

CONFIRMED MINUTES

**FOR THE
GREATER SHEPPARTON CITY COUNCIL**

DEVELOPMENT HEARINGS PANEL

Meeting No. 6/2012

**HELD ON
THURSDAY 26 JULY 2012
AT 10.00AM**

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

**CHAIR
COLIN KALMS**

**COMMITTEE MEMBERS PRESENT: Colin Kalms, Braydon Aitken,
Claire Tarelli, Jonathan Griffin**

**OFFICERS: Andrew Dainton – Senior Statutory Planner
Tim Watson – Planner
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

Dean Rochfort

3. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

Moved by Claire Tarelli and seconded by Braydon Aitken that the minutes of the meeting held on 14 June 2012 be adopted.

Carried.

Moved by Braydon Aitken and seconded by Colin Kalms that the minutes of previous meeting held on 12 July 2012 be adopted.

Carried.

4. DECLARATIONS OF CONFLICTS OF INTEREST

None

5. MATTERS FOR CONSIDERATION

Two items listed for consideration.

6. LATE REPORTS

None

7. NEXT MEETING

9 August 2012.

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Application Details:

Responsible Officer:	Andrew Dainton
Application Number:	2012-32
Applicants Name:	M Zyferi
Date Application Received:	8 February 2012
Statutory Days:	21 days since lodgement of amended plans
Land/Address:	7 Conifer Street SHEPPARTON VIC 3630
Zoning and Overlays:	Business 1 Zone abuts Residential 1 Zone No overlays
Why is a permit required (include Permit Triggers):	Buildings and works in a Business 1 Zone under clause 34.01-4
Are there any Restrictive Covenants on the title?	No

Proposal

To construct a building comprising three shops fronting Conifer Street with floor areas between 69sqm and 84sqm in floor area, and a total building floor area of 227sqm. Although the shops can be leased for any business purpose, two of the premises have been identified as a Hairdressers and pizza shop (Take-a-way food premises).

The applicant's plan showed a rear car park for 11 cars having access from the 6.1m wide laneway between Ash Street and Birch Street.

Summary of Key Issues

- The proposed application is a development application only with the proposed uses being shop and take away food premises both being as of right uses in the B1Z.
- The key issues that are relevant for buildings and works in a Business 1 Zone in this locality near residences and a school are:
 - Provision of car parking,
 - The interface with adjoining zones, especially the relationship with residential areas, and
 - The streetscape, including site and building design with the treatment of fronts and backs of buildings and their appurtenances and illumination.
- At the time of the application Clause 52.06 of the planning scheme required 8 spaces per 100m² floor area for shops. On this basis the proposal required 18 spaces. The applicant showed 11 spaces at the rear of the proposed shops and requested a reduction in requirements for the 7 spaces that could not be reasonably be provided on the land. Following a review by the State Government the car parking requirements for shop have been changed to 4 spaces per 100m² and therefore the requirement is for 9 spaces.

The available space at the rear of the shops is large enough to provide the 9 spaces and a loading bay and amending plans are required by a permit condition to show such provision.

- Inspection by Council officers on a number of occasions suggests that adequate parking exists in the 22 marked bays within Conifer Street for existing uses including the milkbar and residences as well as occasional parking associated with the school. The parking is restricted to ½ hour except for the first three spaces south of Birch Street. There is also bus parking bays signed for buses on weekdays 8am to 9am, the spaces would be available for general parking at other times.

Additional parking exists in the Ash Street road reserve at the kerb on the north side and informal parking well used on the south side for many single vehicles and trucks and trailer combinations. This is despite parking being a concern raised by objectors.

