



Planning and Environment Act 1987

Panel Report

Mount Alexander Planning Scheme
Amendments C63 and C69
Restructure Plans

24 May 2013

Planning and Environment Act 1987

Panel Report pursuant to Section 25 of the Act

Amendments C63 and C69 to the Mount Alexander Planning Scheme

Restructure Plans

A handwritten signature in black ink that reads "Jennifer A Moles." The signature is written in a cursive style with a large initial 'J'.

Jennifer A Moles, Panel Chair



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Appendix A List of Submitters



Amendment Summary

The Amendments	C63 and C69
Purpose of Amendment	Introduction of eight restructure plans
The Proponent	Mount Alexander Shire Council
Planning Authority	Mount Alexander Shire Council
Exhibition	Amendment C63 – 26 October 2012 to 4 January 2013 Amendment C69 – 7 February 2013 to 7 March 2013
The Panel	Jenny Moles
Panel hearings	8 May 2013
Site inspections	8 May 2013
Date of this report	24 May 2013
Appearances	<ul style="list-style-type: none"> • Mr Peter Newman of PLN Planning Pty Ltd for the Planning Authority, assisted by Mr Daniel Borton and Ms Sarah Austin. • Ms Fiona Slechten of Brown Consulting (Vic) Pty Ltd for Mrs Vicki Simms, a submitter to Amendment C69. • Ms Kerry and Mr Russell Healy appeared in person. Ms Healy also represented the Long Family Trust. Mr Healy was a submitter to Amendment C63.
Submissions	In response to exhibition, nine submissions were received in relation to C63, and four submissions in relation to Amendment C69.
Panel recommendation	The Panel recommends that both Amendments C63 and C69 be adopted subject to changes as discussed in this report.

1 Background

This is the report of the Panel appointed to consider submissions to Amendments C63 and C69 to the Mount Alexander Planning Scheme (the Planning Scheme) which were prepared by the Mount Alexander Shire Council as Planning Authority.

(i) The Amendments and the affected land

Mr Newman's submission to the Panel Hearing on behalf of the Council provides the following summary of the Amendments:

Amendments C63 and C69 to the Mount Alexander Planning Scheme between them seek to introduce eight Restructure Plans into the planning scheme as Incorporated Documents. [The plans are for areas at Ravenswood South, Muckleford South, Maldon North (A), Maldon North (B) (Amendment C63) and Gower, Pollard, Tarilta and Walmer (Amendment C69).]

Other related and consequential changes are also proposed:

- *Deletion of the Restructure Overlay from areas of Crown Land in the Public Conservation and Resource Zone; from land which does not require restructuring (e.g. lots which are already in excess of 40 hectares); and from areas to which the overlay has been mistakenly applied (e.g. a road reserve abutting land which is to be restructured).*
- *Inclusion of the following reports into the Planning Scheme as reference documents:*
 - *Restructure Plans for Ravenswood South, Muckleford South, Maldon North (A) and Maldon North (B) Restructure Overlay Areas, PLN Planning, August 2012*
 - *Restructure Plans for Gower, Pollard, Tarilta and Walmer Restructure Overlay Areas, PLN Planning, September 2012*
 - *Mount Alexander Shire Rural Land Capability Project Report, Golder Associates, January 2012.*
- *Replacing of the schedule to Clause 45.05 Restructure Overlay with a new schedule which includes the new restructure plans.*

The Council submission also provides the following summary of the affected land:

The eight areas for which the Restructure Plans have been prepared are all located in the Farming Zone. Only one of the areas (Ravenswood South) has seen significant dwellings development, with the other areas remaining relatively undeveloped. The Restructure Overlay has been in place over these areas because they have subdivision patterns which are not conducive to the purpose of this zone. The areas concerned also have varying environmental sensitivities which are a further reason development densities should remain low. Some of the areas are also relatively remote from townships and services.

(ii) Council preparation and processing of the Amendments

The Council submission to the Panel included that the proposed plans are intended to encourage a reduction in the overall number of lots in each RO and, overtime, a subdivision pattern more suited to the purpose of the Farming Zone (FZ) and to the overlays that apply to some of the areas. The plans also identify certain parcels where dwellings may be permitted in conjunction with restructured land parcels providing greater certainty to the Council and landowners regarding future development.

The Council commenced background work for the preparation of the plans in 2007 by commissioning a review of the then ten RO areas in the Planning Scheme. Centrum Town Planning produced a report (*Review of Restructure Overlays in the Mount Alexander Planning Scheme*) in November 2007. The report recommended retaining the RO for nine of the ten areas. The Council adopted the review report and an implementation plan at its meeting of 8 June 2010.

In accordance with Stage 1 of the adopted implementation plan, Amendment C50 was prepared and later approved (on 21 July 2011). That amendment removed the RO from an area at Moolart, introduced a restructure plan for the Pennyweight Flat area at Castlemaine as an incorporated document of the Planning Scheme, and included the Restructure Review Report as a reference document at Clause 21.05.

The restructure plans for the eight remaining areas have been expedited as a two stage process leading to preparation and exhibition of the two Amendments.

The Council submission indicates that background reports and strategic considerations supporting the Amendments include the following:

- The *Mount Alexander Shire Rural Land Capability Project Report* by Golder and Associates in January 2012. This report is proposed to be introduced as a Planning Scheme reference document by Amendment C63. This report assesses a range of site characteristics to identify the capacity of the lots in the RO to treat and retain waste water on site. Lots are rated Low, Medium and High Risk.

The Council submission to the Panel explained the application of the results to the restructuring of the lots:

- *Undeveloped 'high risk' lots in separate ownerships have been grouped together to form a Restructure Lot. Future development of such lots would require a lot owner to assemble a developable parcel by acquiring the other lots from the other owners. In this regard, the restructuring is providing an opportunity for development which may otherwise not exist.*
- *In some cases single vacant 'high risk' lots are sited between lots which are already developed, and the Restructure Plans have identified these lots as not being suitable for development. The opportunity exists for these lots to be acquired by adjoining owners and incorporated as part of a larger holding.*

The submission notes that a planning permit is nevertheless required for the development of the lots both under the RO and the underlying FZ. Permission may also be required under other overlays of the Planning Scheme.

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- The *Mount Alexander Rural Living Strategy* of 2004 is an existing reference document.

The Council submission suggested that this report identified Muckleford South as possibly being one area where residential development may not compromise agricultural use of the land and effluent may be able to be managed. It was not finally recommended for rural residential purposes, however, and has remained in the Rural Zone (now FZ). Other RO areas were not considered at all as options for rural residential use.

- The RO areas (with the exception of the Ravenswood South and Pollard areas) are within the 1962 gazetted Cairn Curran Water Supply Catchment. The *Guidelines for planning permit applications in open potable water supply catchment areas* (Department of Planning and Community Development, 2009) are required to be considered (see Clauses 14.02 -1 and 14.02-2). The Panel was referred to the decision by the Victorian Civil and Administrative Tribunal in *Simpson v Ballarat CC [2012] VCAT 133 (3 February 2012)* which supports strict application of the guidelines' recommendation for a dwelling density within the catchment of 1 dwelling per 40 hectares. The guidelines also recommend that each lot in a subdivision should be not less than 40 hectares in area. The Council submission at the Panel Hearing noted the support by Goulburn Murray Water as Water Authority for Amendment C63 (no submission was made on C69).

Amendment C63 was authorised by the Department of Planning and Community Development (DPCD) on 18 September 2012 and Amendment C69 on 21 December 2012.

(iii) Submissions

As noted, upon exhibition, Amendments C63 and C69 attracted nine and four submissions respectively. A list of all submitters is included in Appendix A to this report.

The Council submission noted that five submitters supported Amendment C63 and four requested changes to the Amendment.

The Council at its ordinary meeting of 12 February 2013 considered the submissions to Amendment C63 and resolved to make some changes to the Amendment and also request a Panel to advise on other issues.

The agreed changes were minor corrections to the Maldon North (B) Restructure Plan (changes being requested by Submitters 1, 6 and 7).¹ The Council did not agree with all of the changes sought by K A and B A Lewis (Submission 3) in relation to the Muckleford South Restructure Plan; nor all of the changes requested by Russell Healy (Submission 7) in relation to the Maldon North (B) Restructure Plan. Accordingly a Panel was requested.

The Council submission to the Panel noted that one of the four submitters to Amendment C69 supported the Amendment with the three others requesting changes.

The submissions to Amendment C69 were considered by the Council at its ordinary meeting of 12 March 2013 when it was resolved to make some changes including the removal of

¹ The changes accommodated by the Council, together with the other changes requested in submissions for both Amendments, are reviewed by the Panel in the following chapter of this report.

some lots from the Tarilta Restructure Plan and RO, and also to request a Panel to deal with other issues raised in the submissions.

(iv) Planning policy context

The policy framework of the Planning Scheme giving support to the preparation of the restructure plans is set out in detail in the two reports prepared by PLN Planning which are proposed to become reference documents of the Planning Scheme. Mr Newman's submission at the Panel Hearing summarised the applicable planning policy context. He referred to the following policy clauses of the State Planning Policy Framework:

- Clause 11 relating to settlement
- Clause 13 relating to environmental risks
- Clause 14 relating to natural resource management.

