

MINISTERIAL AMENDMENT C211 - RESTRUCTURE OVERLAY ANOMALIES

Report Author: Strategic Planner
Responsible Officer: Director Planning, Design and Development
Ward(s) affected: Chandler; Lyster; O'Shannassy; Streeton;

The author(s) of this report and the Responsible Officer consider that the report complies with the overarching governance principles and supporting principles set out in the Local Government Act 2020.

CONFIDENTIALITY

This item is to be considered at a Council meeting that is open to the public.

SUMMARY

Following the approval of Amendment C177 on 7 August 2021 that updated the mapping of the Restructure Overlay in the planning scheme, a small number of inconsistencies between the Restructure Overlay and the linked Incorporated Document *Restructure Plan for Old & Inappropriate Subdivisions in Yarra Ranges Council, April 2021* that was included in the scheme through Amendment C177 have been identified.

Amendment C211 proposes to:

- Amend the Restructure Overlay in a number of locations across the municipality where there is inconsistency with mapping boundaries in the Incorporated Document or where cadastral updates have resulted in misalignment of Overlay boundaries; and
- Update maps within the Incorporated Document to ensure they are consistent with the Planning Scheme maps.

As the amendment is administrative in nature to correct errors, it is proposed to request the Minister for Planning to use her powers of intervention under Section 20(4) of the *Planning and Environment Act 1987* to prepare, adopt and approve the amendment to the Yarra Ranges Planning Scheme.

Ministerial Amendments are exempt from giving notice and as such the amendment will not be required to undergo an exhibition period. All but one item have previously been exhibited as part of Planning Scheme Amendment C177.

RECOMMENDATION

That Council

1. ***Request the Minister for Planning to prepare, adopt and approve Amendment C211 to the Yarra Ranges Planning Scheme under Section 20(4) of the Planning and Environment Act 1987 to:***
 - (a) ***Correct and clarify the Restructure Overlay mapping in a number of instances where it has been found to be inaccurate or unclear.***
 - (b) ***Amend the Incorporated Document “Restructure Plan for Old and Inappropriate Subdivisions, April 2021”.***
 - (c) ***Make consequential changes to the Schedule to Clause 45.05 (Restructure Overlay), and the Schedule to Clause 72.04 (Table of Documents Incorporated into this Scheme).***

RELATED COUNCIL DECISIONS

At the Council Meeting of 8 September 2020 Council resolved to submit Amendment C177 to the Minister for Planning to consider its approval, in accordance with section 31 of the *Planning and Environment Act 1987*.

The amendment was subsequently approved and gazetted by Minister for Planning on 27 August 2021.

DISCUSSION

Purpose

Amendment C211 proposes to update the Restructure Overlay in the Yarra Ranges Planning Scheme and the associated Incorporated Document *Restructure Plan for Old & Inappropriate Subdivisions in Yarra Ranges Council, April 2021* to remove inconsistencies and anomalies that have been identified since approval of Amendment C177 in August 2021.

Background

The Restructure Overlay in Yarra Ranges is a translation of restructure controls in the four former Shires of Lilydale, Sherbrooke, Healesville and Upper Yarra, prior to Council amalgamation. The Restructure Overlay contains plans which show the way land can be subdivided, consolidated and developed in response to various risk factors such as landslip and bushfire, and were mostly created in the late 1970's and 1980's.

In September 2020, Council adopted Amendment C177 which included a significant update to the Restructure Overlay mapping and other changes to its operation to

improve the fairness of the Overlay for landowners and acknowledge actions already completed by landowners in response to the previous controls.

Following adoption of the Amendment, several cadastral changes in the State Government's official state-wide planning zone and overlay maps (VicPlan) were made along Ferny Creek and the Yarra River, and a small number of anomalies and inconsistencies between the Restructure Overlay and the Incorporated Document *Restructure Plan for Old & Inappropriate Subdivisions in Yarra Ranges Council, April 2021* were identified.

As a result of these matters, there is now a misalignment between planning scheme maps, property boundaries and the Restructure Overlay maps in the Incorporated Document.

Amendment C211 proposes to update the mapping to correct these anomalies and inconsistencies.

Key Issues

The amendment proposes to make the following changes.

Item 1: Restructure Overlay RO36

RO36 extends along the Ferny Creek for a distance of 360 metres. The application of the Restructure Overlay is inaccurate for many of the affected properties and does not correspond to property title boundaries.

The amendment proposes to:

- Amend the Restructure Overlay RO36 to align it with the cadastral boundaries on the following properties - 58 Glenfern Avenue, Upwey and 8-10, 12-14, 16, 20, 22-28, 30-34, 36-40 Torry Hill Road, Upwey;
- Remove RO36 from part of 58 Glenfern Avenue, Upwey & the creek reserve adjacent to 58 Glenfern Avenue, Upwey and 16, 18, 20, 22-28, 30-34, 36-40, 42 & 44 Torry Hill Road, Upwey; and
- Update the Incorporated Document Restructure Plan for Old and Inappropriate Subdivisions in the Yarra Ranges Council, April 2021 to show the overlay changes to RO36 and updated cadastre map of the area.

