

# **CONFIRMED MINUTES**

**FOR THE  
GREATER SHEPPARTON CITY COUNCIL**

## **DEVELOPMENT HEARINGS PANEL**

**Meeting No. 1/2012**

**HELD ON  
THURSDAY 8 MARCH 2012  
AT 10.00AM**

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

**CHAIR  
DEAN ROCHFORT**

**COMMITTEE MEMBERS PRESENT: Dean Rochfort, Braydon Aitken, Claire Tarelli ,  
Carl Byrne, Patricia Garraway**

**OFFICERS: Andrew Dainton – Senior Statutory Planner  
Janine Saxon - Observer  
Steve Bugoss – Timer and Minute Taker**

## **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**

Colin Kalms.

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

Moved by Braydon Aitken and seconded by Claire Tarelli that the minutes of previous meeting held on 22 December 2011 be adopted.

Carried.

## **4. DECLARATIONS OF CONFLICTS OF INTEREST**

None.

## **5. MATTERS FOR CONSIDERATION**

Two item listed for consideration.

## **6. LATE REPORTS**

None

## **7. NEXT MEETING**

22 March 2012.

# INDEX

<b><u>Application No.</u></b>	<b><u>Subject Address:</u></b>	<b><u>Proposal:</u></b>	<b><u>Page No.</u></b>
2011-222	12 Punt Road TOOLAMBA VIC 3614	The use and development of the land for a dwelling in the Farming Zone and Land Subject to Inundation Overlay	3
2011-157	7985 Goulburn Valley Highway KIALLA VIC 3631	The display of an animated and electronic sign in the Business 4 Zone adjacent to a Road Zone (category 1).	19

## Application Details:

Responsible Officer:	Tim Watson
Application Number:	2011-222
Applicants Name:	B A Watts
Date Application Received:	1 August 2011
Statutory Days:	203 (on 22/2/12)
Land/Address:	12 Punt Road TOOLAMBA VIC 3614
Zoning and Overlays:	Farming Zone and Part Land Subject to Inundation Overlay, Part Floodway Overlay and abuts a Bushfire Management Overlay.
Why is a permit required (include Permit Triggers):	35.07-1 – use of land for a dwelling. 35.07-4 – buildings and works associated with a section 2 use. 44.04-1 – buildings and works in the Land Subject to Inundation Overlay.
Are there any Restrictive Covenants on the title?	Yes

## Proposal

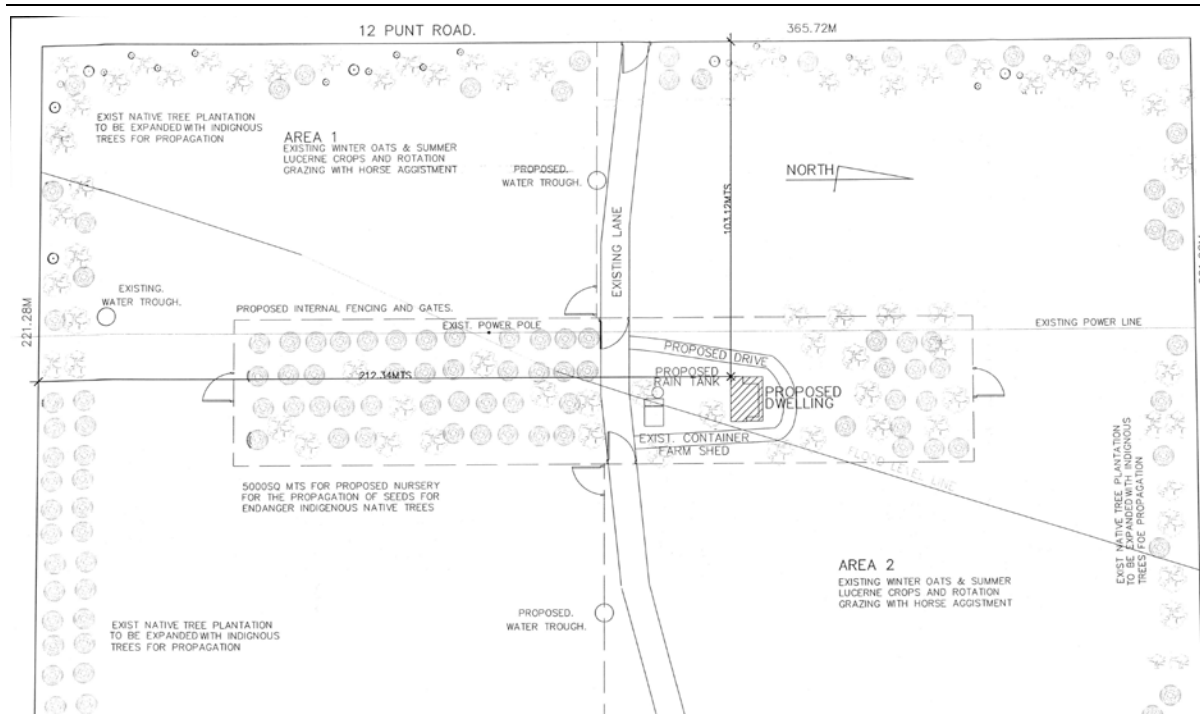
The application for a planning permit proposes the use and development of the land for a dwelling in the Farming Zone and Land Subject to Inundation Overlay.

The subject property has an area of 8.093 hectares, with an existing shed, is used to ageist cattle and for the growth and harvesting of fodder through a lease/share agreement.

The applicant has provided information on how they intend to increase the agricultural output of the land which includes;

- The continuation of the current practices of rearing cattle and the growth and harvesting of fodder;
- To utilise the native vegetation on the property and adjoining crown land for beekeeping; and
- To become involved with intense native seed collection and propagation for endangered local species.

The plan below shows the proposed dwelling location, the existing uses of the land and vegetation on the property.



