

Our ref: **20240332**
Your ref:

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8 April 2024

Gareth Hatley
Victorian Planning Authority
35 Collins Street
MEBOURNE VIC 300

Via VPA online portal

Dear Gareth

**Shepparton South East PSP
Amendment C117gshe
Submission in relation to 650 Doyles Road, Shepparton**

We act on behalf of Margaret Alexander, the registered proprietor of 650 Doyles Road, Shepparton (**Land**).

We are instructed to make this submission in relation to the draft Shepparton South East Precinct Structure Plan dated February 2024 (**PSP**) on behalf of Mrs Alexander, who opposes the proposed PSP designations for the Land and proposed amendments to the Greater Shepparton Planning Scheme (**Scheme**).

Process

From the outset, we are instructed to express our client's disappointment in relation to the PSP consultation undertaken to date by the Victorian Planning Authority (**VPA**). The background studies for the PSP were prepared as early as 2018. The preparation of the PSP occurred between 2019 and November 2023.

The first notice of the PSP and indeed the first time our client was made aware of the PSP and the significant implications for her property was via a letter received on 9 February 2024. The letter advised that the due date for a submission to be made was 15 March 2024, allowing just 5 weeks for our client to consider the PSP and engage suitable representation.

The VPA has offered briefing sessions to the community, including on 7 March 2024, but have only provided 12 hours' notice of the scheduled session to our client's family representative in Shepparton. This is wholly unreasonable for our client and family representatives who are employed full time and not able to arrange to attend at short notice.

We are instructed that representatives of the VPA have also conducted themselves in an unprofessional manner at the briefing meetings and have failed to show any empathy or understanding for the significant implications of the PSP.

The consultation process undertaken to date is not procedurally fair and is prejudicial to our client's interests. The consultation process has caused considerable unnecessary stress for our client. Accordingly, our client reserves all rights to make further submissions after 15 April 2024 as required and to seek review of any defects in procedure.

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Background

Mrs Alexander has owned and occupied the Land since 20 June 1968.

The Land comprises an area of 6.15 hectares and is improved by an existing dwelling. Mrs Alexander has enjoyed the expansive rural property together with her husband for over 50 years, prior to his passing. Mrs Alexander raised children on the property and is now retired. She values the amenity the property provides and intended to spend her retirement years on the Land.

The Land is home to the Alexander family, who wish to remain, to honour the legacy of Geoffrey Robert Alexander, 2020 OAM recipient, for his lifelong contributions to charity work in the local Shepparton community.

The Land has been of interest to many real estate agents and locals, due to being one of very few in the Shepparton area, which offers the amenities and lifestyle choice but the Alexander family has no interest in selling and wishes to maintain the land for current and future occupation by members of the immediate family.

The Land is critical to the health and wellbeing of the Alexander family and the consequent needs for maintaining a particular type of living and lifestyle environment and has special value to the family.

The Land has been subject to land acquisition in 1991 by the Roads Corporation's Notice of Intention to Acquire, dated 16 October 1990 for land required by the Corporation being part of Lot 2 on Plan of Subdivision No. 39476 Parish of Shepparton, for the Shepparton Alternative Route, Shire of Shepparton. Prior to the Alternative Route and the Bridge over the Broken River, the property had been at the end of a dead end road, known as Doyles Lane.

The Land is vegetated with extensive native vegetation to support flora and fauna, which has been planted by the Alexander family over the 50+ years they have owned and occupied the Land. The trees are of personal significance to the Alexander family, spanning over multiple generations. The Land has been the location of weddings, significant family milestones and celebrations, connected to the Alexander family's commitment to supporting and hosting local charity events.

The Land has been registered under the Land for Wildlife nature conservation program (administered by Department of Conservation and Environment at time of registration) since 20 April 1982 (property number 08820001) to support the Alexander family's commitment to the maintenance and enhancement of native flora and fauna on private land.

The Land includes easement E-1 which has a width of 20.12 metre and is for drainage purposes to the benefit of State Rivers and Water Supply Commission (SR&WSC) and lot one on plan LP39476.

For background, our client has provided historical and current photographs of the Land. The photographs depict the enjoyment and memoirs of the Land experienced by the Alexander family over many years since their ownership. The photos also depict the high-quality vegetation and amenity values of the Land.

