



Amendment C197

Greater Shepparton Planning Scheme

Planning Authority Further Submission to the Independent Planning Panel – Right of Reply

8 September 2017

1. INTRODUCTION

This additional submission, or “right of reply”, is made on behalf of Greater Shepparton City Council (**Council**), which is the Planning Authority for Amendment C197 (**Amendment**) to the Greater Shepparton Planning Scheme (**Planning Scheme**).

Council officers have reviewed the further written submission from Submitter No. 6, received by Council by e-mail on 1 September 2017 (**Submission No. 6b**). This reply addresses the matters raised in Submission No. 6b, where possible. Some of the matters raised in Submission No. 6b lacked clarity and, as such, Council officers found it difficult to respond. If further clarification is provided by Submitter No. 6 or by the Panel Chair, Council officers would welcome the opportunity to provide an additional written submission.

2. RESPONSE TO FURTHER WRITTEN SUBMISSION

Submission No. 6b raises four points. Council officers have summarised these matters as understood and provide a response to each of these points.

Point 1:

- a. Submission No. 6b appears to raise concerns that Council officers have acted outside of their delegation regarding the Amendment and the authorisation provided by the Minister for Planning. The submission states:

“The letter dated 28 March 2017 from the Minister of Planning to Mr Peter Harriot CEO Greater Shepparton City Council is specific in respect to the extent of authorisation of Delegation from the Minister.”

Council response:

The letter (see *Attachment 1 – Authorisation Letter*) dated 28 March 2017 is from Bruce Standish, Manager – Hume Regional Planning Services, to the Greater Shepparton City Council Chief Executive Officer (**CEO**) regarding Council's application for authorisation to prepare Amendment C197 to the Greater Shepparton Planning Scheme (**authorisation letter**). The authorisation letter states:

“Under delegation from the Minister for Planning, in accordance with section 8A of the Planning and Environment Act 1987 (the Act) I authorise your council as planning authority to prepare the amendment subject to the following conditions...”

This refers to the delegation provided from the Minister for Planning to Bruce Standish, Manager – Hume Regional Planning Service, to authorise a planning authority to prepare an amendment. It does not refer to delegation from the Minister for Planning to Council or the CEO, nor does it refer to delegation from the CEO to Council officers.

- b. Submission No. 6b states that the term “to the satisfaction of the responsible authority” lacks clarity and transparency as Council officers, including the CEO, are not delegated any power of discretion.

Council response:

Submission No. 6b appears to be raising concerns regarding content within the Planning Scheme that is not proposed to be changed as part of the Amendment. The

term “to the satisfaction of the responsible authority” appears in various schedules to zones and overlays within the Greater Shepparton Planning Scheme. Furthermore, this phrase also appears in some parts of the Victorian Planning Provisions, such as Clause 43.04 – *Development Plan Overlay*.

Point 2:

- a. Submission No. 6b states that the Amendment seeks to correct spelling, grammatical mistakes, formatting, zone and overlay errors. Submission No. 6b goes on to state that the “*slip rule*” could have been used to resolve each spelling, grammar, formatting, zone and overlay error and that the “*slip rule*” is commonly used in planning hearings and legal cases.

Council response:

The Amendment seeks to correct some spelling, grammar and formatting errors that could be overlooked and the intent of the Planning Scheme could still be interpreted. However, the Amendment also proposes to correct other anomalies in the Planning Scheme, such as zone and overlay errors that cannot be overlooked or could be misinterpreted. Given that the Amendment is required to correct these zone and overlay errors, Council officers believe it is prudent to address other errors and anomalies identified within the Planning Scheme.

Further to this, the Minister for Planning amends the State Planning Policy Framework and/or the Victorian Planning Provision to make corrections in the same manner. Amendment VC133 was gazetted on 25 May 2017, which, among other things, corrected inconsistencies and improved the structure of planning schemes. This is sound planning practice and the Amendment was prepared in accordance with the *Planning and Environment Act 1987*.

- b. Submission No. 6b questions whether these are mistakes or errors, or if the purpose of the Amendment is to change the current Planning Scheme.