## Summary of Key Issues

- The application for a planning permit proposes the use and development of land within the Farming Zone and Land Subject to Inundation Overlay for a rural dwelling.
- The land is identified in the schedule to the Farming Zone as Intensive Rural and pursuant to the interim controls (extended under amendment C157) requires a planning permit for the use of land for a dwelling if the area of the allotment does not exceed 100 hectares.
- A planning permit was required pursuant to Clause 44.04-1 for buildings and works within the land Subject to Inundation Overlay. The application was referred to the Goulburn Broken Catchment management Authority, who objected to the granting of a permit, then withdrew their objection after correspondence between the authority and the applicant.
- The application was notified to the Country Fire Authority as the property abuts a Bushfire management Overlay. No response has been received within the provided time.
- The application was referred internally to the Council's Health and Development Engineering Departments, neither of whom object, subject to conditions.
- The application was notified to neighbouring properties, with two submissions received, one of which objected, the other raised concerns.

- The applicant has not provided sufficient justification that a dwelling is reasonably required for the ongoing and proposed operation of the agricultural activities conducted on the land.
- The Council's Development Engineers should a permit be granted would require the road to the property boundary be upgraded to a sufficient standard, which would place a significant cost on the permit applicant. The length of road which would be required to be made would be approximately 400 metres.

---

## **Moved: Claire Tarelli**

## **Seconded: Patricia Garraway**

### **Refusal**

That the Council having caused notice of Planning Application No. **2011-222** to be given under Section 52 of the *Planning and Environment Act 1987* and having considered all the matters required under Section 60 of the *Planning and Environment Act 1987* decides to refuse to Grant a Permit under the provisions of **35.07-1, 35.07-4 and 44.04-1** of the Greater Shepparton Planning Scheme in respect of the land known and described as **12 Punt Road TOOLAMBA VIC 3614**, for the **Use and Development of the land for a dwelling in the Farming Zone and Land Subject to Inundation Overlay**.

### **For the following reasons:**

1. The proposed use and development for a dwelling on the subject land of 8.093 hectares does not provide an acceptable outcome or a net community benefit in terms of the State and Local Planning Policy Frameworks and the purpose and decision guidelines of the Farming Zone, and
  - a. is likely to impact on the continuation of primary production on adjacent land, with particular regard to land values;
  - b. takes land out of agricultural production, and has the potential to limit the use of adjacent land;
  - c. has considerable potential for conflict between the ongoing farming activities and the rural living use;
  - d. sets a precedent in the area for adjacent small lots to be converted to rural living use;
  - e. could lead to a proliferation of residential uses in the area and impact on the productive capacity of the surrounding good quality agricultural land and the economic base of the Municipality
2. The application does not adequately demonstrate that the proposed dwelling is reasonably required for the operation of agricultural activity on the land.

3. The application does not comply with the Rural Regional Land Use Strategy (C121) which seeks to limit dwellings in the proposed Farming Zone 1 which are not associated or required for the agricultural use of the land.

## Carried

---

### Subject Site & Locality

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

Date: **23/8/11**

Time: **3:30pm**

The site has a total area of **8 hectares** and currently contains:

- a line of trees and existing vegetation along the north, west and southern boundaries and a rectangular shaped section orientated north south in the middle of the property also vegetated.
- An existing shed is located within the vegetated area in the middle of the property.

The main site/locality characteristics are:

- The Goulburn River and associated reserve abuts the subject land's eastern , with the reserve significantly vegetated.
- The allotment to the south of the subject property is of similar size, with an existing dwelling and associated sheds. The allotment is used for the breeding and keeping of dogs.
- North of the subject property are two similar sized allotments, one of which is currently used for similar purposes as the subject allotment, with an existing shed, the other of which has been mostly planted for orchard.
- West of the site is land which has been planted for walnuts.
- The property abuts an unmade road on the western boundary which is identified as an extension of punt road and connects with Clement Road.



Site plan illustrating allotment layout of the subject area.



Aerial photograph of subject site

The Photos below show the existing site:





Looking south along unmade road from entrance to subject property.



Image of property

## Permit/Site History

The history of the site includes:

- Planning permit 2010-84 was issued for a shed.

---

## Further Information

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

---

## Public Notification

The application has been advertised pursuant to Section 52 of the *Planning and Environment Act 1987*, by:

- Sending notices to the owners and occupiers of adjoining land.

---

## Objections

The Council has received **one** objection and one submission to date. The key issues that were raised in the objection and submission are:

- The objection was made from the owner and occupier of the dwelling at 10 Punt Road, Toolamba, located directly to the south of the subject property.
- The objection raises a number of private issues with regard to a previous agreement between the objector and applicant. This agreement is not given any weight in the planning permit application assessment process however as it is not registered to title. The objector also raised a concern that if a dwelling was to be approved on the subject property it would create a precedent for the other small allotments within the area, particularly the two other allotments directly to the north of the subject property, with this matter discussed latter within the report.
- The submission and not a formal objection was made from the owner of the property to the west of the subject property, which operates a commercial orchard growing walnuts. The following points were raised with regard to the proposed dwelling:
  - “Operation of the orchard requires the use of a range of mechanical equipment including tractors, sweepers and harvesters, all which make various degrees of noise”
  - “At different stages during the growing season there is the need to spray both the trees and weeds, with much of the foliar spraying done at night or early in the morning to minimise potential spray drift.”
  - “Scare guns are all so used to minimise damage or loss of produce to birds.”
  - “The functions outlined are fundamental requirements for the successful operation of a walnut orchard” the submission asks for some reassurance that the business activities would not be restricted by the granting of a planning permit.

## Title Details

The title contains a restrictive covenant. The application does not breach the restrictive covenant/ for the following reasons:

- The covenant specifies the following with regard to development of the site and restricts:
  - The dwelling on the land must be no smaller than 130 square meters within the outer walls.
  - Any buildings on the site must be a natural colour or uniformly painted.
  - Any privy in a conspicuous place.