His submission included:

The 'Rural productivity' objective at clause 11.05-3 is 'To manage land use change and development in rural areas to promote agriculture and rural production'. The strategies to achieve this include limiting new housing development in rural areas by restructuring old and inappropriate subdivisions.

Clause 13 includes objectives and strategies relating to a range of environmental risks, including floodplain management (clause 13.02-1) and bushfire (clause 13.05-1). These are relevant to the preparation of Restructure Plans for those areas with environmental constraints (which are reflected by the application of other land management overlays).

The 'Protection of agricultural land' objective at clause 14.01-1 is to protect productive farming land which is of strategic significance in the local or regional context. The strategies include that where inappropriate subdivisions exist on productive agricultural land, priority should be given by planning authorities to their re-structure.

In Clause 14.02-1 'Catchment planning and management', the strategies include protecting water catchments and retention of 30m wide vegetation buffers along waterways. Under the policy guidelines, it is required to consider (among other things) the State Environment Protection Policy (Waters of Victoria), and the Guidelines for planning permits in open water catchment areas. These strategies (requirements) are particularly relevant to six of the Restructure Overlay areas (Muckleford South, Maldon North (A), Maldon North (B), Gower, Tarilta and Walmer) which are located in open potable water supply catchments.

Clauses 21 and 22 of the Local Planning Policy Framework were also referred to as supporting the Amendments.

The Council submission included:

The MSS also supports the restructure of old and inappropriate subdivisions.

The Vision at clause 21.03 includes land use decision making to improve the environment of the Loddon and Campaspe catchments, and protection of agriculture land uses from incompatible non-agricultural development.

The objectives for rural living (clause 21.04-4) include reducing the number of small and inappropriately located lots in rural areas and discouraging the use of existing old Crown allotments in the Rural Zone for rural living purposes (on the one hand), and providing locations for rural living development that can be readily serviced by the facilities of a nearby urban area or town (on the other hand).

The rural living strategies include consolidation of lots in old and inappropriate townships into existing tenements or land holdings wherever practicable (Settlement strategy); avoiding rural living development in significant water supply catchments areas and in areas of significant vegetation and habitat and high erosion risk (Environment strategy); and ensuring rural living development does not detrimentally impact on adjoining or nearby productive agricultural uses (Economic Development).

As already noted, the report 'Review of Restructure Overlays in the Mount Alexander Planning Scheme, 2007' is included as a reference document at clause 21.05. There are also a range of other reference documents listed at this clause, particularly under the heading 'Environment, biodiversity and landscape', which are also relevant to restructuring plans.

The MSS at clause 21.06 also includes a monitoring program that Council will use to evaluate the achievement of its strategic policy directions, with one of Council's targets being to achieve a reduction in the number of small and inappropriately located lots in rural areas (i.e. in the restructure overlay areas).

The LPPF also includes a local policy for excisions, construction of housing and re-subdivision of land in the Farming and Rural Living Zones (clause 22.22). It is a policy requirement under this clause to restructure old and inappropriate subdivisions on rural land.

No submitter disagreed with the applicability of these policies² except that submitters represented at or attending the Hearing argued that the fairness of the restructure plans was an issue – this being an objective of the *Planning and Environment Act 1987* – and should be considered.

(v) Panel process

The Panel was appointed under delegation from the Minister for Planning on 21 February 2013.

No Directions Hearing was held in relation to the Amendments and the Panel issued written directions in advance of the Hearing.

The Panel Hearing took place in the Council offices in Castlemaine on 8 May 2013 and a partly accompanied inspection took place in the afternoon.

In reaching its conclusions and recommendations, the Panel has read and considered the submissions received in response to exhibition of the Amendments, a range of related material and the verbal and written presentations at the Hearing.

² Ms Selectmen's submission for the Simms also set out the policy framework in similar terms to Mr Newman's submission.

The following chapter of this report discusses the issues raised in submissions in relation to the restructure plans and the Amendments generally – some of the latter matters being raised by the Panel itself at the Hearing. The Panel conclusions and recommendations are also provided in the following chapter.

2 Consideration of the issues

2.1 Amendment C63

(i) Maldon North B Restructure Plan

The area

The restructure plan area is some 6 hectares in area and located on the Bendigo-Maldon Road a few kilometres north-east of Maldon. It comprises two parcels (See Figure 1):

- The southern parcel (Restructure Lot 1) is adjacent to the Lewis Road intersection and comprises rectangular lots ranging in area from 1000 to around 6200 square metres. It is principally used for grazing and there is one house on the parcel. The land is included in the Farming Zone (FZ), partly in the Significant Landscape Overlay (Schedule 1) (SLO1) and wholly within the Bushfire Management Overlay (BMO); and
- The northern parcels (Restructure Lots 2 and 3) comprise 15 existing lots at the Fogarty's Road intersection. The existing lots range in size from 1000 square metres to 7900 square metres. They are held by two landowners. Two lots retain significant stands of vegetation. All of the land is included in the FZ, SLO1 and BMO.

The restructure plan

The key policy element of the exhibited plan provides:

It is policy that:

- *One dwelling only may be permitted on a restructure lot shown on the Restructure Plan.*
- *No dwelling (including the replacement of an existing dwelling and dwelling additions) may be constructed on a restructure lot until all land within the restructure lot has been consolidated into one title.*
- *No dwelling may be developed on those parts of any landholdings which are identified as "high risk" in the Rural Land Capability Study.*
- *Effluent disposal must be in accordance with a Land Capability Assessment (see below).*
- *Applications for planning permits for buildings and works will be referred for comment to the North Central Catchment Management Authority as part of the assessment process to ensure development does not occur on land which is assessed by the NCCMA as likely to be affected by flooding.*

A table at the rear of the restructure plan sets out the detailed provisions that apply to each of the three consolidated lots within the restructure plan.

The exhibited plan is shown at Figure 1.

Council agreed changes

The Council minutes of its meeting on 12 February 2013 record the following responses to the nine submissions received in relation to Amendment C63:

Sub No	Restructure Lot	Issues	Officer Response
1	Maldon Nth B, Restructure Lot 2	Lot 1 TP396323 Parish of Maldon listed as requiring restructure to this lot, but is not mapped.	This lot is outside the Restructure Overlay, and its inclusion is an error. Recommend changing Amendment to remove L1 TP396323 Parish of Maldon.
2	VicRoads	No objection	N/A
3	Muckleford South Restructure Lot 2	Objects to Restructure Plan. Wants to be able to sell or dispose of separate parcels of land, and retain house. Bought land three years ago because it was multiple parcels.	Restructure Plan does not alter ability to separately sell land, and retain home, however Restructure Plan will not allow for any additional dwellings, as is currently the case under the Restructure Overlay. Officers recommend no change to the Amendment.
4	Coliban Water	No objection	N/A
5	Goulburn Murray Water	No objection	N/A
6	Maldon North B (whole area) Department of Primary Industries	Requests that the Restructure Plan for Maldon North B refers to current operational mining licence as Restructure Plan for Maldon A does.	Recommend adding the following sentence under 'subject land': <i>A current operational licence with processing plant lies approximately 280 metres from land within the Maldon North B Restructure Overlay.</i>
7	Maldon North B Restructure Lot 1	Restructure Plan states that Restructure Lot 1 is currently in a single ownership, but is actually in two separate ownerships. Requests a dwelling be allowed for under each ownership	Recommend removing reference to the land being in one ownership. Officers recommend no further changes to the Restructure Plan to allow further dwellings to be built.
8	CFA	No objection	N/A
9	DSE	No objection	N/A

