early 2012, with Committee Terms of Reference and membership to be reviewed annually.

5. MANAGEMENT REPORTS

5.2 Greater Shepparton Women's Charter Alliance (Continued)

RECOMMENDATION

That Council:

1. Note the formation of the Greater Shepparton Women's Charter Alliance Advisory Committee and its members, being:

Council representatives:	Community representatives:
Cr Jenny Houlihan – Charter Champion	Carla Ralph
Amanda McRoy	Fran Smullen
Amanda Tingay	Jennifer Broadbent
Amy Jones	Nancy Thon
Belinda Collins	Patricia Moran
Fiona Sawyer	
Jacklyn Lamb – Support Person	
Julie Salomon	
Kayelene Kuch	
Leeanne Higgins	
Lisa Eade	
Michelle Latorre	
2. Adopt the proposed Greater Shepparton Women's Charter Alliance Advisory Committee Terms of Reference;
3. Adopt the proposed Greater Shepparton 3 x 3 Local Government Women's Charter Action Plan.

Background

The aim of the Victorian Local Government Women's Charter (Charter) is to support increased participation by women in local government, especially in the areas of gender equity, diversity and public participation. Local Governments, in their capacity as the governments closest to communities, are in a unique position to contribute to the global goal of gender equity for women. This Charter is consistent with state, national and international protocols which highlight equal rights and opportunities as central to good local governance including: the Declaration on the Role of Australian Local Government (1997), the Worldwide Declaration on Women in Local Government (1998), the Victorian Code of Good Governance (2000) and the National Framework for Women in Local Government 2007, Victorian Human Rights and Responsibilities Charter 2006.

5. MANAGEMENT REPORTS

5.2 Greater Shepparton Women's Charter Alliance (Continued)

At the ordinary Council meeting held 17 August 2010, the Council:

- Endorsed the Victorian Local Government Women's Charter initiated by the Women's Participation in Local Government Coalition
- Authorised the Chief Executive Officer to complete the Victorian Local Government Women's Charter, Charter Endorsement Council Register documentation for return to the Municipal Association of Victoria; and
- Nominated Councillor Houlihan as the Champion Charter Champion and steer the development of a Greater Shepparton 3 x 3 Local Government Women's Charter Action Plan to promote more active citizenship and way forward in Greater Shepparton.

An internal working group of interested Council officers was formed to develop and progress the Action Plan. As part of this Action Plan the committee proposed to develop a Women's Charter Alliance Advisory Committee made up of interested Council Officers and community members to progress the Action Plan and create innovative ways to encourage leadership roles for women in all aspects of Council and community decision-making processes.

Proposed Terms of Reference have been developed that articulate the roles and functions of the Committee.

The working group recently advertised an expression of interest seeking nominations for membership. These interested persons will form the Committee.

It is anticipated that the Greater Shepparton Women's Charter Alliance Advisory Committee form in early 2012 and look to advise Council staff to hold events throughout the year, particularly on 8 March - International Women's Day, that aim to progress the Charter principles through a range of forums on key issues.

Risk Management

There is no risk in Council endorsing the formation of this Committee.

Policy Implications

This recommendation is consistent with all relevant Council policies.

Best Value Implications

This proposal is consistent with all Best Value principles.

Financial Implications

It is anticipated that the majority of actions identified in the 3 x 3 Local Government Women's Charter Action Plan will be met within existing budget allocations. Any initiatives endorsed within the action plan which require additional Council funding will be referred to Council as part of the annual budget process.

Victorian Charter of Human Rights and Responsibilities Act 2006 Implications

This proposal is aligned with and supports the human rights principles provided for under the Victorian *Charter of Human Rights and Responsibilities Act 2006*.

5. MANAGEMENT REPORTS

5.2 Greater Shepparton Women's Charter Alliance (Continued)

Legal/Statutory Implications

This report is consistent with the *Local Government Act 1989*.

Consultation

This recommendation has been made with the support of the MAV and the VLGA.

Officers believe that appropriate consultation has occurred and the matter is now ready for Council consideration.

Strategic Links

a) Greater Shepparton 2030 Strategy

This recommendation is consistent with the Community Life topic within the *Greater Shepparton 2030 Strategy*.

b) Council Plan

This recommendation is consistent with the Community Life objectives within the *Council Plan 2009-2013*.

c) Other strategic links

This recommendation is consistent with national and international protocols which highlight equal rights and opportunities as central to good governance including the Declaration on the Role of Australian Local Government (1997), the Worldwide Declaration on Women in Local Government (1998), the Victorian Code of Good Governance (2000) and the National Framework for Women in Local Government (2001).

Attachments

- Proposed Greater Shepparton Women's Charter Alliance Advisory Committee Terms of Reference
- Greater Shepparton 3 x 3 Local Government Women's Charter Action Plan

5. MANAGEMENT REPORTS

FROM THE CORPORATE SERVICES DEPARTMENT

5.3 Councillor Expense Report – January 2012

Disclosures of conflicts of interest in relation to advice provided in this report

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Summary

The purpose of the report is to provide details of Councillor expense payments.

RECOMMENDATION

That the Council receive and note the Councillor expenses report for the month of January 2012.

Background

The report has been prepared in accordance with the *Council Plan 2009 – 2013* Strategic Objective 6 “Council Organisation and Management”. This provides that:

“Greater Shepparton City Council will deliver best practice management, governance, administrative and financial systems that support the delivery of Council programs to the community of Greater Shepparton”.

This report will be presented to Council on a monthly basis to make councillor expenses more transparent.

Risk Management

There are no identified risks associated with this report.

Policy Implications

There are no conflicts with other Council policies.

Best Value Implications

The public presentation of Councillor expenses is in line with Best Value principles.

Financial Implications

The 2011/2012 Budget provides a basis for measurement of actual performance/position to July 2012.

Victorian Charter of Human Rights and Responsibilities Act 2006 Implications

The report does not limit any human rights provided for under the Victorian *Charter of Human Rights and Responsibilities Act 2006*.

Legal/Statutory Implications

There are no legal/statutory implications.

Consultation

No consultation is required for this matter.

5. MANAGEMENT REPORTS

5.3 Councillor Expense Report – January 2012 (Continued)

Strategic Links

a) Greater Shepparton 2030 Strategy

There are no direct links to the Greater Shepparton 2030 Strategy.

b) Council Plan

The report is consistent with the governance principal of Strategic Objective 6 of the *Council Plan 2009 – 2013* “Council Organisation and Management”.

c) Other strategic links

No other strategic links have been identified.

Attachment

January 2012 Councillor Expense Report.

5. MANAGEMENT REPORTS

5.4 Financial Report – January 2012

Disclosures of conflicts of interest in relation to advice provided in this report

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Summary

This report provides interim details of Council's financial position at 31 January 2012.

RECOMMENDATION

That the Council receive and note the financial report and position as at 31 January 2012.

Background

Section 137 of the *Local Government Act 1989* provides that Council maintain a budgeting and reporting framework that is consistent with the principles of sound financial management. Ongoing monthly reports will provide the basis for this.

Council adopted a revised \$104M Operating Budget and a \$36M Capital Works Program for 2011/2012. Council expects to have another successful year in delivering a multitude of Capital and Community based projects.

The following reports have been prepared and are presented to Council to facilitate decision making:

1. Overview Commentary
2. Income Statement
3. Balance Sheet
4. Cash Flow Statement.

Other schedules have been included for the information of Councillors:

5. Strategic Objective Reports (both Operating and Capital)
6. Investment Reports
7. Sundry Debtor Report
8. Rates Report.

Risk Management

Risks identified as part of the preparation of this report include works being undertaken with invoices not yet received.

Policy Implications

There are no conflicts with existing Council policies.

Best Value Implications

Close monitoring of budgets is in line with Best Value principles.

Financial Implications

The 2011/2012 Budget provides a basis for measurement of actual performance/position to July 2012.

Victorian Charter of Human Rights and Responsibilities Act 2006 Implications

5. MANAGEMENT REPORTS

5.4 Financial Report – January 2012 (Continued)

The report does not limit any human rights provided for under the Victorian *Charter of Human Rights and Responsibilities Act 2006*.

Legal/Statutory Implications

Section 138 of the *Local Government Act 1989* requires quarterly statements comparing budgeted revenue and expenditure for the financial year with the actual revenue and expenditure to date to be presented to the Council at a Council meeting which is open to the public. This report satisfies that requirement.

Consultation

All officers responsible for works included in the 2011/2012 Budget have been consulted in preparing this report.

Council Officers believe that appropriate consultation has occurred and the matter is now ready for Council consideration.

Strategic Links

a) Greater Shepparton 2030 Strategy

There are no direct links to the *Greater Shepparton 2030 Strategy*.

b) Council Plan

The report is consistent with the governance principle of Strategic Objective 6 of the *Council Plan 2009-2013* "Council Organisation and Management".

c) Other strategic links

No other strategic links have been identified.

Attachments

January 2012 Financial Report containing:

- Overview Commentary
- Income Statement
- Balance Sheet
- Cash Flow Statement
- Strategic Objective Reports (both Operating and Capital)
- Investment Reports
- Sundry Debtor Report
- Rates Report.

5. MANAGEMENT REPORTS

5.5 2011/2012 Mid Year Budget Review

Disclosures of conflicts of interest in relation to advice provided in this report

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Summary

The 2011/2012 Mid Year Budget Review provides an opportunity to undertake a detailed review of the Council's Operating and Capital Budgets which also involves estimating the end of the financial year position on all programs within Council's Strategic Objectives. In addition it also provides an opportunity to assess the previous financial years result against the budgeted outcomes.

At the time of formal consideration and subsequent adoption of the 2011/2012 Budget in June last year, the Council endorsed the decision to reduce borrowings from \$4.5 million to \$3.0 million, as proposed in the draft budget, with the intention of funding this decrease from savings identified during the 2010/2011 financial year forecasting processes. At the end of the 2010/2011 financial year however, savings of this amount were unable to be recognised and as such one of the key objectives for this mid year review was to investigate and identify savings in this order.

In addition to the adopted 2011/2012 Budget borrowings of \$3.0 million, a further \$3.0 million in borrowings were endorsed during a Revised Budget process in the later months of 2011. Community feedback during the consultation process for the budget revision urged Council to find savings internally and reduce borrowings. Hence, a further objective of the mid year process was to assess the requirement of borrowings for the 2011/2012 year and if required to what level.

In summary, as a result of the review some variations to the adopted Operating and Capital Works Budgets were identified and have been incorporated into the 2011/2012 Mid year Budget Review. In line with the objectives of the review, the budget was able to be adjusted to achieve savings of \$1.5 million as well as reducing borrowings from \$6.0 million to \$5.0 million.

RECOMMENDATION

That the Council:

1. Receive the 2011/2012 Mid Year Review Report.
2. Approve the changes to the Operating and Capital Budgets as identified in the attachments.

Background

The Council's 2011/2012 budget was prepared in accordance with the *Local Government Act 1989* and was formally adopted at the Special Council Meeting held on 28 June 2011. In addition to the annual adopted budget a 2011/2012 Revised Budget was prepared which specifically addressed changes relating to confirmation of the final costs associated with the purchase of land for GV Link and was formally adopted at the

5. MANAGEMENT REPORTS

5.5 2011/2012 Mid Year Budget Review (Continued)

Ordinary Council Meeting held on 20 December 2011. A full midyear review has now been carried out and compared with this revised budget.

Overall, there has been a number of line item changes incorporated into both the operating and capital budgets through this review process.

Explanations of variances along with appropriate financial statements are contained within the attached report and commentary.

Risk Management

Monitoring of the 2011/2012 Adopted Budget provides for prudent financial management and ensures that Council is made aware of any known or potential financial risks. This review has made adjustments for known variances and therefore reduces the risk that the actual results will significantly differ from the budget..

Policy Implications

There are no known policy implications.

Best Value Implications

Close monitoring of budgets is in line with Best Value principles.

Financial Implications

The financial implications are clearly detailed in the attached 2011/2012 Mid Year Budget Review report. There is a change to the budgeted surplus increasing from \$4.53 million to \$7.92 million with the increase predominantly relating to additional grant funds associated with capital works projects. In terms of changes to the capital works program, the midyear review has seen a minor change to the total program cost decreasing from \$35.93 million to \$34.79 million.

Victorian Charter of Human Rights and Responsibilities Act 2006 Implications

This report does not limit any human rights provided for under the *Victorian Charter of Human Rights and Responsibilities Act 2006*.

Legal/Statutory Implications

There are no statutory or legal implications. The *Local Government Act 1989* allows for a reallocation.

Consultation

The 2011/2012 Mid Year Budget Review has been prepared through consultation with the Executive Leadership Team and Responsibility Managers across the organisation who have direct responsibility for the management of budgeted financial resources. The Mid Year Budget Review has also been the subject of a councillor briefing. The review provides the opportunity to allocate funding for local community needs identified through councillor and community consultation processes.

Council officers believe that appropriate consultation has occurred and the matter is now ready for Council consideration.

5. MANAGEMENT REPORTS

5.5 2011/2012 Mid Year Budget Review (Continued)

Strategic Links

a) Greater Shepparton 2030 Strategy

There are no direct links to the Greater Shepparton 2030 strategy.

b) Council Plan

The report is consistent with the governance principle of Strategic Objective 6 of the *Council Plan 2009-2013* "Council organisation and Management".

c) Other strategic links

The Mid Year Budget Review remains consistent with Council's Strategic Financial Plan and Strategic Resource Plan.

Attachments

2011/2012 Mid Year Budget Review report containing:

- Overview commentary
- Income Statement
- Balance Sheet
- Cash Flow Statement
- Strategic Objective Reports (both operating and capital).

5. MANAGEMENT REPORTS

FROM THE SUSTAINABLE DEVELOPMENT DEPARTMENT

5.6 Planning Application 2012-4 Installation and Use of 20 Electronic Gaming Machines

Disclosures of conflicts of interest in relation to advice provided in this report

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest in relation to the matter under consideration.

Summary

Urbis Pty Ltd (the applicant) has made a planning application to use and install 20 electronic gaming machines (EGM's), associated buildings and works and reduction in car parking requirements at the Peppermill Hotel, Kialla.

The proposal is summarised as follows:

- Use and install 20 EGM's
- 87sqm extension to existing hotel (plus enclosure of bottle shop area additional 55sqm)
- 114sqm gaming area and 23sqm outdoor gaming lounge
- 18 additional on site car parking spaces are required of which 10 are provided, therefore the application seeks a reduction of eight on site car spaces
- No change to operating hours (close 1am Monday to Saturday, 11pm on Sunday's)
- \$30,000 in donations to the community per year

This report considers the merits of the proposal under the *Planning and Environment Act, 1987* and Greater Shepparton Planning Scheme. Key considerations include:

- Tests under section 60 of the Act – social and economic effects
- Whether the proposal achieves acceptable outcomes based on relevant provisions in the scheme including the Business 4 Zone (B4Z), Overlays, clause 52.06 (parking), clause 52.28 (gaming), clause 65 and section 60 of the Act
- Clause 10.04 states responsible authorities should endeavour to

'integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations'

A detailed assessment of the application is provided under the 'assessment' section of this report.