- Objectors are owners or occupiers of the two abutting premises and express concerns including amenity and safety issues particularly with late night opening, damage to side fence or other property, lack of parking availability, and too many pizza shops already in Shepparton.
- The land is on a sensitive interface between residential and commercial zones and therefore it is well established in planning that the residential land cannot expect a pristine residential amenity as would be expected in a residential area that is remote from commercial zones
- The zero setback of the building to Conifer Street is in accordance with the building lines policy under clause 21.06-6

Moved by Braydon Aitken and Seconded by Claire Tarelli

Notice of Decision to Grant a Permit

That Council having caused notice of Planning Application No. 2012-32 to be given under Section 52 of the *Planning and Environment Act 1987* and having considered all the matters required under Section 60 of the *Planning and Environment Act 1987* and having considered the objections to the application, decides to Grant a Notice of Decision to Grant a Permit under the provisions of clause 34.01-4 of the Greater Shepparton Planning Scheme in respect of the land known and described as 7 Conifer Street Shepparton, for the Buildings and works in the Business 1 Zone in accordance with the Notice of Decision and the endorsed plans and an amended condition that requires a new colour bond fence to be constructed on the northern side of the property adjacent to the residential property.

CARRIED

Subject Site & Locality

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

Date: 21/2/12

Time: 2 pm

The site has a total area of 595.4m² and currently contains:

- Vacant land zoned Business 1 Zone. The land is one of two lots zoned Business 1 Zone, the second lot being on the south side on the corner of Conifer and Ash Street and has a milkbar. The land abutting on the north side is zoned Residential 1 Zone and has a residence.

The main site/locality characteristics are:

- Land further to the north is residential and on the east side of the rear laneway is residential. Land opposite over Verney Road is a school. Land to the south over the large New Dookie Road reserve is zoned Industrial 1 Zone and has a number of small industrial, restricted retail and service businesses. New Dookie Road is a Road Zone Category 1, and Verney Road is a Road Zone Category 2. The areas abutting any of these road reserves could be described as in a fairly busy locality with passing traffic movement and local parking including bus stops being a predominate characteristic.

The Photos below show the existing site:



Frontage of land at 7 Conifer Street



Garage and entry of residence at 5 Conifer Street, looking across 7 Conifer Street towards milk bar north wall



Southern fenceline of 5 Conifer Street viewed across land at 7 Conifer Street



General view of bus and car parking area looking towards 7 Conifer Street land and milk bar, note car parking is ½ hour and bus parking is 8am to 9am weekdays and available to cars or trucks at other times



General view northwards of Conifer Street ½ hour parking area



View from milk bar to informal parking on south side of Ash Street, note cars are likely to be all day from businesses on south side of New Dookie Road



View from milk bar corner of Ash Street and informal parking on south side of Ash Street

Permit/Site History

The history of the site includes:

- No relevant history as the land is vacant and the land has been zoned for business for many years.

Further Information

Was further information requested for this application? Not formally, see consultation section for meeting with the applicant to discuss amendments to the submitted plan.

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 and land to the east abutting rear lane and dwelling on corner of Birch and Conifer Streets.
- Placing a sign on site.

Buildings and works in the Business 1 Zone are generally exempt from being advertised and from third party rights, but are not exempt in this case due to being within 30m of a Residential 1 Zone.

Objections

The Council has received three objections to date. Two objections were from the owner and the occupier of the milk bar abutting the south side of the land, One objection is from the owner/occupier of the residence abutting the north side of the land. The key issues that were raised in the objections are.

For the resident abutting on the north side (and located in a Residential 1 Zone) the following concerns:

- amenity issues relating to the design being very commercial and not in keeping with residential character,
- amenity issues relating to encouraging loitering, noise disturbance and undesirable activities (personal safety), with the open area at the front of the shops being relatively dark and secluded and possible late night opening for the proposed pizza shop;
- seven of the car parking spaces directly abutting the side fence gives possibility of damage, and there is ample parking at the front of the shops. The objector requested a reduction of parking spaces at the rear and a barrier between the spaces and the side fence and a lockable gate/ fence and security lighting. (the applicant amended the plan to show a 1.2m landscape buffer between the spaces and the fence and a 1.8m high powdercoated pool type safety fence and sliding gate for the rear car park area);

- too many pizza shops already in Shepparton, such food is not good for the health of primary school children;
- with vacant shops throughout Shepparton therefore are more shops necessary?;
- building up to bordering fence will affect natural sunlight into property, place garden in full shade and be oppressive to look out onto a blank wall. (the amending plans now show two tone brickwork with red brick to 1m and red brick tree motifs above on a cream brick background which was suggested by the objector).