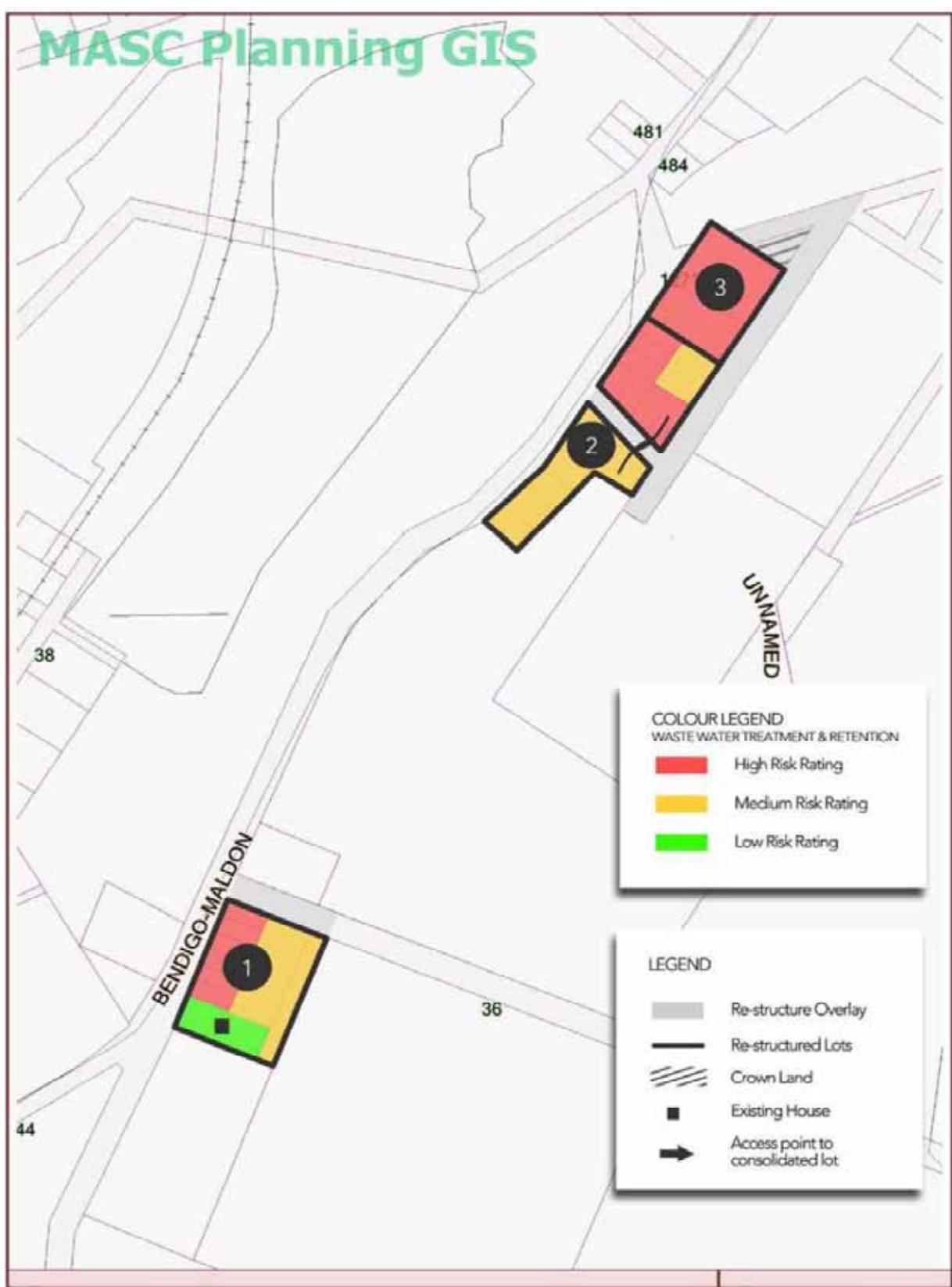


Figure 1: Maldon North B Restructure Plan

Other elements of submission by Russell Healy

Mr Russell Healy made a written submission to the Council in response to the exhibited version of the restructure plan for Maldon North B. It related to the Restructure Lot 1 land.

Detailed provisions for that lot appearing in the table at the rear of the restructure plan are as follows:

Farm Land which is part of a landholding which includes land outside of the Restructure Overlay area (the other lots being CA 6, CA 8C, CA 8D, CA 8F & CA 8G Sec B Parish of Maldon).

An existing dwelling appears to have already been excised from the original landholding.

The land is all included as a single restructure lot and no additional dwelling is allowed.

Mr Healy's written submission to the Council requested that consideration be given to allowing a second dwelling on the land shown in Restructure Lot 1 on the proposed restructure plan. As indicated on that plan, the southernmost lot in Restructure Lot 1 (being some 4047 square metres in area) contains the existing dwelling. Mr Healy's written material sought to have a second dwelling permissible on the balance of the Restructure Lot 1 land which has an area of some 1.5 hectares which is in separate ownership from the lot with the dwelling.

Ms Kerry and Mr Russell Healy appeared in person at the Panel Hearing. Ms Healy also represented the Long Family Trust which is the second owner of the land in the southern parcel. The Healy's said that they wanted the same entitlement for a dwelling to apply to this Restructure Lot 1 as is applied to Lots 2 and 3. It was said that the land did not have different characteristics from that in Lots 2 and 3.

At the Hearing, the Council conceded that the proposed tenement arrangements for Restructure Lot 1 in the exhibited restructure plan had been heavily influenced by the misunderstanding that the land was all in the one ownership.

On the correct understanding that the lot containing the existing dwelling is in separate ownership from the balance of the land shown in the exhibited Restructure Lot 1, it was conceded by the Council that the Healy's' submission should effectively be allowed. It was agreed that the southernmost lot (given it is a single developed lot in separate ownership) should be excised from the restructure plan (and from the RO); and that the balance of the land within Lot 1 might have an entitlement to have a single dwelling provided all of the existing lots within Lot 1 were consolidated and the dwelling would be sited in the medium risk area of the consolidated lot.

Other minor corrections to the lot descriptions were also agreed.

Panel conclusions and recommendations

The Panel has reviewed and supports the minor corrections to the Maldon North B Restructure Plan noted against Submissions 1 and 6 in the above table of Council responses. The further change noted against Submission 7 is no longer required given the other changes concerning Maldon North B Structure Plan Area 1 agreed at the Hearing.

The Panel supports the changes to Restructure Lot 1 of the restructure plan as agreed by the Council at the Panel Hearing.

The Panel also believes some other changes should be made to this restructure plan as well as all other restructure plans as arise from the discussion of the Simms' submission in Section 2.2(i) below. The recommendations arising from that discussion are also included in that section.

The Panel recommends:

- **The entry for Restructure Lot 1 in the 'Description' column of the table to the Maldon North B Restructure Plan should include:**

CA 1 SEC B Parish of Maldon

CA 2 SEC B Parish of Maldon

CA 3 SEC B Parish of Maldon

CA 4 SEC B Parish of Maldon

CA 5 SEC B Parish of Maldon

CA 6 SEC B Parish of Maldon

CA 7 SEC B Parish of Maldon

CA 8 SEC B Parish of Maldon

CA 8F SEC B Parish of Maldon

And the description of the lots should be updated to refer to their identification on the new title plans for the land.

- **The entry for Restructure Lot 1 in the 'What is allowed' column of the table to the Maldon North B Restructure Plan should read:**

Farmland which is part of a landholding which includes land outside the Restructure Overlay area (the other lots being [correct description of remainder of Family Trust land to be inserted by Council]).

One dwelling on the consolidated parcel.

The building envelope for a future dwelling is to be located on that part of the consolidated lot which is rated 'Medium Risk' in the Rural Land Capability Study (Golder and Associates, 2011).

- **In Maldon North B Restructure Plan:**

- **add the following to Section 2.0 Subject Land:**

A current operational licence with processing plant lies approximately 280 metres from land within the Maldon North B Restructure Overlay; and

- **for Restructure Lot 2, remove reference to Lot 1 TP396323 Parish of Maldon.**

(ii) Muckleford South Restructure Plan

The area

The RO area applies to parts of the Township and Parish of Muckleford. It straddles both sides of the Pyrenees Highway approximately 15 kilometres to the south west of Castlemaine. The area is gently undulating grazing country largely cleared of native vegetation except along the Muckleford Creek which flows through the area; on some of the many unconstructed roads and on land in the south west and south east. The land is affected by flooding. Lots vary considerably in size and are held by eight landowners. The land is principally included in the FZ with some in the Public Conservation and Resource Zone (PCRZ). A Heritage Overlay (HO) applies to a small area, the Environmental Significance Overlay (Schedule 5) (ESO5) applies to land along the creek and the BMO to land north of the highway (see Figure 2).

The restructure plan

The key policy element of the exhibited plan provides:

It is policy that:

- *One dwelling only may be permitted on a restructure lot shown on the Restructure Plan.*
- *No dwelling (including the replacement of an existing dwelling and dwelling additions) may be constructed on a restructure lot until all land within the restructure lot has been consolidated into one title.*
- *No dwelling may be developed on those landholdings containing land identified as “high risk” in the Rural Land Capability Study.*
- *No dwelling is permitted unless it has frontage to a road that is constructed and can be maintained in an “all weather” standard.*
- *Effluent disposal must be in accordance with a Land Capability Assessment (see below).*
- *The development of buildings and works and the removal of native vegetation within 60 metres of Muckleford Creek is [sic are] prohibited.*
- *Applications for planning permits for buildings and works will be referred for comment to the North Central Catchment Management Authority as part of the assessment process to ensure development does not occur on land which is assessed by the NCCMA as likely to be affected by flooding.*
- *Require new dwellings to gain access to the Pyrenees Highway via the existing road network rather than directly, except where this is unavoidable (in which case an application is required to VicRoads).*

A table at the rear of the restructure plan sets out the detailed provisions applying to each of the consolidated lots (Areas) within the restructure plan.



Figure 2: Muckleford South Restructure Plan

Council agreed changes

There were no Council agreed changes in response to written submissions received.

Submission by K A and B A Lewis

The Lewis' own lots proposed to comprise Restructure Lot 3 shown on Figure 2. The land is adjacent to the Pyrenees Highway/Symes Road intersection. It has a total area of some 5.8 hectares and is divided by unconstructed road reserves. Drainage lines traverse some of the existing lots and the land capability rating is shown as 'high risk' for many lots. The land is in the Cairn Curran Special Water Supply Catchment.

The detailed provisions for this part of the restructure plan area in the table to the exhibited plan are as follows:

Existing dwelling.

One dwelling on the consolidated parcel.

The Council submission explained that these provisions are intended to indicate that no further dwellings would be allowed on the land.