Council response:

The purpose of the Amendment is to correct spelling, grammar, formatting, zone and overlay errors, to clarify the intent of planning controls, update the Municipal Strategic Statement to include various adopted strategies as reference documents, and introduce the recommendations into the Planning Scheme.

Point 3:

- a. Submission No. 6b queries the use of the phrase “to clarify the intent of the planning controls” in the Planning Scheme. Submission No. 6b appears to raise concerns that the Amendment does not clarify the intent of the Planning Scheme, but changes the intent that was previously approved by the Minister for Planning.

Council response:

The Amendment seeks to clarify the intent of the planning controls in various clauses of the Planning Scheme. For example, the Amendment proposes to revise the Schedule to the Land Subject to Inundation Overlay (**LSIO Schedule**) in the following manner:

Permit requirement

A permit is not required to construct or carry out the following buildings or works:

- a new industrial, retail, or office building within ~~any~~ industrial, ~~or business~~ commercial or activity centre zone of Mooroopna, Shepparton and Tatura where the floor level is at least 300 millimetres above the 100-year ARI flood level, or a higher level set by the responsible authority;

In 2013, the state-wide Amendment VC100 replaced the former business zones with the new commercial zones. The LSIO Schedule referenced permit exemptions for land in business zones. However, these zones no longer exist. The LSIO Schedule intends to provide permit exemptions for land in commercial zones, including the Activity Centre Zone, which was recently introduced to the Planning Scheme through Amendment C92. The Amendment clarifies the intent of the Planning Scheme by changing the wording to reference the current zones.

Not every change included in the Amendment proposed to clarify the intent of the planning controls. Some changes are simple spelling, grammatical or formatting corrections.

- b. Submission No. 6b queries why Schedule 1 to Clause 43.02 – *Design and Development Overlay (DDO1)* was amended. Submission No. 6b states that the proposed changes to DDO1 do not clarify the intent of the Planning Scheme and, instead, change the intent of the planning controls.

Council response:

The Amendment proposes to correct two grammatical errors in DDO1. It proposes to insert a bracket and to remove a full stop as shown below:

- Internal road cross sections shall be generally in accordance with Figure 1 (Doyles Road) and Figure 2 (Florence Street).

All development must be designed and sited to the satisfaction of the responsible authority and in accordance with the industrial development objective to ‘improve the design and appearance of new industrial areas and buildings’ (Greater Shepparton Planning Scheme, Clause 21.05-3).

The Amendment does not seek to change the intent of the planning controls for DDO1, nor does it seek to clarify the intent of the planning controls. This is a simple grammatical and formatting correction.

- c. Submission No. 6b queries the use of the phrase “*to the satisfaction of the Responsible Authority*” in DDO1 and suggests that this phrase is not clear in itself.

Council response:

The phrase “*to the satisfaction of the Responsible Authority*” in DDO1 was established through a separate planning scheme amendment process and is not proposed to be changed as part of the Amendment.

- d. Submission No. 6b states that the Amendment is a “*back door approach*” to change the Planning Scheme by introducing a number of recommendations from various adopted strategies. Submission No. 6b states this was not the intent of the Minister’s delegation to the CEO of the Greater Shepparton City Council.

Council response:

It is clearly stated in the amendment documentation Explanatory Report that the Amendment introduces recommendations from various adopted strategies. The Explanatory Report states:

“The Amendment also proposes to update the Municipal Strategic Statement (MSS) to include the following adopted strategies as reference documents and introduce some of their recommendations into the Planning Scheme:

- *Calder Woodburn Memorial Avenue Conservation Management Plan 2001;*
- *Greater Shepparton Cycling Strategy 2013-2017;*
- *Greater Shepparton Environmental Sustainability Strategy 2014-2030;*
- *Greater Shepparton Freight and Land Use Study 2013;*
- *Greater Shepparton Resource Recovery Precinct Feasibility and Site Selection Study 2016;*
- *Greater Shepparton Universal Access and Inclusion Plan 2013-2017;*
and
- *Strategic Review of Tatura Industrial Land Addendum Report (Interim) – Tatura Abattoirs Site, June 2016.”*

The authorisation letter (dated 28 March 2017) refers to the delegation provided from the Minister for Planning to Bruce Standish, Manager – Hume Regional Planning Service, to authorise a planning authority to prepare an amendment. It does not refer to delegation from the Minister for Planning to Council or the CEO, nor does it refer to delegation from the CEO to Council officers.

