

# **ATTACHMENT TO AGENDA ITEM**

**Ordinary Meeting**

**20 May 2014**

**Agenda Item 10.6      Buildings and works for a 1.8 metre high chain mesh  
fence in the Floodway Overlay and Land Subject to  
Inundation Overlay.**

**Attachment 1      Delegate Report ..... 570**

## Delegates Report

### Application Details:

Responsible Officer:	Sarah Van Meurs
Application Number:	2013-324
Applicants Name:	Mooroopna Golf Club Inc
Date Application Received:	12 December 2013
Statutory Days:	97 (20/03/2014)
Land/Address:	2 Fairway Drive MOORoopNA VIC 3629
Zoning and Overlays:	Farming Zone 1 Urban Floodway Zone Land Subject to Inundation Overlay Floodway Overlay
Why is a permit required (include Permit Triggers):	44.03-1 Buildings and works in the Floodway Overlay 44.04-1 Buildings and works in the Land Subject to Inundation Overlay
Are there any Restrictive Covenants on the title?	No

### Proposal

The application proposes to construct a 1.8 metre high chain mesh fence along the western side of the golf course at 2A Fairway Drive, Mooroopna. The proposed fence is approximately 450 metres in length and runs along the boundary the golf course and Fairway Drive.

The purpose of the proposed fence is to provide security and reduce un-authorised access to the Golf Course.

The subject land is partially in the Farming Zone 1 and Urban Floodway Zone and is partially affected by the Floodway Overlay and Land Subject to Inundation Overlay.

The proposed fence is located in the Farming 1 Zone, Floodway Overlay and Land Subject to Inundation Overlay.

Pursuant to Clause 44.03-1 and 44.04-1 of the Greater Shepparton Planning Scheme a planning permit is required for the construction of a fence in the Floodway Overlay and Land Subject to inundation Overlay, respectively.

### Summary of Key Issues

A planning permit is required for construction of a fence in the Floodway Overlay and Land Subject to Inundation Overlay.

The application was referred to the Goulburn Broken Catchment Management Authority who objected to the issuing of a planning permit.

The Catchment Management Authority is a recommending referral authority.

The Planning Department notified the applicant of Goulburn Broken CMA's objection and the applicant was given the opportunity to respond.

The applicant provided Council's Planning Department with a written response to the objection, however did not provide any expert evidence to support the proposal.

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### Subject Site & Locality

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

Date: 17 December 2013                      Time: 11:25 am

The site has a total area of **28.14** hectares and currently contains:

- 18 hole golf course, and bowls club
- Club house with restaurant, pokies, TAB and also offers live entertainment.

The main site/locality characteristics are:

- Residential land to the west and vacant land to the east.

The photos below show the existing site:



Looking north-west along fairway drive from the golf Club rooms (intersection of Ann Street and Fairway Drive, Mooroopna).



Looking north-west along Fairway Drive, Mooroopna.



Looking north west, further along Fairway Drive, Mooroopna.



Looking north along Fairway Drive, Mooroopna from the bend in the road.



Looking north along Fairway Drive from the intersection of Grant Street, Mooroopna.



Looking east from the end of Fairway Drive, Mooroopna.



Looking north from the end of Fairway Drive, Mooroopna.

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### **Permit/Site History**

The history of the site includes:

- 2009-14/A for the purpose of the construction of a storage shed.
- 2007-329 for the purpose of extension to an existing building.
- 2006-395 for the purpose of constructing an outdoor smoking area.
- 2006-301 for the purpose of advertising signage.
- 2002-286 for the purpose of 7 lot subdivision, (refusal).

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### Further Information

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

What date was the further information requested?: **N/A**

What date was the further information received?: **N/A**

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### Public Notification

The application was exempt from being advertised in accordance with Clause **44.03-4** and **44.04-4** of the planning scheme.

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### Objections

As specified above, the application was not required to be advertised, therefore no objections were lodged.

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### Title Details

The title contains a Section 173 Agreement. The application does not breach the Section 173 Agreement for the following reasons:

- The Section 173 Agreement recognises the construction over Council's drainage assets is at the risk of the owner.
- The proposed fence is not in close proximity to Council's drainage easement.