Public notice of the planning application was undertaken and five objections were received.

Based on our assessment of the application, it is recommended that a planning permit issue as the application achieves acceptable outcomes as the location of the hotel is unlikely to lead to unplanned gaming (that is, gamers will have to make a conscious decision to travel to the venue for gaming, rather than being able to walk past in transit to another location and decide to enter) and the proposed development complies with the

5. MANAGEMENT REPORTS

5.6 Planning Application 2012-4 Installation and Use of 20 Electronic Gaming Machines (Continued)

relevant policies and decision guidelines including the Design and Development Overlay 7 (DDO7).

Whilst this report considers the planning aspects of the proposal, the matter of whether the Council should make a submission to the Victorian Commission for Gaming Regulation under the *Gambling Regulation Act, 2003* in relation to the social and economic impacts of the EGM's is addressed in a separate report.

RECOMMENDATION

That in relation to Planning Application 2012-4, on the basis of the information before the Council and having considered all relevant matters as required by the *Planning and Environment Act 1987*, the Council resolves to issue a Notice of Decision to Grant a Permit.

Applicant/Property Details

The planning application was made by Urbis on 3 January 2012.

The land is located at 7900 Goulburn Valley Highway, Kialla and is accessed by an existing service road. The land is currently used for the hotel which was established in 1989, which incorporates the following:

- Bistro
- Public Bars
- TAB
- Accommodation
- Bottle shop
- Outdoor dining area
- Large car parking areas

The hotel has a general liquor licence with permitted operating hours between 7.00am to 1.00am the following morning on Monday to Saturday and 10.00am to 11.00pm on Sunday's and 12 (noon) to 11.00pm on Good Friday and ANZAC day.

The proposed application does not seek to extend these operating hours.

Surrounding land uses include, commercial uses on the east side of the Highway including Neat Line Homes, on the western side of the Highway there is the Kialla Sports precinct which includes Cricket Club, Tennis Club, Bowls Club and community facilities including a kindergarten and Cub hall. Further to the south east of the land is the Shepparton Aerodrome and then further east again the Kialla Lakes residential estate.

Proposal in Detail

The proposed application requires a planning permit for the following:

- Buildings and works in the B4Z under clause 34.04-4
- Buildings and works in the DDO under clause 43.02-2
- Buildings and works in the Land Subject to Inundation Overlay (LSIO) under clause 44.04-1
- Use and installation of electronic gaming machines under clause 52.28-2

5. MANAGEMENT REPORTS

5.6 Planning Application 2012-4 Installation and Use of 20 Electronic Gaming Machines (Continued)

Development

The proposed development includes the conversion of the existing bottle shop into a gaming lounge, two new outdoor lounges, covering of an existing outdoor dining area to the rear of the hotel, proposed tropical style outdoor area, new front entry to the hotel, cool room, and store and outdoor service yard.

The development component of the proposal represents a straight forward development proposal with the main considerations being streetscape amenity which is satisfactory.

Flooding

The land is within the LSIO, which triggers a permit for buildings and works in the LSIO. The application was referred to the GBCMA who consented to the issue of a permit subject to one condition, relating to floor levels.

The condition allows the extended area to be constructed at the same floor level (in terms of flood levels) as the existing hotel as extensions to the hotel have not exceeded 50% of the size of the original hotel as developed in the late 1980's.

Car Parking

The proposed development increases the floor area of the hotel by 87sqm, creating the need for an additional 18 on site car parking spaces. Of the 18 additional required car spaces the applicant seeks the permit provides permission to reduce the requirement by eight spaces, therefore ten additional on site spaces are provided.

Despite this application for a reduction, it is considered there is enough vacant land to provide the parking as required by clause 52.06. Therefore permit conditions will require that the development provide 18 additional on site car spaces to comply with clause 52.06.

Electronic Gaming Machines

The application proposes to use and install 20 EGM's at the hotel, which currently does not include any EGM's. The EGM's are proposed to be located in a gaming lounge where the existing bottle shop is located. The gaming lounge is 114sqm in size and includes an outdoor area, bar, toilets, seating and cashier.

Background

The Greater Shepparton Local Government area has a cap of 329 gaming machines. These gaming machines are within seven venues in Shepparton, Mooroopna and Tatura.

The application seeks to increase the number of venues with EGM's from seven to eight but does not increase the number of EGM's above 329.

5. MANAGEMENT REPORTS

5.6 Planning Application 2012-4 Installation and Use of 20 Electronic Gaming Machines (Continued)

Venue	Number of machines	Entitlements purchased	Change in machine entitlements
Goulburn Valley Hotel	40	40	0
Hill Top Golf and Country Club	20	20	0
Mooroopna Golf Club	44	40	-4
Shepparton Club	61	46	-15
Shepparton RSL	80	80	0
Sherbourne Terrace	39	43	+4
Victoria Hotel	45	40	-4
Peppermill Hotel	0	20	+20
Total	329	329	

The City of Greater Shepparton hold a low score on the 2006 SEIFA index of Relative Socio-Economic Disadvantage which occurs when the area has many families of low income and many people with little training and in unskilled occupations.

A comparison made in the Hume region show that City of Greater Shepparton is listed second most disadvantaged city after Benalla Rural City.

Greater Shepparton has a relatively high number of electronic gaming machines on a per adult basis, 6.96 EGM's per 1000 adults, and a relatively low socio-economic ranking on a state basis as shown on the below table.

Area	REGM's per 1,000	Expenditure per adult	Adults per venue
City of Shepparton	6.96	\$640	6,756
City of Warrnambool	9.36	\$765	4,165
Rural City of Horsham	9.84	\$640	3,733
City of Ballarat	9.09	\$759	5,162
City of Greater Geelong	7.92	\$670	6,730
City of Greater Bendigo	6.91	\$559	7,192
Regional Victoria	6.65	\$503	8,271

Assessment under the *Planning and Environment Act, 1987*

EGM'S

The assessment of a planning application under the Act and an application under the GRA Act provides for different considerations and was summarised in *Drayton Manor P/L v Greater Bendigo 2011 (VCAT 628)* as follows:

5. MANAGEMENT REPORTS

5.6 Planning Application 2012-4 Installation and Use of 20 Electronic Gaming Machines (Continued)

The planning permission is focused upon whether it is an appropriate location suitable for gaming and, secondly, the social and economic impacts of the location. The gaming considerations include whether the net economic and social impact of the machines would or would not be detrimental to the wellbeing of the community of the municipal district in which the premises are located. Hence, it is our view that a more detailed analysis of the economic and social impacts upon the community is a matter that is best dealt with as part of the consideration under the Gambling Regulation Act rather than as part of the planning application.

In Beretta's Langwarrin P/L v Frankston (Red Dot) 2009 (VCAT 74), the following comment was made regarding the considerations under 52.28:

we are conscious that the relevant planning permit trigger here is Clause 52.28 of the Planning Scheme. In setting out below the purposes of Clause 52.28, there is a clear intention that the planning decision maker focus on the locational attributes of this type of gaming proposal

It is the Council's role under planning to review:

- *to what extent the proposal can be supported when assessed by Clause 52.28 of the Planning Scheme,*
- *any relevant planning issues; and*
- *whether on balance the proposal ultimately deserves planning approval.*

Clause 52.28-1 (Gaming) purposes are:

1. To ensure that gaming machines are situated in appropriate locations and premises.
2. To ensure the social and economic impacts of the location of gaming machines are considered.
3. To prohibit gaming machines in specified shopping complexes and strip shopping centres.

Clause 52.28-2 triggers a permit to use and install a gaming machine.

Clause 52.28-5 includes the following decision guidelines:

- The State Planning Policy Framework (SPPF) and the Local Planning Policy Framework (LPPF), including the Municipal Strategic Statement and local planning policies.
- The compatibility of the proposal with adjoining and nearby land uses.
- The capability of the site to accommodate the proposal.
- Whether the gaming premises provides a full range of hotel facilities or services to patrons or a full range of club facilities or services to members and patrons.

The SPPF does not include any specific policy on EGM's. The Council's local policies contain no reference to EGM's.

5. MANAGEMENT REPORTS

5.6 Planning Application 2012-4 Installation and Use of 20 Electronic Gaming Machines (Continued)

First purpose of 52.28 - Are the EGM's in an appropriate location and in appropriate premises

The land is within a B4Z which includes a hotel as a section 2 use. The hotel has operated from the land since the late 1980's. The hotel is located on the Goulburn Valley Highway, which is a four lane road and can easily accommodate the vehicular traffic from the hotel.

The nearest residential neighbourhoods are on the western side of the Goulburn Valley Highway and to the eastern side of the Industrial land.

The site is large and is currently used for a hotel and accommodation. The site has adequate on site car parking and provides safe access by a service road to the land from the Goulburn Valley Highway.

The hotel currently offers a full range of services and this proposal seeks to provide additional access to these services by way of an enlarged bistro, additional outdoor areas and increased on site car parking.

The hotel is not proposing to become exclusively an EGM venue it will operate as a venue that provides opportunities for a range of entertainment which would include dining, drinking, gambling, accommodation, playing pool and live music.

Based on the existing hotel operations and proposed services it is clear the hotel offers a full range of hotel services and these services will be increased by the proposed improvements to the hotel. The applicant in part justifies the EGM's with the improved hotel facilities, therefore permit conditions will require that the EGM's are not operated until the hotel facilities are upgraded as shown on the endorsed plans and described in the applicants planning report.

Given the hotel is existing and this proposal does not seek to extend operating hours, the hotel is an appropriate in terms of location and premises.

Second purpose of 52.28 - Consideration of the social and economic impacts of the location of the EGM's

The land is located on the southern approach to Shepparton and is separated from sensitive uses by commercial zonings to the east and a four lane highway to the west. The land is not located on a major pedestrian route as the pedestrian route linking to the residential areas is on the western side of the Highway.

There is a number of sporting clubs and community uses opposite the land in the Kialla Sports precinct, although to access the hotel from this precinct would require the crossing of a four lane highway. There is no footpath connectivity from the sports precinct to the hotel and the nearest controlled crossing is at Kialla Lakes Drive which is 700 metres to the north.

5. MANAGEMENT REPORTS

5.6 Planning Application 2012-4 Installation and Use of 20 Electronic Gaming Machines (Continued)

A consideration of EGM's is whether the location of the land is likely to lead to unplanned gaming. An example of this would be an EGM venue in a strip shopping centre, when a planned trip to a bakery or newsagent could lead to an unplanned trip to an EGM venue in the same strip shopping centre.

Given the hotel is not located in a strip shopping centre or shopping plaza it is more likely that to access the proposed EGM's a conscious decision will need to be made to travel by car to the hotel to access the EGM's.

Third purpose of 52.28 - Shopping Complex and Strip Shopping Centres

The application is not prohibited by 52.28-3 or 52.28-4 as the hotel is not within a shopping complex or in a strip shopping centre.

A strip shopping centre is an area that meets all of the following requirements:

- it is zoned for business use
- it consists of at least two separate buildings on at least two separate and adjoining lots
- it is an area in which a significant proportion of the buildings are shops;
- it is an area in which a significant proportion of the lots abut a road accessible to the public generally.

Strip Shopping Centre	Response	Reasons
it is zoned for business use	Yes	The frontage of the land is within the B4Z and rear of the land in the IN3Z, both of which allow for business use
it consists of at least two separate buildings on at least two separate and adjoining lots	Yes	Separate and adjoining lots are developed with buildings to the north and south along the Highway
it is an area in which a significant proportion of the buildings are shops	No	The B4Z prohibits use of land for a shop. There is buildings which appear as shops within the immediate area
it is an area in which a significant proportion of the lots abut a road accessible to the public generally	Yes	Most if not all lots have direct access to the Goulburn Valley Highway
Shopping Complex	No	The land is not within a shopping complex.

Therefore the application is not prohibited by 52.28-3 or 52.28-4 as the hotel is not within a shopping complex or in a strip shopping centre.

5. MANAGEMENT REPORTS

5.6 Planning Application 2012-4 Installation and Use of 20 Electronic Gaming Machines (Continued)

Clause 52.28 – Decision Guidelines

First decision guideline - The compatibility of the proposal with adjoining and nearby land uses

The hotel is located on the Goulburn Valley Highway and is separated from sensitive land uses by commercially zoned land to the east and the four lane road to the west.

On the western side of the Goulburn Valley Highway is the Kialla Sports precinct and kindergarten, however the highway and landscaping provides a barrier between the two uses.

The land is large and is capable of accommodating on site car parking without relying on street car parking. The size of the land also allows the expansion of the hotel to accommodate the gaming lounge with ease and without reducing the setback of the hotel to the street.

Second decision guideline - The capability of the site to accommodate the proposal

The land currently is used as a hotel, which provides adequate on site car parking, safe access to the Goulburn Valley Highway and the proposed extensions can easily be accommodated on the land to comply with the relevant design requirements as listed in the DDO's.

Third decision guideline - Whether the gaming premises provides a full range of hotel facilities or services to patrons or a full range of club facilities or services to members and patrons

The hotel provides a range of services including accommodation, dining, bars, TAB, outdoor areas and entertainment such as pool and live music.

Based on the above assessment, it is the Planning and Development Branch's view that the proposal achieves acceptable outcomes against clause 52.28.

Section 60 - Social Considerations

Section 60(1A) of the Act states the following:

Before deciding on an application, the responsible authority, if the circumstances appear to so require, may consider—

any significant social and economic effects of the use or development for which the application is made;

In *Tabcorp Holdings v Moreland City Council* 2004 (VCAT 693) the following comments were made regarding section 60 considerations relating to EGM's.

The social effects of gaming is a difficult issue. It is notorious that gaming does have some adverse social effect, but it is equally true that gaming is a recreational activity for many people. The complexity of the social effects of gaming, including wagering, can be contrasted with the simplicity of the policy positions that different members of the community may adopt in relation to such activity, which are often black and white in nature.

5. MANAGEMENT REPORTS

5.6 Planning Application 2012-4 Installation and Use of 20 Electronic Gaming Machines (Continued)

This is because attitudes to gaming are primarily determined, not so much by detailed sociological or economic evidence as to the impact of gaming, but by philosophical or moral values, sometimes even religious values. When it comes to exercising powers pursuant to the [Planning and Environment Act](#) in relation to social effects, I do not believe that it is appropriate to simply apply philosophical or moral or religious values. Rather it is necessary to make such decisions on the basis of a true empirical understanding of the facts of the situation.

The municipality operates within a capped number of EGM's being 329. The regional caps were introduced by the Victorian Government in 2001 in an attempt to reduce accessibility of gaming machines in vulnerable areas.

Currently all 329 EGM's entitlements are controlled by EGM operators and the hotel has purchased 20 EGM entitlements from other venues within the municipality which have decided to their reduced EGM entitlements.

This application will continue to see the number of EGM's within Greater Shepparton is at or below 329, but not above. There is a Ministerial Direction that prevents the Victorian Commission for Gambling Regulation from allowing more than 329 EGM's to operate within Greater Shepparton.