The Amendment has been prepared in accordance with this authorisation, including the conditions included in the authorisation letter dated 28 March 2017.

- e. Submission No. 6b notes the condition included in the authorisation letter requiring the deletion of the proposed additions to Clause 21.05 – *Environment*.

Council response:

In initially preparing the Amendment, Council officers proposed changes to the Clause 21.05 – *Environment* to introduce some of the recommendations of the *Greater Shepparton Environmental Sustainability Strategy 2014-2030* to the Planning Scheme. The authorisation received on 28 March 2017 required the removal of these changes to Clause 21.05 – *Environment* from the Amendment. Council officers met with Richard Whiting, Senior Regional Planning, Hume Regional Planning Services with the Department of Environment, Land, Water and Planning to ensure the conditions included in the authorisation of the Amendment were met.

- f. Submission No. 6b states:

*“Amendments **must** be clear and precise and properly representing the intent of the amendment with transparency and must be subject to a thorough and complete review before approval by the Minister or adoption by Council, notwithstanding previous amendments may not have been subject to those processes, the Council, now, without justification is requiring the Panel Chairman to change with a stroke of a pen the previous adopted Planning Scheme that may or may not have fundamental problems.”*

Council response:

Council officers are uncertain as to the meaning of this statement. Submitter No. 6 appears to not understand the Panel's role and the planning scheme amendment process. Council officers have not proposed any post-exhibition changes to the Amendment and are not *"requiring the Panel Chairman to change with a stroke of a pen the previous adopted Planning Scheme"*.

The Amendment has been prepared in accordance with the *Planning and Environment Act 1987* and the process undertaken has been transparent and allows thorough review. The Amendment has not been adopted by Council, nor approved by the Minister for Planning. Any recommendations of the Panel will be considered prior to any adoption or approval of the Amendment.

- g. The submission states that the Amendment *"is a misuse of power and is in contravention of a number of laws and the Victorian Charter of Human Rights"*.

Council response:

Council officers are uncertain how the Amendment is perceived by Submitter No. 6 as a misuse of power and in contravention of any laws or the Victorian Charter of Human Rights. The Amendment has been prepared in accordance with the *Planning and Environment Act 1987*.

Point 4:

Submission No. 6b queries the strategic justification of three documents, being:

1. Schedule 1 to the Activity Centre Zone;
2. Schedule 1 to the Design and Development Overlay; and
3. Schedule to the Land Subject to Inundation Overlay.

Council response:

These three schedules were included in the Greater Shepparton Planning Scheme through separate planning scheme amendment processes. The Amendment does not seek to change the intent of these schedules, rather it seeks to correct spelling and grammatical errors, or clarifies the intent of the controls, as explained in Point 3, above.

3. POST-EXHIBITION CHANGES

It should be noted that Council officers are not presenting any post-exhibition changes to the Panel. However, the Amendment was exhibited prior to the gazettal of the new Ministerial Direction 13 on the Form and Content of Planning Schemes. As such, the exhibited amendment documentation does not align with this new ministerial direction.

Redrafting the amendment documentation to meet Ministerial Direction 13 may, in some cases, appear substantive and could be viewed by the submitter as transformative. Council officers intend to work with representatives from the Department of Environment, Land, Water and Planning to ensure the Greater Shepparton Planning Scheme meets the Ministerial Direction 13 and is fit for purpose.