Furthermore the land must not be used for:

- No pigs or stallions maybe kept on site;
  - Transport/ bus depot or any ancillary use;
  - Panel beating or repair shop or any ancillary use;
  - Wood yard/ Marine depot or any ancillary use;
  - Storage of hardware, building materials, fuel, pesticides or insecticides other than those used by the occupier of the land;
  - Picnic or amusement park;
  - Mining operations or excavation for the recovery of ore or minerals;
  - Poultry/ eggs or purposed ancillary use;
  - Boarding kennel or keep any more any four dogs on the land; and
  - A commercial caravan or camp site or the use of any permanent out building for the purpose of accommodation.
- The application for a planning permit proposes the use and development of the land for a dwelling which will have an area in excess of 130 square metres and therefore the proposal would not breach the restrictive covenant as no prohibited activities are proposed, should a permit be issued

---

## Consultation

Consultation was undertaken. Relevant aspects of consultation, included:

- An onsite meeting (28/8/11) with the applicant after the planning permit application was lodged. The applicant was informed of the policies and objectives of the Farming Zone and the given the circumstances it was highly unlikely that an application for a planning permit would be approved. The applicant advised that they wish to proceed with the application. The applicant was informed that the application would therefore be notified to surrounding properties and referred to the appropriate authorities.
- A meeting was held at the Council's offices after the notification period between the applicant and the Council's Planning officers in which the objection from the neighbour properties were discussed along with the objection received from the Goulburn Broken Catchment Management Authority.
- The applicant was informed that under the Scheme that the Council was required to refuse the application for a planning permit as the Goulburn Broken Catchment

Management Authority had objected under section 61(2) of the *Planning and Environment Act 1987*.

The applicant advised that they would arrange discussions with the Goulburn Broken Catchment Management Authority in an attempt to withdraw the objection. Those discussions have resulted in the Goulburn Broken Catchment Management Authority re-considering their objection subject to information being supplied by the applicant.

- A response from the Goulburn Broken Catchment management Authority received at Council's offices on 8 February 2012, stated that the Goulburn Broken Catchment Management Authority withdraws its objection, subject to conditions.

## Referrals

External Referrals/Notices Required by the Planning Scheme:

Referrals/Notice	Advice/Response/Conditions
Section 55 Referrals	<p>The application for a planning permit was referred to the Goulburn Broken Catchment Management Authority under section 55 of the Act pursuant to Clause 44.04-5 of the Planning Scheme. The Goulburn Broken Catchment Management Authority Object to the issue of a planning permit on the following grounds:</p> <ol style="list-style-type: none"> <li>The proposal is not consistent with the Greater Shepparton Planning Scheme's incorporated document Local Floodplain Development Plan – Precinct of the Goulburn River (2006).</li> </ol> <p>In further correspondence received from the authority the object was withdraw subject to the following conditions:</p> <ol style="list-style-type: none"> <li>The proposed dwelling must be located outside the Floodway Overlay.</li> <li>The finished floor level of the proposed dwelling must be constructed at least 300 millimetres above the 100-year ARI flood level of 117.9 metres AHD, i.e. metres AHD, or higher level deemed necessary by the responsible authority.</li> </ol>
Section 52 Notices	The application for a planning permit was notified to the Country Fire Authority who has not responded within the provided time, and therefore consent has been deemed.

Internal Council Notices	Advice/Response/Conditions
Development Engineering	<p>The application for a planning permit internally to the Council's Development Engineers, who do not object to the issue of a permit subject to the following conditions:</p> <p><b><u>Rural Vehicle Crossing Location</u></b></p> <p>Vehicle crossings providing access to the land must be constructed at a location and of dimensions and standard to the satisfaction of the responsible authority. Vehicle crossing(s) must be constructed at the owner's expense.</p> <p>The vehicle crossing must be no less than 4.9 metres in length, be constructed with crushed rock or other material to provide an all weather access and include a pipe of a diameter suitable to accommodate the actual volume/flow (having a minimum diameter of 375 mm). Culverts located in the clear zone shall be installed with trafficable end walls (refer VicRoads standard drawing SD 1991). The final location of the crossing is to be approved by the responsible authority via an 'Works within the Roads Reserve' (Road Opening)' permit.</p> <p>All bridges and crossings must be designed and constructed to carry a vehicle weighing a minimum of 15 tonnes and be a minimum of 3 metres in</p>

	<p>width.</p> <p><b><u>Roadworks – Punt Road</u></b></p> <p>Construction of Punt Road in the existing road reserve from chainage 820m to the proposed property access of the development.</p> <p>All vehicular access roads shall be at least 4 metres in width, have 4m vertical clearance and be constructed from a material able to provide an all weather access. (Refer to section '12.4' of the Councils 'Infrastructure Design Manual')</p> <p><i>This would require the applicant to construct the road for approximately 400 metres, which would then be managed by the Council, as the current access is along an unmade road.</i></p> <p><b><u>Rural Drainage - Works</u></b></p> <p>Before the use begins and/or the building(s) is/are occupied all stormwater and surface water drainage from the land, buildings and works must be connected to the legal point of discharge or retained on site to the satisfaction of the Responsible Authority/Goulburn Murray Water. Effluent and/or polluted water must not be discharged to Council's stormwater drainage system from the land.</p>
Health	<p>The application for a planning permit was referred to the Council's Health Department, who do not object to the issue of a permit subject to the following conditions:</p> <p>Prior to the commencement of works for the proposed dwelling the owner shall lodge with the Council an application to Install a Septic Tank System in accordance with the Code of Practice – Onsite Wastewater Management, Publication 891.1, September 2008.</p> <p>The application to Install a Septic Tank System shall include:</p> <ol style="list-style-type: none"> <li>1) The application form provided by the Council completed, signed and dated by the owner.</li> <li>2) A floor plan of the proposed dwelling.</li> <li>3) A site plan indicating the location of the effluent disposal area.</li> <li>4) The design of the effluent disposal system including instructions for installation and working drawings.</li> </ol> <p>The current application fee.</p>

## Assessment

### The zoning of the land

Clause 35.07 (Farming Zone) requires a permit for use and development of a dwelling on a lot of less than 100ha (Intensive Rural in the Schedule to clause 35.07), and for Buildings and works associated with a section 2 use.

### Farming Zone – Clause 35.07

The purpose of the Farming Zone is to:

- Provide for the use of land for agriculture;
- Encourage the retention of productive agricultural land;
- Ensure that non-agricultural uses, particularly dwellings, do not adversely affect the use of land for agriculture;
- Encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision; and
- Protect and enhance natural resources and the biodiversity of the area.

## Farming Zone Decision Guidelines

The decision guidelines which are relevant to this application and which the Council must consider when assessing an application to construct a dwelling or subdivide land are:

### **General issues**

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The capability of the land to accommodate the proposed use or development, including the disposal of effluent.
- How the use or development relates to sustainable land management.
- Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses.