Based on this cap the number of EGM's in Greater Shepparton will not alter as a result of this application, although the number of EGM venues will increase from seven to eight.

Both the applicant and the Council have obtained social and economic reports (report) on the application, which have conflicting recommendations.

Urbis Social and Economic Impact Assessment 'believe the net social and economic benefits likely to flow from the addition of 20 EGM's to the Peppermill Inn are such that this application deserves favourable consideration by the Commission'

Whereas the Council's report prepared by CPG Consulting stated:

The introduction of EGMs in Shepparton will produce a net loss to the community on social grounds (loss of one of only two venues where one can socialise in a pub type environment with friends without being within walking distance to an EGM) while is likely to be virtually neutral in terms of economic benefit.

This is due to the fact that the Peppermill Inn is currently one of only two venues in Shepparton where one can socialise in a pub type environment without being within walking distance to an EGM.

The proposed EGM operating hours are between Monday to Saturday 10.00am to 1.00am the following morning and 10.00am to 11.00pm on Sundays. These operating

5. MANAGEMENT REPORTS

5.6 Planning Application 2012-4 Installation and Use of 20 Electronic Gaming Machines (Continued)

hours are significantly less than existing hotel venues with EGM's in Shepparton which are open for up to 20 hours a day.

It is also required to consider the positive benefits of the proposed EGM's which include, additional limited employment opportunity at the hotel, annual community donations by the hotel totaling \$30,000 and additional option for those who enjoy EGM' s as a recreational activity.

On balance it is considered the proposed EGM venue does not so much social harm in planning terms that it is fatal to an application. The main harm the application causes is increasing the number of venues with EGM's from seven to eight. However this is balanced by no overall increase in EGM's in Greater Shepparton, the location of the venue not being in an activity centre, operating hours of the venue and community donations to be made by the applicant and the improved social outcome of the upgraded hotel.

Conclusion on EGM's

It is considered the proposal to use and install 20 EGM's at the hotel achieves acceptable planning outcomes for the following reasons:

- The application responds positively to the purposes and decision guidelines of clause 52.28
- The application is not prohibited by being in a shopping centre or strip shopping area
- The application does not increase the overall number of EGM's within the municipality
- The location of the hotel is such that it is unlikely that people will 'impulse gambling' at the hotel, it is more likely it will take a conscious decision to travel to the venue to access the EGM's
- The EGM's operating hours are limited to reasonable times that prevent all night gaming

Design and Development Overlay 7

The proposed development complies with the DDO7 as described in the below table.

5. MANAGEMENT REPORTS

5.6 Planning Application 2012-4 Installation and Use of 20 Electronic Gaming Machines (Continued)

Design Requirement	Officers response
Maximum height of 14.5 metres Street wall height should not exceed three storeys	The proposed extensions maximum height is 4.2m -Complies
Building setback should be 20 metres from the front boundary	The proposed front setback exceeds 20 metres -Complies
Front fences should have a maximum height of 1.2m	No front fence is proposed -Complies
Minimum of three metre landscape buffer along rear boundary A minimum of 15% of the area of the lot frontage must be landscaped including with one mature canopy tree (These requirements cannot be varied with a permit)	A permit condition will require the submission of a landscape plan to comply with the landscape requirements under the DDO7 -Complies
Building appearance	The proposed extensions provide an improved entry façade to the building which incorporates a mixture of building materials and avoids the appearance of blank walls. -Complies
Parking and access	The proposal relies on the existing vehicle accesses from the service road. The Council engineers have reviewed the proposed car park and advised that the layout is acceptable. -Complies
Advertising Signs	No additional advertising signs are being proposed as part of this application -Complies

Risk Management

The application has been considered in accordance with the provisions of the Act, which includes public notice of the proposal, which reduces possible risk to the Council.

The applicant or an objector could review the Council's decision, however it is unlikely that VCAT would award costs against the Council, given the Council has followed the planning processes.

Policy Implications

There are no conflicts with the Council's planning policies.

Financial Implications

In the event of an application for review by Victorian Civil and Administrative Tribunal (VCAT), each respective party will be required to bear its own costs.

Victorian Charter of Human Rights and Responsibilities Act 2006 Implications

In *Smith v Hobsons Bay (Red Dot) 2010 (VCAT 668)* consider the link between planning decisions and the Charter.

5. MANAGEMENT REPORTS

5.6 Planning Application 2012-4 Installation and Use of 20 Electronic Gaming Machines (Continued)

The Charter does not manifestly change the role and responsibility of the Tribunal. Implicitly, the Tribunal already considers the reasonableness of potential infringements on a person's privacy and home in its day-to-day decision making, in dealing with issues such as overlooking (as in this case), overshadowing, noise, environmental constraints and a variety of other issues and potential amenity impacts within the planning regulatory framework. That framework recognises that reasonable restrictions may be placed on the use and development of land, and that there may on occasion be reasonable and acceptable off-site impacts on others. There is an emphasis on performance based policies, objectives and guidelines that deal with a range of potential amenity impacts on a person's privacy and home. Provided these issues are properly considered, it would be a rare and exceptional case where the exercise of a planning discretion in accordance with the regulatory framework is not Charter compatible.

Given the proposed planning application has been considered in accordance with the relevant parts of the Greater Shepparton Planning Scheme, the decision does not contravene the Charter.

Legal/Statutory Implications

The responsible authority's decision may be subject to an application for review by VCAT.

Given the decisions under the *Gambling Regulation Act, 2003* and *Planning and Environment Act, 1987* are subject to different considerations, it is possible that the Commission and Council could reach different determinations. For 20 EGMS to be used and installed, consents need to be granted under both Acts.

Consultation

The planning application was advertised by written notice to adjoining land owners and within the Shepparton News. The public notice period was extended as the sign on site was not at first satisfactorily displayed.

In response to this public notice five objections were lodged with the Council.

Each of the objectors received acknowledgement of their receipt by the Planning and Development Branch.

The permit applicant prepared a written response to the objections; this response was provided to each of the objectors.

The grounds of objections related to the following:

5. MANAGEMENT REPORTS

5.6 Planning Application 2012-4 Installation and Use of 20 Electronic Gaming Machines (Continued)

Ground of objection	Officers response
20 additional EGM's are not in the social and economic interests of Greater Shepparton	The application does not increase the overall number of EGM's within the municipality; however the application does introduce EGM's to a venue which currently does not have EGM's.
This application represents the intrusion of EGM's within Kialla	The application does propose to use and install EGM's within Kialla which currently has no EGM's.
The number of EGM's in Greater Shepparton exceeds the state average	Greater Shepparton has 6.96 EGM's per 1000 persons which exceeds the regional average of 6.65 EGM's per 1000 persons. The average expenditure per adult in Greater Shepparton is \$640 which is higher than the regional Victoria average of \$503. Despite this, this planning application does not seek to increase the number of EGM's within Greater Shepparton, the application seeks to move EGM's between existing venues to allow the hotel to have a 20 EGM gaming lounge.
EGM's, particularly problem gambling leads to negative socio-economic impacts on some parts of the community	It is not disputed that EGM's can drastically affect problem gamblers and their families and friends. However the planning application largely considers the location of the EGM's. The social and economic impacts of EGM's are best considered under the GRA and have been considered in the CPG report.

Although the objections raise important social issues, the objections are not considered to be fatal to the planning application.

Strategic Links

a) Greater Shepparton 2030 Strategy

The key features to note about the population of Shepparton:

- From 1996 to 2003 Shepparton has experienced higher population growth rates than other urban centres in the municipality, and higher than averages for Regional Victoria and Victoria.
- Shepparton has a relatively young population and high proportion of people of working age
- Shepparton is a multicultural city. It has a higher proportion of residents who were born overseas when compared to Regional Victoria
- The average household size in Shepparton is higher than the average for Regional Victoria and Victoria
- Per capita income levels are higher than the average for Regional Victoria

5. MANAGEMENT REPORTS

5.6 Planning Application 2012-4 Installation and Use of 20 Electronic Gaming Machines (Continued)

b) Council Plan

Key strategic objective 2 – community life

(11) Ensure social issues are actively considered when making planning decisions.

c) Other strategic links

Greater Shepparton Public Health Plan

Council is committed to promoting and supporting healthy living in all the communities which make up Greater Shepparton

Attachments

Site plan

5. MANAGEMENT REPORTS

5.6 Planning Application 2012-4 Installation and Use of 20 Electronic Gaming Machines (Continued)

NOTICE OF DECISION

APPLICATION NO: 2012-4

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: 7900 GOULBURN VALLEY HIGHWAY
KIALLA VIC 3631

WHAT THE PERMIT WILL ALLOW: BUILDINGS AND WORKS FOR THE REDEVELOPMENT OF AN EXISTING HOTEL, USE AND INSTALLATION OF 20 ELECTRONIC GAMING MACHINES

WHAT WILL THE CONDITIONS OF THE PERMIT BE?

Amended Plans Required

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

- Plans to show provision of additional eight car spaces so that not less than an additional 26 on site car spaces are provided
- Plans to show the building additions to be setback at least 20 metres from the properties boundary to the service road
- A bicycle rail that accommodates at least two bicycles
- Cigarette disposal bin at the entry to the hotel
- Screened electrical substation if one is required

Layout Not Altered

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

5. MANAGEMENT REPORTS

5.6 Planning Application 2012-4 Installation and Use of 20 Electronic Gaming Machines (Continued)

Electronic Gaming Machines

No more than 20 electronic gaming machines are permitted to be installed or used within the land.

The electronic gaming machines must only be available for use between the hours of 10.00am to 1.00am Monday to Saturday and 10.00am to 11.00pm on Sunday's.

Before the use of the 20 electronic gaming machines commences the hotel redevelopment as shown on the endorsed plans and described in the Urbis planning report (dated December 2011 report number 001) must be completed to the satisfaction of the responsible authority.

Drainage Discharge Plan

Before the development starts, a drainage plan with computations prepared by a suitably qualified person to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and a minimum of two copies must be provided. The plans must be in accordance with council's Infrastructure Design Manual and include:

- how the land will be drained;
- underground pipe drains conveying stormwater to the legal point of discharge
- measures to enhance stormwater discharge quality from the site and protect downstream waterways or as otherwise agreed to in writing by the responsible authority
- provision of an electronic copy of the MUSIC model (or equivalent) demonstrating achievement of the required reduction of pollutant removal

Before the occupation of the hotel redevelopment all drainage works required by the drainage plan must completed to the satisfaction of the responsible authority.

Landscape Plan

Before the development starts a landscape plan must be submitted to and approved by the responsible authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions and two copies must be provided. The landscaping plan must be in accordance with the landscape requirements under the Design and Development Overlay 7 and show:

- a survey of all existing vegetation and natural features showing plants (greater than 1200mm diameter) to be removed;
- a schedule of all proposed trees, shrubs and ground cover, including the location, number and size at maturity of all plants, the botanical names and the location of areas to be covered by grass, lawn or other surface materials as specified;
- the method of preparing, draining, watering and maintaining the landscaped area;
- details of surface finishes of pathways and driveways;
- garden bed heights above car-park surface;
- all areas where vehicle overhang will occur;
- all landscaped areas to be used for stormwater retardation;

All species selected must be to the satisfaction of the responsible authority.

The landscape plan must also indicate that an in-ground irrigation system is to be provided to

5. MANAGEMENT REPORTS

5.6 Planning Application 2012-4 Installation and Use of 20 Electronic Gaming Machines (Continued)

all landscaped areas.

All trees planted as part of the landscape works must be a minimum height of 1.5 metres at the time of planting.

Before the occupation of the hotel redevelopment or by such a later date as is approved by the responsible authority in writing, landscaping works shown on the endorsed plan must be carried out and completed to the satisfaction of the responsible authority.

Car Park Plan

Before the development starts, a car park plan must be submitted to and approved by the responsible authority. When approved, the plan will then form part of the permit. Three copies of the plan must be submitted. The plan must provide but is not limited to the following:

- Location of disabled car parking bays
- Detailed plan of the car parking with no less than 26 additional car parking spaces
- Dimensions of the access aisles and car parking spaces
- Once approved the Car Park Plan will be endorsed to form part of this permit.

The approved plan can be amended to the satisfaction of the responsible authority. The car park must be managed in accordance with the approved Car Park Plan to the satisfaction of the responsible authority.

Before the occupation of the hotel redevelopment the works set out in this condition must be completed to the satisfaction of the responsible authority, including:

- An all-weather seal coat surface
- Drainage in accordance with an approved drainage pla.
- Line-marking to indicate each car space and all access lanes.
- Proper illumination with lighting designed, baffled and located to prevent any adverse effect on adjoining land.
- Measures taken to prevent damage to fences or landscaped areas of adjoining properties and to prevent direct vehicle access to an adjoining road other than by a vehicle crossing
- Provision of traffic control signage and or structures as required
- Signage directing drivers to the area set aside for car parking. Such signs are to be located and maintained to the satisfaction of the responsible authority. This sign must not exceed 0.3 square metres.
- All redundant vehicle crossings be removed and replaced with concrete kerb and channel

Car parking areas must be constructed, and drained to prevent diversion of floor or drainage waters and maintained in a continuously useable condition to the satisfaction of the responsible authority.

Car spaces and access lanes must not be used for any other use, to the satisfaction of the responsible authority.

5. MANAGEMENT REPORTS

5.6 Planning Application 2012-4 Installation and Use of 20 Electronic Gaming Machines (Continued)

General Exterior Treatment

Before the development starts, a schedule of materials, external finishes and colours to the satisfaction of the responsible authority, must be submitted to and approved by the responsible authority. When approved, the schedule will be endorsed and will then form part of the permit.

The exterior treatment of the buildings must be maintained to the satisfaction of the responsible authority.

Construction Phase

Before the development starts, a construction management plan shall be submitted to and approved by the responsible authority. The plan must detail measures to be employed for the effective management of matters including, mud on roads, dust generation and erosion and sediment control on the land, during the construction phase. When approved the plan will be endorsed and form part of the permit. The construction management plan must provide contact details of the site manager.

During the construction of buildings and/or works approved by this permit, measures must be employed to minimise mud, crushed rock or other debris being carried onto public roads and/or footpaths from the land, to the satisfaction of the responsible authority.

Dust suppression must be undertaken to ensure that dust caused on the land does not cause a nuisance to neighbouring land to the satisfaction of the responsible authority.

Roof Plant

Before the occupation of the hotel redevelopment, additional plant equipment, vents and other mechanical equipment on the roof must be screened so that it is not visible from Goulburn Valley Highway to the satisfaction of the responsible authority.

- An all-weather seal coat surface.

Time for Starting and Completion

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

- the development and use are not started within **two years** of the date of this permit
- the development is not completed within **four years** of the date of this permit.

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

5. MANAGEMENT REPORTS

5.7 Consideration if an Economic and Social impact submission should be made by the Council to the Victorian Commission for Gambling and Liquor Regulation (VCGLR) to use and install 20 EGM's at Peppermill Inn, Kialla

Disclosures of conflicts of interest in relation to advice provided in this report

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest in relation to the matter under consideration.