The Lewis' submission indicates that they bought the land approximately three years ago and that they object to the requirement to consolidate their lots as they wish to be able to dispose of separate lots as part of their intended succession planning, while retaining the house lot.

The Council opposed any change to the Amendment in response to this submission. It was argued that the RO applied to the land at the time of purchase and the Lewis' should have been alerted to the possibility of requirements for title consolidation and/or that development of a further dwelling may not be allowed. It was said that in any case the restructure plan does not prevent lots being sold separately.

The Council submission went on to outline the public interest reasons why the restructure plan should proceed including the relatively small size of the land in the context of the zone, the high risk land capability mapping and siting within an open potable water catchment.

It was noted, however, that the list of lots comprising Restructure Lot 3 in the table to the restructure overlay is missing a reference to 'CA 1 Section 4 Parish of Muckleford' and incorrectly includes 'CA6 Sec 4 Parish of Muckleford'. It was recommended that the land description be corrected and updated to refer to new Title Plans.

Panel conclusions and recommendations

The Panel has reviewed the Lewis' submission and the Council response. I have also inspected the Muckleford South area generally.

In the Panel's view the Council position with respect to the Lewis' submission is the correct one. There are strong public interest reasons why land in Muckleford South should be subject to a restructuring plan. In particular there are very limited lot sizes, there is poor land capability for effluent disposal and the land is located in an open water supply catchment.

Also, this is not a case where no indication of land development difficulties was available at the time the Lewis' purchased the land. The land was already in the RO clearly signalling the prospect of limited development options.

The Panel recommends:

- that no change be made to the Muckleford South Restructure Plan in response to the submission by the Lewis'; and
- the land description for Restructure Lot 3 in the table to the Muckleford South Restructure Plan should be corrected by adding 'CA 1 Section 4 Parish of Muckleford' and deleting 'CA6 Sec 4 Parish of Muckleford'; and should be updated to refer to lot numbers on new title plans.

2.2 Amendment C69

(i) Tarilta Restructure Plan

The area

The restructure plan area is located some 10 kilometres south of Castlemaine between the townships of Guildford and Vaughan. It includes 128 lots in the Crown Township of Tarilta and adjacent parts of the Parishes of Tarilta and Fryers. Much of the land is within the Tarilta Creek valley and is cleared grazing land. It is subject to flooding and most lots are assessed as 'high risk' in terms of capability for containment of waste water. The plan also applies to the Castlemaine Diggings National Heritage Park situated on higher, more undulating land. The total plan area covers of some 190 hectares of which around half is in the park area and not proposed to be restructured. The private land is in two ownerships with the owners owning further land outside the restructure area. There are five existing dwellings in the restructure area. As exhibited, two large privately owned farming lots in the plan area are not required to be restructured. The land in the park is also affected by the HO and the entire area is in the BMO. The land is in the Cairn Curran open potable water supply catchment area.

The restructure plan

The key policy element of the exhibited plan provides:

It is policy that:

- *No additional dwellings will be permitted in this Restructure Overlay area.*
- *Existing dwellings may not be replaced or extended until the lots in the immediate vicinity of the dwelling (as identified in the restructure plan) have been consolidated into one title.*
- *A building other than a dwelling may only be approved if the lots comprising this Restructure Lot are consolidated as one title.*
- *Lots used for farming purposes are encouraged to be consolidated to form a larger Restructure Lot which is defined by physical features (e.g. Tarilta Creek) and road reserves (whether constructed or unconstructed).*
- *The development of buildings and works and the removal of native vegetation within 60 metres of Tarilta Creek is prohibited.*

The restructure plan (in two parts) follows at Figures 3 and 4.