From the owner of the milk bar on the south side and resident approx 1.2km north in Arthur Park estate;

- More parking and traffic congestion in the area of 14 car spaces and 2 bus parking bays which are full with vehicles at most times between 8:30am and 4:30pm Monday to Friday. It is annoying as an elderly person having to park along Ash Street or on the south side of Ash Street and walk across Ash Street to the milk bar.

From the occupier of the milk bar;

- Lack of parking in Conifer Street especially at the peak times of early morning and at 4:30pm
- Many customers of the milk bar are trade workers with large vehicles, trailers and trucks and if there is not enough room for them to park, they will simply not stop at the milk bar resulting in loss of trade for our business.

Title Details

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

Consultation

Consultation was undertaken. Relevant aspects of consultation, included:

- Meeting with Brian Pethybridge of Peps Plans on behalf of the applicant and Andrew Dainton and Carl Byrne Development Engineer, on 21 February 2012 to discuss amendments to the proposed development plan to show vehicle turning circles in the rear car park, show a sealed coat to the car park, amend the application to include reduction in required car parking (see notes that a change to the planning scheme means this is no longer required as the proposed car parking is sufficient to requirements), and need for drainage plans.
- An information meeting was held on 26 June 2012, which was chaired by Braydon Aitken and attended by the applicant, objectors and the planning officer. This meeting resulted in the submission of an amended plan on 27 June 2012 as described below. This information meeting did not result in the removal of any objections, but did ensure the objectors had an understanding of the proposed development.
- An amended plan was received on 27 June 2012 showing the above items, and also proposed hours for each occupier, security fence and gate for the car park after hours, and proposed signage indicating the existence of the rear car park area.

Referrals

External Referrals/Notices Required by the Planning Scheme:

Referrals/Notice	Advice/Response/Conditions
Section 55 Referrals	None
Section 52 Notices	GVW usual condition for water supply and sewerage, and trade waste disposal

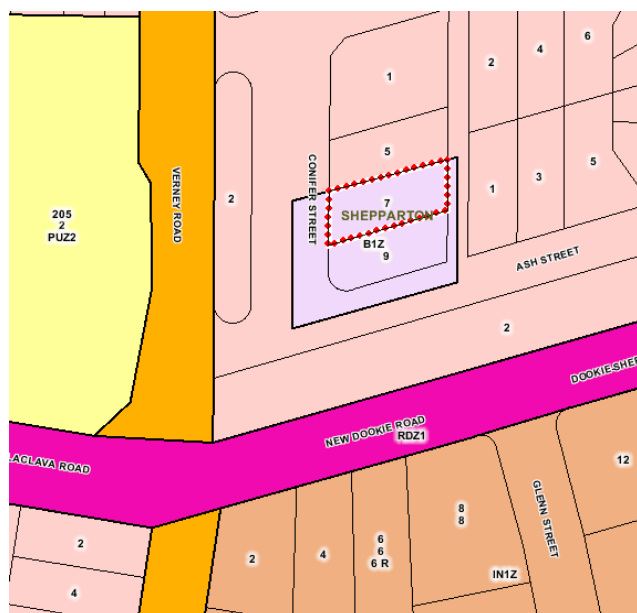
Internal Council Notices	Advice/Response/Conditions
Health	Condition requiring compliance with various requirements relating to food regulations and for the hairdressing business
Development Engineers	Usual conditions for construction of car parking including disabled space, design and construction of drainage, landscaping and construction phase.

Assessment

The zoning of the land

Business 1 Zone – covers only the subject land and the abutting milk bar shop and adjacent parking area in Conifer Street. Land to the north is zoned Residential 1 Zone.

A zoning plan is below:



A permit is required for buildings and works.

The proposed uses of hairdresser (shop) and food and drink premises are as-of-right (no permit required) in the Business 1 Zone.

In respect to the buildings and works the following decision guidelines are relevant.

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- The movement of pedestrians and cyclists, and vehicles providing for supplies, waste removal, emergency services and public transport.*
- The provision of car parking.*
- The interface with adjoining zones, especially the relationship with residential areas.*

- The streetscape, including the conservation of buildings, the design of verandahs, access from the street front, protecting active frontages to pedestrian areas, the treatment of the fronts and backs of buildings and their appurtenances, illumination of buildings or their immediate spaces and the landscaping of land adjoining a road.*
- The storage of rubbish and materials for recycling.*
- Defining the responsibility for the maintenance of buildings, landscaping and paved areas.*
- The availability of and connection to services.*
- The design of buildings to provide for solar access.*

Relevant overlay provisions

No overlays.

