

15 April 2024

FROM

Jack Chiodo
Principal Planner
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Adeline Lane
Principal
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To

Gareth Hatley
Strategic Planning Manager – Regional Victoria
Victorian Planning Authority
[REDACTED]

AND TO:

Jack Moloney
Planner – Planning services
Victorian Planning Authority
[REDACTED]

Dear Gareth and Jack,

**SUBMISSION IN RESPECT OF SHEPPARTON SOUTH EAST PSP & DCP
AMENDMENT C117GSHE
125 McPHEES ROAD, SHEPPARTON (LAND)**

This submission is made on behalf of TB Innes-Irons and JM Innes-Irons concerning Draft Amendment C117gshe to the Greater Shepparton Planning Scheme (**Scheme**) and the draft Shepparton South East PSP and DCP (together, the **Amendment**).

In general terms, while our clients appreciate the need to facilitate the growth of Shepparton to the south-east of the established urban area, our clients have serious concerns regarding specific matters that are outlined in this submission that we seek to be addressed by the planning authority.

Parts of our client's Land that are of critical importance to the conduct of a farming enterprise carried out by our clients are designated through the Amendment as subject to future acquisition by Greater Shepparton City Council. The Amendment appears to proceed in a mistaken assumption that only 'excess land' is proposed for inclusion in the PAO (being land that is excess to the existing dwellings, a curtilage to existing dwellings and points of vehicle access). This assumption is flawed and, our client posits, was not rigorously (or even sufficiently) investigated prior to the finalisation of the Amendment's strategic basis or the proposed amendments to the ordinance.

This submission responds to the 'Exhibited Documents' that are available on the Engage Victoria website and seeks to outline each issue of concern and the requested changes that will mitigate the inequitable and unacceptable impact to our clients, together with serving to enhance the deliverability of the PSP.

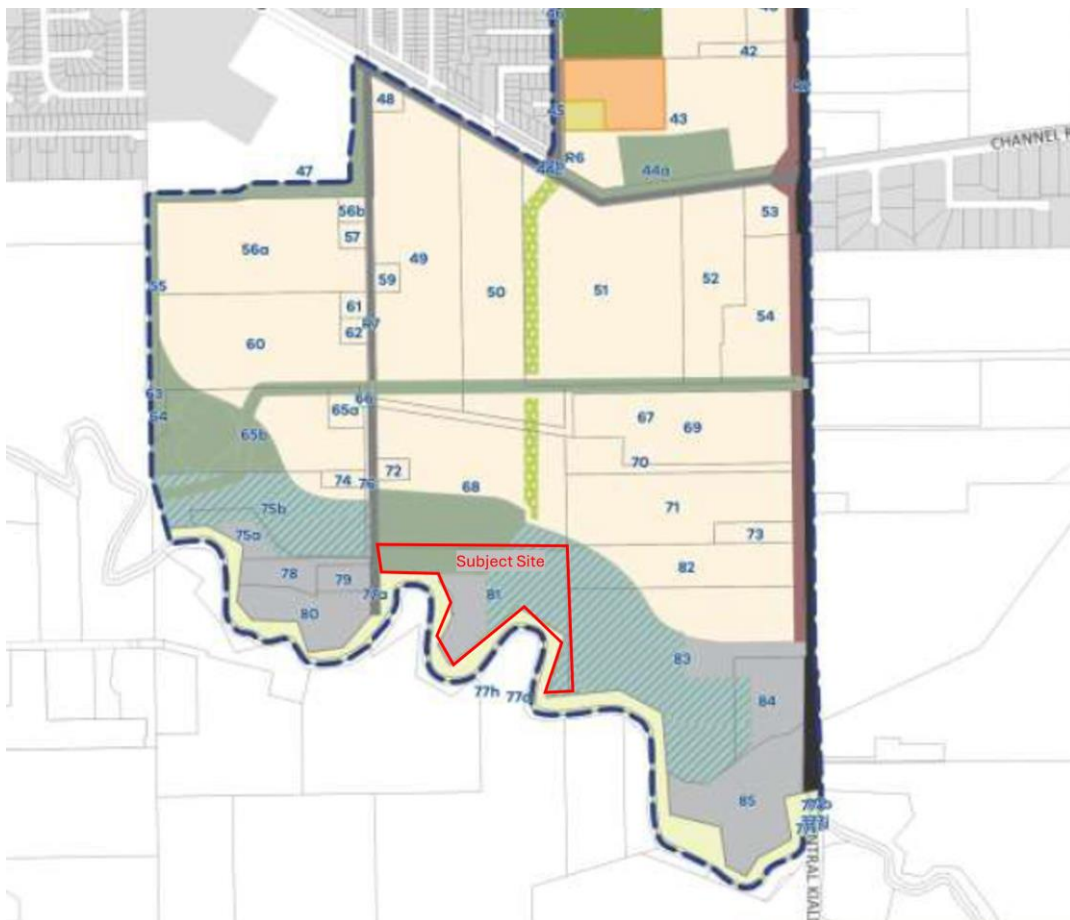
This submission has been structured to identify and explain our client's key issues.