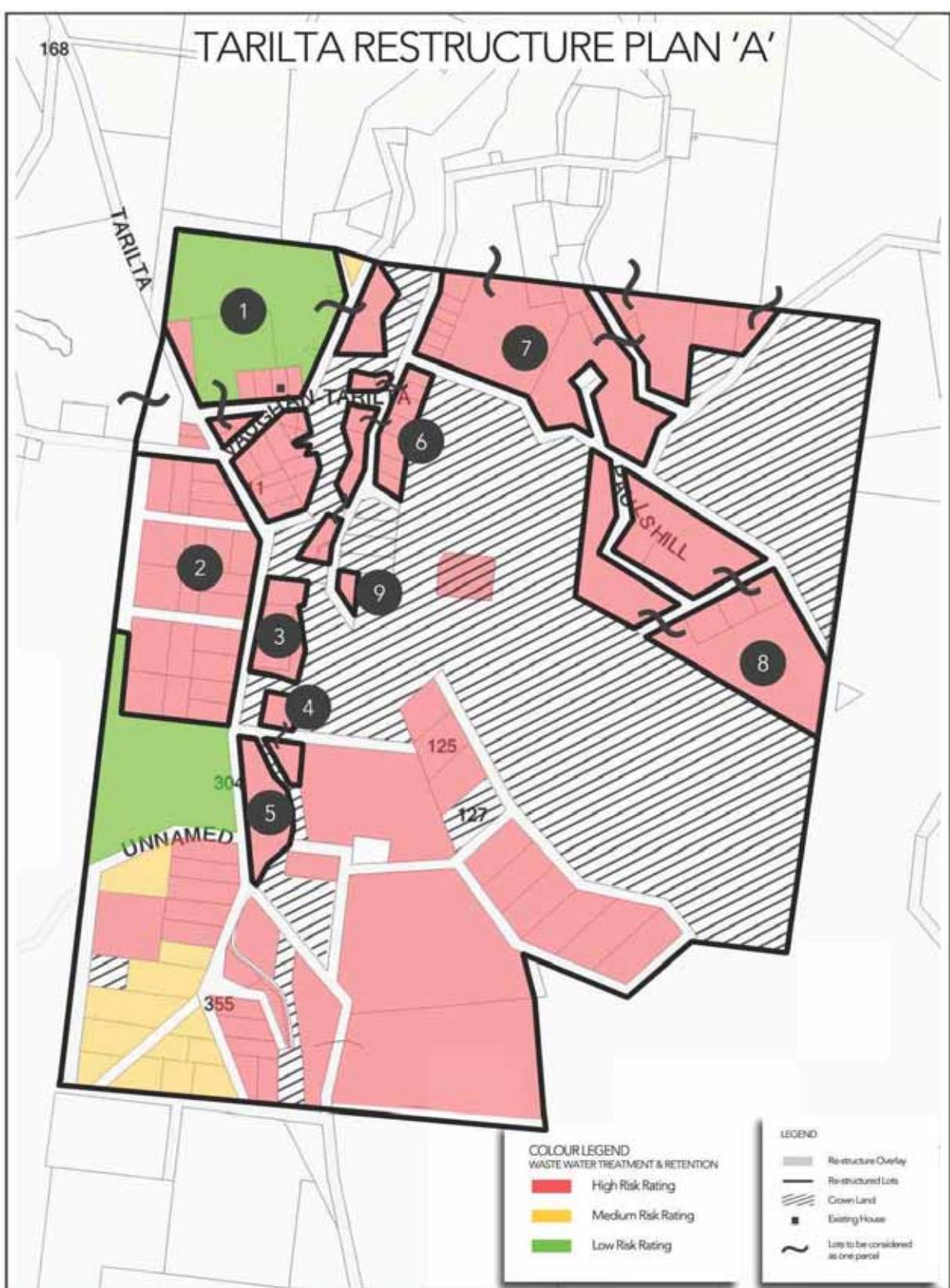


Figure 3: Tarilta Restructure Plan Part A

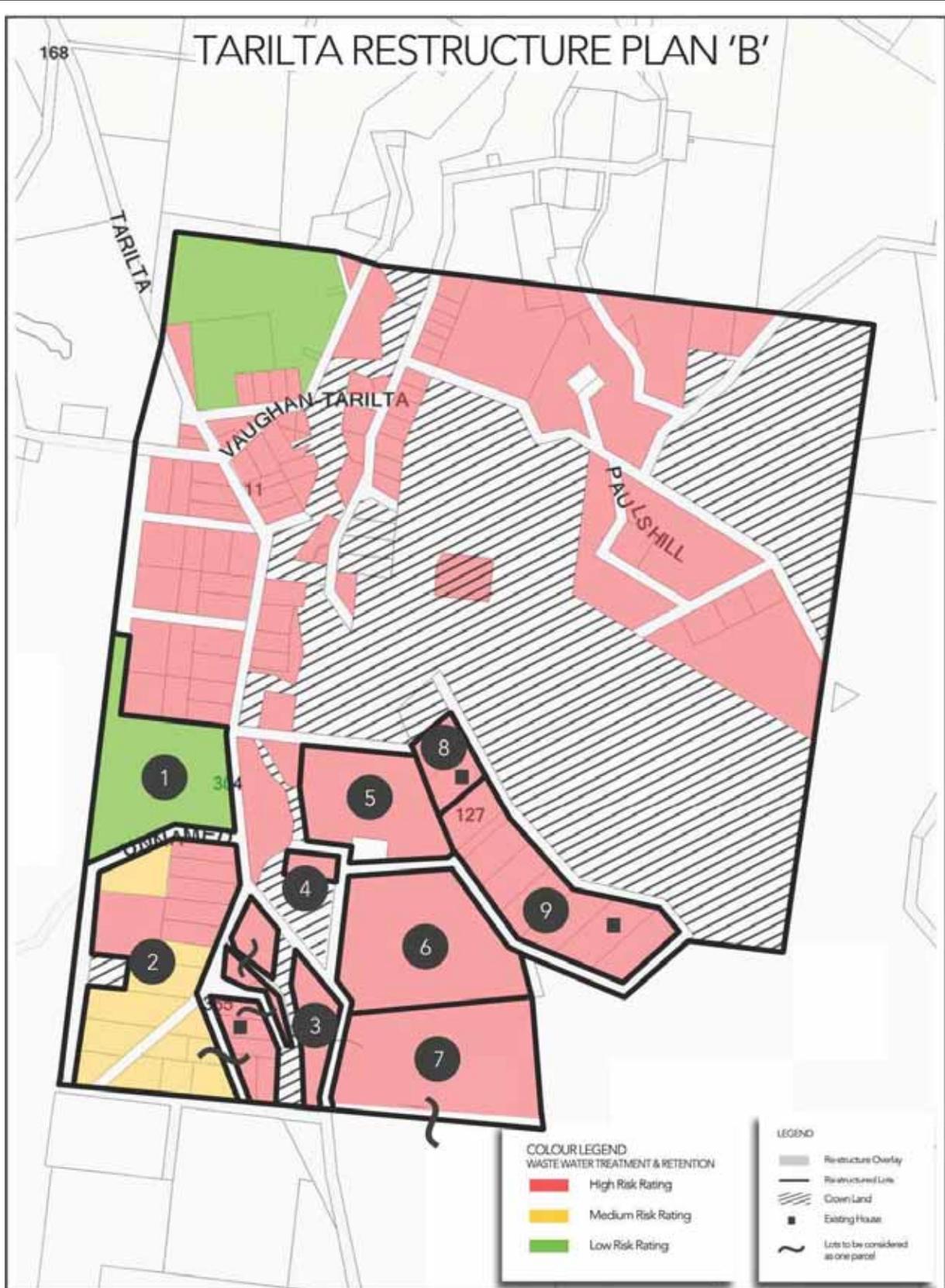


Figure 4: Tarilta Restructure Plan Part B

Council agreed changes

At its meeting of 12 March 2013, the Council resolved to make a number of changes to the exhibited documentation in response to submissions.

Notably in response to the submission by the Simms (see below) the Council agreed to remove proposed Restructure Lot 7 as well as Restructure Lots 3 and 6 from the Tarilta B restructure plan and the RO. In the case of the land in proposed Restructure Lot 7, this is a relatively large area of land and forms part of an even larger lot outside the RO; and in the case of proposed Lots 3 and 6, they are single stand alone lots.

Submission by Mr and Mrs Simms

In response to exhibition, a submission was lodged by Banon Consultants on behalf of Mr and Mrs B Simms who are one of the private owners of land in the restructure plan area. They own proposed Restructure Lots 2 to 7³ in Part B of the plan, which currently comprise some 31 or 32 lots. This amounts to around 50 hectares of their 175 hectare property. There is an existing dwelling on Restructure Lot 2.

As exhibited, the Amendment proposes that all of their land in the restructure area should be consolidated into six lots and no further dwellings would be allowable. As discussed above, the Council now propose to revise the Amendment for the land after receipt of the submission by removing three restructure lots from the plan and RO. The policy component of the restructure plan for this land (now comprising three restructure lots only) indicates that no further dwellings would be permissible and that consolidation of all existing lots within a restructure lot is required before any dwelling extension, replacement building or new building (other than a dwelling) would be allowed. This policy provision is repeated in the table following the lot plan which shows the particular requirements for each restructure lot in Part B.

Specifically the table indicates that for proposed Lot 2 (around 13.55 hectares) the following applies:

Existing dwelling:

One dwelling on the consolidated parcel (being part of a larger landholding which extends beyond the Restructure Overlay boundary).

The existing dwelling may only be replaced or extended if the lots comprising this Restructure Lot are consolidated as one title.

A building other than a dwelling may only be approved if the lots comprising this Restructure Lot are consolidated as one title.

For proposed Lot 4 (4294 square metres), the table provides:

Vacant land: No dwelling allowed.

Encourage consolidation of this site with an adjoining site.

For proposed Lot 5 (4.8 hectares):

Vacant land: No dwelling allowed.

³ The Council submission at the Panel Hearing referred to Lot 8 being in the Simms ownership but the submission on behalf of the Simms suggest that this is not the case.

Encourage consolidation of these sites with an adjoining site.

A building other than a dwelling may only be approved if the lots comprising this Restructure Lot are consolidated as one title.

The written submission for the Simms raises a number of matters about those lots proposed by Council to be retained in the restructure plan after the changes agreed above. These issues were reiterated at the Panel Hearing by Brown Consultants for the Simms. The issues are:

- In relation to Lot 2, the owners' assumption is that any development not listed in the table of the restructure plan is prohibited (on the relevant lot);
- There needs to be a nexus between the requirement to consolidate and the development proposed and that none exists in the case of extensions to or replacement of the existing dwelling or construction of new farm buildings on Lot 2;
- The requirement to consolidate titles in the above circumstances would impose unnecessary and unfair consolidation costs upon the landowner and thus be contrary to the purpose of the FZ by placing strain upon a farming enterprise;
- In relation to Lot 4, the provisions suggest that farm sheds are prohibited and there is no quantum given for the required new land title;
- Lots 4 and 5 should be removed from the restructure plan and RO on the same basis as Lots 3, 6 and 7 (being single lots);
- In relation to proposed Lot 5, this is said to be a single lot but a building other than dwelling must be preceded by lot consolidation; and
- The restructure plan should be abandoned for the Simms land, but, failing this, it should be removed from Lots 3, 4, 5, 6 and 7 and the condition applying to the remaining Lot 2 should read:

Existing dwelling:

One dwelling on the consolidated parcel (being part of a larger landholding which extends beyond the Restructure Overlay boundary).

The existing dwelling may be replaced or extended without consolidating this restructure lot.

Farming sheds may be constructed without consolidating this restructure lot.

If an application is made for an additional dwelling [later revised as being a possible request for a Dependent persons unit], the lots in this restructure lot are to be consolidated into one title.

Their submission also directly raises some general issues:

- As the document is currently drafted it appears to achieve little in terms of planning objectives for this land in the FZ. The restructured lots will remain undersized in terms of development in the zone (and water supply catchment);
- If the intention of consolidation is to prevent environmental impact from waste water contamination then use of an ESO would be more appropriate;
- Consolidated lots may misleadingly appear to be suitable for dwelling development; and

-
- A better proposal would be to apply the RO to all of the land in the Simms ownership and require re-subdivision of all of the land into lots of at least 40 hectares where a dwelling might be permitted.

The Council response to these matters included:

- Despite an officer recommendation to allow buildings other than dwellings on Lot 4 (and other restructure lots), the Council had made no resolution on this matter;
- If the Panel thought this change appropriate, it should perhaps be made in relation to all proposed restructure lots in the Tarilta Restructure Plan where there is no specific mention of other buildings;
- If the submission implies that no consolidation should be required prior to development, the Council does not agree;
- Concerning the matter of nexus and unfair imposition of costs, it was said that at present farm buildings are prohibited by the absence of a restructure plan for the RO and the situation would be liberalised with the introduction of the proposed plan;
- Concerning the creation of lots still potentially too small to develop for dwellings, it was noted that they might nevertheless be suitable for other buildings;
- To require restructuring of the entire property into 40 hectare lots was regarded as too onerous an imposition;
- Lot 5 is in fact two existing lots. One was not assessed in the Golder and Associates' land capability assessment as it was erroneously believed to be Crown land. It is owned by persons other than the Simms; and
- It was conceded that a Dependent persons unit might be acceptable on Lot 2.

Panel conclusions and recommendations

The Panel has considered the submission and Council position.

The issues raised by the submitter in part arise from the manner in which these incorporated restructure plans have been drafted and some lack of clarity around what the provisions are intended to achieve.

The Panel provides the following advice and recommendations.

Implementing the purposes of the restructure plans

The background reports for both Amendments indicate that the matter of planning concern is that the small lots of the restructure plan areas might be seen as suitable for development for dwellings and, if permits were successfully applied for, the areas could become entrenched as rural living areas. This is said to be contrary to the continuation of productive agricultural use of the land and in many instances would also be incompatible with the environmental values of the land. It is also noted that the areas are in some cases relatively remote from townships and services.

This suggests that the restructuring of lots is not an end in itself but is designed to achieve other purposes – in the main to clearly prevent further dwelling development (with some exceptions) and the loss of the land for agriculture.

The Panel is of the view that the provisions of the plans are relatively clear about where dwellings might be permitted and where they are prohibited and there has been appropriate consideration of the physical characteristics of the land.

However, there also appears also to be a related intent on the part of the Council to prevent the proliferation of other types of buildings which in some cases might come to be unlawfully used as dwellings. In terms of these other buildings (mostly sheds), the plans make only inconsistent references to whether they are or are not permitted. Lot 4 in the restructure plan for Tarilta A is a case in point. The Council submission conceded that generally in the 'What is allowed' column in the table of this restructure plan, there is no mention of buildings other than dwellings for some lots.