The State Planning Policy Framework (SPPF)

11.05-1 Regional settlement networks

Support sustainable development of the regional cities and centres of Ararat, Bairnsdale, Benalla, Colac, Echuca, Hamilton, Horsham, Mildura, Portland, Sale, Shepparton, Swan Hill, Wangaratta, Warrnambool and Wodonga.

15.01-1 Urban Design

Ensure new development or redevelopment contributes to community and cultural life by improving safety, diversity and choice, the quality of living and working environments, accessibility and inclusiveness and environmental sustainability.

15.01-2 Urban Design Principles

Strategies

Apply the following design principles to development proposals for non-residential development or residential development not covered by Clause 54, Clause 55 or Clause 56:

Context

- Development must take into account the natural, cultural and strategic context of its location.
- Planning authorities should emphasise urban design policies and frameworks for key locations or precincts.
- A comprehensive site analysis should be the starting point of the design process and form the basis for consideration of height, scale and massing of new development.

The public realm

- The public realm, which includes main pedestrian spaces, streets, squares, parks and walkways, should be protected and enhanced.

Safety

- New development should create urban environments that enhance personal safety and property security and where people feel safe to live, work and move in at any time.

Landmarks, views and vistas

- Landmarks, views and vistas should be protected and enhanced or, where appropriate, created by new additions to the built environment.

Pedestrian spaces

- Design of interfaces between buildings and public spaces, including the arrangement of adjoining activities, entrances, windows, and architectural detailing, should enhance the visual and social experience of the user.

Heritage

- New development should respect, but not simply copy, historic precedents and create a worthy legacy for future generations.

Consolidation of sites and empty sites

- New development should contribute to the complexity and diversity of the built environment.
- Site consolidation should not result in street frontages that are out of keeping with the complexity and rhythm of existing streetscapes.
- The development process should be managed so that sites are not in an unattractive, neglected state for excessive periods and the impacts from vacant sites are minimised.

Light and shade

- Enjoyment of the public realm should be enhanced by a desirable balance of sunlight and shade.
- This balance should not be compromised by undesirable overshadowing or exposure to the sun.

Energy and resource efficiency

- All building, subdivision and engineering works should include efficient use of resources and energy efficiency.

Architectural quality

- New development should achieve high standards in architecture and urban design.
- Any rooftop plant, lift over-runs, service entries, communication devices, and other technical attachment should be treated as part of the overall design.

Landscape architecture

- Recognition should be given to the setting in which buildings are designed and the integrating role of landscape architecture.

17.01-1 Business

To encourage development which meet the communities' needs for retail, entertainment, office and other commercial services and provides net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities.

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

21.06-4 Commercial / Activity Centres

The city's commercial and retailing centres fulfil both local shopping and discretionary shopping needs, and provide services at the regional level. The Greater Shepparton 2030 Economic Development Report identified that based on the requirement for the average provision of 2.1 sqm per capita, there will be demand for 20,660 sqm of additional retail floor space by 2011, with another 40,570 sqm supported by the forecast population growth from 2011 to 2030. The report notes that no foreseeable demand exists in the long term for new major freestanding centres, other than in the north and south growth corridors, and for suitably accommodating bulky goods activities. The Activity Centre Hierarchy identified in the report can be described as:

- *Murchison, Merrigum, Dookie and local shops in Shepparton are Local / Town Centres.*

Provide neighbourhood commercial and retail centres that are accessible to the local community, especially by public transport and bicycle, and that also have adequate car parking provisions.

Policy Guideline – Building Setbacks

- *Buildings in a Business 1 or 2 zone are encouraged to have a zero set back from any road unless otherwise specified in a schedule to the Design and Development Overlay.*

GS2030 states the role of local centres (local shops in Shepparton) is to provide for everyday convenience goods.

Officer's response to B1Z, SPPF and LPPF

The proposed uses in the B1Z for shop and take away food premise are as of right uses; therefore the application is limited to development considerations.