We trust the contents of this submission are clear however, we look forward to working closely with the Victorian Planning Authority (VPA) as the Amendment progresses.

1. Subject Site

The Land:

1. is located at 125 McPhees Road in Shepparton and is located within the Shepparton South East Precinct (the Precinct);
2. is identified as Property 81 within the PSP, as shown below;
3. is located east of McPhees Road, south of the intersection of McPhees Road and bound north to the meander of the Broken River;
4. is irregular in shape and has a total area of approximately 7.32 hectares;
5. is currently partly used for accommodation (our client's existing dwelling and associated outbuildings and a swimming pool);
6. is also currently partly used for productive purposes, comprising an equestrian enterprise into which our clients have made a significant investment including through the establishment of a range of facilities, including notably a horse training arena, stables, loose boxes, electric fencing, irrigation, trees and foaling paddock; and
7. is located more broadly in a predominantly farming and agriculture area of productive value.



The Site is currently affected either partially or wholly by the following planning controls:

1. Urban Floodway Zone (**UFZ**);
2. Farming Zone, Schedule 1 (**FZ1**);
3. Floodway Overlay (**FO**);
4. Specific Controls Overlay, Schedule 3 (**SCO3**);
5. Land Subject to Inundation Overlay (**LSIO**); and
6. Bushfire Management Overlay (**BMO**).

2. The Amendment

We understand that the Amendment proposes the following to the Land by way of planning controls:

1. rezone the entire land to the Urban Growth Zone, Schedule 2 (**UGZ2**);
2. deletion of the LSIO;
3. extend the FO to affect the entirety of the Land;
4. apply the Public Acquisition Overlay (**PAO**) to parts of the Land; and
5. apply the Development Contributions Plan Overlay, Schedule 5 (**DCPO5**) to the entirety of the Land.

Under the PSP:

1. on Plan 3: Place Based Plan:
 - a. the part of the Land that contains the dwelling is designated as an 'existing urban area/developed land';
 - b. the northern part of the Land is shown to contain part of a retarding basin and the associated drainage area;
 - c. the southern boundary of the Land is shown as part of the Broken River environment;
 - d. the remainder of the Land is designated as the 'Broken River Floodplain';
2. on Plan 7: Open Space and Community Facilities:
 - a. a large part of the Land is designated as being within a 'Waterway and Drainage Reserve' (specifically, coinciding with the location of the retarding basin and the 'Broken River Floodplain' from Plan 3);
3. on Plan 10: Public Transport and Pathways;
 - a. shows an 'Off-Road Shared Path' moving through the Land, roughly mirroring the alignment of Broken River and passing through the area designated as the 'existing urban area/developed land' on Plan 3;