The Panel is of the view that, as a minimum, there needs to be a review of whether buildings other than dwellings are intended to be permissible on each restructure lot throughout this restructure plan area as well as the other seven restructure plans. A clear provision needs to be made in the table of each restructure plan for each restructure lot in this respect. As the restructure plans are now set out, it does appear that where there is no mention of other buildings in the 'What is allowed' column, this may well mean that they are prohibited.

The Panel also notes that the restructure plan provisions, as currently written, impose no limit on the number of sheds which might be applied for on each restructure lot (subject to consolidation having occurred). This may be intentional in that the land would be held in larger parcels more consistent with the size of parcels in the FZ (and the rate of shed development therefore may be little different from that which occurs on larger farming lots) but it may be that this is something which may require further consideration by the Council.

What if any planning approaches should be taken to these small lots?

A key question which arises from the Simms' submission is whether there is a real prospect in these areas of either dwellings or sheds proliferating as a result of as of right development or successful planning applications for development of dwellings or sheds on the unstructured lots. This might suggest that there is no real need to introduce restructure provisions at all.

It was also suggested by the submitters that there is little purpose to requiring lots to be consolidated into parcels which remain well below the 40 hectares lot size/dwelling density requirement of the open potable water catchment guidelines and the 40 hectare minimum lot size which is required for dwellings to be able to be constructed as of right in the FZ. It was also said that in the case of their land and other land, given the very poor capability of the land for effluent disposal, its flood liability etc, that it would be unlikely that a dwelling would be approved in any case.

The Panel has reviewed the Planning Scheme provisions and, while it has to be conceded that it is unlikely and in some cases highly unlikely that a dwelling would be approved on the unstructured lots (or even the restructured lots), it would nevertheless be possible to apply for permission for a dwelling.⁴

Any application for development at the present time may or may not be successful. In this respect it has to be noted that in the FZ, while the conditions to be met if a dwelling use (and development) is to be as of right are:

⁴ In this respect the Panel notes the Council view that the absence of restructure plans for the eight areas included in the Restructure Overlay (RO) of the Planning Scheme in 1998 has precluded any development of the affected land since that time. There may no development during that time, but in the Panel view it is at least arguable that the absence of the plans has legally precluded development.

Must be the only dwelling on the lot.

The lot must be at least the area specified in a schedule to this zone. If no area is specified, the lot must be at least 40 hectares

the use and development of land for a dwelling not meeting those conditions is potentially permissible. In the latter case servicing requirements are then imposed by Clause 35.07-2 but potentially these might be met.

Also, while the Panel has also noted the weight given to the potable water catchment guidelines by VCAT, they remain a consideration in the exercise of discretion as to whether or not a permit should be granted rather than serving as an absolute prohibition in every instance.

The Panel notes the Simms' submission that consolidation and re-subdivision of the titles to their property to create lots above 40 hectares in area would be an outcome more consistent with the FZ objectives. It would seem that this option may have been available to the submitters under the zone provisions but has not been taken up.

The Panel acknowledges that the sizes of the restructured lots fall well short of the minimum size for house lots in the FZ, however, it does not seem that the intent in these restructure plans has been to facilitate housing developments on all of the restructured lots. Rather the plans identify some limited opportunities for new housing as well as shift lot patterns and sizes towards those more useful in the farming context and reduce the 'threat' of loss of agricultural land by sale and development of very small lots.

The Panel therefore finds that there is a strategic purpose to requiring consolidation of lots to bring them towards a size more suited to the FZ.

So far as the Simms' suggestion that other Planning Scheme tools such as an ESO might be more appropriate for dealing with the land capability and water catchment issue is concerned, the Panel indicates that the use of the restructure tool is acceptable here.

Clarifying the effect of the plans

The written submission for the Simms referred to the difficulty there is in understanding the plan provisions. The Panel agrees.

The Panel was advised that the structure of these incorporated documents has followed that of the approved 2009 Pennyweight Flat Restructure Plan in the Planning Scheme which was in turn based on a restructure plan in the Greater Bendigo Planning Scheme.⁵ The Panel is nevertheless of the view that if the restructure plans are to proceed, some wording and structural improvements are required to all plans.⁶ In particular, there needs to be wording changes to help clarify that that provisions in the tables in each plan are indeed mandatory and remove the uncertainty around some of the provisions.

The head clause of the RO provides that, subject to some exemptions, a permit is required to subdivide land and to construct or extend a dwelling or other building. For both subdivision

⁵ The Panel notes the similarity with the format of the Neilborough and Ravenswood Restructure Plans in that scheme.

⁶ Perhaps the existing Pennyweight Flat Restructure Plan could be made consistent in a subsequent amendment.

and buildings, the head clause provides that the development⁷ *must be in accordance with a restructure plan for the land listed in the schedule to this overlay.*

The restructure plans proposed in these Amendments contain:

- A preamble in Clause 1 which links the plan to the consideration of applications under Clause 45.05 – the head clause of the RO;
- A description of the affected land at Clause 2;
- A series of objectives at Clause 3 – required because the decision guidelines of the head clause refer to such objectives;
- Various statements of policy at Clause 4 relating to whether further dwellings are permissible, when lot consolidation is required and the like;
- A mapped depiction of the restructure lots including existing and possible house sites and Crown Land where relevant.⁸ Lots required to be restructured are coloured according to their land capability rating; and
- A table with four columns. The first column is the number of the restructure lot; the second and third columns give the street address and titles to the existing lots within the restructure lot; and the final column, headed ‘Status: What is allowed?’ contains various statements and requirements such as:

Existing dwelling:

One dwelling on the consolidated parcel.

A building other than a dwelling may only be approved if the lots comprising this Restructure Lot are consolidated as one title⁹.

Some of the drafting aspects which produce difficulties are:

- The inclusion of policy statements rather than merely requirements in an incorporated document such as this is unusual;
- The relationship between the policy and the ‘What is allowed’ column is unclear especially where there is an inconsistency between them. Such an inconsistency occurs in the Pollard Plan, for example – the policy supports the extension of dwellings or replacement dwellings only when land is consolidated but none of the eight restructure lots in that plan refer to this requirement for existing dwellings. Inconsistencies of this kind should be removed before the plans are adopted;
- There is no link in the text of the plan to the table and its provisions. It is suggested that there is a clause missing before the table that might say that the particular requirements for each restructure lot are set out in the table;
- The content of the ‘What is allowed’ column is sometimes unclear in the references to dwellings. ‘*Vacant land. No dwelling allowed*’ is clear enough, but the provisions are rather less clear when there is an existing dwelling on the land. Site 1 of the Pollard Plan, for example, says:

⁷ Or permit for development in the case of buildings.

⁸ In the case of the Pollard Restructure Plan, the existing dwelling has accidentally been omitted from the plan and should be inserted not least because the provisions of the plan refer to it.

⁹ Site 1 in Pollard Restructure Plan.

Existing dwelling:

One dwelling on the consolidated parcel.

Does this mean that a dwelling additional to the existing dwelling is permissible or just the existing dwelling? The discussions at the Panel Hearing clarified that this provision is intended to mean that no further dwellings are permissible on the restructure lot but the words are ambiguous and should be clarified. Reliance on the policy that says that 'no additional dwellings will be permitted in this Restructure Area' is inadequate to make sense of the table – given that it is 'policy' rather than a 'requirement'.

Generally the wording of the particular requirements for each restructured lot in all of the restructure plans should be reviewed to better express the intent of the plan where existing dwellings already occur on the proposed restructure lot. Perhaps it should say 'no additional dwellings allowed' as it does in other plans;

- The Simms submission also raises the issue of whether it is intended that a Dependent persons unit is precluded from all restructure lots.

This is a land use separate from 'dwelling' specified as being as of right in the FZ subject to its being the only one on the lot and meeting the servicing requirements of Clause 35.07-2. It does not require planning permission for development unless within specified setbacks to boundaries, roads, waterways etc. By definition the use must be on the same site as a dwelling:

A movable building on the same lot as an existing dwelling and used to provide accommodation for a person dependent on a resident of the existing dwelling.

In the Panel's view, in light of the scheme definitions which treat 'Dependent persons unit' as separate from 'Dwelling', there is no required change to the restructure plan for Tarilta B or those other plans where buildings other than dwellings are allowed on those restructured lots where dwellings are permitted.

It is noted, however, that there are some plans, such as Maldon North A and B, where there are restructure lots with existing or permissible dwellings but no provision is made for buildings other than dwellings. This should be amended to allow Dependent persons units to be moved onto the land if required; and

- The Panel also wishes to alert the Planning Authority to the fact that the provisions of the RO and the restructure plans would have ongoing effect even after the lot consolidation has occurred. This may well be appropriate for these restructure plan areas given the physical characteristics of the land, but there may be some circumstances where it would be satisfactory to 'revert' to reliance on other scheme permission triggers once restructuring had occurred.

The ongoing requirement for permission for a building, dwelling etc is imposed by the RO head at Clause 45.05-2. There is no option offered to remove this permission requirement once land has been consolidated. In this respect the Panel is of the view that the restructure plans even though incorporated into the Scheme would be unable to remove this head clause imposition of a permit requirement.