It is considered that the existence of only two lots, having a business zoning and the size of the road reserve at the front with the bus parking and line-marked car parking shows that a small group of neighbourhood shops was expected to service the surrounding area.

The proposal generally satisfies local policy and scheme requirements of the listed decision guidelines. The design suits the site and shows a tasteful facade with canopy of modest local shops.

The provision of parking at the rear augments the car parking in the road reserve at the front of the site which would be expected to satisfy need for short term parking of customers. The parking supply satisfies clause 52.06 requirements (discussed in Particular Provisions Section) and is more than usually supplied for small groups of neighbourhood strip shops).

The space at the rear of the shops can provide a loading bay and also storage for waste/recycling bins) and for bicycle parking. Many of the deliveries of small goods to strip shopping centres by third party suppliers tend to occur through the front door of the premises when the supplier can find parking at the front and this cannot be realistically prevented by permit condition, but having rear loading available with a generous width laneway (6m) is an advantage.

The interface with the residential zone is important. In this regard the wall on the boundary could have been anticipated and is only 13m long and is on a south boundary and therefore does not block sunlight.

The applicant has agreed to provide a face brickwork design (pattern) that meets the request of the neighbour. The neighbour has a garage at the front of the property adjacent to the south boundary, which extends further into the lot than the proposed shop wall. The shop wall will not be opposite the dwelling itself.

The provision of 1.2m wide landscaping provides a separation of vehicles from the side fence and a barrier kerb can be required to ensure this distance is maintained.

Additional the land is on a residential commercial interface and therefore the level of residential amenity cannot what would be expected in a pristine residential area that is remote from commercial zoned land.

It is considered the proposed development is acceptable for the following reasons:

- The development proposes a modest local shop development which should of been expected to occur in the B1Z
- The development provides onsite facilities for car parking, loading and bin storage
- The design has been amended to provide additional landscaping, rear fence with gate and patterned brick work as discussed with the objector, additionally the applicant has volunteered hours of operation not to continue beyond 10pm
- The design provides a canopy for weather protection
- The zero setback of the building to the street is encouraged by the Council's policy guideline

Relevant Particular Provisions

Clause 52.06 – Parking

Clause 52.06-5 requires that a shop and food and drink premises both require four on site spaces per 100sqm.

Based on a 227sqm (leasable floor area), nine on site car spaces are required.

The submitted plan provides 11 on site spaces, which is two more spaces than required.

The 90 degrees car parks are 4.9m in length with an access way width of 6.5m. The width of the car parking spaces will be required to be not less than 2.6m in width, to ensure the dimensions comply with clause 52.06-8.

The proposed parallel parks are between 6.5m to 5.5m in length, which does not comply with the 6.7m car park length under 52.06-8. Amended plans will be required to be submitted to increase the length of the parallel car spaces to 6.7m in length. Additional in response to objectors concerns relating to damage to the shared fence, bollards will be required to be installed to protect the side fence.

Based on the submission of amended plans as required by permit conditions, the proposal complies with 52.06.

52.07 – Loading

As a result of the introduction of VC90 and lesser amount of onsite car parking required, amended plans have been required for the provision of an onsite loading bay.

Clause 52.34 Bicycle Parking

Clause 52.34-3 requires the provision of bicycle rails for take away food premises, being one for employees and one for customers.

A permit condition will require the installation of a Council approved bicycle rail on the footpath at the front of the premises, to allow customer access to the bicycle rail.

Therefore the proposal complies with clause 52.34.

The decision guidelines of Clause 65

Orderly planning – is a planned location for a small number of local shops, and parking is adequate

Amenity – should be minimal effect on amenity, and is reasonable towards the adjoining dwelling, which should also accept some reduction in amenity due to business zone abutting the land, established parking area for shops at within the road reserve.

Drainage – the permit conditions require the submission of a properly prepared drainage plan to respond to the Council IDM.

Based on the above it is considered the application achieves acceptable planning outcomes.

Relevant incorporated or reference documents

Infrastructure Design Manual (reference document)

Greater Shepparton 2030 (reference document)

Other relevant adopted State policies or strategies policies

Nil

Relevant Planning Scheme amendments

Nil

Are there any significant social & economic effects?