These refinements of the RO mapping were exhibited as part of the technical reports supporting Amendment C177, however the accompanying planning scheme maps were not included in the suite of exhibition documents to enable enactment of the changes in the planning scheme.

In addition, following the approval of Amendment C177, the cadastre was updated along Ferny Creek. Amendment C211 therefore proposes to realign the restructure overlay to match the new cadastral boundaries updated in late August 2021.

Item 2: Changes to the Restructure Overlay RO42

6 Bay Street, Tecoma is a proposed new address, which will consolidate two lots that are included in RO42. Currently, the allotment pattern of the Restructure Overlay does not align with the property boundaries and to meet the requirements of the Restructure Overlay for a dwelling, an additional small area of adjoining land, that is part of the adjacent property 4 Bay Street, needs to be included in the lot consolidation for 6 Bay Street.

The amendment proposes to update the Incorporated Document *Restructure Plan for Old and Inappropriate Subdivisions in the Yarra Ranges Council, April 2021* to show a revised restructure boundary between the two properties at 4 and 6 Bay Street, Tecoma. This change will align the mapping of RO42 with the property boundary, which will then allow the consolidated lots to meet the requirements for an additional dwelling.

As the Restructure Overlay RO42 allotment pattern does not currently align with the cadastral property boundaries, the requirement for a small part of land on the adjoining property is considered to be an anomaly.

The request for this change has been made by the owner of 6 Bay Street and Council has received a letter of support from the owner of 4 Bay Street.

Item 3 and 4: Changes to the Restructure Overlay RO44

The amendment proposes to update the Incorporated Document *Restructure Plan for Old and Inappropriate Subdivisions in the Yarra Ranges Council, April 2021* to reapply Restructure Overlay RO44 to 21 James Street, Selby.

There is currently an inconsistency between the mapping of RO44 in the Incorporated Document and the Planning Scheme maps. The planning scheme maps that formed part of Amendment C177 incorrectly showed RO44 as being deleted from 21 James Street, Selby, however the Incorporated Document showed it correctly as part of RO44. The property contains two lots which require consolidating in order for the RO to be deleted from the site which has yet to occur. The amendment proposes to resolve this inconsistency by re-applying the RO to the site.

The amendment also proposes to update the planning scheme map to re-apply RO44 to the closed road Black Hill Parade, Selby. The Incorporated Document Restructure Plan for Old and Inappropriate Subdivisions in the Yarra Ranges Council, April 2021 correctly shows the closed road included in RO44.

No private properties require this road for access. Displaying the closed road as part of a Restructure Overlay is an allowable way to display it and has been done elsewhere in the Incorporated Document. Should an adjoining owner wish to make application to purchase the road, that is still possible.

Item 4: Restructure Overlay RO65

The amendment proposes to amend Restructure Overlay RO65 to align with the property boundary at 521 Mt Dandenong Road, Olinda.

There is currently an inconsistency between the Incorporated Document *Restructure Plan for Old and Inappropriate Subdivisions in the Yarra Ranges Council, April 2021* and the Planning Scheme maps. The property contains two lots, the planning scheme maps need to be updated to show both lots as being part of RO65.

Item 5: Restructure Overlay RO73

The amendment proposes to amend the Restructure Overlay RO73 to align with the cadastre boundaries of 95-99 and 103 Ferndale Road, Upper Ferntree Gully. As part of the realignment, the amendment will also remove RO73 from parts of the adjacent creek reserve and 175-191B Glenfern Road.

The refinements along the waterway were exhibited as part of the technical documents supporting Amendment C177, however were not reflected in the final planning scheme maps for approval.

In addition, following approval of Amendment C177, on 03 Mar 2022, the cadastre was updated along Ferny Creek. The amendment proposes to realign the restructure overlay to match the updated cadastral boundaries.

These changes will also require an update to the Incorporated Document *Restructure Plan for Old and Inappropriate Subdivisions in the Yarra Ranges Council, April 2021* to show the changes to RO73.

Item 6: Restructure Overlay RO101

RO101 extends along the Yarra River for a distance of 1.4 kilometres. The application of the Restructure Overlay is inaccurate for many of the properties and does not correspond to property title boundaries.

The amendment proposes to amend the Restructure Overlay RO101 to align with the following property boundaries along the Yarra River: 17, 21, 21A, 25, 29 & 31 Fisherman Drive, Reefton.

The planning scheme maps to remove the Restructure Overlay from parts of the affected properties was included in the approved Amendment C177, however due to a technical error the associated planning scheme map to apply the RO101 to affected land was not included.

These changes will also require an update to the Incorporated Document *Restructure Plan for Old and Inappropriate Subdivisions in the Yarra Ranges Council, April 2021* to show the additional areas added to the map of RO101.

Options considered

Option 1

Seek the preparation, adoption and approval of a Ministerial Amendment for the anomalies detailed in this report through utilising section 20(4) of the *Planning and Environment Act 1987*.