Summary

An application has been received by Bazzani Scully Brand Lawyers (the applicant) to use and install 20 electronic gaming machines (EGM's) at the Peppermill Hotel, Kialla. In this matter consent is required for the 20 EGM's in the form of a planning permit and a license from the Victorian Commission for Gambling and Liquor Regulation (commission). Both consents have different considerations in reaching a decision as to whether the application achieves acceptable outcomes.

Section 3.4.19(1) of the *Gambling Regulation Act, 2003* (the Act) allows the Council to make a submission to the commission in respect of the following:

- The social and economic impact of the proposed amendment on the well being of the community of the municipal district in which the approved venue is located; and
- Taking into account the impact of the proposed amendment on the surrounding municipal districts

The prescribed form 'Economic and Social Impact Submission Form for local authority', states submissions are to address the following questions:

- What is the net social and economic impact of this application
- Will this proposal result in net social and economic detriment to the community

Submissions are due to be received by the commission on 5 March 2012, extensions will only be granted by the commission in exceptional circumstances.

CPG Australia (CPG) was engaged by the Council to review the applicants report and prepare for the Council an economic and social impact submission to the commission. The report concludes the following:

The introduction of EGMs in Shepparton will produce a net loss to the community on social grounds (loss of one of only two venues where one can socialise in a pub type environment with friends without being within walking distance to an EGM) while is likely to be virtually neutral in terms of economic benefit.

While this report considers the commission's aspects of this proposal, the matter of whether Council should decide to grant a planning permit in relation to the planning impacts of the EGM's is addressed in a separate report.

RECOMMENDATION

Based on the CPG report and the introduction of an additional EGM venue in Greater Shepparton, it is recommended that the Council make a social and economic impact submission to the commission opposing the gaming application.

5. MANAGEMENT REPORTS

5.7 Consideration if an Economic and Social impact submission should be made by the Council to the Victorian Commission for Gambling and Liquor Regulation (VCGLR) to use and install 20 EGM's at Peppermill Inn, Kialla (Continued)

Background

The Greater Shepparton local government area currently has a cap of 329 gaming machines. These gaming machines are within seven venues in Shepparton, Mooroopna and Tatura.

The application seeks to increase the number of venues with EGM's from seven to eight but does not increase the number of EGM's above 329.

Venue	Number of machines	Entitlements purchased	Change in machine entitlements	Net EGM Expenditure 2010/11
Goulburn Valley Hotel	40	40	0	\$5,820,505.73
Hill Top Golf and Country Club	20	20	0	\$593,669.66
Mooroopna Golf Club	44	40	-4	\$3,519,643.40
Shepparton Club	61	46	-15	\$4,501,593.61
Shepparton RSL	80	80	0	\$5,210,719.47
Sherbourne Terrace	39	43	+4	\$5,329,340.92
Victoria Hotel	45	40	-4	\$5,306,405.40
Peppermill Hotel	0	20	+20	
Total	329	329		\$30,281,878.19

Note: Net EGM expenditure is the total amount lost by players

The City of Greater Shepparton hold a low score on the 2006 SEIFA index of Relative Socio-Economic Disadvantage which occurs when the area has many families of low income and many people with little training and in unskilled occupations.

A comparison made in the Hume region show that City of Greater Shepparton is listed second most disadvantaged city after Benalla Rural City.

Greater Shepparton has a relatively high number of electronic gaming machines on a per adult basis, 6.96 EGM's per 1000 adults, and a relatively low socio-economic ranking on a state basis as shown on the below table.

5. MANAGEMENT REPORTS

5.7 Consideration if an Economic and Social impact submission should be made by the Council to the Victorian Commission for Gambling and Liquor Regulation (VCGLR) to use and install 20 EGM's at Peppermill Inn, Kialla (Continued)

Area	REGM's per 1,000	Expenditure per adult	Adults per venue
City of Shepparton	6.96	\$640	6,756
City of Warrnambool	9.36	\$765	4,165
Rural City of Horsham	9.84	\$640	3,733
City of Ballarat	9.09	\$759	5,162
City of Greater Geelong	7.92	\$670	6,730
City of Greater Bendigo	6.91	\$559	7,192
Regional Victoria	6.65	\$503	8,271

Assessment

This assessment under the Gaming Regulation Act (GRA) considers whether the application will have a positive or negative social and economic impact on the community and therefore considers making a submission to the commission.

It is the Planning and Development Branch's recommendation, based on the CPG report and the introduction of one additional EGM venue, that the Council should make a submission opposing the application under the GRA to the commission.

In contrast to the locational considerations under the act, which is being dealt with as part of the planning permit assessment, the gaming commission must consider if the 'net economic and social benefit of approval will not be detrimental to the wellbeing of the community of the municipal district in which the premises are located'.

For the majority of EGM gamblers, gaming is a form of enjoyable recreation and social contact. People gamble for a variety of reasons, including reduction of boredom, isolation and loneliness, to win money and for excitement. Women gamblers in particular have reported that they feel safe accessing gambling venues alone, unlike other forms of similar entertainment.

A small but significant proportion of the population, known as problem gamblers, has difficulty containing the amount of time and money they spend playing EGM's, often with adverse consequences for them, their families and the community.

A telephone interview undertaken among community support and counselling services in Shepparton showed that it is estimated that 32 people within the Shepparton area have a serious gambling problem relating to EGMs. When applying the industry point of reference of 15 people affected for every one person with a gaming problem, it is expected and estimated 480 people are also impacted in the community by the effects of problem gambling.

Research has shown that these small portions of problem gamblers are responsible for a significant proportion of gaming expenditure. The social costs associated with the adverse consequences of problem gaming are high relative to other forms of gambling.

5. MANAGEMENT REPORTS

5.7 Consideration if an Economic and Social impact submission should be made by the Council to the Victorian Commission for Gambling and Liquor Regulation (VCGLR) to use and install 20 EGM's at Peppermill Inn, Kialla (Continued)

There are few clear socio-economic factors that pre-dispose people to a higher likelihood of problem gambling. A recent survey undertaken in Victoria showed that people who live in low income households are under-represented in the population of problem gamblers in Victoria, while those with moderate incomes are over represented.

All over, research support discouraging 'convenience gambling' indicates that limiting accessibility to EGMs is likely to decrease issues associated with problem gaming and protect vulnerable communities.

The risk that provision of gaming opportunities will produce an overall negative net benefit for a community will vary depending on local conditions, in particular the vulnerability of the local population and the accessibility of the gaming opportunities provided.

In 2006 the Victorian Government released *Taking Action on Problem Gambling: A Strategy for Combating Problem Gambling in Victoria*. Under Action Area Four – *Protecting Vulnerable Communities*, the Strategy suggests that some communities are more at risk than others from the harm caused by problem gambling indicators of at-risk communities referred to in the Strategy are:

- Low levels of workforce participation
- Lower educational and literacy levels
- Health risks associated with higher incidence of smoking and alcohol abuse.

Shepparton has an Index of Relative Socio-Economic Disadvantage score of 968. This score places Shepparton as the 19th most disadvantaged local government area in Victoria. (Source SEIFA 2006, Department of Human Services).

Shepparton has a higher rate of unemployment than the regional state in average, 7.2% versus 5.8% in regional Victoria. It similarly has a higher rate of young persons not engaged in any school, work or further education and training.

It is recognised under the Gambling Regulation Act (GRA) that gaming has both positive and negative impacts upon local communities. The GRA requires the commission to consider whether the net social and economic impacts will be detrimental to the well-being of the community when considering approval of premises suitable for gaming.

In determining the expected social and economic benefits of the 20 EGMs requested to be introduced to the Peppermill Inn, the CPG report regard it important to consider the viability of the development under the following scenarios:

1. Operating 20 EGMs, versus
2. not operating the EGMs

If operating the 20 EGMs, Peppermill Inn could expect to be ahead by \$17.7M by 2021. Without the EGMs it is expected the return on the \$800,000 re-development through increased meal/beverage sales is likely to be in the order of 13% or more than twice the

5. MANAGEMENT REPORTS

5.7 Consideration if an Economic and Social impact submission should be made by the Council to the Victorian Commission for Gambling and Liquor Regulation (VCGLR) to use and install 20 EGM's at Peppermill Inn, Kialla (Continued)

risk fee rate. On this evaluation, if, as the applicant for Peppermill Inn contends, that gaming is not their core business, the development at peppermill Inn should not be contingent upon the granting of the EGM license. On this basis, it is expected that even without the Poker machines licenses, the redevelopment of peppermill Inn will be attractive enough to an investor at some point within the foreseeable future to make the proposed investment in redevelopment since the returns will be attractive enough to warrant the investment.

In addition to monies directed to the Community Support Fund (CSF), the applicant proposes to put in place a Community Development Program. The program would make available \$30,000 per annum for 10 years for community projects. Further, the applicant proposes to spend \$800,000 on the redevelopment of the Peppermill venue.

It is estimated that revenue spent into the proposed EGMs (net losses) at the hotel will be \$1,940,000 (net) annually.

At present Peppermill Inn provides opportunity for visitors to socialise and dine at a venue which is not within walking distance from a convenience gaming venue. This makes Peppermill one of only two venues in Greater Shepparton which is not within walking distance from a EGM venue. Hence, if you are a problem gambler trying to socialise with family and friends in Shepparton in a location where you can be safely excluded from the attraction of EGMs, the hotel offers one of just two such socialising options.

The report from CPG Australia concluded that:

The introduction of EGMs in Shepparton will produce a net loss to the community on social grounds (loss of one of only two venues where one can socialise in a pub type environment with friends without being within walking distance to an EGM) while is likely to be virtually neutral in terms of economic benefit.

Based on the above mentioned research and social and economic report from CPG it is the Council's Planning and Development Branch's view that the additional EGM venue will have a negative social impact on the community for the following reasons:

- Peppermill Inn is currently one of only two pub type dining venues in Shepparton which is not within walking distance from an EGM venue. This is pertinent to anyone with a gaming problem trying to stay on a self exclusion program.
- Gaming problems causes harm to not only the gambler but also to approximately 15 people in their surrounds. In Shepparton it is estimated that there are 32 problem gamblers seeking help for their gambling addiction.
- It does not follow that the Shepparton community will benefit from the one-off \$800,000 infrastructure spend or the \$30,000 community contribution in return for the \$1,94M (net) expected to be lost at this venue per year.

5. MANAGEMENT REPORTS

5.7 Consideration if an Economic and Social impact submission should be made by the Council to the Victorian Commission for Gambling and Liquor Regulation (VCGLR) to use and install 20 EGM's at Peppermill Inn, Kialla (Continued)

Risk Management

This report considers whether the Council should make a submission to the commission regarding the EGM's. Whether the Council decides to make a submission or not, no significant risk is associated with this decision.

Policy Implications

No conflicts with the Council's planning policies has been identified.

Financial Implications

Should the matter proceed to a Gaming Hearing, the Council will need to engage lawyers and expert witnesses to present its case to the hearing.

Victorian Charter of Human Rights and Responsibilities Act 2006 Implications

This proposal does not limit any of the human rights provided for under the Victorian *Charter of Human Rights and Responsibilities Act 2006*.

Legal/Statutory Implications

If the Council decides to make a submission to the gaming commission, the Council will need to make representations to the gaming hearing.

Like a liquor license application, multiple consents are required. i.e. planning permit and the liquor license. In this matter consent is required for the 20 EGM's in the form of a planning permit and a license from the commission. Both consents have different considerations in reaching a decision as to whether the application achieves acceptable outcomes.

Given the decisions under the *Gambling Regulation Act, 2003* and *Planning and Environment Act, 1987* are subject to different considerations, it is possible that the commission and Council could reach different determinations. For 20 EGMS to be used and installed, consents need to be granted under both Acts.

Consultation

A requirement of the commission is for the applicant to notify the local community of the application within a metropolitan or major local newspaper. Within this notice community members are provided with an opportunity to lodge a submission with the commission.

Strategic Links

a) Greater Shepparton 2030 Strategy

Community Life

A healthier community with strong community building and diverse cultural activities.

Economic Development

Continued Economic growth and diversification, that the municipality will be more attractive and enticing.

b) Council Plan

Key strategic objective 2 – Community life

(11) *Ensure social issues are actively considered when making planning decisions.*

c) Other strategic links

Greater Shepparton Public Health Plan

5. MANAGEMENT REPORTS

5.8 Consideration if an Economic and Social impact submission should be made by the Council to the Victorian Commission for Gambling and Liquor Regulation (VCGLR) to use and install 20 EGM's at Peppermill Inn, Kialla (Continued)

Council is committed to promoting and supporting healthy living in all the communities which make up Greater Shepparton.

Greater Shepparton Community Development Framework

Focus area 2: Place

Supporting active, healthy and connected communities.

Greater Shepparton Community Profile informed decisions (id)

- *Analysis of household income levels in the City of Greater Shepparton in 2006 compared to Victoria shows that there was a smaller proportion of high income households (those earning \$1,700 per week or more) but a larger proportion of low income households (those earning less than \$500 per week).*
- *Shepparton is a multicultural city. It has a higher proportion of residents who were born overseas when compared to Regional Victoria.*
- *The size of the City of Greater Shepparton's labour force in 2006 was 26,857 persons of which 8,519 were employed part-time (31.7%) and 15,965 were full time workers (59.4%).*

Attachments

Site plan

CPG Report

5. MANAGEMENT REPORTS

5.8 Kialla Landfill Site Australian Botanic Gardens Shepparton

Disclosures of conflicts of interest in relation to advice provided in this report

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Summary

The Council at the Ordinary Council Meeting, held on 15 November 2011, determined to seek approval to name the former Kialla Landfill Site. The proposal was placed on Public Notice in the Shepparton News dated Friday 16 December 2011 and there were no submissions received.

RECOMMENDATION

That the Council:

1. Approve the proposed name of "Australian Botanic Gardens Shepparton" as the official name for the site known as the former Kialla Landfill is located at the northern end of Kialla Tip Road, Kialla, in accordance with Guidelines for Geographic Names Victoria and the *Geographic Place Names Act 1998*
2. Submit the name for approval to the Registrar of Geographic Names.

Background

This name was requested by the Kialla Landfill Site Special Committee as part of the Kialla Landfill Site Development and Management Plan.

Risk Management

As the proposed name was formally put on public notice and no submissions were received, there are no Risk Management implications.

Policy Implications

The proposed name was assessed in accordance with Guidelines for Geographic Names in Victoria and *Geographic Place Names Act 1998*.

Best Value Implications

The name has been approved in response to requests from the wider community.

Financial Implications

There are no fees associated with the formal approval and/or lodgement of park names.

Victorian Charter of Human Rights and Responsibilities Act 2006 Implications

The naming of this site does not limit any human rights provided for under the Victorian *Charter of Human Rights and Responsibilities Act 2006*.

5. MANAGEMENT REPORTS

5.8 Kialla Landfill Site Australian Botanic Gardens Shepparton

Legal/Statutory Implications

Assessment of the name has been undertaken in accordance with the *Geographic Place Names Act 1998*.