Nil

Discuss any other relevant Acts that relate to the application?

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

Conclusion

That having considered the application against the relevant scheme provisions, the planning officer has formed the view that the development achieves acceptable planning outcomes through the development of B1Z land for local shops.

Draft Notice Of Decision

APPLICATION NO: 2012-32

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: 7 CONIFER STREET SHEPPARTON VIC 3630

WHAT THE PERMIT WILL ALLOW: BUILDINGS AND WORKS IN THE BUSINESS 1
ZONE FOR THE CONSTRUCTION OF A BUILDING
AND ASSOCIATED CAR PARK

WHAT WILL THE CONDITIONS OF THE PERMIT BE?

1. 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 (or as specified) must be provided. Such plan must be generally in accordance with the plan submitted being Peps Plan dated 26 June 2012 with the application but modified to show:

- a) Bicycle rail on the footpath on Conifer Street abutting the land
- b) Bollards along the southern boundary of land to provide a barrier along the side boundary fence
- c) Provision of a loading bay within the car park area on the land
- d) Location of any roof plant material to be screened from view
- e) Deletion of the car parking calculations from the plan
- f) Deletion of column location from the plan
- g) Deletion of the storm water details from the plan

2. Layout Not Altered

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

3. 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. The plans must be in accordance with council's Infrastructure Design Manual and include:

- a) how the land will be drained;
- b) underground pipe drains conveying stormwater to the legal point of discharge;
- c) An electronic copy of MUSIC or equivalent demonstrating measures to enhance stormwater discharge quality from the site and protect downstream waterways;
- d) a maximum discharge rate from the site of (37) l/sec/ha.
- e) documentation demonstrating approval from the relevant authority for the legal point of discharge; and
- f) the provision of a litter trap installed at the drainage outfall of the development to ensure that no effluent or polluted water of any type may be allowed to enter the Council's stormwater drainage system.

Before the building is occupied all drainage works required by the drainage plan must be completed to the satisfaction of the responsible authority

Before the building is occupied all stormwater and surface water drainage from the land, buildings and works must be connected to the legal point of discharge by underground pipe drains to the satisfaction of the responsible authority.

4. Landscape Plan

Before the development starts a landscape plan must be submitted to and approved by the responsible authority for the car park land to the rear of the proposed building. 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 to show:

- a) 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;
- b) the method of preparing, draining, watering and maintaining the landscaped area;
- c) details of surface finishes of pathways and driveways;
- d) landscaping and planting within all open areas of the site
- e) garden bed heights above car-park surface;
- f) all areas where vehicle overhang will occur;
- g) 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 all landscaped areas.

All trees planted as part of the landscape works must be a minimum height of 1.2 metres at the time of planting.

Before the occupation of the developments starts 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.

5. 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 building must be maintained to the satisfaction of the responsible authority.

6. 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.

7. Works Prior to the Occupation of the Development

The development must not be occupied until all works as shown on the endorsed plans have been completed to the satisfaction of the responsible authority.

8. Car Park Construction Requirements

Before the building is occupied no fewer than nine car spaces must be provided on the land for the use and development including one space clearly marked for use by people with disabilities.

Before the occupation of the development starts, the area set aside for parking of vehicles and access lanes as shown on the endorsed plans must be:

- a) surfaced with an all-weather seal coat

- b) drained in accordance with an approved drainage plan;
- c) line-marked to indicate each car space and all access lanes;
- d) properly illuminated with lighting designed, baffled and located to prevent any adverse effect on adjoining land;
- e) treated with measures to prevent damage to fences or landscaped areas on adjoining land and prevent direct vehicle access to adjoining road/s other than by a vehicle crossing;
- f) signed to direct drivers to the area(s) set aside for car parking. Such signs are to be located and maintained to the satisfaction of the Responsible Authority. Signs must not exceed 0.3 square metres;

to the satisfaction of the responsibility authority.

All car parking spaces and access ways must be designed to allow vehicles to enter and exit the land in a forward direction.

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

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

9. Delivery of Goods

The loading and unloading of goods from vehicles in association with the use on the land, must only be carried out on the land within the designated loading bay and must not disrupt the circulation and parking of vehicles on the land to the satisfaction of the responsible authority.