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Consultation documents

The PSP

The Land is identified at the southern edge of the PSP area on Plan 3 (Place Based Plan) of the PSP. The Land is identified as 'Existing urban area/developed land', with Broken River identified along the southern portion of the Land.

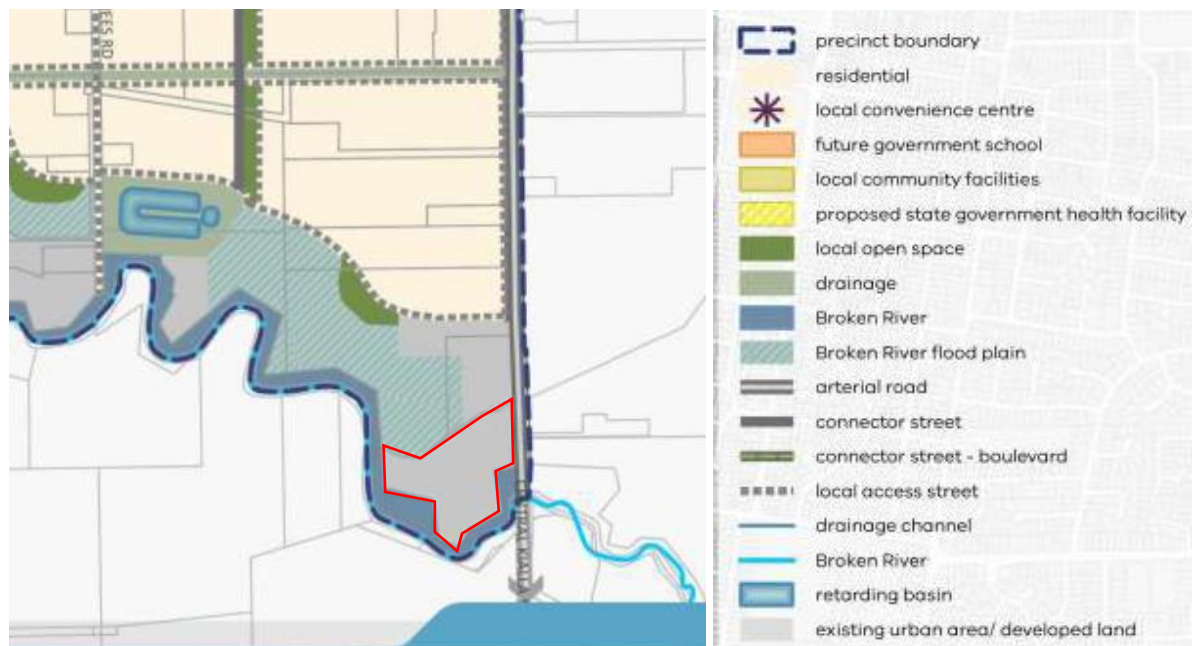


Figure 1: Extract from PSP Plan 3 – Place Based Plan
(Approximate boundaries to the land shown in red)

Other relevant designations in the PSP include:

- Plan 4 (Land Use Budget) identifies the Land as property 85;
- Plan 10 (Public Transport & Pathways) identifies an off-road shared path traversing the north of the Land to Doyles Road (PCP-01);
- Plan 12 (Integrated Water Management) identifies an 'other drain' located along the northern boundary of the Land within the drainage easement. Surrounding land to the northwest of the Land is identified for SC-01 'Broken River Floodplain';
- Plan 13 (Infrastructure & Development Staging) retains the designation of the Land as existing developed land;
- Plan 14 (Precinct Infrastructure Plan) identifies the off-road shared path traversing the north of the Land to Doyles Road.

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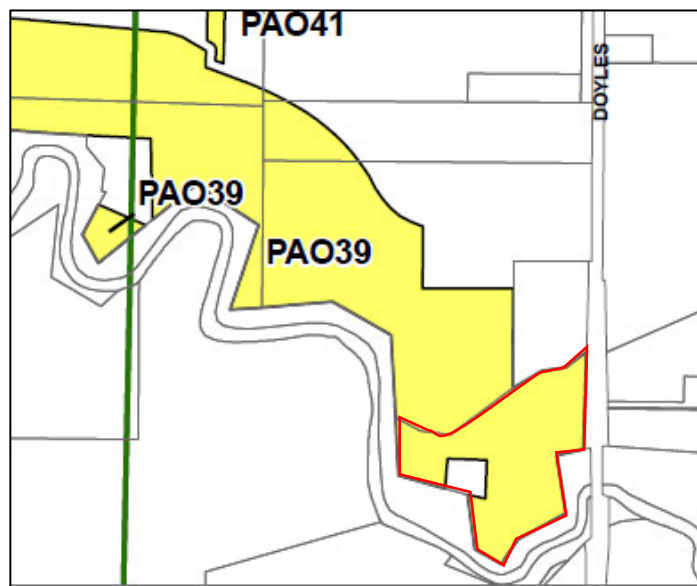
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Appendix 1: Property Specific Land Use Budget Table identifies the entirety of the Land as existing developed land and does not identify the Land for transport, community and education or open space purposes.