Consultation

Australian Botanic Gardens Shepparton was placed on Public Notice in the Shepparton News on Friday 16 December 2011. No submissions were received.

Council Officers believe that appropriate consultation has occurred and the matter is now ready for Council consideration.

Strategic Links

a) Greater Shepparton 2030 Strategy

There are no strategic links to the *Greater Shepparton 2030 Strategy*.

b) Council Plan

This proposal supports objective 35 of the *Council Plan 2009-2013*: “Provide best practice management and administrative systems and structures to support the delivery of Council services and programs” in order to meet our statutory obligations, in this case under the *Geographic Place Names Act 1998*.

c) Other strategic links

There are no other strategic links.

Attachments

Nil.

5. MANAGEMENT REPORTS

5.9 Planning Application 2005-306 – 45 Apollo Drive Shepparton

Disclosures of conflicts of interest in relation to advice provided in this report

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest in relation to the matter under consideration.

Summary

Planning permit 2005-306 was issued by the Victorian Civil and Administrative Tribunal (VCAT) on 6 June 2006 and allowed the use and development of the land for a brothel. Condition 29 of the permit required that the use and development be commenced within two years of the date of the permit and that the development be completed with four years of the date of the permit.

On 22 December 2008, VCAT ordered the extension of time to the permit for the commencement of the development, and therefore required the development be completed by 31 August 2011.

Senior Member Horsfall made the following comment:

'An extension for a brothel permit is entitled to consideration on the same basis as an extension of a permit for a factory, medium density housing or any other permit, irrespective of views on the morality or acceptability of brothels.'

On 18 August 2011, the permit applicant sought an extension to the completion date of the permit to 31 December 2011.

On 23 September 2011, following a resolution of the Council, the permit was extended by four months to require completion of the development and commencement of use by 31 December 2011.

As the development is not complete the permit holder has sought to extend the permit until 31 March 2012 to allow completion of the works and commencement of the use.

It is important to note that the merits of the use and development of the land for a brothel are not being reconsidered. This application is limited to deciding if the application to extend the completion date should be granted.

The two most substantive considerations are:

1. Has there been significant change to planning policies which would prevent the re-issue of the permit?
2. Has the development been substantially commenced?

Since the issue of the permit in June 2006, the zoning of the land and surrounding land is unchanged, there has been no significant change to the planning policies relating to brothels. Therefore, it is likely if this permit was to expire and a fresh application was applied for a permit would be re-issued, most likely at the direction of VCAT.

At the time of the previous extension request in September 2011, the development was described as being at lock up stage. The applicant has informed that since the previous extension internal works have been progressed such as plastering, bathrooms, electrical works and tiling.

5. MANAGEMENT REPORTS

5.9 Planning Application 2005-306 – 45 Apollo Drive Shepparton (Continued)

The applicant made assurances that the previous extension would allow works to be completed, including

'the writer (Mr Albon) says no further request for extension of time will come forward, at least not one in his name'.

The application for extension made by Mr Albon goes against this previous undertaking. Whilst this is less than ideal, it is not a valid planning reason to deny an extension based on a non binding assurance provided to the Council and its planning officers.

Given the applicant continues to satisfy the two substantive considerations, it is the Planning and Development Branch's view that there is no practical planning purpose in not allowing an extension of time to allow the development to be completed and the use to commence.

RECOMMENDATION

That in relation to the extension of time to the completion date for Planning Permit 2005-306 for use and development of a brothel at 45 Apollo Drive, Shepparton, on the basis of the information before the Council and having considered all relevant matters as required by the *Greater Shepparton Planning Scheme*, in accordance with Section 69(2) of the *Planning and Environment Act 1987* the Council extends the permit as follows:

1. The time in which the permit will expire if the development is not completed is extended to 31 March 2012
2. The time in which the permit will expire if the use is not started is extended to 31 March 2012.

Assessment under the Planning and Environment Act

When submitting a request for an extension of time to a permit it is generally accepted, that the applicant is obliged to advance some reason in support of the application.

In the written request for the extension the following reasons were provided by the applicant in support of the application:

The works undertaken since the previous extension of time are – plastering of the entire building, near completion of showers, their screens and the associated tiling, vanities. Completion of all electrical wiring and half way through fit out, west wall completed in tiling of bluestone blocks. Erection of two wings that are fencing. Additional signage. Near completion of air-conditioning. All door jams completed and doors in place in most instances. Purchase of further communication equipment, and completion of security system wiring and monitoring. Installation of lockers near completed, facilities for working women advanced and all storm water pipes laid, hot water services installed. Installation of cabling for computer systems. All insulation in internal and exterior walls completed. All underground cabling for lighting has been completed. General cleaning of site and building. Removal of excessive building material from the site.

5. MANAGEMENT REPORTS

5.9 Planning Application 2005-306 – 45 Apollo Drive Shepparton (Continued)

It is proposed to commence the use on 14 February 2012. It follows that the permit should extend until that date, but erring on the side of caution and with regard to my personal health which has seen me hospitalised on two occasions during November and December 2011 that massively impacted on the project not being completed and the operation commenced by 31 December 2011, let us say, an extension to 31 March 2012.

The applicant's proposal to commence the use on 14 February 2012, is seven days before the February Council meeting, at which it will be decided if the permit extension is granted. The applicant has been informed the use cannot commence until this application is decided on by the Council, or VCAT if necessary.

Kantor & Ors v Murrindindi Shire Council 18 AATR 285 at 313 and Juric v Banyule set out relevant considerations for the application to extend the completion date, which are considered below.

Whether there has been a change of planning policy.

Since the issue of the permit in 2006, the zoning of the land and surrounding land is unchanged. There has been no major changes to either State or Local planning policies relating to the use and development of land for brothels.

Whether the landowner is seeking to 'warehouse' the permit.

The *Planning and Environment Act, 1987* (The Act) does not support a permit holder extending a permit so that the owner may obtain a windfall by selling the land. If the owner was reasonably considered to be seeking to warehouse the permit, this would negatively influence the issue of an extension.

The warehousing test generally relates to an application to extend time for a commencement of a development. Given the project is substantially completed and continues to progress towards completion, this test is of little relevance.

Intervening circumstances bearing on grant or refusal of the extension.

This ground relates to circumstances that have arisen since the granting of the permit and which are not entirely under the control of the permit holder and which have reasonably caused a delay in being able to act upon the permit. Such matters would need to be of significance (beyond life's common setbacks), such as unusual seasonal conditions, natural disasters, actions by third parties, sudden and significant changes to markets and unexpected delays in obtaining other necessary approvals.

The applicant states that recent hospitalisations of the permit holder has 'massively impacted' on the completion of the development.

The total elapse of time and whether the time limit originally imposed was adequate.

An extension would tend not to be supported if the permit has become excessively old and it is appropriate that all issues be reconsidered and any interested parties or referral authorities be given an opportunity for input by way of a fresh application. Given there has been no significant changes in policy since the issue of the permit, the total elapse of time does not either negatively or positively impact on the application to extend the completion date.

5. MANAGEMENT REPORTS

5.9 Planning Application 2005-306 – 45 Apollo Drive Shepparton (Continued)

The economic burden imposed on the landowner by the permit.

The applicant would have investigated significantly in the development by obtaining the permit and in construction costs incurred to date.

The probability of a fresh permit issuing should a fresh application be made.

This test is determinative as to whether the original permit is still appropriate. If the extension was refused, how likely is it that a similar permit would be issued. If it is likely that a permit would re-issue, this leads to the extension of a permit.

This test triggers consideration if there would be any practical planning purpose by refusing to extend the permit and force the permit holder to apply for a fresh permit.

Also relevant to this ground is whether or not a fresh permit would be issued subject to similar conditions. If the circumstances had changed to the extent that significantly different conditions would be appropriate, this would negatively influence the grant of an extension to the completion date.

It is considered that if this request for an extension to the completion date was refused, and a fresh application was made, it is likely to be granted. This is primarily based on the fact that there has been no significant change to planning policies relating to the land or brothels.

Based on this, there is no practical purpose served in preventing the development from being completed.

Substantial Commencement

This test specifically relates to applications seeking to extend the completion date, such as this application. It considers how far the development has proceeded and if the developer has committed to the proposal by progressing towards completion.

The applicant has sought a short extension period (three months) for the development to be completed.

The applicant has obviously expended significant amounts of money on progressing the development to a point of near completion. In doing this the developer has complied with numerous planning permit conditions including, submission of design plans and drainage plans, urban vehicle crossings and signage.

Given that the development has clearly substantially commenced, to now prevent a development that is said to be 90% complete provides no beneficial planning outcome.

Risk Management

There are no identified risks associated with this report if it is decided to extend the permit.

Should it be decided to refuse to extend the permit it is possible that VCAT could overturn the Council's decision and award costs against the Council.

Policy Implications

There are no conflicts with existing Council policy.

5. MANAGEMENT REPORTS

5.9 Planning Application 2005-306 – 45 Apollo Drive Shepparton (Continued)

Financial Implications

In the event of an application for review by VCAT, each respective party will be required to bear its own costs.

Victorian Charter of Human Rights and Responsibilities Act 2006 Implications

This proposal does not limit any of the human rights provided for under the Victorian *Charter of Human Rights and Responsibilities Act 2006*.

Legal/Statutory Implications

The responsible authority's decision may be subject to an application for review by VCAT.

Consultation

There is no statutory requirement to provide public notice of an application to extend a planning permit.

Despite this, one interested person informed the Planning and Development Branch of their concern with the planning application being extended by the Council.

Council Officers believe that appropriate consultation has occurred and the matter is now ready for Council consideration.

Strategic Links

a) Greater Shepparton 2030 Strategy

Greater Shepparton 2030 does not contain any objectives that specifically relate to this proposal.

b) Council Plan

There are no direct links to the Council Plan.

c) Other strategic links

There are no Strategic Links.

Attachments

Attachment 1 - Site photos

5. MANAGEMENT REPORTS

5.10 Amendment C103 – Consideration of Panel Report and Adoption of Amendment

Disclosures of conflicts of interest in relation to advice provided in this report

No Council officers or contractors, who have provided advice in relation to this report, have declared a conflict of interest in relation to the matter under consideration.

Summary

Amendment C103 affects land known as 47-61 Wyndham Street and 48-60 Maude Street, Shepparton, which is the site of the Alexander Miller Memorial Homes (Miller Homes Cottages). This Amendment proposes to:

- Retract the area of Heritage Overlay HO96 (HO) applying to 48-60 Maude Street and part of 47-61 Wyndham Street, Shepparton; and
- Rezone land at 47-61 Wyndham Street from the Residential 1 Zone (R1Z) to the Business 5 Zone (B5Z).

At the close of the exhibition period, the Council had received five submissions. Four submissions raised no objections to the Amendment, whilst one submission sought a change to the Amendment. As a result, it was referred to an Independent Planning Panel. The Panel strongly supported Amendment C103 as exhibited and recommended that the Amendment be adopted without any changes.

RECOMMENDATION

That having considered all submissions under section 22 of the *Planning and Environment Act 1987* and the Report of the Independent Planning Panel for Amendment C103 under Section 27 of the *Planning and Environment Act 1987*, the Council:

1. Adopt the Panel Report for Amendment C103;
2. Adopt Amendment C103, in accordance with section 29 of the *Planning and Environment Act 1987*; and
3. Submit the Amendment to the Minister for Planning for approval in accordance with section 31 of the *Planning and Environment Act 1987*.

Background

Subject Site

This Amendment applies to a rectangular shaped parcel of land fronting onto both Wyndham and Maude Streets. The site has recently been subdivided into two lots, one to the west fronting onto Wyndham Street and the other to the east fronting onto Maude Street. The lot fronting onto Maude Street has recently experienced significant redevelopment (see Figures One and Two).

The northern portion of the site contains ten cottages of local cultural heritage significance. The cottages were constructed by the philanthropist Alexander Miller from 1919-1933 to provide housing for the elderly - eight of these cottages are located on the northern portion of the lot addressing Wyndham Street and the remaining two cottages are located on the lot addressing Maude Street.

5. MANAGEMENT REPORTS

5.10 Amendment C103 – Consideration of Panel Report and Adoption of Amendment (Continued)

To the south of the eight cottages, on the same lot, there are a number of 1960s social housing units. These units were part of a larger scheme of 20 units constructed in the 1960s that extended across the entirety of the eastern lot. The units on the eastern lot have recently been demolished to allow for the construction of an aged-persons' development. The two Miller Homes Cottages on this lot have been renovated, extended and converted to serve as an administrative centre and a community centre for the aged-persons' facility. The site is currently owned and operated by the Alexander Miller Memorial Homes Philanthropic Trust Fund.

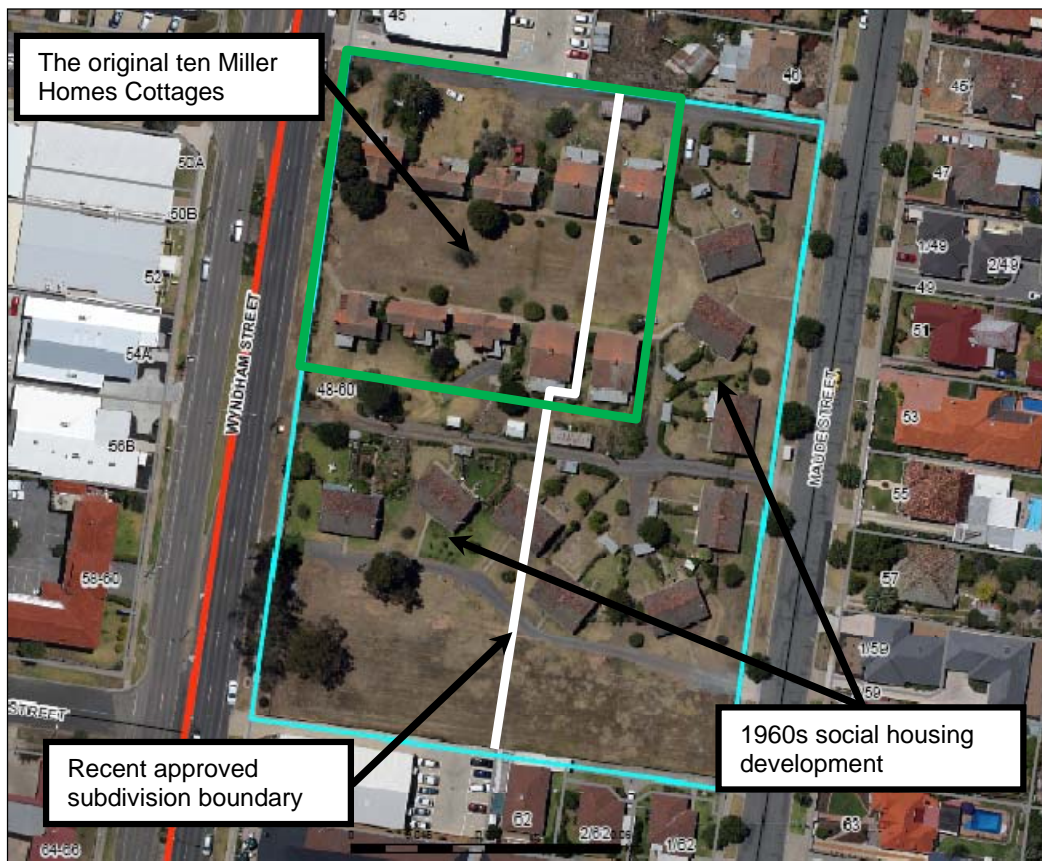


Figure One: The previous layout of the site before the recent construction of the aged-persons' development on the eastern lot.