10. Control of Lightspill

Before the occupation of the building, external lighting must be designed, baffled and located so as to prevent any unreasonable adverse effect on adjoining land to the satisfaction of the responsible authority.

11. Hours of Operation

The hours of operation are limited to the hours as shown on the endorsed plan being:

Tenancy 1:

Monday to Wednesday 9.00am to 6.00pm

Thursday to Friday 9.00am to 9.00pm

Saturday 9.00am to 5.00pm

Tenancy 2:

Monday to Saturday 8.00am to 9.00pm

Sunday 9.00am to 8.00pm

Tenancy 3:

Monday to Sunday 10.00am to 10.00pm

Unless otherwise agreed in writing by the responsible authority.

12. Neat and Tidy Site

The subject land must be kept clean and tidy at all times and must not adversely affect the amenity of the area, to the satisfaction of the responsible authority.

13. Underground Connection

Before the building is occupied, the electricity connection to the land must be undergrounded to the satisfaction of the responsible authority.

14. Advertising Signs - Amended Plans

Before the development starts, full details of signs to be displayed on site are to be submitted and approved by the responsible authority unless a Planning Permit is not required by the Greater Shepparton Planning Scheme. Details must include dimensions, type and location of all signs to be placed on the site, including illumination, wording and colour scheme.

15. Goulburn Valley Region Water Corporation Requirements

- a) Payment of a new customer contribution for water supply to the development, such amount being determined by the Corporation at the time of payment;
- b) Provision of individual water supply metres to each tenement within the development,
- c) Payment of a new customer contribution for sewerage services to the development, such amount being determined by the Corporation at the time of payment;
- d) Provision of reticulated sewerage and associated construction works to each allotment within the development, at the developer's expense, in accordance with standards of construction adopted by and to the satisfaction of the Goulburn Valley Region Water Corporation;

In the case of multi-tenement development, the works required are to be carried out in accordance with AS 3500.2 – "Sanitary plumbing and drainage", and include disconnection of any existing house connection drain to the satisfaction

of the Corporations Property Services Section;

- e) Discharge of trade waste from the development shall be subject to a Trade Waste Consent Agreement.

The owner and or occupier is required to submit a completed Trade Waste Application, and install the required pre-treatment facility to the satisfaction of Goulburn Valley Water's Trade Waste Section, before approval to discharge trade waste from the development into the Corporation's sewer is granted.

16. Time for Starting and Completion

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

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

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.

Application Details:

Responsible Officer:	Tim Watson
Application Number:	2005-379/C
Applicant Name:	Nu-Con Design & Construction P/L
Permit expiry date	17 January 2010
Date extension request received:	6 July 2012
Land/Address:	630-632 Wyndham Street SHEPPARTON VIC 3630
Zoning & Overlays:	Business 1 Zone Road Zone Category 1 Land Subject to Inundation Overlay Design and Development Overlay 6
Why was a permit required at the time of issue (include Permit Triggers):	34.01-4 – Buildings and works in the Business 1 Zone 43.02-2 – Buildings and works in the Design and Development Overlay. 52.06 – reduction in car parking requirements.

Proposal

In accordance with Section 69(1) of the *Planning and Environment Act 1987* an application for extension of time to the above planning permit has been made.

DETAILS OF APPLICATION

The planning permit allows buildings and works for the construction of a building to be used for retail purposes.

The applicant has extension to the permit to allow for works to be completed by 17 January 2014.

The permit was issued on 17 January 2006 and condition 19 required that the subdivision be completed within four years of the date of the permit, being 17 January 2010. The works have not been completed by this date and given the request for extension is outside the three month grace period, the permit has expired and cannot be extended by the Council.

The only works yet to be completed are for a small shop of 36.4 square metres on the southern side of the existing development to front Wyndham Street. This shop was not part of the original proposal and was included through amended plans submitted and endorsed.

The applicant seeks that if the Council decides to refuse to grant an extension, the Council indicate if it would be supportive of VCAT granting an extension of time.