### Response

The state and local policy framework are addressed under other sections within this report.

It is considered that the subject land has the capability to dispose effluent onsite given the size of the property. It is not considered that the proposed land use is compatible with adjoining and nearby land uses, given the walnut orchard within close proximity of the subject property's boundary and the orchards and other farming practices occurring within the locality of the proposed dwelling site.

### **Agricultural issues**

- Whether the use or development will support and enhance agricultural production.
- Whether the use or development will permanently remove land from agricultural production.
- The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.
- The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure.

### Response

It is not considered that the proposed dwelling is required to support the current agricultural activities on the land and furthermore the proposed enhancements are not considered enough justification to remove a small portion of land from agricultural production. The area of land to be removed would include an appropriate access way to the dwelling and a septic disposal area. This area should a dwelling be approved on the proposed site in the middle of the property, would remove land from agricultural production, a significant portion given the relatively small size of the allotment.

### **Dwelling issues**

- Whether the dwelling will result in the loss or fragmentation of productive agricultural land.
- Whether the dwelling is reasonably required for the operation of the agricultural activity conducted on the land.
- Whether the dwelling will be adversely affected by agricultural activities on adjacent and nearby land due to dust, noise, odour, use of chemicals and farm machinery, traffic and hours of operation.
- Whether the dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural uses.
- The potential for the proposal to lead to a concentration or proliferation of dwellings in the area and the impact of this on the use of the land for agriculture.

### Response

It is not considered that the proposed dwelling is reasonably required for the agricultural activity on the land. The agricultural pursuits currently operating on the land are undertaken by another farmer in the locality through a share/contractor agreement and the proposed activities are considered sufficient enough to justify the need for a dwelling.

### **Design and siting issues**

- The need to locate buildings in one area to avoid any adverse impacts on surrounding agricultural uses and to minimise the loss of productive agricultural land.
- The impact of the siting, design, height, bulk, colours and materials to be used, on the natural environment, major roads, vistas and water features and the measures to be undertaken to minimise any adverse impacts.

### Response

The proposed location of the dwelling is approximately in the middle of the subject allotment, however given the small size of the allotment it is likely that agricultural activities on surrounding land could still impact of the occupants of the dwelling. The proposed site is not envisaged to remove much land from agricultural production given the area is already covered with vegetation, however an area associated with the use of the land for a dwelling could extend into the useable agricultural land of the allotment.

### **Relevant overlay provisions**

Land Subject to Inundation Overlay 44.04-4

The Overlay identifies land in a flood storage or flood fringe area affected by the 1 in 100 year flood or any other area determined by the floodplain management authority. The Overlays purpose is to ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, is compatible with the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.

A planning permit was required pursuant to Clause 44.04-1 of the Land Subject to Inundation Overlay. The application was referred to the Goulburn Broken Catchment Management Authority under Section 55 of the Act pursuant to Clause 44.04-5 of the Planning Scheme.



The Goulburn Broken Catchment Management Authority initially Objected to the issue of a planning permit on the following grounds:

- a) The proposal is not consistent with the Greater Shepparton Planning Scheme's incorporated document Local Floodplain Development Plan – Precinct of the Goulburn River (2006).

Following correspondence between the applicant and the Goulburn Broken Catchment Management Authority, the Authority has revised it's position and has given conditional consent to the issue of a permit.

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

Clause 17.05 Agriculture – objective is to minimise loss of productive farmland.

The objective for agriculture in this Clause is:

- To ensure that the state agricultural base is protected from the unplanned loss of productive agricultural land due to permanent changes of land use and to enable protection of productive agricultural land which is of strategic significance in the local and regional context.

It is State policy:

- Permanent removal of productive agricultural land from the State's agricultural base must be undertaken without consideration of its economic importance for the agricultural production and processing sectors.

In considering a proposal to subdivide or develop agricultural land, the following factors must be considered:

- The desirability and impacts of removing the land from primary production, given its agricultural productivity;
- The impacts of the proposed subdivision or development on the continuation of primary production on adjacent land, with particular regard to land values and to viability of infrastructure for such production;
- The compatibility between the proposed or likely development and the existing uses of the surrounding land; and
- Assessment of land capability.

Response

It is not considered that the proposed dwelling and application satisfies the objectives and policy of the State Planning Policy Framework. The application's inability to achieve an acceptable outcome in terms of justifying the loss of agricultural land and potential impacts



on surrounding agricultural ventures for a dwelling is not provided with the applicant's proposal for a dwelling.

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

**Clause 21.04-3 Dwellings in Rural Areas**

While it is acknowledged that a dwelling will often be needed to properly farm land, these must be limited to those that genuinely relate to agricultural production. The number of dwellings that a farm can economically sustain relates to its rural land capability, the labour needs of the farming practice, the intensity of the farm activity and the volume of rural output. Development of houses at a density greater than is required for the rural use of land can give rise to conflicts with legitimate farming practices. Isolated dwellings in the rural areas have the potential to disrupt agricultural activities and should not impinge on the appropriate use of farming land.

**Objectives – Dwellings in Rural areas**

- To ensure that dwellings in rural areas are required to support the agricultural use of the land.
- To discourage the development of dwellings which are unrelated to farming.
- To ensure that the use of a dwelling on a rural lot does not prejudice surrounding agricultural activities.
- To prevent the construction of dwellings on small and inappropriate lots in rural areas.

**Clause 21.06 – Economic Development objectives include:**

- To protect rural land for productive agricultural purposes.

**Response**

The proposed dwelling application does not meet the objectives of the above clause, in particular to prevent the construction of dwellings on small and inappropriate lots in rural areas. It is envisaged that should a permit be issued for the proposed application it would set a precedent for the two allotments to the north of similar size, thus creating a rural living situation and failing to achieve the objectives of the Local Policy for rural areas.

**Relevant Particular Provisions**

There are no relevant Particular Provisions that relate to this application.

**The decision guidelines of Clause 65**

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

- The following decision guidelines are relevant to this application:
- 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.

In assessing the application for a planning permit the above listed decision guidelines have been considered. The decision guidelines have been addressed under the individual subsection of this report.