Table 8 (Integrated Water Management Infrastructure) in the PSP identifies properties 68, 75, 76, 81, 82, 83 and 84 as part of SC-01, which includes the purchase of land adjacent to the Broken River for the purposes of flood mitigation. The Land is not identified as forming part of SC-01.

Planning scheme maps

The Land is identified on the draft planning scheme maps (**Scheme Maps**) within the proposed Public Acquisition Overlay – Schedule 39 (**PAO39**). Draft clause 45.01 of the Scheme specifies PAO39 is for the purpose of Stormwater Infrastructure – Shepparton South East PSP.



*Figure 2: Extract from planning scheme map – PAO39
(Approximate boundaries to the land shown in red)*

Other relevant designations in the Scheme Maps include

- The Land is identified for rezoning to Urban Growth Zone – Schedule 2 on the proposed zoning map, with an applied zone of the Farming Zone.
- The Land is identified to be included within the Development Contributions Plan Overlay – Schedule 5;
- The Floodway Overlay is proposed to be extended across the entirety of the Land.

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The Shepparton South East Development Contributions Plan – February 2024 (DCP)

Table 7 in Section 5.3.8 – Calculation of Costs – Development Infrastructure Levy in the DCP includes an estimated project cost for SC-01, which includes land costs of \$ 3,151,653.24 for 23.38 hectares of land, comprising those lots included at Table 8 of the PSP, but not including the Land.

Appendix A – Property Specific Land Budget in the DCP similarly identifies the Land as comprising 6.15 hectares of existing developed Land, with zero hectares of developable land.

Background documents

The PSP and DCP are supported by the ‘Shepparton South East Precinct Structure Plan Land Valuation Assessment – March 2023’ prepared by LG Valuation Services (**Valuation Report**) on behalf of Greater Shepparton City Council (**Council**) and the VPA. The Valuation Report does not include a valuation for the Land.

The PSP and DCP are supported by a ‘Memorandum from Water Technology dated 17 May 2022’, ‘Shepparton South East Precinct Structure Plan – Stormwater Design – July 2022’ prepared by Alluvium and ‘Stormwater Functional Design Drawings – 2022’ prepared by Alluvium (**Stormwater Design**).

The Stormwater Design identifies six (6) catchments, but excludes the Land. Each catchment includes a retarding basin. The proposed development scenario in the Stormwater Design relies on ‘significant earthworks’, to fill development land above the 1% AEP, with approximately 370,000-420,000m³ of imported soil required (not including the floodplain storage requirements).

The PSP and DCP are supported by the ‘Biodiversity Assessment for the Proposed Shepparton South East Precinct Structure Plan, Shepparton, Victoria – February 2022’ prepared by Ecology and Heritage Partners (**Biodiversity Assessment**). The Biodiversity Assessment identifies large patches of Floodplain Riparian Woodland (EVC 56) and Plains Woodland (EVC 803) on the Land, as well as Important Victorian Wetlands’.

Submissions

Our client **opposes**:

1. The inclusion of the Land within the PSP and DCP;
2. The inclusion of the Land in PAO39, including the excision of the existing dwelling on the Land’;
3. The inclusion of an off-road shared path traversing the north of the Land to Doyles Road; and
4. The introduction of significant fill to facilitate development to the north of the Land, without proper consideration of flooding impacts on land to the south.

Our client submits that the Land should be excluded from the PSP and DCP.

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PAO39 and inclusion of the Land in the PSP

The Land is not identified for any purpose under the PSP or DCP, it is located at the periphery of the PSP, comprising existing developed land. Indeed, supporting documentation to the PSP does not even identify the Land within the PSP.¹ Given the Land is not necessary to further the objectives of the PSP or to provide infrastructure, it should be removed from the PSP.