5. MANAGEMENT REPORTS

5.10 Amendment C103 – Consideration of Panel Report and Adoption of Amendment (Continued)

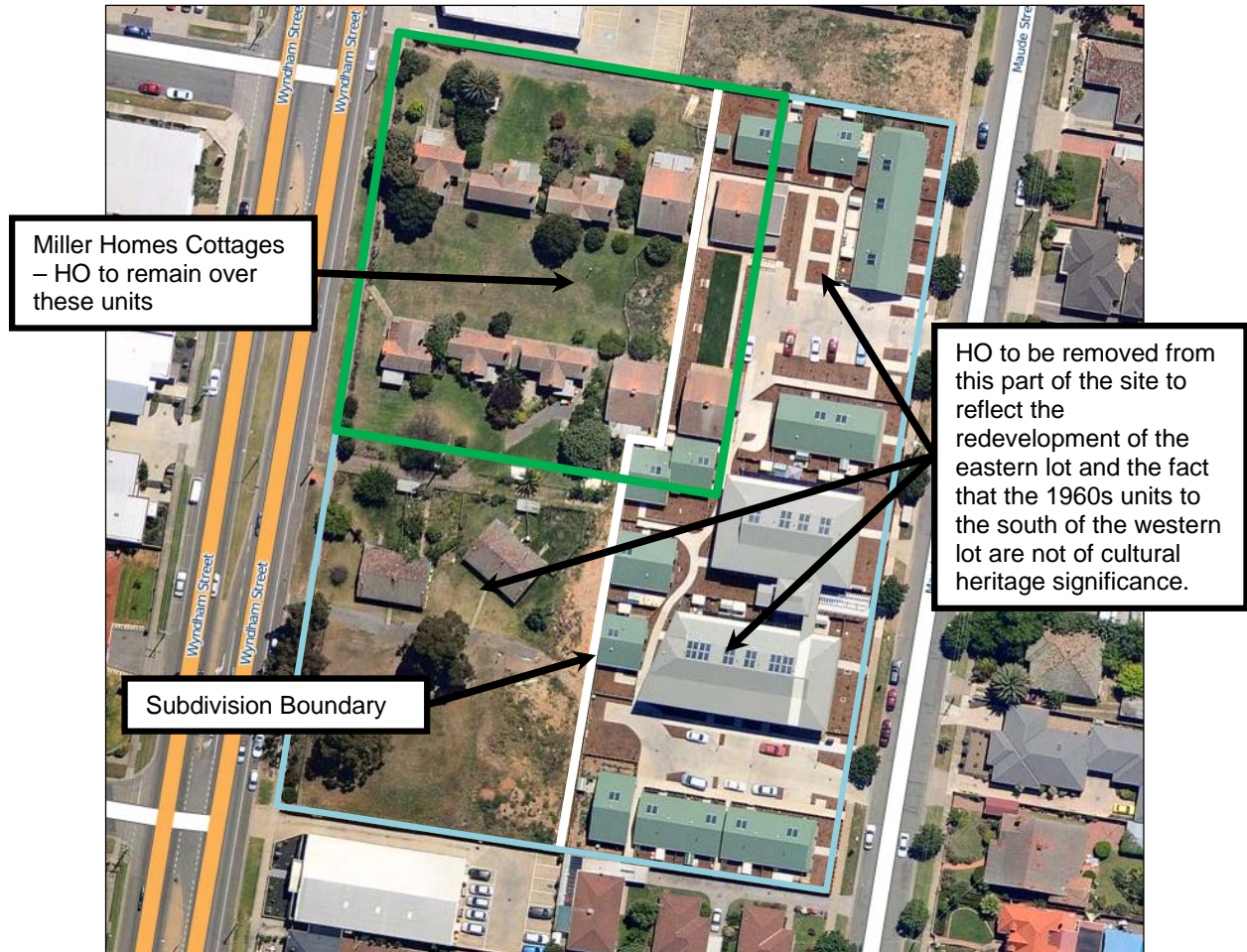


Figure Two: The current layout of the site following the construction of the aged-persons' development on the eastern lot. Note the extent of the revised Heritage Overlay, which reflects the redevelopment of the eastern lot and the fact that the remaining 1960s units, to the south of the western lot, are not deemed to be of any cultural heritage significance.

The Miller Homes Philanthropic Trust Fund and Wintringham Housing Ltd

The Miller Homes Philanthropic Trust Fund provides low cost housing for the elderly throughout Victoria. The Fund was established after the death of Alexander Miller. The Trust continues to construct and maintain a number of houses for the elderly throughout Victoria. One of the issues that they face today is that many of the earlier homes, particularly those from the early 20th Century, no longer meet current requirements and/or standards for the elderly. This is the case with the existing homes in Shepparton.

The Trust approached the Council to initiate the Amendment to facilitate for the site's redevelopment for social housing and to consider the possibility of commercial development along the Wyndham Street frontage. Wintringham Housing Ltd (Wintringham) is a not-for-profit organisation involved in housing provision for frail and elderly persons on low incomes. Wintringham worked together with the Trust, as

5. MANAGEMENT REPORTS

5.10 Amendment C103 – Consideration of Panel Report and Adoption of Amendment (Continued)

landowner, to develop the lot addressing Maude Street. Wintringham is the objecting submitter to this Amendment.

Current Land-Use Zoning Objective and Overlay

Each lot is currently zoned R1Z. Heritage Overlay (HO96) applies to the whole of the site. This HO was included over the site as part of Amendment C50, which introduced cultural heritage controls following the completion of the *City of Greater Shepparton Heritage Study Stage II*. The Heritage Study is a Reference Document at Clause 21.07 of the Municipal Strategic Statement in the Council's Planning Scheme.

The 10 Miller Homes Cottages are of local social, historic and aesthetic cultural heritage significance. This significance can be briefly summarised as follows:

- the architectural diversity of the four unit designs arranged around a common open space area adds to the aesthetic importance of the buildings. They have a strong relationship to the English Arts and Crafts movement – they are characterised by a very evocative vernacular architecture, as well as a quaintness and human scale which add to their value;
- the design and layout of the homes demonstrate early planning and design principles, which were developed in association with the ideals of the British Garden City Movement - a rare local example of 19th and 20th century planning and design principles which recognised the health giving properties of fresh air, light and sunshine; and
- the complex provides physical evidence of the development of philanthropy in Shepparton - this is the only development funded philanthropically in Shepparton in the early 20th century.

The Study's Data Sheet includes the following cultural heritage significance citation:

“The Alexander Miller Memorial Homes are of local social, historic and aesthetic significance. They are one of a group of homes constructed by the prominent philanthropic businessman Alexander Miller and continue to provide low cost accommodation for the elderly. Aesthetically, they are unique within the municipality as a picturesque group of substantially intact Edwardian cottages arranged around a garden courtyard. The cream brick units are of no significance...”

Recommendation

- a) Maintain original unpainted finish to face brickwork and investigate original paint colours.*
- b) Retain central garden court.*
- c) Ensure that any new buildings are sympathetic to the setting and style of the original buildings...”*

Development Facilitation

Prior to seeking authorisation for the preparation and exhibition of Amendment C103, considerable consultation occurred between the applicants, the Council's Heritage Adviser and the Department of Planning and Community Development (DPCD) in order to facilitate the applicants' development proposals.

5. MANAGEMENT REPORTS

5.10 Amendment C103 – Consideration of Panel Report and Adoption of Amendment (Continued)

This Amendment should be considered in conjunction with recent planning permits on the site that have approved the redevelopment of the lot fronting onto Maude Street;

1. Ministerial Planning Permit SH2009009009 was issued for the demolition of the 1960s units on the site and the construction of thirty-six aged-persons' units with associated car parking and alteration of access to a road in a Road Zone 1.
2. Planning Permit No. 2010-66 approved by the Council for a two-lot subdivision of the site, subdivides the land in a north-south direction (see Figure One).

In conjunction with this Amendment, these permits have and will facilitate for the appropriate redevelopment of the entire site. The planning permits have allowed for the demolition of the 1960s units on the site and the construction of an aged-persons' development on the lot addressing Maude Street (which is proposed to remain within R1Z in this Amendment), whilst the Wyndham Street frontage (which is proposed to be rezoned to B5Z in this Amendment) will facilitate for the commercial use and redevelopment of the Miller Homes Cottages. It will also provide for further commercial development on the southern portion of this lot that is currently vacant.

The subdivision boundary provided for two of the Miller Homes Cottages to be incorporated into the new social housing development fronting onto Maude Street. The remaining eight Miller Homes Cottages have been retained within the Wyndham Street lot of the subdivision and it is the intention of this Amendment to allow for their redevelopment as part of any future commercial development.

The applicants had requested the rezoning of the site as outlined in the Amendment; however they also requested the removal of the HO from the entire site. There was no strategic or cultural heritage conservation justification for the removal of the HO to the extent requested by the applicant. The removal of the HO from the ten Miller Homes Cottages would not allow for their continued preservation or guide future development to preserve their cultural heritage significance, as outlined in the Greater Shepparton Heritage Study Stage II.

Amendment C103

This Amendment is required to facilitate for the future commercial redevelopment of the Wyndham Street lot.

On this basis, the Council officers proceeded with an amendment which proposed to rezone the western lot, fronting onto Wyndham Street, from R1Z to B5Z. Such rezoning is consistent with the surrounding land fronting onto Wyndham Street. The eastern lot, fronting onto Maude Street, will remain within R1Z and will contain the two remaining Miller Homes Cottages. This retains the most appropriate land use zoning objective on the site to reflect the recently constructed aged-persons' development on the lot.

In addition, the retraction of the HO to only the 10 Miller Homes Cottages is in accordance with the applicants' proposed development plans for the entire site. It retains the ten Miller Homes Cottages within a HO to reflect their cultural heritage significance. The retention of the HO on this portion of the site will continue to guide future development proposals to protect the cultural heritage significance of the cottages. This retraction will also reflect the recent demolition of a number of the 1960s social housing units on the lot addressing Maude Street that were deemed not to be of any cultural

5. MANAGEMENT REPORTS

5.10 Amendment C103 – Consideration of Panel Report and Adoption of Amendment (Continued)

heritage significance. For this reason, the Amendment also proposes to retract the HO from the southern portion of the lot addressing Wyndham Street.

Amendment Exhibition

Five submissions to the amendment were received. The submission from Wintringham (in part) stated that:

“The key issue in the amendment in our submission is that all the housing within the proposed Business 5 Zone should be able to be demolished. The reason for this view is that the original aim of Alexander Miller was to maximize social housing in regional Victoria so as to assist those in need. Removal of the houses will maximize return which will be invested in future social housing-those in need will continue to benefit”.

The submission from Wintringham sought a further retraction of HO96 to allow for the demolition of the eight Miller Homes Cottages located within the proposed B5Z lot. Wintringham requested this further retraction in order to allow the land, which is proposed to be rezoned to B5Z to be sold on in an unencumbered state – thus making it potentially more valuable.

It has also been revealed there was only a very small chance that the proceeds from the sale of the land would be used in Shepparton. Rather, the funds would go into a pool to be used for social housing elsewhere in Victoria.

Panel Report

As a result of Wintringham’s objection, the Amendment was referred to an Independent Planning Panel. The Panel considered a number of issues proposed by Wintringham’s objection. The most relevant are:

1. Whether the retracted HO area, as exhibited Amendment, is warranted – namely whether the Miller Homes Cottages have local heritage significance?
2. Whether the perceived greater market value of an unencumbered site, and the potential to realise a greater amount of money for social housing purposes from the sale of such a site, is a factor which should be considered when the Amendment is being assessed? If this is the case, what weight, if any, should be given to this factor?
3. Whether the proposed retention of only two of the 10 original Miller Homes Cottages, and recording of the remainder, is an appropriate management approach to their cultural heritage value?

Having discussed the cultural heritage significance of the Miller Homes Cottages at length, the Panel made it explicitly clear that the buildings:

‘are clearly of local significance on historical/social and architectural/aesthetic bases. Their importance is enhanced by the form of the development clearly giving expression to the philosophical basis of the social housing intents’.

The Panel also stated that it was of the view that consideration of the local heritage significance of the site was the only proper matter for consideration when assessing the extent of the HO to be retained on the land. The Panel considered that Wintringham was, in effect, requesting that the Panel and the Council make an immediate decision on the

5. MANAGEMENT REPORTS

5.10 Amendment C103 – Consideration of Panel Report and Adoption of Amendment (Continued)

demolition of the cottages as part of the Amendment. The Panel did not support this approach.

The Panel considered the issues of returns to social housing on the sale of the land, as well as the appropriateness of retaining only two of the cottages and recording the remainder, to be 'a matter normally dealt with under a planning permit'. The Panel also considered that in the absence of a known redevelopment proposal that the decision cannot be appropriately made. A redevelopment proposal would enable the proper balancing of all considerations - the proposal needs to be known so that it can be brought into play in exercising discretion about the appropriateness of the loss of the Miller Homes Cottages.

The Panel considered that it is appropriate to remove the HO only to the extent proposed by the exhibited Amendment. The retention of the overlay over the Miller Homes Cottages and their courtyard would enable their cultural heritage value to be recognised and managed by the Council's Planning Scheme. The issue of the redevelopment of the Cottages could only be made as part of the assessment of a planning permit application that sought their demolition.

Discussion

Whilst Wintringham Housing is focussed on the outcome of achieving the maximum income possible from the sale of the B5Z land to accumulate funds for future housing projects, the Council must consider the local cultural heritage significance of the Miller Homes Cottages. This significance is extensive and the Cottages are a considerable cultural heritage asset within the Municipality.

The applicants' request to remove the HO from the entire site, citing a desire to achieve an unknown future market value for the site, is not a material planning consideration. The purpose of a HO is not to preclude demolition and development, but rather require a planning permit for demolition, and buildings and works. Redevelopment or potential partial demolition is still permissible under the HO. The HO simply ensures that all cultural heritage matters, including the setting of these structures, are given due consideration in the planning process. It also allows for third party input to achieve better planning, conservation and social outcomes. Councillors will be aware of other successful structures of cultural heritage significance being integrated into redevelopment schemes, notably the former Butter Factory site on Wyndham Street.

The removal of the HO from all of the Cottages would allow for their demolition without a planning permit. Given that the former Miller Homes in Benalla have recently been demolished and the Miller Homes in Euroa are currently being demolished, the Shepparton and Rushworth Homes are currently the only surviving representatives in the north-east area of Victoria. This adds additional weight to their important local cultural heritage significance.