A condition which would have been placed on the permit if the application had been approved would have required that the applicant upgrade Punt Road from chainage 820 m to the proposed property access of the development. The condition would have required that the road be constructed at least 4 metres in width and be constructed of a material able to provide an all weather access. This condition would have placed a significant financial burden on the applicant with the road to be constructed in accordance with Council Infrastructure Design Manual.

#### **Relevant incorporated or reference documents**

The Rural Regional Land Use Strategy and the Local Floodplain Development Plan (Precinct of the Goulburn River).

The Rural Regional Land Use Strategy has identified the subject land as a growth area. The Strategy identifies that the level of planning control required to be delivered in these areas by the respective councils will be effectively prevent any further fragmentation of this land, to not provide for inappropriate dwellings to be constructed and to prevent any other uses and developments that are not consistent with agriculture.

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

There are no other relevant adopted State or strategic policies that relate to this application.

#### **Relevant Planning Scheme amendments**

Amendment C121 proposes an amendment to the schedule to the Farming Zone and the minimum lot sizes. The proposed amendment will not have any alteration on this application given that the proposed minimum lot size for a dwelling as of right for this dwelling will be 100 hectares on irrigated land. The subject property falls well below this minimum lot size and the application for a dwelling is being assessed on its need for the agricultural practice.

The Land has been identified in Farming Zone 1 (growth), with a proposed minimum lot size of 100 hectares required for the use of land as of right for a dwelling.

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

There are no relevant significant social or economic effects that relate to this application.

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

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

---

## **Conclusion**

Given consideration to the relevant planning scheme provisions, the proposed use of land for a dwelling is not considered to achieve acceptable outcomes in terms of relevant adopted strategic policies. Consequently it is recommended that the Panel decide to refuse to grant a permit.

# **DRAFT REFUSAL TO GRANT A PERMIT**

---

<b>APPLICATION NO:</b>	2011-222
<b>PLANNING SCHEME:</b>	GREATER SHEPPARTON PLANNING SCHEME
<b>RESPONSIBLE AUTHORITY:</b>	GREATER SHEPPARTON CITY COUNCIL
<b>ADDRESS OF THE LAND:</b>	12 Punt Road TOOLAMBA VIC 3614
<b>WHAT HAS BEEN REFUSED:</b>	Use and Development of the land for a dwelling in the Farming Zone

**WHAT ARE THE REASONS FOR THE REFUSAL?**

---

1. The proposed use and development for a dwelling on the subject land of 8.093 hectares does not provide an acceptable outcome or a net community benefit in terms of the State and Local Planning Policy Frameworks and the purpose and decision guidelines of the Farming Zone, and
  - a) is likely to impact on the continuation of primary production on adjacent land, with particular regard to land values;
  - b) takes land out of agricultural production, and has the potential to limit the expansion of agriculture on adjacent land;
  - c) has considerable potential for conflict between the ongoing farming activities and the proposed rural living use;
  - d) sets a precedent in the area for adjacent small lots to be converted to rural living use;
  - e) could lead to a proliferation of residential uses in the area.
2. The application does not adequately demonstrate that the proposed dwelling is reasonably required for the operation of agricultural activity on the land.
3. The application does not comply with the Rural Regional Land Use Strategy (C121) which seeks to limit dwellings in the proposed Farming Zone 1 which are not associated or required for the agricultural use of the land.

---

## Application Details:

Responsible Officer:	Tim Watson
Application Number:	2011-157
Applicants Name:	McPherson Mazda
Date Application Received:	6 June 2011
Statutory Days:	
Land/Address:	7985 Goulburn Valley Highway KIALLA VIC 3631
Zoning and Overlays:	Business 4 Zone, the Design and Development Overlay (schedule 7) and the Land Subject to Inundation Overlay
Why is a permit required (include Permit Triggers):	52.05-7 – the display of an animated sign in the Business 4 Zone. 43.02-2 – the variation of the requirements of the Design and Development Overlay in relation to signage.
Are there any Restrictive Covenants on the title?	yes

---

## Proposal

The application for a planning permit proposes the display of an animated and electronic sign in the Business 4 Zone adjacent to a Road Zone (category 1).

The sign operates with a projector setback from the facade of the building facing east, which projects images on to a flat surface of the building, so as to be seen from the Goulburn Valley Highway. The images projected consist mainly of promotional videos, which are shown at night when the projected images are easier to view.



Photograph shows image projected on to wall with projector mounted on business sign in the fore ground.

---

## Summary of Key Issues

- Application for a planning permit applied for after investigation undertaken by Council's Enforcement officer indicated no permit had been applied for.

- Application was referred to VicRoads pursuant to Clause 66.03 for an application to display an animated or electronic sign within 60 metres of a freeway or arterial road declared under the Road Management Act 2004.
- Vicroads made a request for further information which was to include a lighting report which would need to address a number of matters, including the potential for the sign to impact drivers.
- The further information requested was submitted and forwarded to VicRoads.
- VicRoads have advised that they object to the issue of a planning permit for the display of the proposed advertising signage, on the grounds that the sign is a traffic hazard and therefore does not satisfy the Decision Guidelines.
- The Council are therefore required under section 61(2) of the *Planning and Environment Act* 1987 to refuse to grant the permit as the relevant referral authority objects to the grant of a permit.

---

## **Moved: Braydon Aitken**

### **Seconded: Patricia Garraway**

#### **Refusal**

That the Council having not caused notice of Planning Application No. **2011-157** to be given under Section 52 of the *Planning and Environment Act* 1987 and having considered all the matters required under Section 60 of the *Planning and Environment Act* 1987 decides to refuse to Grant a Permit under the provisions of **52.05-7** of the Greater Shepparton Planning Scheme in respect of the land known and described as **7985 Goulburn Valley Highway KIALLA VIC 3631**, for the **The display of an electronic sign in the Business 4 Zone..**

#### **For the following reasons:**

- VicRoads acting as a referral authority under section 55 of the *Planning and Environment Act*, 1987 (the Act) objected to the grant of a permit, therefore section 61(2) of the Act requires the Council to refuse to grant a permit.
- VicRoads reasons for refusal included:
  - The proposed sign is inappropriate having regard to the decision guidelines at clause 52.05 particularly those decision guidelines relating to road safety.