Planning Considerations

The responsible authority may consider the following in accordance with *Kantor & Ors v Murrindindi Shire Council 18 AATR 285 at 313*:

▪ **WHETHER THERE HAS BEEN A CHANGE OF PLANNING POLICY.**

Since the issue of the permit in 2006 there planning policies applying to the land have changed through the introduction of the Design and Development Overlay (DDO6) to the land through amendment C79 on the 29 May 2008.

The DDO6 applies to the Shepparton South Village Precinct and primarily affects the properties abutting and to the west of Wyndham Street between Longstaff Street and

Guthrie Street, Shepparton. A requirement under the DDO6 which cannot be varied with a permit which would affect this permit is that:

Building setback must be a minimum of 5 metres and a maximum of 10 metres from the front boundary of the lot.

The plans endorsed show a setback of approximately 14.5 metres from the front property boundary, in accordance with the existing shops. The original planning permit was issued prior to the introduction of the Design and Development Overlay (DDO6), however the amendment to the permit to include the subject shop was made post the introduction of the Design and Development Overlay (DDO6). The Council is currently in the process of amending the Design and Development Overlay to allow for more flexibility.

▪ **WHETHER THE LANDOWNER IS SEEKING TO 'WAREHOUSE' THE PERMIT.**

This is the first time the applicant has sought an extension to the permit. Since the issue of the permit the applicant has sought and received three amendments to amend what the permit allows and conditions on the permit. The most recent amendment approved 11 May 2010 (after permit had expired) was for the inclusion of the proposed shop which is yet to be constructed.

The applicant has completed all other works.

▪ **INTERVENING CIRCUMSTANCES BEARING ON GRANT OR REFUSAL OF THE EXTENSION.**

The applicant reason for not completing the final works of the project is that they were under the belief that the date of expiry for the commencement of works for the proposed shop was 2 years from when the permit was last amended (11 May 2012).

▪ **THE TOTAL ELAPSE OF TIME AND WHETHER THE TIME LIMIT ORIGINALLY IMPOSED WAS ADEQUATE.**

It is considered the original time imposed on the permit of two years to commence and four years to complete was sufficient.

Given the permit was amended a number of times to remove major components of the permit including subdivision and the development of the land for 16 dwellings the matter of an expiry date being overlooked is a cause for concern.

▪ **THE ECONOMIC BURDEN IMPOSED ON THE LANDOWNER BY THE PERMIT.**

The applicant has already significantly invested in the development of the property with the majority of works completed, with the delays however a result of the significant amendments made to the permit.

▪ **THE PROBABILITY OF A FRESH PERMIT ISSUING SHOULD A FRESH APPLICATION BE MADE.**

Should a fresh application be made it is likely a similar permit would issue, however the setbacks required by the Design and Development Overlay (DDO6) would be cause for concern. The applicant would be required to submit plans illustrating a setback of 10 metres maximum from the property eastern property boundary, which would protrude into the existing car park and be out of context when compared with the existing development.

DISCUSSION / COMMENTS

The above assessment against the relevant tests allows the conclusion that on its merits the permit could be extended.

Despite this, the request was lodged outside the three month grace period, which is fatal to the application.

Therefore it is recommended that the application should be refused.

The applicant has sought that the Council indicate its position, should the applicant seek an extension of time to VCAT.

Planning permit 2005-379/C expired if works were not completed on 17 January 2010. The applicant sought and was granted an amendment to the permit on 11 May 2010 to vary what the permit allowed and to include the addition of a shop which has not yet been constructed.

The applicant who now seeks to construct this shop was unaware that the permit had expired. Should an application be made a fresh it is likely that a permit would be issued, however the applicant would be required to provide designs which showed the building met the current setbacks specified by the Design and Development Overlay (DDO6). This would require the new building to be approximately 4.5 meters closer to the eastern property boundary than the rest of the development. The works would also be constructed in what are currently set aside as internal access ways and car parks.

Moved by Braydon Aitken and Seconded by Claire Tarelli

That the responsible authority refuses the application for extension of time to a planning permit as the application was made outside of the three month grace period.

That should the applicant seek to extend the permit through VCAT, the Council not oppose a four year extension to the permit i.e. works to be completed by 17 January 2014

CARRIED

Meeting closed at 10.52 am