In addition, there are a number of other Miller Homes throughout the state that have been refurbished and adapted as part of redevelopment schemes. It seems inequitable that Shepparton is not being considered in the same light - the impression is that Shepparton can provide the financial yield to support other social housing schemes and that the cultural heritage value of these Cottages are of no real consequence for the residents of Shepparton.

5. MANAGEMENT REPORTS

5.10 Amendment C103 – Consideration of Panel Report and Adoption of Amendment (Continued)

This site is one of the landmark entrances to Shepparton. The Council has already implemented a number of controls that will reinforce the importance of this entrance way.

This includes a DDO and the heritage controls that are in place on the current Miller Homes Cottages. The use of these two controls will ensure that there is streetscape diversity – both in style of buildings, scale and massing, and the intensity of development. The Miller Homes Cottages provide an opportunity for adaptive re-use and could be used for a number of activities – medical suite, office, shop, cafe, etc. The proximity to a higher density residential area is also seen to support a variety of potential different uses that should assist in the redevelopment of this site.

The applicants have already been granted approval for:

- a) a 2-lot subdivision; and
- b) development of the units on the Maude Street frontage as proposed (through the demolition of a significant number of the c.1960s units) approved by the Minister for Planning, without having to first sell the Wyndham Street land, as they received funding through the Nation Building program.

The applicants' application stated that '*...the sale proceeds will contribute to the development of more appropriate housing fronting Maude Street...*' However, as a consequence of the Building Nation funding, Wintringham received the required funds for this project without the need to sell the Wyndham Street lot and they now have the capacity to raise extra funds from the sale of the lot for further social housing development in regional Victoria.

In addition, this amendment proposes to rezone the Wyndham Street land to B5Z. This will further facilitate the applicants in their goal of providing social housing by designating the site for a potentially higher value than it might achieve under its current land use zoning objective.

Conclusion and Officer's Recommendation

There is no strategic justification for the further retraction of the HO as requested in the Wintringham submission. The site has been identified in the Heritage Study and the HO has been placed over the site to protect the local cultural heritage significance of the ten Miller Homes Cottages. Had the Council requested authorisation for the removal of the HO to the extent now requested by the applicants, it is likely, given the lack of evidence to justify the removal of the HO, that the Department of Planning and Community Development would not have supported the amendment and the exhibition would not have been authorised.

The applicants' request to remove the HO to allow for the demolition of the Cottages, and sell the land unencumbered, to raise additional funds for social housing is not a material planning consideration. Whilst there is no doubt that the developers are genuine in their goal to provide additional social housing, it seems that Shepparton is being used to provide the funding for their ongoing work. The removal of the HO from the B5Z lot may enable a higher market price to be realised but it will come at the cost of a significant loss to any future interpretation and understanding of the cultural heritage significance of the Miller Homes Cottages.

It is recognised that the lot addressing Wyndham Street may not achieve the financial yield of an unencumbered site with the HO in place. However, the applicants have

5. MANAGEMENT REPORTS

5.10 Amendment C103 – Consideration of Panel Report and Adoption of Amendment (Continued)

received the financial support required to redevelop the Maude Street lot and will still realise a substantial contribution from the sale of the western lot to contribute to their exemplary and laudable housing strategies.

The encouragement of a diversity of uses and the potential character of adaptive re-use of this site could also support a greater street life in this section of Wyndham Street and particularly during the weekend. When considering the design of the subdivision, Council officers took into account adaptive re-use, as well as modifications that might be included in any future change of use.

If the Council were to abandon this Amendment, the HO would remain over the whole of the site, despite the removal of the 1960s social housing that were deemed not to possess any cultural heritage significance. It would also mean that the lot addressing Wyndham Street would not be rezoned to B5Z. This option would not facilitate a good planning outcome for the applicants, the site or any future re-use of the Miller Homes Cottages.

Given the issues outlined above and the irrefutable argument made by the Panel in their report that the Cottages are of noted cultural heritage significance, the Council is respectfully requested to adopt this Amendment as exhibited and issue it to the Minister for approval.

Assessment under the Planning and Environment Act:

Under Section 12(1)(a) and (b) of the *Planning and Environment Act 1987*, the Council, as the responsible authority, must implement the objectives of planning in Victoria and provide sound, strategic and coordinated planning of the use and development of land in its area.

All Amendment C103 procedures comply with legislative requirements for amendment preparation, exhibition, submission consideration, panel stage and adoption under the *Planning and Environment Act 1987*.

Under Section 27 of the Act, the planning authority must consider the Panel's Report before deciding whether or not to adopt the amendment.

A planning authority adopts an amendment under Section 29 of the Act, with or without changes.

Risk Management

There are no known risks associated with the Amendment.

Policy Implications

There are no conflicts with existing Council policy. Amendment C103 is supported by the Council's cultural heritage, residential and commercial strategic directions.

Financial Implications

There are no financial implications with the Amendment. (Andrew Panel Costs or noted in other reports??)

5. MANAGEMENT REPORTS

5.10 Amendment C103 – Consideration of Panel Report and Adoption of Amendment (Continued)

Victorian Charter of Human Rights and Responsibilities Act 2006 Implications

The Amendment will not contravene this legislation.

Legal/Statutory Implications

All Amendment C103 procedures comply with legislative requirements for amendment preparation, exhibition, submission consideration, panel stage and adoption under the *Planning and Environment Act 1987*.

The amendment is:

1. Consistent with the Ministerial Direction on the Form and Content of Planning Schemes under Section 7(5) of the Act.
2. Complies with Minister's Direction No 6, *Rural Residential Development*.
3. Complies with Minister's Direction No 11, *Strategic Assessment of Amendments* and practice note, *Strategic Assessment Guidelines – revised August 2004*.

Under the provisions of Section 27 of the *Planning and Environment Act 1987*, the Council must consider the Independent Planning Panel's Report before deciding whether or not to adopt the amendment.

Council Officers believe that appropriate consultation has occurred and the matter is now ready for Council consideration.

Strategic Links

a) Greater Shepparton 2030 Strategy

No strategic links have been identified.

b) Council Plan

There are not direct links to the Council Plan.

c) Other strategic links

No other strategic links have been identified.

Attachments

Nil.

5. MANAGEMENT REPORTS

5.11 Enforcement Order Application – 57- 59 Hogan Street, Tatura

Disclosures of conflicts of interest in relation to advice provided in this report

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest in relation to the matter under consideration.

Summary

A panel beating business trading under the name 'Olds Cool Panel Shop' is currently trading from 57-59 Hogan Street Tatura. There has been no Council approval for the use on the land. The land is located within the Business 1 Zone (B1Z).

The Greater Shepparton Planning Scheme (Scheme) states that use of the land as a panel beating business within the B1Z is a prohibited use. Greater Shepparton City Council is the responsible authority, required by law, to efficiently administer and enforce the Scheme.

The Council's Planning and Development Branch were made aware of the prohibited use through a written complaint from a concerned resident in October 2009.

A Council planning officer investigated the complaint and subsequently advised 'Olds Cool Panel Shop' that the use was prohibited and requested that the business be vacated by 25 August 2010.

'Olds Cool Panel Shop' wrote to the Council on 2 September 2010 requesting an extension of time to relocate. They also advised that the business had only been operating from the site for a period of four years which meant they did not qualify for existing use rights.

The Council's Chief Executive Officer granted 'Olds Cool Panel Shop' an extension until 9 September 2011 to relocate.

An inspection of the premises on 28 September 2011 revealed that 'Olds Cool Panel Shop' was still operating from the land.

RECOMMENDATION

That based on the information before the Council and having considered all relevant matters as required by the *Planning and Environment Act 1987*, the Council resolves to support the continued enforcement action against 'Olds Cool Panel Shop', and lodge an Enforcement Order with the Victorian Civil and Administrative Tribunal, ordering 'Olds Cool Panel Shop' cease trading immediately, and vacate the business from the land within 30 days of the date of the order.

Applicant/Property Details

'Olds Cool Panel Shop' operator rents the premises at 57-59 Hogan Street Tatura.

The land is situated in the B1Z and is in the main street of Tatura.

Allotments located adjacent to the northern and eastern boundaries of the subject property are used for residential purposes, with existing dwellings located onsite.

5. MANAGEMENT REPORTS

5.11 Enforcement Order Application – 57- 59 Hogan Street, Tatura (Continued)

Shire of Rodney Planning Scheme map shows 57-59 Hogan Street Tatura and adjoining sites along Hogan Street Tatura, were zoned Commercial A Zone. A 'Motor Body Works' was prohibited in that zone.

The site became B1Z under the new format planning scheme on 29 July 1999 under a neutral (no change) translation. Panel Beating is prohibited in the B1Z as an industrial use listed in clause 52.10 (uses with adverse amenity potential).

Proposal in Detail

Greater Shepparton City Council is the responsible authority, required by law, to efficiently administer and enforce the Scheme. Any person who uses or develops land in contravention of or fails to comply with the Scheme is guilty of an offence.

Enforcement action should occur when there is a clear breach of the Scheme, and the breach warrants enforcement, especially if it causes detriment to the community. The main emphasis of enforcement is on obtaining compliance rather than on prosecuting offenders.

The Council's Planning and Development Branch has already commenced enforcement action in this matter. A Council planning officer wrote to 'Olds Cool Panel Shop' in February 2010 advising the use was prohibited, and requested the business be vacated by the 25 August 2010. 'Olds Cool Panel Shop' wrote back to the Council in September 2010 requesting a 6 month extension. The Council's Chief Executive Officer granted 'Olds Cool Panel Shop' an extension until 9 September 2011 to vacate the business.

An inspection of the premises on 28 September 2011 revealed that 'Olds Cool Panel Shop' was still operating from the land.

The Councils Planning and Development Branch seek to lodge the Enforcement Order with the Victorian Civil and Administrative Tribunal (VCAT) due to failure to comply with the Councils requests. Council will be seeking an Enforcement Order for 'Olds Cool Panel Shop' to cease trading immediately and vacate the business from the land within 30 days. It should be noted that although the timeframe for the business to cease trading and vacate the premises may seem short, it is unlikely that the matter will be heard at VCAT before October 2012 given VCAT's current case load. 'Olds Cool Panel Shop' has also already had over two years to relocate since the Councils first notification of the prohibited use and required relocation of the business.

Background

A report of a panel beating business within the B1Z was reported to the Councils Planning and Development Branch in October 2009. The complainant advised of the following issues:

1. *Noise – The building is not sealed on the complainant's side on our side and we can hear all that is happening.*
2. *Pollution – (a)When they spray the cars they do not have a spray booth and on occasions do not shut the roller door which causes respiratory illness for those in my house.
(b) They have installed a wood heater with a flue through the roof, the flue is not high enough so I cannot open the back door of my house or have my car in the backyard as the smoke and ash fills my backyard and that of my next door neighbour. Both of us cannot hang out clothes on the line either.*

5. MANAGEMENT REPORTS

5.11 Enforcement Order Application – 57- 59 Hogan Street, Tatura (Continued)

3. *Signage has been erected near my fence and takes away from the frontage of my residence as it is quite large and blocks my view.*
4. *Opening hours – Many Sundays – tenants have worked before 9am – usually 7am which means those of us that live around this business are awoken to the sound of a grinder or the roller door going up and down.*

The Councils Planning and Development Branch wrote to 'Olds Cool Panel Shop' in February 2010 advising the operators that the use was prohibited, and requested the business be vacated by the 25 August 2010.

On 3 September 2010 the Councils Economic Development Branch met with 'Olds Cool Panel Shop' to discuss sourcing of alternative premises.

'Olds Cool Panel Shop' wrote to the Councils Chief Executive Officer Phil Pearce in September 2010 requesting a 6 month extension.

The Councils Chief Executive Officer wrote back to 'Olds Cool Panel Shop' on 10 September 2010 advising they had an extension until 9 September 2011 to vacate the business. They were also offered assistance from the Councils Planning and Economic Branch to assist in sourcing alternative premises.

A site inspection of the premises on 28 September 2011 confirmed 'Olds Cool Panel Shop' was still operating from the land.

The matter was referred to the Council Solicitors, Russell Kennedy, on 30 September 2011 to commence legal action.

Russell Kennedy wrote to 'Olds Cool Panel Shop' and the landowners on 10 October 2011 giving 21 days to show cause as to why formal proceedings should not be commenced.

Beck Legal responded to Russell Kennedy on 7 November 2011 on behalf of 'Olds Cool Panel Shop'. Beck Legal advised that their client was still seeking alternate premises to relocate to, and requested that no enforcement action be taken against them until such time.

The Councils Economic Development Branch contacted 'Olds Cool Panel Shop' on 28 November 2011 offering assistance in finding a suitable alternative site for the business. A suitable site was not located however Council officers continue to search for a site.

After consultation with Russell Kennedy, Councils Planning and Development Branch now seek to lodge an Enforcement Order with VCAT, ordering 'Olds Cool Panel Shop' cease trading immediately, and vacate the business from the land within 30 days from the date of the order.

The Councils Planning and Development Branch have received a secondary complaint in relation to 'Olds Cool Panel Shop' on 20 January 2012. In summary the issues are:

5. MANAGEMENT REPORTS

5.11 Enforcement Order Application – 57- 59 Hogan Street, Tatura (Continued)

1. Noise – The building is not adequately sealed and the noise of electric tools, air compressors, and revving of cars is a constant issue.
2. Opening hours – Workers are at the site as early as 7am and after 9pm. They work all days of the week including public holidays.
3. Fumes and seepage – A flue on the roof is creating pollution with burnt paper, soot and smoke filling neighbouring yards. Complainant claims that the fumes from the paint when cars are being sprayed, are making residents of the house sick including headaches from the fumes. As the building is not sealed adequately, paint is washing through to neighbouring properties.
4. Non compliance – Complaint of 'Olds Cool Panel Shop' not following the Councils regulations, as well as EPA Guidelines.
5. Quality of life – Being affected by the prohibited use of panel beating. Some days the complainant is unable to go outside of their own property due to the fumes and smoke.

Assessment under the Planning and Environment Act

Clause 34.01 Business 1 Zone – The purpose is to encourage the intensive development of business centres for retailing and other complementary commercial, entertainment and community uses.

Clause 34.01-2 Use of Land - states the following:

Amenity of the neighbourhood - A use must not detrimentally affect the amenity of the neighbourhood, including through the:

1. Transport of materials, goods or commodities to or from the land.
2. Appearance of any building, works or materials.
3. Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.

Clause 52.01 Uses With Adverse Amenity Potential – The purpose is to define those types of industries and warehouses which if not appropriately designed and located may cause offence or unacceptable risk to the neighbourhood.

61.01 Administration and enforcement of this Scheme - The responsible authority for the administration and enforcement of this Scheme or a provision of this Scheme is specified in this clause and the schedule to this clause.

Schedule to Clause 61.01 - Responsible authority for administering and enforcing this Scheme: The Greater Shepparton City Council is the responsible authority for administering and enforcing the Scheme, except for matters specified in Clause 61.01-1 and matters listed in the schedule.