#### **Carried**

---

## **Subject Site & Locality**

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

Date: **15/6/11**

Time: **3:45pm**

The site has a total area of **5457** square metres and currently contains:

- A number of existing building joined together and operated as a Mazda and Peugeot dealership and service centre.
- The front portion of the allotment abutting the service road to the Goulburn Valley Highway is used to display car for sale.
- The southern part of the building is used for the sale of cars with the northern part used as a service centre.
- The rear of the site is used as a vehicle parking area with access onto Buckworth Street.
- The main site/locality characteristics are:
- The subject land is located on a service road for the Goulburn Valley Highway and is zoned Business 4.
- The land to the south is zoned Residential 1 and used accordingly.
- The land north of the site along the Goulburn Valley Highway is zoned business 4 and used for uses including furniture shops, car dealerships and other bulking good retailers.

▪

---

## Permit/Site History

The history of the site includes:

- Planning permit 2008-223 approved additional works to the building.
- Planning permit 2009-194 approved the display of a seven metre high business identification sign.

▪

---

## Further Information

Was further information requested for this application? **Yes,**

A further information request was made by VicRoads as the relevant referral authority for the following:

- A report by a suitably qualified lighting engineer describing this sign's level of illumination and the manner in which the lighting output of the sign will be managed to ensure that it does not give a veiling luminance to the driver, of greater than 0.25 cd/m<sup>2</sup>, throughout the driver's approach to the sign.
- The manner in which light spillage from the sign will be controlled.

What date was the further information requested?: **26 August 2011**

- What date was the further information received?: **11 October 2011**

▪

## Public Notification

- The application was not advertised pursuant to Section 52 of the *Planning and Environment Act 1987* as it is believed that no material detriment will be caused to any person for the following reasons:
- The sign is to be located at the northern end of the site and therefore away from the Residential 1 Zoned land.
- The proposed advertising sign will only be displayed at night and will not require the construction of any additional structures.
- The material to be displayed will be mostly for business identification purposes.
- The sign is located within the Business 4 Zone, with the material displayed on the existing facade setback from the property boundary fronting the service road to the Goulburn Valley Highway.

---

## Objections

The Council has received **one** objection to date. The objection has been received from VicRoads as a relevant referral authority under Section 55 of the *Planning and Environment Act 1987*.

---

## Title Details

The title contains two Section 173 Agreements. The application does not breach the Section 173 Agreements for the following reasons:

- Agreement AD067094P states the following:
- The owner agrees and acknowledges that:
  - The Land is subject to inundation in time of flood; and
  - The Council would normally require any buildings erected on the land to be constructed with a minimum floor level at the nominal flood protection level applicable to the land of 113.85 metres AHD; and
  - Council's agreement to the owners's request to permit construction of the new development at a floor level lower than the nominated protection level, to match the floor level of the existing buildings of 113.38 metres AHD means that the new development is more likely to be inundated in times of flood; and
  - No further extension to the building with a floor level below the nominal flood protection level of 113.85 metres AHD will be permitted.
- Agreement V741370P States that:
- The owners covenant with the Council that:
  - a) The owners will comply with the conditions of the permit and each and every term of this agreement; and
  - b) That the owner enter into a Section 173 Agreement under the Planning and Environment Act 1987 noting that the floor level of the building existing on the land as at 24 April, 1998 of 113.37 metres AHD, is below the 1% flood level for the land



based on the designated flood levels for Shepparton-Mooroopna of 113.55 metres AHD.

- The application for a planning permit proposes the display of a sign only and no new buildings or extension the existing buildings are proposed and therefore the agreements would not be breached by the issue of a permit.

---

## Consultation

Consultation was undertaken. Relevant aspects of consultation, included:

- Initial correspondence between the applicant and the Council was with regard to the investigations file. The applicant was informed that they would require a planning permit for the display of the sign, which has been applied for.
- Discussions with VicRoads regarding the further information submitted and Vic Road's request to lapse the application. informed that due to timeframes and the time which had lapsed before VicRoads requested further information, the option to lapse the application could not undertaken.
- VicRoads informed that they objected to the issue of a permit as some of the information requested was not submitted
- Discussions were had with the applicant, who advised that they would submit a response to VicRoad's response regarding the further information request not addressing some points.
- VicRoads were contacted after this information was forwarded onto them, in an attempt to arrange a meeting with the applicant and VicRoads to discuss the application.
- VicRoads advised that they still objected to the application in writing after the additional information was submitted in response to their initial objection and did not feel that a meeting was needed.
- The applicant was contacted and informed that the application would be refused as a section 55 referral authority objected to the issue of a permit.

---

## Referrals

External Referrals/Notices Required by the Planning Scheme:

Referrals/Notice	Advice/Response/Conditions
Section 55 Referrals	<p>The application for a planning permit was referred to VicRoads under Section 55 of the <i>Planning and environment Act 1987</i> pursuant to Clause 66.03 of the Planning Scheme.</p> <p>VicRoads made a request for further information which was submitted by the applicant and forwarded to the authority. The authority objected to the issue of a permit and provided a brief response to why the information was not sufficient. This letter was forwarded to the applicant who provided a response addressing the authorities objection. VicRoads were provided a copy of this information and responded by re-confirming their objection, with the following grounds:</p> <ol style="list-style-type: none"><li>a) The proposed sign is inappropriate having regard to the decision guidelines at clause 52.05 particularly those decision guidelines relating to road safety.</li></ol>

Section 52 Notices	The application for a planning permit was not referred to any authorities
--------------------	---

Internal Council Notices	Advice/Response/Conditions
Nil	Nil
Nil	Nil

## Assessment

### The zoning of the land

Business 4 Zone 34.04

The purpose of the zone is to encourage the development of a mix of bulky goods retailing and manufacturing industry and their associated business services.

Advertising signs 34.04-5

Advertising sign requirements are at Clause 52.05. this zone is in Category 1

### Relevant overlay provisions

Design and Development Overlay 43.02 (DDO7) – Kialla Park Boulevard Precinct

The purpose of the overlay is to identify areas which are affected by specific requirements relating to the design and built form of new development.