This process enables the Minister for Planning to exempt herself from the notice requirements of the Act and the amendment would be prepared, adopted and approved by the Minister without any public notice.

The effect of the exemption is that third parties will not receive notice of the amendment and will not have the opportunity to make a submission or be heard by an independent planning panel.

Option 2

Council prepares the amendment and resolves to seek authorisation from the Minister for Planning to prepare and exhibit the amendment. This would require significant officer time and would incur associated expenses for exhibition, and while unlikely, costs associated with a Planning Panel.

Option 3

Include the proposed changes in the next corrections amendment.

Council is required to regularly review the provisions of the planning scheme for which it is a planning authority in accordance with the *Planning and Environment Act 1987*. Council has recently exhibited and adopted a corrections and anomalies amendment (Amendment C197).

The next corrections amendment may be at least two years away and holding off on making the corrections would result in known anomalies and contradictions remaining in the Planning Scheme.

Recommended option and justification

It is recommended Option 1 be pursued to ensure the timely correction of known anomalies and errors in the planning scheme.

The proposed changes to the planning scheme are correcting anomalies and errors that were all, (except for the proposed changes to RO42), included in the exhibited and adopted Amendment C177, and have therefore been through a public exhibition process. No submissions were received in relation to the properties identified in this report.

As noted above the owners of 4 and 6 Bay Street, Tecoma are in support of the changes to RO42.

Option 1 has been discussed with the Department of Environment, Land, Water and Planning (DELWP) who are supportive of utilising Section 20(4) of the *Planning and Environment Act 1987* to correct the identified anomalies.

FINANCIAL ANALYSIS

The costs associated with the preparation of Ministerial Amendment C211 can be accommodated within the operational budget for Strategic Planning.

The correction of anomalies will reduce planning enquiries, and consequently lessen the impact on Council's resources. Financial implications are otherwise limited to costs to administer the amendment and associated officer time.

APPLICABLE PLANS AND POLICIES

This report contributes to the following Council strategies and plans:

- Council Plan 2021-25: Quality Infrastructure and Liveable Places and Protected and Enhanced Natural Environment; and
- Yarra Ranges Planning Scheme – Clause 1.0 Purpose of the Yarra Ranges Planning Scheme: To provide a clear and consistent framework within which decisions about the use and development of land can be made.

RELEVANT LAW

The planning scheme amendment has been prepared in accordance with the legislative requirements of the *Planning and Environment Act 1987*.

SUSTAINABILITY IMPLICATIONS

Economic Implications

Overall economic impacts will be minor, but there will be some benefit through removing redundant provisions and clarifying the ability to develop and use land.

Social Implications

There will be no significant social impacts. The proposed changes will make it clear to community, developers, and planners what the intended land outcomes are for the impacted properties.

Environmental Implications

There will be no significant environmental impacts.

COMMUNITY ENGAGEMENT

Amendment C211 intends to remove minor anomalies and contradictions in the Planning Scheme that have been identified since the approval of Amendment C177 and cadastral boundary updates in VicPlan.

Amendment C177 was publicly exhibited and included:

- Letters sent to all land-owners and occupiers affected by the Restructure Overlay;
- Notices in local newspapers;

- Direct notification to relevant government agencies and departments; and
- Notice in the Government Gazette.

As noted above, the changes proposed through Amendment C211 are to correct anomalies and errors, and no submissions from affected properties were received through exhibition of Amendment C177.

The change to Restructure Overlay RO42 has been included in this amendment at the request of the property owner. As part of the amendment preparation, Council officers have engaged with the property owners of the two affected properties, 4 and 6 Bay Street, Tecoma, and received a letter of support for the proposed changes.

As noted above, if Council resolves to seek a Ministerial Amendment under section 20(4) of the *Planning and Environment Act 1987*, the amendment would be prepared, adopted and approved by the Minister without any further public notice.

COLLABORATION, INNOVATION AND CONTINUOUS IMPROVEMENT

Council has liaised with DELWP in preparation of Amendment C211. Other Councils, Governments or statutory bodies were consulted through the exhibition of Amendment C177.

The amendment will contribute towards continuous improvement of the Yarra Ranges Planning Scheme by:

- Making the Yarra Ranges Planning Scheme more efficient for internal and external users; and
- Accurately reflecting land tenure and land use planning objectives in order to appropriately guide land use and development.

RISK ASSESSMENT

There is no significant risk associated with this amendment.

CONFLICTS OF INTEREST

No officers and/or delegates acting on behalf of the Council through the Instrument of Delegation and involved in the preparation and/or authorisation of this report have any general or material conflict of interest as defined within the *Local Government Act 2020*.

ATTACHMENTS TO THE REPORT

1. Amendment C211 Explanatory Report
2. Amendment C211 Planning Scheme Maps
3. Amendment C211 Extracted Maps from Incorporated Document *Restructure Plan for Old & Inappropriate Subdivisions in Yarra Ranges Council, September 2022*
4. Amendment C211 Supporting Document – (Pg. 58-60) Yarra Ranges Planning Scheme Amendment C177 – *Review of the Restructure Overlay 2019: Technical Report*