The land is located within the B1Z.

The use of the land for panel beating has been defined as Industry which is defined under the Scheme as land used for any of the following operations:

- any process of manufacture
- dismantling or breaking up of any article
- treating waste materials
- winning clay, gravel, rock, sand, soil, stone, or other materials (other than Mineral, stone, or soil extraction)

5. MANAGEMENT REPORTS

5.11 Enforcement Order Application – 57- 59 Hogan Street, Tatura (Continued)

- laundering, repairing, servicing or washing any article, machinery, or vehicle, other than on-site work on a building, works, or land; or
- any process of testing or analysis
- If on the same land as any of these operations, it also includes:
- storing goods used in the operation or resulting from it
- providing amenities for people engaged in the operation
- selling by wholesale, goods resulting from the operation and
- accounting or administration in connection with the operation
- If Materials recycling, goods resulting from the operation may be sold by retail.

Within the B1Z, the use of Industry is a section 2 Use. A section 2 use requires a permit, however any condition opposite the use must be met. If the condition is not met, the use is prohibited. The Scheme states that within the B1Z, the use of Industry requires a permit, however must not be listed in the table to Clause 52.10 Uses With Adverse Amenity Potential. The use of Panel Beating is listed in Clause 52.10, making it a prohibited use in the B1Z.

The use of the land for Panel Beating does not qualify for existing use rights. Information provided to the Council on 2 September 2010 by 'Olds Cool Panel Shop' stated they had only been operating from the site for a period of four years. Under Clause 63.01 and Clause 63.11 of the Scheme, existing use rights only apply where proof of continuous use of the site is established for a period of 15 years.

The Councils Planning and Development Branch is now seeking an Enforcement Order for 'Olds Cool Panel Shop' to cease trading immediately and vacate the business from the land within 30 days of the date of the order for the following reasons:

- The use of the land for Panel Beating is not consistent with the purpose of *Clause 34.01 Business 1 Zone* – which is:
- to encourage the intensive development of business centres for retailing and other complementary commercial, entertainment and community uses.
- The use of the land for Panel Beating is not consistent with *Clause 34.01-1 – Section 2 – Permit required* which states:
- The use of Industry must not be a purpose listed in the table to Clause 52.10.
- The use of the land for Panel Beating is not consistent with *Clause 34.01-2 Use of Land – Amenity of the neighbourhood* which includes:
- A use must not detrimentally affect the amenity of the neighbourhood, including through the:
- Transport of materials, goods or commodities to or from the land
- Appearance of any building, works or materials
- Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.

Risk Management

Continuing enforcement action in this matter may not be a popular political decision and

5. MANAGEMENT REPORTS

5.11 Enforcement Order Application – 57- 59 Hogan Street, Tatura (Continued)

may attract negative media and community feedback, however Council is the responsible authority required by law to enforce the Scheme.

If the Councils Planning and Development Branch take no action in this matter, the Council may also be liable for action taken by the complainant regarding the reported potential health impacts.

Policy Implications

There are no conflicts with existing Council policy.

Financial Implications

Solicitor Fees – the Council will be responsible for any fees incurred from legal advice and assistance in this matter from Russell Kennedy.

VCAT Fees - In the event of lodging an Enforcement Order with VCAT, Section 109(1) of the *Victorian Civil and Administrative Tribunal Act 1998* states that parties must bear their own costs.

Victorian Charter of Human Rights and Responsibilities Act 2006 Implications

If the Council choose to continue enforcement action, the proposal does not limit any of the human rights provided for under the Victorian *Charter of Human Rights and Responsibilities Act 2006*.

Alternatively, if the Council choose not to continue enforcement action this could be limiting the human rights of the complainant provided for under this Act.

Legal/Statutory Implications

The responsible authority's decision may be subject to an application for review by VCAT.

Consultation

Officers believe that appropriate consultation has occurred with the operator and the matter is now ready for Council consideration.

Strategic Links

a) Greater Shepparton 2030 Strategy

No relevant strategies identified.

b) Council Plan

Key Strategic objective – Community Life strategies

(9) Develop and pursue strategies to improve community health and wellbeing

c) Other strategic links

No other strategic links have been identified.

Attachments

Map of site.

Aerial map of site.

Photos taken of site on 28 September 2011.

Photos taken of site on 19 January 2012.

5. MANAGEMENT REPORTS

5.12 Amendment C148 – Consideration of Panel Report and Adoption of Amendment

Disclosures of conflicts of interest in relation to advice provided in this report

No Council officers or contractors, who have provided advice in relation to this report, have declared a conflict of interest in relation to the matter under consideration.

Summary

The purpose of Amendment C148 is to allow VicRoads to acquire land, to facilitate the duplication of an existing roundabout at the corner of Benalla Rd (Midland Hwy) and Doyles Rd and for the future duplication of Doyles Rd north of Benalla Rd (Midland Hwy). The proposal is part of a larger project to duplicate Benalla Rd (Midland Hwy) between Florence St and Orrvale Rd.

The amendment was exhibited and seven submissions were received. Two of the submissions objected to the amendment and as a result, all submissions were referred to an Independent Planning Panel.

The Independent Planning Panel, appointed by the Minister to consider the submissions, has made its determination following the Panel hearing held on 14 November 2011.

The recommendation of the Independent Planning Panel is that “Amendment C148 to the Greater Shepparton Planning Scheme be adopted generally as exhibited but with minor changes to the area of application as shown in this report”.

RECOMMENDATION

That having considered the Panel Report in accordance with Section 27(1) of the *Planning and Environment Act 1987*, the Council:

1. Adopt the Panel Report for Amendment C148;
2. Adopt Amendment C148, with the changes recommended by the Panel; and
3. In accordance with Section 31 of the *Planning and Environment Act 1987*, submit Amendment C148 to the Greater Shepparton Planning Scheme to the Minister for approval.

Proposal in detail

Amendment C148 relates to 1,469m² of land at 293-295 Benalla Road, Shepparton. The Amendment has been made at the request of CPG on behalf of VicRoads. The Amendment proposes to include the land within a Public Acquisition Overlay, to facilitate the future acquisition of the land by VicRoads for the duplication of both Doyles Road, and the existing roundabout at the intersection of Benalla Road / Midland Highway and Doyles Road. Following acquisition, the land will be rezoned to Road Zone Category 1.

Amendment C148 proposes to:

- Introduce a new map into the Planning Scheme to include the subject land in the Public Acquisition Overlay (PAO19)

5. MANAGEMENT REPORTS

5.12 Amendment C148 – Consideration of Panel Report and Adoption of Amendment (Continued)

- Amend the schedule to the Public Acquisition Overlay (at Clause 45.01) to include VicRoads as an acquiring authority; and
- Amend the Schedule to Clause 61.03 to include a new map

Panel report

The Amendment was exhibited and seven submissions were received. Four of the submissions were from the relevant public authorities, none of whom objected to the Amendment. One submission was from the Minister for Environment and Climate Change (through the Department of Sustainability and Environment), who did not object to the Amendment. Two submissions were received objecting to the Amendment; from a spokesperson, on behalf of the owner of the affected land, and from one of the land owners, on behalf of the other owners of the land. The submissions were referred to an Independent Planning Panel.

The spokesperson's submission concerned the future acquisition of the land as part of his assets and the impact that the acquisition will have on the Landmark business that is currently operating on the land. The Independent Planning Panel accepted the rationale for the location of the Public Acquisition Overlay and concluded that the processes for compensation should provide a just and equitable outcome for the spokesperson.

One of the land owners submission related to the potential impact that the works may have on the proposed use and development of his own land. The Independent Planning Panel concluded that the issues raised by an owner of the land were outside the scope of the Amendment.

The Council supports the Amendment on the basis that it addresses the policy objectives of the Greater Shepparton Planning Scheme that focus on the provision of safe and efficient infrastructure, and the development of an integrated road network which will minimise intrusive traffic volumes / movements into Shepparton (including road widening where appropriate).

After considering the submissions, the Independent Planning Panel stated that the duplication of the Doyles Road roundabout is strategically justified in planning terms, owing to existing and predicted traffic volumes. It was concluded that the use of a Public Acquisition Overlay is the most appropriate tool to achieve the desired outcome. The Independent Planning Panel recommends adopting Amendment C148 with minor changes including:

1. A minor increase in the area of the Public Acquisition Overlay related to a correction to the survey plan; and
2. An increase in the area of the Public Acquisition Overlay of 16m² to allow for a footpath on the verge of the west side of Doyles Road.

These changes were provided by VicRoads to Mr Caverzan, who provided no further comments on the plan and no further submission was received.

Assessment under the Planning and Environment Act 1987

Under Section 12(1)(a) and (b) of the *Planning and Environment Act 1987*, the Council, as the responsible authority, must implement the objectives of planning in Victoria and provide sound, strategic and coordinated planning of the use and development of land in its area.

5. MANAGEMENT REPORTS

5.12 Amendment C148 – Consideration of Panel Report and Adoption of Amendment (Continued)

All Amendment C148 procedures comply with legislative requirements for amendment preparation, exhibition, submission consideration, panel stage and adoption under the *Planning and Environment Act 1987*.

Under Section 27 of the Act, the planning authority must consider the Independent Planning Panel's Report before deciding whether or not to adopt the amendment.

A planning authority adopts an amendment pursuant to Section 29 of the Act, with or without changes.

Risk management

There are no known risks associated with the Amendment. See MICHAEL

Policy implications

There are no conflicts with existing Council policy.

Financial implications

There are no financial implications for Council. In accordance with Regulations 6(5), (6), (7) and (8) of the *Planning and Environment (Fees) Regulations 2000*, the proponent of the amendment is responsible for all fees associated with the amendment process. In accordance with Section 156(3) of the *Planning and Environment Act 1987*, the proponent is required to meet all costs associated with the independent planning panel. In accordance with Section 109 of the *Planning and Environment Act 1987*, as the acquisition authority, VicRoads will be responsible for any costs associated with acquisition of the land.

Victorian Charter of Human Rights and Responsibilities Act 2006 implications

This proposal does not limit any of the human rights provided for under the *Victorian Charter of Human Rights and Responsibilities Act 2006*.

Legal / statutory implications

All Amendment C148 procedures comply with legislative requirements for amendment preparation, exhibition, submission consideration, panel stage and adoption under the *Planning and Environment Act 1987*.

The amendment is:

- Consistent with the Ministerial Direction on the Form and Content of Planning Schemes under Section 7(5) of the Act.
- Complies with Minister's Direction No 11, *Strategic Assessment of Amendments* and accompanying practice note, *Strategic Assessment Guidelines – revised August 2004*.

Under the provisions of Section 27 of the *Planning and Environment Act 1987*, the Council must consider the Independent Planning Panel's Report before deciding whether or not to adopt the amendment.

Consultation

The amendment was placed on exhibition from 10 March 2011 until 11 April 2011. Notices appeared in both the Government Gazette and the Shepparton News.

5. MANAGEMENT REPORTS

5.12 Amendment C148 – Consideration of Panel Report and Adoption of Amendment (Continued)

As required by the *Planning and Environment Act 1987*, formal notice of Amendment C148 was given to the prescribed Ministers, relevant referral and statutory authorities and affected landowners.

Strategic links

a) Greater Shepparton 2030 Strategy

Any arterial road upgrades must be integrated with the route of the Shepparton Bypass. Integration with the Shepparton Bypass will ensure that clear linkages are available from the Shepparton Bypass to the preferred arterial road network to reduce local traffic intrusion in future years as well as prior to the development of the bypass.

b) Council Plan

Strategic Objective 5 – Infrastructure, Point 26 pursues the duplication of major highway entrances to Shepparton and Mooroopna.

The southern and western approaches to Shepparton and the eastern approach to Mooroopna have been significantly upgraded over the past few years, improving their appearance and traffic flow. Further work still needs to be done however, to upgrade the eastern and northern approaches to Shepparton, particularly as retail development extends east along Benalla Road and the western entrance to Mooroopna.

We will lobby the Victorian Government and VicRoads to extend the duplication of Benalla Road Shepparton and McLennan Street, Mooroopna, in order to improve road safety, support business development and improve the overall appearance of these busy highways.

Clause A states that in the next four years of the Plan's adoption to:

- Support VicRoads in seeking funding for the duplication of Benalla Road from Florence Street to Doyles Road.

c) Other strategic links

No other strategic links have been identified

Attachments

Nil

6. TABLED MOTIONS

7. REPORTS FROM COUNCIL DELEGATES TO OTHER BODIES

8. REPORTS FROM SPECIAL COMMITTEES AND ADVISORY COMMITTEES

9. NOTICES OF MOTION, AMENDMENT OR RESCISSION

Cr Jenny Houlihan

I move the following:

That a report be provided to Council which documents the positive and negative effects of banning smoking in outdoor dining areas in Greater Shepparton.

The report

- a) must address relevant health, environmental, social, economic, and governance matters and
- b) be included on the agenda of the March or April 2012 Ordinary Council meeting.

10. DOCUMENTS FOR SIGNING AND SEALING

11. COUNCILLOR ACTIVITIES

11.1 Councillors' Community Interaction and Briefing Program

From 8 December 2011 to 23 January 2012, some or all of the Councillors have been involved in the following activities:

- Murray Darling Basin Authority Public meeting
- Regional Issues Meeting with Ministers Powell and Napthine
- Disability Awareness Silent Morning Tea
- 'Shepparton Show Me' meeting
- International Dairy week opening

Councillors were also briefed on the following matters:

- Asset Management Presentation
- Off Leash Dog Park
- Cultural Diversity and Inclusion Strategy
- Library Redevelopment Proposal
- Victoria Park Lake issues

In accordance with section 80A of the *Local Government Act 1989* records of the Assemblies of Councillors are attached.

RECOMMENDATION

That the summary of the Councillors' community interaction and briefing program be received.

Attachments

Assemblies of Councillors Records

- Short Discussion Session – 17 January 2012
- Short Discussion Session – 6 December 2011
- Short Discussion Session – 13 December 2011
- Short Discussion Session - 20 December 2011
- Art Gallery Advisory Committee Meeting – 19 October 2011
- Meeting with Ministers Naphine and Powell – 11 January 2012
- Record of Assembly of Councillors – Women's Charter Alliance planned meeting – 16 December 2011
- Women's Charter Alliance Planned Meeting – 23 January 2012
- Short Discussion Session – 24 January 2012

12 URGENT AND OTHER BUSINESS NOT INCLUDED ON THE AGENDA

13. PUBLIC QUESTION TIME

14. CONFIDENTIAL MANAGEMENT REPORTS

14.1 Designation of Confidentiality of Information – Report Attachments

RECOMMENDATION

In accordance with section 77(2)(b) of the *Local Government Act 1989* (the Act) the Council designates as confidential all documents used to prepare the following agenda item 14.1 'Contract No. 1364 – Rehabilitation of the Murchison Landfill' and designated by the Chief Executive Officer or her delegate in writing as confidential under section 77(2)(c) of the Act. These documents relate to contractual matters, which is a relevant ground applying under section 89(2)(d) of the Act.