4. on Plan 12: Integrated Water Management;
 - a. shows the retarding basin (as identified on Plan 3) designated as 'RBWL1';
 - b. shows the 'Broken River Floodplain' (as identified on Plan 3) as SC-01 (identified as 'flood mitigation' for the 'Broken River Floodplan' on Table 8);
5. on Plan 13: Infrastructure and Development Staging;
 - a. shows all of the Land, with the exception of the area identified as 'existing urban area/developed land' on Plan 3, as being within the 'medium – 5 to 15 years' stage;
6. on Plan 14: Precinct Infrastructure Plan;
 - a. shows the 'Off-Road Shared Path' (as identified on Plan 10) as designated as 'PCP-01' (described in Table 9).

3. Submissions

At a high level, our client raises serious concerns with the combination of the controls and infrastructure proposed for the Land, including:

- lack of consistency between different controls and infrastructure locations;
- lack of clarity regarding the application of controls and chosen infrastructure locations;
- lack of equity in the nominated controls and chosen infrastructure locations; and
- lack of clarity regarding the ultimate intended outcome for the Land.

The rationale for the selection of controls on our clients' land appears to be best explained at section 7.1.2 of the Shepparton South East Background Report (VPA, February 2024) as:

As a result of this assessment:

- The need for a floodplain area adjacent the Broken River was defined by the GBCMA that will result in 23.28ha of land being set aside to protect future development from the impacts of riverine flooding. Given the new flood plain identification the existing Urban Floodway Zone (UFZ) be amended to align with this area. This area of land will add an additional 5,000m³ of flood storage capacity within the precinct and ensure that riverine flooding will not impact new development of the PSP. Given proposed UFZ zoning no further development will be permitted within this area and Council will acquire large proportion of the flood plain area, via the use of a public acquisition overlay (PAO). No houses currently within the floodplain will be acquired by Council via the PAO, only excess land surrounding, enabling existing houses and access arrangement to remain. Existing houses within the flood plain will be able to remain, however will not be able to intensify or subdivide unless permitted by Council and the GBCMA.
- The GBCMA has advised against location of any stormwater infrastructure assets within 50m of the top of the bank from the Broken River within the floodplain area as this could have potential geomorphic consequences created by lateral migration of the river channel impacting the integrity of the assets.
- The need for a 30m wide overland flow path running east-west across in the south of the precinct is required to convey flows entering the precinct east of Doyles Road. The overland flow path is required to meet GBCMA requirements for no water level increase of more than 2cm outside the study area compared with the existing conditions for the 1% AEP plus climate change Broken River flood event.

Stepping through the different documents, the background flood modelling (Memorandum, Water Technology, 17 May 2022) identifies the southern section of the PSP area as being subject to flooding:

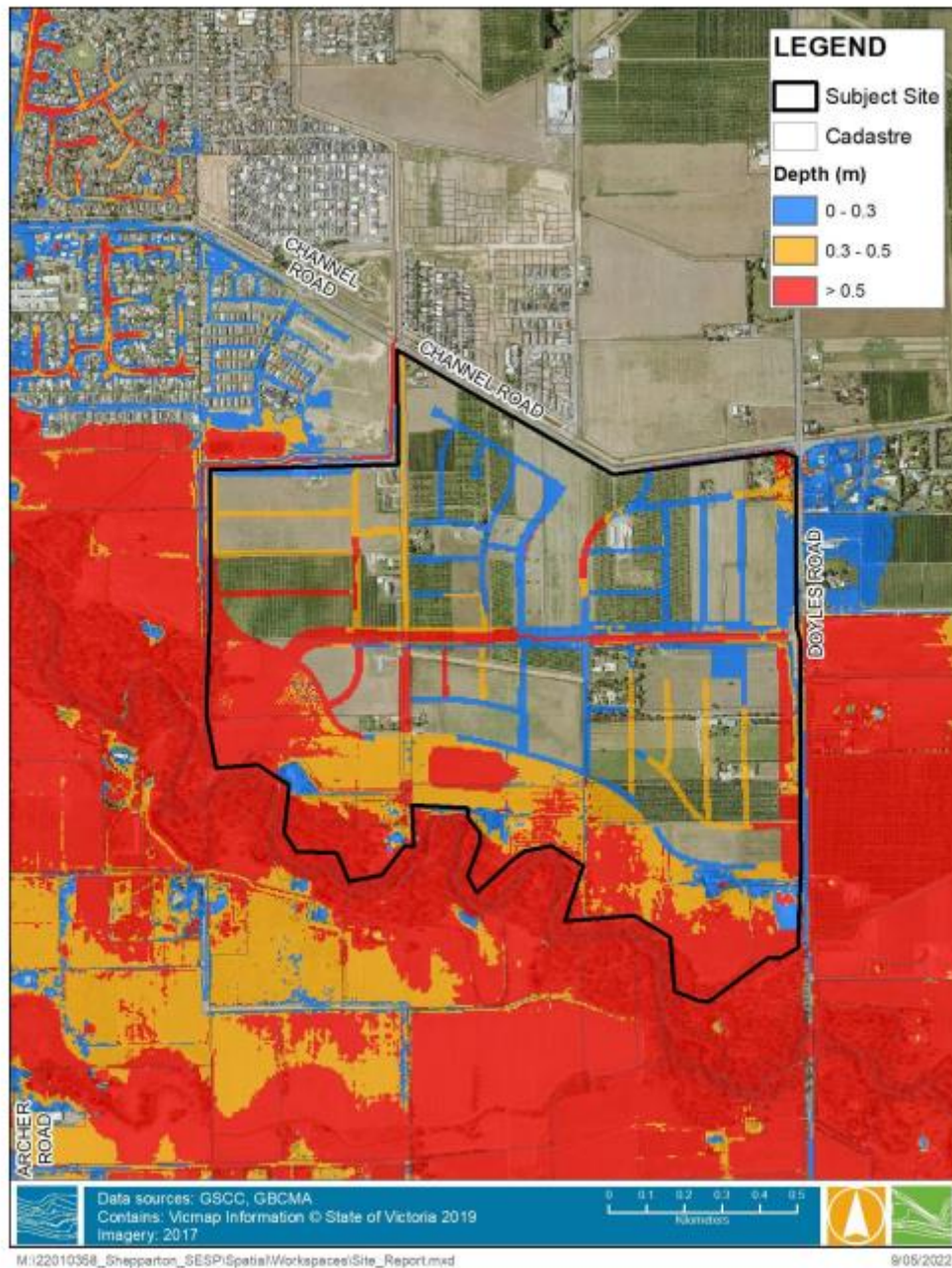
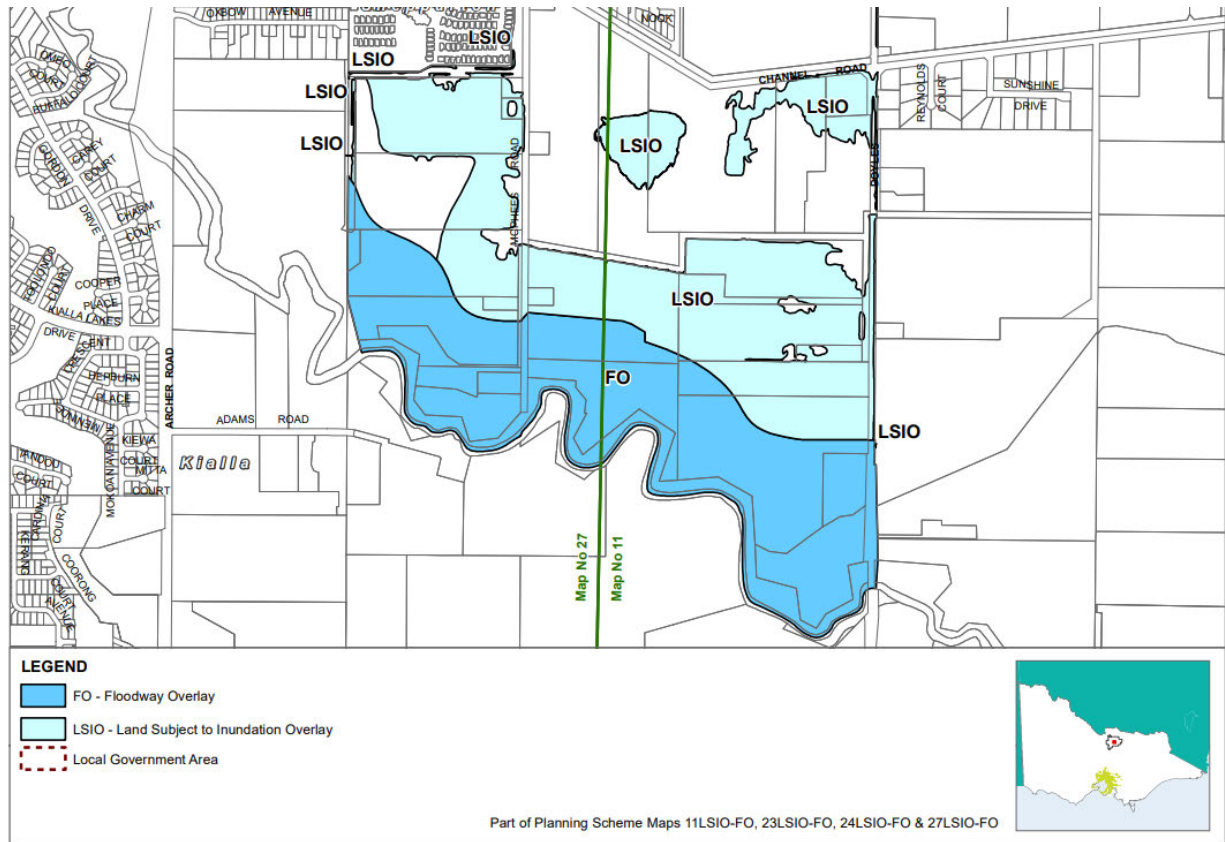