It is suggested that this is a matter which the Council may like to bring to the attention of the Department of Planning and Community Development. It may assist in removing an unnecessary administrative burden in some cases.

Fairness and nexus

As indicated at the Panel Hearing, I do not agree with the Simms' submission that there has to be a 'nexus' between lot consolidation and dwelling extensions, dwelling replacements or new farm buildings. The nexus test is one sometimes employed when examining the appropriateness of planning permit conditions. In the case of amendments to planning schemes, however, the 'test' of their appropriateness is whether the proposed provisions can be strategically justified. Would the provisions achieve a purpose sought by planning policy? As earlier indicated, I am satisfied that the restructure plans are strategically appropriate.

The reasonableness or fairness of the new provisions is something that does warrant some consideration, however. This is a matter which is frequently raised in relation to restructure plans.¹⁰

The Panel has considered the assertion in the submission that it would be unreasonable and unacceptably financially burdensome for the Simms (and indeed other owners) to have to consolidate land titles if they were required to rebuild their house after a fire, or were simply building a new farm shed. I am not persuaded that the rebuilding of dwellings or extensions to dwellings should be exempt from the consolidation requirement. This is on the basis that that rebuilding or extensions to dwellings may potentially allow increased occupancy of the land either immediately or some time in the future. There is greater merit to the argument that the requirement for consolidation being linked to farm sheds is inappropriate. This is on the basis that they do not add to settlement pressures (assuming they are not used for habitation such as during shearing or more permanently).

It might be possible to devise a list of exemptions from the consolidation requirement which applies to buildings other than dwellings. It would, however, be quite difficult to devise an adequately prescribed list of exemptions. At the same time care would need to be taken not to undermine the effectiveness of the restructure plans.

If there were to be such a list of exemptions, consideration would need to be given as to whether the exemptions should apply uniformly to all restructure plan areas or instead respond to the circumstances of each area. Equity and fairness issues would likely again arise. The Panel does not recommend that a list of exemptions needs to be developed, but it might be something which the Council may feel is worthy of consideration.

Submission by Mr Ian McDonald

This submitter also owns farming land in the Tarilta Restructure Plan area (Main Road, Tarilta). His submission was that the Council's rating valuations should take into account that under the FZ the area for a dwelling has increased to 40 hectares (whereas once a dwelling could be built in any lot).

The Panel agrees with the Council submission that this submission does not relate to the proposed restructure plan. Also it does not take account of the capability restrictions

¹⁰ See, for example, Wellington C71 (PSA) [2012] PPV 153 (19 December 2012).

applying to at least some of the land which is likely to mean that no permission for a dwelling would be granted in any case.

The Panel recommends:

- **The Simms' land in proposed Restructure Lots 3, 6 and 7 of the Tarilta Restructure Plan B should be excluded from the plan and RO as resolved by the Council in post exhibition changes.**
- **Restructure Lot 4 on that plan should also be excluded from the plan and the RO.**
- **Lot 5 should be retained in the Tarilta Restructure Plan B.**
- **Lot 2 should also be retained in the Tarilta Restructure Plan B with the same provisions as exhibited.**
- **A review should be undertaken of all restructure lots in the restructure plans to establish whether buildings other than dwellings are intended to be permissible on all of the restructure lots. A clear provision then needs to be made in the table of each restructure plan for each restructure lot in this respect.**
- **The Council should consider whether in some or all restructure plans they wish to add a limit on the number of farm sheds or other buildings that may be constructed on each restructure lot or at least those which do not contain an existing dwelling or dwelling option.**
- **Inconsistencies between the policy components and the particular requirements for restructure lots in the table of the restructure plans should be removed before the plans are adopted.**
- **Insert a clause in each restructure plan (in Amendment C63 and C69) to the effect that the particular requirements in relation to the restructure lots are set out in the table included in the plan.**
- **Clarify the wording in relation to dwelling entitlements where there is already an existing dwelling on the restructure lot.**
- **Review all restructure plans, to ensure that for restructure lots with existing or permissible dwellings provision is made for buildings other than dwellings to allow Dependent persons units to be moved onto the land.**
- **Consider bringing to the attention of the Department of Planning and Community Development that the RO head clause at Clause 45.05-2 imposes an ongoing requirement for permission for a building, dwelling etc and that it may be beneficial in terms of reducing administrative costs if the option were available to remove this permission requirement once land has been consolidated.**
- **No change is required to Amendment C69 as a result of the written submission by Mr McDonald.**

(ii) Pollard Restructure Plan

The area

This restructure overlay is located approximately 8 kilometres north west of Maldon township at the intersection of the Maldon-Shelbourne Road, Three Chains Road, Bradford Road and Bradford Hills Road. The overlay applies to approximately 30 hectares and comprises 60 small allotments and one larger allotment. The area is in the Loddon River catchment downstream of Laanecoorie Reservoir and is characterised by gently undulating grazing land. Most native vegetation occurs in road reservations and along Bradford Creek, which runs along the northern side of the overlay area. A tributary of the Bradford Creek

runs through the overlay area in a north south direction. Although the Land Subject to Inundation Overlay is not applied to any of the affected land, it may be affected by flooding from Bradford Creek and its tributaries. The land capability assessment of these lots is medium to high risk.

The land to the north-east of the Maldon-Shelbourne Road comprises 16 long narrow rectangular-shaped lots varying in size between 790 square metres and 2,200 square metres. These lots are privately owned by the one landholder, the submitter, with the landholding containing a homestead (the only dwelling in this RO) and associated shedding and other improvements. Five allotments along the south-west side of Three Chains Road are privately owned (by the same landowner). Much of the remaining land is Crown land under grazing licences.

The lots in the restructure area are included in the FZ, except for the land along Bradford Creek which is included in the PCRZ. The PCRZ land is also included in ESO5. The EMO also applies to all of the privately owned land.

The restructure plan

This restructure plan applies mainly to Crown land but there are four privately owned restructure lots defined. All are owned by the submitter. Lot 1 is a large parcel north of the intersection and the three other restructure lots (Lots 3, 5 and 7) are quite small and interspersed between Crown land restructure lots on the south side of Three Chains Road.

The key policy component of the restructure plan provides:

It is policy that:

- *No additional dwellings will be permitted in this Restructure Overlay area.*
- *The existing dwelling on the privately owned land in this area may not be replaced or extended until all land within the restructure lot has been consolidated into one title.*
- *A building other than a dwelling may only be approved if the lots comprising this Restructure Lot are consolidated as one title.*
- *The Crown lots in the part of the overlay area to the south-west of Maldon-Shelbourne Road are encouraged to be consolidated into two separate parcels.*

Council agreed changes

The Panel was not advised of any Council agreed changes.