The inclusion of the Land in PAO39 is also unjustified. Relevantly, the purpose of the public acquisition overlay in clause 45.01 of the Scheme is:

...To identify land which is proposed to be acquired by a Minister, public authority or municipal council.

To reserve land for a public purpose and to ensure that changes to the use or development of the land do not prejudice the purpose for which the land is to be acquired.

...

(our emphasis)

The Explanatory Report to the Amendment provides the following explanation for the introduction of public acquisition overlays in the PSP:

The application of the Public Acquisition Overlay to land required for stormwater drainage infrastructure will ensure that the land is reserved for a future public purpose.

It is evident from the above summary of the PSP, DCP and background documents, that the Land is not identified as being required for stormwater drainage infrastructure or floodplain management. The inclusion of the Land in PAO39 is not supported by the technical assessments.

Specifically:

- the land is not identified within SC-01 and is otherwise identified as existing developed land in the PSP and DCP.
- the excision of the existing dwelling on the Land from PAO39 confirms that the acquisition of the Land is not necessary to provide for flood plain storage across the entirety of the Land.

Our client submits there is **no** public purpose for the acquisition of the Land. The inclusion of the Land in PAO39 cannot possibly proceed in the absence of the need to acquire the Land for a public purpose.

¹ See for example Memorandum from Water Technology dated 17 May 2022

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As shown in Figure 3 below, the excision of the dwelling from PAO39 allows for the retention of the dwelling, but without any access from Doyles Road and surrounded by land designated for an unknown public purpose. This is not a logical planning outcome.

Our client strongly objects to an outcome where the Land is acquired as proposed by PAO39, whereby the existing dwelling remains, surrounded by acquired land. Such an outcome is inconsistent with the current amenity values of the Land.



Figure 3: Proposed PAO39
(Source: VPA)

The imposition of PAO39 as proposed on the Land is misconceived, unnecessary, illogical and lacks planning merit.

Amendment sought: The Land should be excluded from the PSP.

Alternative amendment: If the VPA does not support the removal of the Land from the PSP, the proposal to include the Land within PAO39 should be abandoned.

Off-road shared path

PCP-01 is proposed to traverse the northern portion of the Land to connect with Doyles Road, but the DCP does not allow for any project costs for the acquisition of the land for the shared path. The Explanatory Report to the Amendment does not refer to the public acquisition overlay being applied for the purpose of the path. Any acquisition for this purpose would be inconsistent with the intent of the proposed PAO39.

The location of the shared path fails to consider the existing drainage easement and the significant patches of plains woodland EVC in the north of the Land.

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The shared path does not need to extend south into the Land. The preferred design should be to locate the shared path within the boundary of 630 Doyles Road.

Amendment sought: The Land should be excluded from the PSP and the off-road shared path removed from the Land in the PSP.

Drainage

Our client is concerned regarding the accuracy of the Flood Information Report for the Land as available on the Community Flood Intelligence Portal for the Goulburn Broken Catchment Management Authority. The report indicates that the dwelling on the Land was flooded in both the 1974 and 1993 floods, to a depth of 0.17/0.18 respectively. The report is incorrect as the floor was not flooded during these events. Consequently, our client is concerned regarding the efficacy of their flood/terrain modelling, both in the past and particularly in respect of future events.

The concerns in relation to future events are exacerbated by the various iterations of development options presented in the background material, which has culminated in a development scenario which requires significant earthworks to facilitate development above the 1% AEP and a loss of floodplain storage.

On its face, the background material, fails to have proper regard for potential future flooding impacts for the Land due to the change in conditions to the north. Pursuant to section 16 of the *Water Act 1989*, liability arises out of the unreasonable flow of water. The PSP should properly consider any flood impacts arising from the significant earthworks in the northern portion of the PSP.

Conclusion

For reasons set out above, our client submits that the Land should be excluded from the PSP and DCP. It follows that the proposal for an off-road share path must be abandoned.

If the VPA and Council pursues the inclusion of the Land in the PSP and DCP:

- the proposal to include the Land in PAO39 must be abandoned as there is no public purpose to warrant the inclusion of the Land in a public acquisition overlay;
- the shared path should be deleted off the Land due to the potential impacts on native vegetation.

If you require any further information regarding this submission, please contact the undersigned.

Yours faithfully



Gemma Robinson
Senior Associate