Council officers are cognisant of the volume of changes required to meet this Ministerial Direction. However, given the apparent misunderstanding expressed in Submission No. 6b in terms of Council attempting to change the intent of controls in the Planning Scheme,

Council officers are hesitant to present any additional changes at this time. If the Panel requests post-exhibition changes to align with the Ministerial Direction, this can be provided. With this in mind, Council officers seek the views of the Panel regarding communicating any changes required to meet Ministerial Direction 13 to the submitter and/or other land owners and occupiers.

Submitters should also note that, following the preparation of the Amendment, various Planning Scheme amendments have been approved and gazetted. The amendment documentation will be updated prior to any future Council adoption and/or subsequent Ministerial approval to ensure the changes are being made to the most recent version of the Planning Scheme. This means that the version of the planning scheme amendment documentation that was exhibited in April will differ from any future documentation that may be adopted by Council and/or approved by the Minister for Planning.

4. CONCLUSION

The Amendment proposes to correct spelling, grammar, formatting, zone and overlay errors, and clarify the intent of planning controls in the Greater Shepparton Planning Scheme. The Amendment also proposes to update the Municipal Strategic Statement to include a number of adopted strategies as reference documents and introduce some of the recommendations that they contain.

The matters raised in Submission No. 6b have been considered by Council officers and no changes are proposed to be made to the amendment documentation based on the concerns raised in the submissions. If further clarification is provided by submitters or by the Panel Chair, Council officers would welcome the opportunity to provide an additional written submission.

ATTACHMENT 1 – AUTHORISATION LETTER



Department of Environment Land, Water and Planning

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Wangaratta, Victoria, 3677
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Wangaratta, Victoria 3676
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www.delwp.vic.gov.au

File: FOL/17/16601

28 MAR 2017

Mr Peter Harriott
Chief Executive Officer
Greater Shepparton City Council
Email address: sam.kemp@shepparton.vic.gov.au

Dear Mr Harriott

PROPOSED GREATER SHEPPARTON PLANNING SCHEME AMENDMENT C197

I refer to your council's application for authorisation to prepare an amendment to the Greater Shepparton Planning Scheme. The amendment proposes to correct spelling, grammar, formatting, zone and overlay errors, and clarify the intent of planning controls, update the Municipal Strategic Statement (MSS) to include the following adopted strategies as reference documents and introduce the recommendations in the planning scheme.

Under delegation from the Minister for Planning, in accordance with section 8A of the *Planning and Environment Act 1987* (the Act) I authorise your council as planning authority to prepare the amendment subject to the following conditions:

- That the amendment documentation is revised in accordance with discussions with the department and a meeting with council officers on 24 March 2017, to the satisfaction of the department prior to exhibition of the amendment.
- Deletion of the proposed additions to Clause 21.05 Environment.
- That notice of the amendment be given to Native Title Services Victoria as the proposed amendment affects crown land.

The amendment must be submitted to the Minister for approval.

The authorisation to prepare the amendment is not an indication of whether or not the amendment will ultimately be supported.

Please note that [Ministerial Direction No. 15](#) sets times for completing steps in the planning scheme amendment process. This includes council:

- giving notice of the amendment within 40 business days of receiving authorisation; and
before notice of the amendment is given, setting Directions Hearing and Panel Hearing dates with the agreement of Planning Panels Victoria. These dates should be included in the Explanatory Report [Practice Note 77: Pre-setting panel hearing dates](#) provides information about this step).

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The Direction also sets out times for subsequent steps of the process following exhibition of the amendment.

The Minister may grant an exemption from requirements of this Direction. Each exemption request will be considered on its merits. Circumstances in which an exemption may be appropriate are outlined in [Advisory Note 48: Ministerial Direction No.15 – the planning scheme amendment process](#).

In accordance with sections 17(3) and (4) of the Act the amendment must be submitted to the Minister **at least 10 business days** before council first gives notice of the amendment.

Please submit the amendment electronically to planning.amendments@delwp.vic.gov.au

If you have any questions in relation to this matter, please contact Richard Whiting, Senior Regional Planner, Hume Regional Planning Services with the Department of Environment, Land, Water and Planning (03) 5895 4116.

Yours sincerely



Bruce Standish
Manager – Hume Regional Planning Services