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### Consultation

Consultation was undertaken. Relevant aspects of consultation, included:

- The Goulburn Broken Catchment Management Authorities objection was provided to the applicant (17 February 2014) who was given the opportunity to provide a response.
- The applicant provided responded to the objection (4 March 2014) with the following:  
*The club believes that if a flood were to occur it would be a rise and fall situation and would not impact on current hydraulic grade flows that are current, therefore increased impact to the residential the area and homes along Fairway Drive as stated by the objector, Guy Tierney, Statutory Planning and Floodplain Manager.*

Other issues raised by the applicant are summarised in the following in the three points:

- Safety risks for the patrons of the golf club. The applicant provided a case study of an attack on a golfer.

- General public utilising the golf course for passive and formal recreation and the safety concerns associated with the use of the area for playing golf.
- Vandalism of the grounds and associated repair costs.

## Referrals

External Referrals/Notices Required by the Planning Scheme:

Referrals/Notice	Advice/Response/Conditions
Section 55 Referral Recommending Authority	<p><u>The Goulburn Broken Catchment Authority</u></p> <p>The application was referred to the Goulburn Broken CMA who objected to the application. The following response was given:</p> <p><i>Available ground contour information indicates that the depth of flooding would range between 400 and 600 millimetre in depth in a repeat of a 100 year type flood.</i></p> <p><i>Two major concerns of this proposal is that the hydraulic grade is generally from west to east and the potential impact by the proposed chain mess fence on residential the area and homes along Fairway Drive.</i></p> <p><i>In the light of the above, and pursuant to Section 56 of the Planning and Environment Act 1987, the Goulburn Broken CMA objects to the granting of a permit on the following grounds:</i></p> <ol style="list-style-type: none"> <li>1. <i>The proposal is discouraged within the State Planning Policy Framework and Local Planning Policy Framework of the Greater Shepparton Planning Scheme 21.05-2.</i></li> <li>2. <i>The proposal is not consistent with the Victoria Planning Provisions Practice Note Applying for a Planning Permit under the Flood Provisions (DOI, 2000).</i></li> <li>3. <i>Long-term cumulative impacts of such proposals.</i></li> </ol> <p><i>The Goulburn Broken CMA would consider alternative design that is more sympathetic to the floodplain characteristics, such as vertical uprights at 125 millimetre spacings.</i></p>
Section 52 Notices	There are no Section 52 Notices required in accordance with the Greater Shepparton Planning Scheme.

Internal Council Notices	Advice/Response/Conditions
No Internal Council Notices required	N/A

## Assessment

### The zoning of the land

The subject land is located in the Farming Zone 1 and Urban Floodway Zone. However, the location of the proposed fence is only within the Farming Zone 1.

The purpose of the Farming Zone 1 is:

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



- To provide for the use of land for agriculture.
- To encourage the retention of productive agricultural land.
- To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.
- To encourage the retention of employment and population to support rural communities.
- To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

A planning permit is not required for the construction of a fence in the Farming Zone 1, therefore the decision guidelines of the zone are not applicable.

**Relevant overlay provisions**

The subject land is partially affected by the Floodway Overlay and Land Subject to Inundation Overlay.

**44.03 Floodway Overlay**

Pursuant to Clause 44.03-1 of the Greater Shepparton Planning Scheme a planning permit is required for buildings and works in the Floodway Overlay.

**44.03-6 Decision guidelines**

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

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The local floodplain development plan or flood risk report.
- Any comments of the relevant floodplain management authority.
- The Victorian River Health Strategy (2002) and any relevant regional river health strategy and associated wetland plan.

**44.04 Land Subject to Inundation Overlay**

Pursuant to Clause 44.04-1 of the Greater Shepparton Planning Scheme a planning permit is required for buildings and works in the Land Subject to Inundation Overlay.

**44.04-6 Decision guidelines**

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

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

**The State Planning Policy Framework (SPPF)**

**13.02-1 Floodplain Management**

**Objective**

To assist the protection of:

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

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

**21.05-2 Floodplain and Drainage Management**

**Objectives**

- To recognise the constraints of the floodplain on the use and development of land.

**Relevant Strategies**

- Ensure that all new development maintains the free passage and temporary storage of floodwater, minimises flood damage is compatible with flood hazard and local drainage conditions, and minimises soil erosion, sedimentation and silting.
- Prevent tree removal.

**Response:**

The application was referred to the Catchment Management Authority who objected to the application, as stated in previous sections of this report.