Advertising sign requirements

- One business identification sign is permitted per development.
- Multiple business occupancies are to share space on the sign.
- Freestanding business identification signs are to fit in an envelope that is a maximum height of 2 metres, and a maximum width of 1.5 metres. This envelope includes the height of any supporting structure.
- Signs attached to a building are encouraged and should be a maximum height of 1.0 metre, and a maximum width of 3.0 metres. Exemptions may be made for signs composed of individual letters that form an integral part of the building facade.
- Promotional signs should be avoided.
- Above verandah signs including V-board signs and adverting elements such as banners, flags and inflatable should be avoided.
- Colours and materials that interfere with the safety or efficiency of traffic circulation should be avoided.

### Response

The application proposes the variation to the requirements of the Design and Development Overlay (schedule 7), as the proposed sign will not meet the above requirements. The

proposed variation is considered an acceptable outcome in terms meeting the design objectives of the overlay. The sign helps to further promote the precinct as a retail area through business identification signage and the innovative use of technology. The proposed sign does not propose any structures and therefore does not significantly impact on the amenity of the locality or impede on the front setback which is to be used for the display of products.

#### Development Plan Overlay 43.04 (DPO3) – Shepparton South Growth Corridor

The purpose of this overlay is to identify areas which require the form and conditions of future use and development to be shown on a development plan before a permit can be granted to use or develop the land.

Only a small portion in the southern section of the site is affected by the overlay, the location of the sign is not affected by this overlay.

#### Land Subject to Inundation Overlay 44.04-4

The Overlay identifies land in a flood storage or flood fringe area affected by the 1 in 100 year flood or any other area determined by the floodplain management authority. The Overlay's purpose is to ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, is compatible with the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.

A planning permit was not required for the proposed Advertising sign in the land Subject to Inundation Overlay.

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

There are no relevant State planning policies that relate to this application.

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

Policy Guideline – Urban Design

Strategies of clause 21.04-4 that are relevant to signage include:

- Control the location, size and scale of advertising signage, especially in key precincts of the Shepparton CBD and town centres.
- Ensure that the location, form and size of signs complements the dominant character of any urban or rural landscape, building, site or area on which they are erected.

#### Clause 21.04-7 – Policy Guidelines – Urban Design

When considering an application for an advertising sign, Council will be guided by the following provisions:

- *Fewer signs displaying a simple clear message is encouraged.*
- *Advertising signage is encouraged to be primarily for business identification providing basic identification information of the business.*

- *Freestanding signs should be limited to one sign per premises with multiple occupancies encouraged to share sign space.*
- *Where a building is set back from the street, signs are encouraged to be located within the boundary and should be orientated to be parallel or at right angles to the street.*
- *Permanent bunting, streamers, banner, balloons, animated, reflective signs or similar devices, are strongly discouraged in all zones due to the detriment to the amenity of the area and the high level of visual clutter and dominance. These signs may be considered for temporary (3 month maximum) promotions only.*

### Response

No structure has been constructed to display the advertising signage with the projector mounted on an existing sign and the images projected onto the facade of the building. The existing signs onsite all display a clear and simple message with the use of the logo for the Mazda brand used as business identification. Existing signs consist of a simple sign which displays the brand and business name on the facade of the building and a seven metre high sign approved under a previous permit is displayed on the front boundary of the site.

The proposed advertising sign displays materials associated with promoting the vehicles sold from the site and is not considered as create visual clutter, as the sign will only operate at night and can be turned off at any time. The proposed sign will be used for business identification purposes only, with all existing signage considered to provide a clear and simple message which is easily understood.

### **Relevant Particular Provisions**

#### Advertising Signs 52.05

The purpose of Clause 52.05 is:

- *To regulate the display of signs and associated structures.*
- *To provide for signs that are compatible with the amenity and visual appearance of an area, including the existing or desired future character.*
- *To ensure signs do not contribute to excessive visual clutter or visual disorder.*
- *To ensure that signs do not cause loss of amenity or adversely affect the natural or built environment or the safety, appearance or efficiency of a road.*

Pursuant to Clause 52.05-7 a planning permit is required to display an electronic and animated sign.

#### Decision Guidelines 52.05-3

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

The character of the area including:

- The sensitivity of the area in terms of the natural environment, heritage values, waterways and open space, rural landscape or residential character.
- The compatibility of the proposed sign with the existing or desired future character of the area in which it is proposed to be located.
- The cumulative impact of signs on the character of an area or route, including the need to avoid visual disorder or clutter of signs.
- The consistency with any identifiable outdoor advertising theme in the area.

### Response

The locality is used for retail with the sale of bulky goods intended through the zoning of the land as Business 4. It is desired that the land located along this part of the Goulburn Valley Highway will be used as a retail district which will compliment the main CBD area of Shepparton. The area is designated as a key entrance to the Shepparton city and the appearance of this entrance is identified as important with the placement of a Design and Development Overlay on the land along the highway. Given the retail and bulky goods character of the area, it is expected that business signs would be located on these sites. The proposed advertising sign does not detrimentally affect the area as it will only be displayed at night and no additional structure has been established to display the sign.

Impacts on views and vistas:

- The potential to obscure or compromise important views from the public realm.
- The potential to dominate the skyline.
- The potential to impact on the quality of significant public views.
- The potential to impede views to existing signs.

### Response

The proposed sign does not impede on or compromise important views from the public realm, given the promotional material is to be displayed on the existing building facade and the sign does not screen existing signs or dominate the skyline.

The relationship to the streetscape, setting or landscape:

- The proportion, scale and form of the proposed sign relative to the streetscape, setting or landscape.
- The position of the sign, including the extent to which it protrudes above existing buildings or landscape and natural elements.
- The ability to screen unsightly built or other elements.
- The ability to reduce the number of signs by rationalising or simplifying signs.
- The ability to include landscaping to reduce the visual impact of parts of the sign structure.

### Response

The proposed sign will not detract from the existing streetscape as no structures have been constructed to support the sign.

The relationship to the site and building:

- The scale and form of the sign relative to the scale, proportion and any other significant characteristics of the host site and host building.
- The extent to which the sign displays innovation relative to the host site and host building.
- The extent to which the sign requires the removal of vegetation or includes new landscaping.

#### Response

The proposed sign is considered to use the building in an innovative way by projecting an image on to an otherwise vacant faced of the building. No native vegetation is required to be removed as part of the proposed display of the sign.