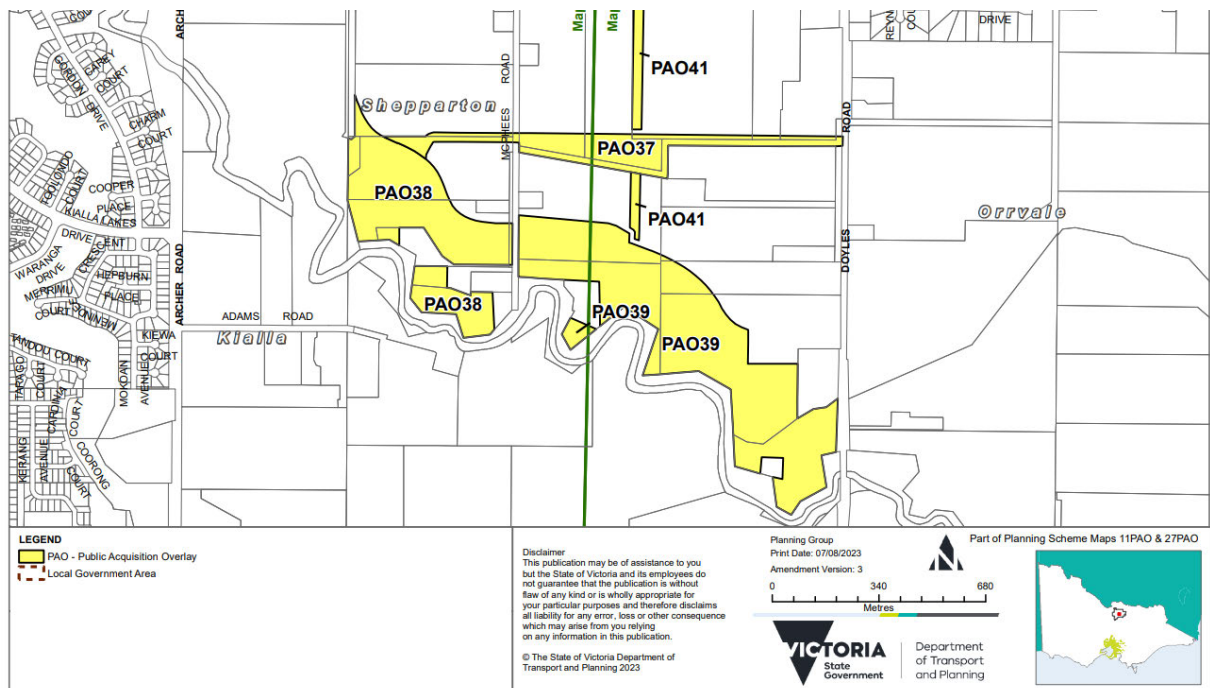