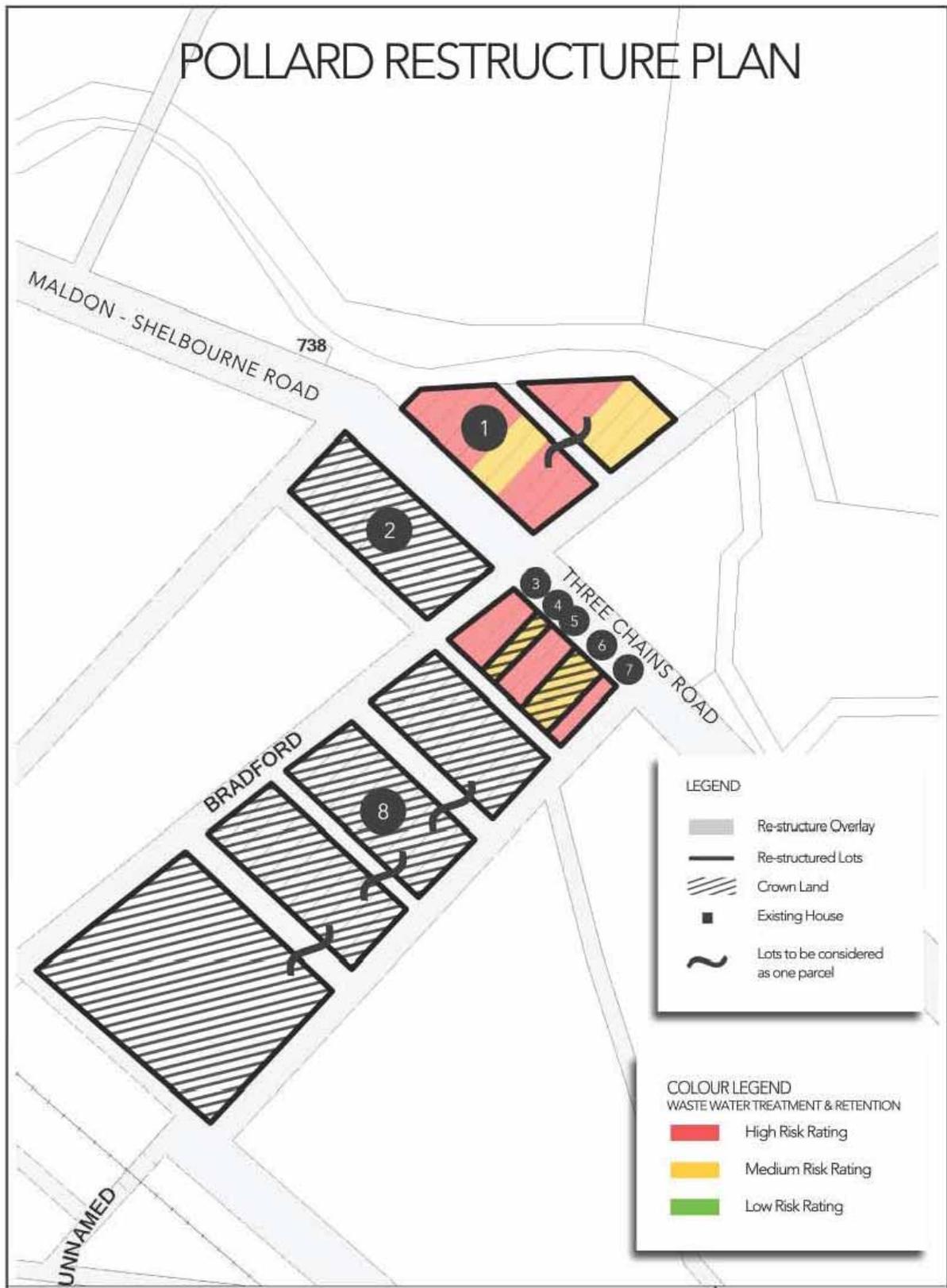


Figure 5: Pollard Restructure Plan

Submission by Mr Alec and Ms Betty Taylor

A written submission was lodged for the Taylors by their solicitors, Robertson Hyetts of Castlemaine. The submission objected to Amendment C69 on the basis that existing Planning Scheme provisions already restrict the use and development of the land including the construction of further dwellings; the Taylors own all of the private land to be consolidated and the submission asserts that there are no environmental, economic or social benefits to be gained from implementing the restructure plan. It is said that the overlay would do nothing more than force consolidation of titles. It is also said that the Council should bear the surveying costs associated with consolidation. The submission also objects to costs associated with reversing consolidation in future. It describes the plan as 'an unwarranted encumbrance' and the Taylors as being unfairly targeted. It suggests that a more liberal regime related to dwellings, consistent with the Maldon North A Restructure Plan, should be applied.

The Council response was that the submission displays a misunderstanding of what is proposed by the Amendment. It is said that it fails to understand that the RO already applies to the land and that title consolidation only will be required if new development is proposed. The Council submitted that restructuring is required given the relative isolation of the land from services, its high risk capability rating, environmental sensitivities associated with the creek and potential flooding, and that most of the area is Crown land.

Panel conclusions and recommendations

The Panel has considered the submission and the Council's response. It is true that the submission does appear to misunderstand that the RO is already in place (see second paragraph of the section of their letter relating to 'Background' and that the restructure requirements only apply when development is proposed. The submission does, however, raise a number of relevant concerns.

The submission includes that the Taylors would not be able to obtain a permit for development (including works to their dwelling) until after consolidation occurs. It is correct that so far as Lot 1 is concerned that both the policy and the table of particular requirements indicate that any new building other than a dwelling requires lot consolidation. However, while the policy indicates that:

The existing dwelling on the privately owned land in this area may not be replaced or extended until all land within the restructure lot has been consolidated into one title.

the table of particular provisions is silent in relation to dwelling extensions and reconstruction of dwellings on Lot 1. The effect of these provisions is unclear, as is commented earlier in the discussion of the Simms submission. The policy and the table should be made consistent so far as Lot 1 is concerned.

So far as Lots 3 and 5 are concerned, the provisions of the overlay are clear: no dwelling is allowed and any building other than a dwelling requires consolidation of the lots. Given the small size of these lots and their high risk rating in terms of effluent disposal, precluding a dwelling is reasonable.

Lot 7 is more problematic in so far as it appears to be a single lot. On same basis as single lots were excluded from the Tarilta Plan it would seem appropriate to exclude this lot from the plan and RO.

It is self evident that the Taylors have not, as claimed, been targeted in terms of requirements to restructure land under Amendment C69; and, as has been discussed earlier, the Panel is satisfied that the restructure plans do achieve an appropriate strategic outcome. In the Panel's view the imposition on the Taylors of the cost of surveying is not an unreasonable accompaniment to the application costs associated with development proposals.

The Panel recommends:

- **The provisions relating to Restructure Lot 1 in the table to the Pollard Restructure Plan should be amended so as to be made consistent with the policy component of that plan.**
- **Restructure Lot 7 of the Pollard Restructure Plan should be omitted from the plan and the Restructure Overlay.**

2.3 General conclusions and consolidated recommendations

For the reasons outlined in this report, the Panel recommends that Amendments C63 and C69 to the Mount Alexander Planning Scheme should be adopted as exhibited subject to the following recommendations:

C63 Specific recommendations

1. Maldon North B Restructure Plan

(a) Add the following to Section 2.0 Subject Land:

A current operational licence with processing plant lies approximately 280 metres from land within the Maldon North B Restructure Overlay.

(b) The entry for Restructure Lot 1 in the 'Description' column of the table should include the land in:

CA 1 SEC B Parish of Maldon

CA 2 SEC B Parish of Maldon

CA 3 SEC B Parish of Maldon

CA 4 SEC B Parish of Maldon

CA 5 SEC B Parish of Maldon

CA 6 SEC B Parish of Maldon

CA 7 SEC B Parish of Maldon

CA 8 SEC B Parish of Maldon

CA 8F SEC B Parish of Maldon

and the description of the lots should be updated to refer to their identification on the new title plans for the land.

(c) The entry for Restructure Lot 1 in the 'What is allowed' column of the table should read:

Farmland which is part of a landholding which includes land outside the Restructure Overlay area (the other lots being [correct description of remainder of Family Trust land required]).

One dwelling on the consolidated parcel.

The building envelope for a future dwelling is to be located on that part of the consolidated lot which is rated 'Medium Risk' in the Rural Land Capability Study (Golder and Associates, 2011).

(d) For Restructure Lot 2, remove reference to Lot 1 TP396323 Parish of Maldon.

2. Muckleford South Restructure Plan

- (a) The land description for Restructure Lot 3 in the table should be corrected by adding 'CA 1 Section 4 Parish of Muckleford' and deleting 'CA6 Sec 4 Parish of Muckleford'; and should be updated to refer to lot numbers on new title plans.
- (b) No change should be made to the plan in response to the submission by the Lewis'.

C69 Specific recommendations

3. Tarilta Restructure Plan B

- (a) Restructure Lot 2 should also be retained in the plan with the same provisions as exhibited.
- (b) Proposed Restructure Lots 3, 6 and 7 should be excluded from the plan and Restructure Overlay as resolved by the Council in post exhibition changes.
- (c) Restructure Lot 4 should also be excluded from the plan and the Restructure Overlay.
- (d) Restructure Lot 5 should be retained in the plan and overlay.
- (e) No change is required to the plan as a result of the written submission by Mr McDonald.

4. Pollard Restructure Plan

- (a) The provisions relating to Restructure Lot 1 in the table should be amended so as to be made consistent with the policy component of that plan.
- (b) Restructure Lot 7 should be omitted from the plan and the Restructure Overlay.

General recommendations for both Amendments

5. All restructure plans:

- (a) A review should be undertaken of all restructure lots in the restructure plans to establish whether buildings other than dwellings are intended to be permissible on all of the restructure lots. A clear provision then needs to be made in the table of each restructure plan for each restructure lot in this respect.
- (b) The Council should consider whether in some or all restructure plans they wish to add a limit on the number of farm sheds or other buildings that may be constructed on each restructure lot or at least those which do not contain an existing dwelling or dwelling option.

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- (c) Inconsistencies between the policy components and the particular requirements for restructure lots in the table of the restructure plans should be removed before the plans are adopted.**
 - (d) Insert a clause in each restructure plan to the effect that the particular requirements in relation to the restructure lots are set out in the table included in the plan.**
 - (e) Clarify the wording in relation to dwelling entitlements where there is already an existing dwelling on the restructure lot.**
 - (f) Review all restructure plans, to ensure that for restructure lots with existing or permissible dwellings provision is made for buildings other than dwellings to allow Dependent persons units to be moved onto the land.**
 - (g) Consider bringing to the attention of the Department of Planning and Community Development that the RO head clause at Clause 45.05-2 imposes an ongoing requirement for permission for a building, dwelling etc and that it may be beneficial in terms of reducing administrative costs if the option were available to remove this permission requirement once land has been consolidated.**

Appendix A List of Submitters

Amendment C63

No.	Submitter
1	Julie Long
2 *	VicRoads
3	K A & B A Lewis
4 *	Coliban Water
5 *	Goulburn-Murray Water
6	Department of Primary Industry
7	Russell Healy
8 *	CFA
9 *	Department of Sustainability and Environment

Note: The submissions marked with an asterisk supported the amendment, and required no further action.

Amendment C69

No.	Submitter
1 *	Department of Sustainability and Environment
2	Mr & Mrs B Simms, c/o Banon Consultants
3	Ian R McDonald
4	Mr Alec & Mrs Betty Taylor, c/o Robertson Hyetts Solicitors

Note: The submission marked with an asterisk supported the relevant Amendment, and required no further action.