The impact of structures associated with the sign:

- The extent to which associated structures integrate with the sign.
- The potential of associated structures to impact any important or significant features of the building, site, streetscape, setting or landscape, views and vistas or area.

#### Response

The display of the sign does not require any additional structures to be constructed and therefore these provisions were not considered.

The impact of any illumination:

- The impact of glare and illumination on the safety of pedestrians and vehicles.
- The impact of illumination on the amenity of nearby residents and the amenity of the area.
- The potential to control illumination temporally or in terms of intensity.

#### Response

Given the proposed advertising sign is projected onto a wall, there is a level of illumination. It is not expected that the sign's illumination would affect the amenity of nearby residents, as the sign is located towards the northern end of the site away of the Residential 1 Zoned land. It is not envisaged that the level of illumination emitted from the sign would impact on the safety of pedestrians, however it is not considered that the Council's relevant Planning officer has the expertise to comment on the signs potential impact on traffic because of illumination, this is the reason the application is required to be referred to VicRoads.

It is however noted that the report submitted by the applicant identifies that the proposed sign will display a level of illumination less than the existing signs on sight and other illuminated signs within the locality.

The impact of any logo box associated with the sign:

- The extent to which the logo box forms an integral part of the sign through its position, lighting and any structures used to attach the logo box to the sign
- The suitability of the size of the logo box in relation to its identification purpose and size of the sign.

### Response

No structure on sign box is proposed as part of this application to display the advertising sign.

The need for identification and the opportunities for adequate identification on the site or locality.

The impact on road safety. A sign is a hazard if the sign:

- Obstructs a driver's line of sight at an intersection, curve or point of egress from an adjacent property.
- Obstructs a driver's view of a traffic control device, or is likely to create a confusing or dominating background which might reduce the clarity or effectiveness of a traffic control device.
- Could dazzle or distract drivers due to its size, design or colouring, or it being illuminated, reflective, animated or flashing.
- Is at a location where particular concentration is required, such as a high pedestrian volume intersection.
- Is likely to be mistaken for a traffic control device, because it contains red, green or yellow lighting, or has red circles, octagons, crosses, triangles or arrows.
- Requires close study from a moving or stationary vehicle in a location where the vehicle would be unprotected from passing traffic.
- Invites drivers to turn where there is fast moving traffic or the sign is so close to the turning point that there is no time to signal and turn safely.
- Is within 100 metres of a rural railway crossing.
- Has insufficient clearance from vehicles on the carriageway.
- Could mislead drivers or be mistaken as an instruction to drivers.

### Response

The relevant Council planning officer does not have the expertise to comment on the safety of the proposed sign and has relied on the response of VicRoads as the relevant authority for the above decision guidelines that deem that the sign proposes a potential traffic hazard.

The relevant officer however will provide the following assessment of the above decision guidelines, based on observations of the sign in operation. It is not envisaged that the sign obstructs a drivers line of sight at intersection or obstructs a driver's view of a traffic control device or likely to create confusion, given the distance of the sign from the road and the

screening of the sign from various locations along the road with vegetation in the nature strip. The sign is unlikely to be mistaken for a traffic control device nor does it invite the driver to turn in an inappropriate location nor is the sign proposed within 100 metres of a rural railway crossing. The sign is not located on a carriageway and it is not envisaged that it could be misleading in providing instructions to drivers, given the location of the sign from the main highway. The image below shows the distance to be approximately 43 metres between the edge of the Goulburn Valley Highway and the proposed sign and also demonstrates the existing vegetation on the medium strip between the highway and service road.



Image illustrates layout of Highway and service roads, with existing vegetation between highway and service road. Distance between sign and highway is approximately 43 metres.

#### **The decision guidelines of Clause 65**

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

- The following decision guidelines are relevant to this application:
- 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.

#### Response

The relevant decision guidelines have been considered and addressed when assessing the application for a planning permit with the following identified.

There is no significant relevant State Planning policy which relates to the proposed advertising signage. The proposed sign considered to meet the urban design objectives of the Local Planning policy, as no structure is to be constructed and the material displayed is to be of a business identification nature.

The sign is considered to further the purposes of the zone and the locality as a central business corridor used for the sale of large and bulky goods, as the sign is to be used for the identification of the business operating from the site. The Design and Development Overlay which affects the land, identifies a number of policies for the placement of advertising signage on land affected by the overlay. Though the sign does not meet the requirements of the DDO, it is considered that the variation achieves an acceptable outcome in achieving the purposes of the DDO.

The matters required to be considered under the particular provision for advertising signage have been addressed under the individual subsection of this report.

It is considered that the application does not impact the orderly planning of the area as no structures are proposed as part of the application or the amenity of the area given the locality of the sign within the business area and the distance between the signs location and the Residential 1 Zoned land.

#### **Relevant incorporated or reference documents**

There are no relevant incorporated or reference documents that relate to this application.

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

There are no other relevant adopted State or strategic policies that relate to this application.

#### **Relevant Planning Scheme amendments**

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

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

There are no relevant significant social or economic effects that relate to this application.

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

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

## Conclusion

It is recommended that the application for a planning permit to display an electronic animated business identification sign be refused under section 61(2) of the *Planning and Environment Act 1987* as the relevant referral authority objects to the grant of a permit.

# DRAFT REFUSAL TO GRANT A PERMIT

---

<b>APPLICATION NO:</b>	2011-157
<b>PLANNING SCHEME:</b>	GREATER SHEPPARTON PLANNING SCHEME
<b>RESPONSIBLE AUTHORITY:</b>	GREATER SHEPPARTON CITY COUNCIL
<b>ADDRESS OF THE LAND:</b>	7985 Goulburn Valley Highway KIALLA VIC 3631
<b>WHAT HAS BEEN REFUSED:</b>	The display of an electronic and animated business identification sign in the Business 4 Zone and the variation of the requirements of the Design and Development Overlay (schedule 7).

### WHAT ARE THE REASONS FOR THE REFUSAL?

---

- VicRoads acting as a referral authority under section 55 of the *Planning and Environment Act, 1987* (the Act) objected to the grant of a permit, therefore section 61(2) of the Act requires the Council to refuse to grant a permit.
- VicRoads reasons for refusal included:
  - The proposed sign is inappropriate having regard to the decision guidelines at clause 52.05 particularly those decision guidelines relating to road safety.