Figure 7 Development Option 2 – Flood Depth (1% AEP with Climate Change)

The proposed controls then appear to account for this with the FO applies in a manner that reflects the identified floodplain land:



Next, the PAO appears to be proposed to be applied to the entire floodplain area, save for some 'cutouts' where existing dwellings (and other development) is located:



In the first instance, it is unclear from any of the exhibited documents what method has been used to define the curtilage around the existing dwellings that is proposed to be free from the PAO. What exactly has been used to define the 'excess land' (to use the phrase from the Background Report) that is to be subject to the PAO is unclear.

It is equally unclear if any investigation was undertaken of rural enterprises carried out in association with residential land uses in the southern portion of the PSP area prior to the preparation of the exhibited documents. This is both surprising and disappointing.

At any rate, the wide-ranging application of the PAO to majority of our clients' land is inequitable, particularly in light of the lack of any quantifiable 'benefit' that our client will receive from the PSP – the Land will remain within the underlying FZ or the UFZ and will be largely undevelopable due to the FO were the Amendment to be approved.

Second, whilst the PAO may roughly align with the floodplain land as identified in the background reports, the proposed boundaries of the PAO do not correlate with the land identified as being within 'SC-01' on Plan 12, accommodating an additional area to the south of our clients' Land that is identified as 'existing urban area/developed land' on Plan 12 (noting this issue also arises for other surround properties):



Third, PAO39 is identified in the Schedule as being for 'Stormwater Infrastructure – Shepparton South East Structure Plan'.

Plan 12 does not identify any stormwater infrastructure located within the southern portion of the Land, nor does it identify this part of the Land as being within the SC-01 floodplain. The PSP seems to designate this section of the Land as being within the curtilage of the existing development on the Land, yet this is then not reflected in the proposed boundaries of the PAO.

To the extent that the PAO may be in place in this location to accommodate the proposed 'Off-Road Shared Path', this is not consistent with the stated intent of PAO39.

As a result, the application of the PAO is unclear and, in part, is not supported by the designation of land within the PSP itself.

The application of the PAO to a portion of our client's Land lying to the east of the domestic fenced area containing our client's dwelling, swimming pool etc contains a significant asset of critical importance to the equestrian enterprise carried out by our clients in conjunction with the dwelling land use.

Further, to the extent that the 'Off-Road Shared Path', being a public facility, is proposed to run through the area that is to remain as 'existing urban area/developed land' (as identified on Plan 12), this is a wholly inequitable outcome in context of the proposal to acquire the vast majority of the Land for the otherwise public purposes of drainage.

It is deeply disappointing that the planning authority has failed to undertake a sufficiently thorough analysis of the uses conducted by our clients on their Land or seek to understand the impacts of the application of the PAO as proposed in the Amendment to both of the land uses made of the Land prior to finalising the Amendment documentation.

4. Requested changes

Please contact Jack Chiodo on [REDACTED] or [REDACTED] or Adeline Lane on [REDACTED] or [REDACTED] with any questions.

Jack Chiodo
Principal Planner
Jackson Lane Legal