There are two different types of referral authorities. A 'determining authority' and a 'recommending authority'. A determining authority has the power to require a planning application to be refused, or for certain conditions to be included in a permit. A recommending authority may only comment on an application and comments must be considered by the responsible authority.

The Goulburn Broken Catchment Management is a recommending authority. It is acknowledged that the Catchment Management Authority is the flood expert and the planning department has considered their comments recommending that no permit be granted.

In *Ballywarra Farms Pty Ltd Vs Baw Baw SC* (2014), the VCAT Member did not give weight to Councils decision as it was not supported by the relevant floodplain management authority, and no additional evidence or material was provided to support the ground to demonstrate why the floodplain management authority's view was somehow misconceived.

The applicant was provided with the opportunity to respond with their own expert report, of which none was provided. Therefore it is reasonable to rely on the expertise of the Catchment Management Authority in the decision to refuse to grant a permit.

Given the objection received by the Authority, it could be considered that the proposed fence provides flood risks in the area. Whilst the fence is not solid, in the event of a flood there is potential for debris to be caught in the 450 metre long fence and potentially re-direct flood waters. This could cause immediate risk to the abutting residential area, impacting on life, property and community infrastructure in the area.

The proposed development seeks to construct a fence to provide a barrier from the general public entering and using the golf course for personal use. The proposed fence therefore

cannot be re-located out of flood prone land. The Catchment Management Authority has informed a pool type fence would be an acceptable outcome. The applicant verbally stated that pool type fencing would not be sufficient in deterring un-authorized access and highlighted the elevated costs associated with the style of fencing.

The subject land is located in the Local Floodplain Development Plan – Precinct of Goulburn River.

The applicant has not indicated that any trees will be removed to allow for the construction of the proposed fence.

**Relevant Particular Provisions**

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

**The decision guidelines of Clause 65**

**65.01 Decision Guidelines**

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

Before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate, the matters set out in clause 65.01.

- The matters set out in Section 60 of the Act.
- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The purpose of the zone, overlay or other provision.
- Any matter required to be considered in the zone, overlay or other provision.
- The orderly planning of the area.
- The effect on the amenity of the area.
- The proximity of the land to any public land.
- Factors likely to cause or contribute to land degradation, salinity or reduce water quality.
- Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.
- The extent and character of native vegetation and the likelihood of its destruction.
- Whether native vegetation is to be or can be protected, planted or allowed to regenerate.

- The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.

**Response:**

The application complies in the following ways:

- The relevant matters set out in Section 60 of the Act have been considered. The application does not accord with the relevant provisions in the Greater Shepparton Planning Scheme, or the objectives of planning in Victoria. The Goulburn Broken CMA objected to the application.
- The application is not considered to be in accordance with the purpose of the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The proposed application is not generally in accordance with the purpose of the Floodway and Land Subject to Inundation Overlays.
- All relevant matters have been considered in accordance with the zone, and other provisions as above.
- The proposal could lead to significant changes in floodwaters in the area and would not be considered orderly planning.
- The surrounding area is predominately residential in character. The proposed fence is not considered to be appropriately designed given the flooding constraints of the land and may cause additional flooding in the surrounding residential area.
- The subject land is not in close proximity to any public land.
- The proposed fence may reduce water quality by blocking floodwater flows.
- The fence is likely to impact on the management of stormwater within and exiting the site.
- The applicant has not proposed any vegetation removal; therefore the proposed use would not have any detrimental impact on vegetation.
- Based on advice from the Goulburn Broken Catchment Management Authority, the degree of flood hazard associated with the development of the land would be could be detrimental to the abutting lands.

**Relevant incorporated or reference documents**

The relevant incorporated document is the Local Floodplain Development Plan – Precinct of Goulburn River.

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

There are no other relevant State policies or strategies that relate to the application.

**Relevant Planning Scheme amendments**

There are no relevant Planning Scheme amendments that relate to the application.

**Are there any significant social & economic effects?**

There are no social and economical effects that relate to the application.

**Discuss any other relevant Acts that relate to the application?**

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

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**Conclusion**

Based on the advice from the Goulburn Broken Catchment Management Authority the application for a planning permit for the construction of a 1.8 metre high chain mesh fence has the potential to change floodwater flows on the surrounding land. This may increase the impact of flood waters on surrounding residential land. The application is not considered to achieve acceptable outcomes when assessed against the relevant policies of the Greater Shepparton Planning Scheme and it is therefore recommended that the application for a planning permit be refused.