

# YARRA RANGES PLANNING SCHEME AMENDMENT C177

## RESTRUCTURE OVERLAY CORRECTION 2019

### BACKGROUND REPORT

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## 1.0 INTRODUCTION

Yarra Ranges Council is proposing a Planning Scheme Amendment to the Restructure Overlay.

It is proposed to rationalise, correct, and clarify the Restructure Overlay in response to identified redundancies, anomalies and lack of clarity.

The proposed amendment avoids making changes to the Restructure Overlay in cases where its removal would result in additional dwelling potential, other than where anomalies have been identified.

This Background Report has been written to explain the background and rationale for the proposed changes. To accompany this report, a separate Technical Report provides much of the technical analysis underpinning the proposed changes.

## 2.0 RESTRUCTURE OVERLAY - HISTORY

Before adequate planning controls were in place in the mid 1900's a number of subdivisions occurred whereby small lots were created despite significant physical, environmental and infrastructure constraints affecting the land. Many of these subdivisions were located in and around the Dandenongs and in the Upper Yarra Valley. They are generally referred to as 'old and inappropriate' subdivisions.

It was recognised decades ago that the full development of these subdivisions would have led to significant environmental and social impacts. In an attempt to ensure that the future development of these areas avoided causing such detriment, a series of Restructure Maps were created that outlined how to consolidate lots to provide more suitable conditions for the development of single dwellings. By creating larger lots, issues such as the absorption of waste on site and the siting of dwellings to reduce fire risk were able to be addressed. These Restructure Maps formed part of the planning schemes that applied in the area before the creation of the Yarra Ranges Planning Scheme.

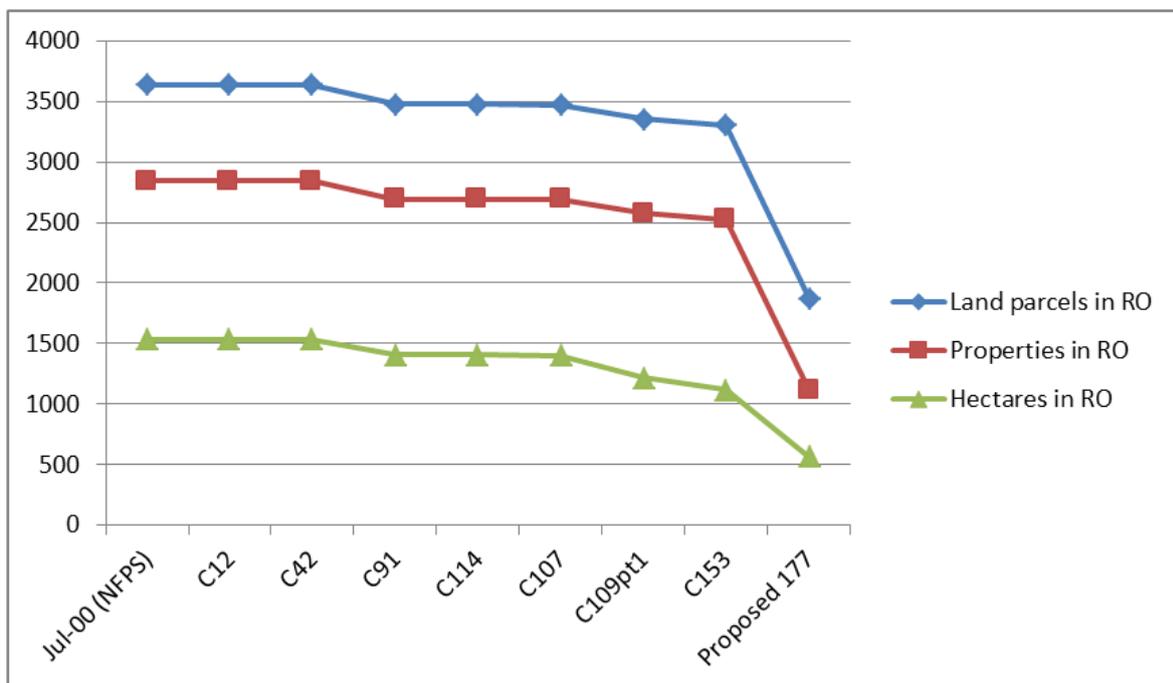
With the creation of the Yarra Ranges Planning Scheme in July 2000, these Restructure Maps were then translated into over 100 Restructure Overlay Maps in the current Planning Scheme. The Overlay gives effect to a restructure map that identifies how lots within each subdivision must be reconfigured to allow for the construction of a dwelling. In many cases this means that several lots must be consolidated into one. There are also stringent requirements that must be met if a planning permit to construct a dwelling is to be issued.

### 3.0 PLANNING CONTROLS UNDER THE RESTRUCTURE OVERLAY

Under the Restructure Overlay (Clause 45.05 – Yarra Ranges Planning Scheme) requires:

- A planning permit to subdivide land. The configuration of lots must be in accordance with a restructure map that is incorporated into the Overlay. Some minor modifications can be permitted to the layout providing no additional lots or subdivision potential is created. The applicant must demonstrate that all waste water can be treated and retained on site.
- A permit to construct or extend a dwelling or other building. Any permit issued can include a permit condition requiring the consolidation of lots. This provides a mechanism to ensure lots are configured as set out in the incorporated 'Restructure Plan'.

The Restructure Overlay is a planning tool intended for continuous review and rationalisation. During the course of land being consolidated in accordance with the layout required, the Restructure Overlay achieves its purpose and often has no further function to perform, whereupon it can be removed from land. Since the implementation of the New Format Planning Scheme in July 2000, there have been a number of planning scheme amendments which have rationalised the land affected by the Overlay, as demonstrated in the graph below:



Rationalising the Restructure Overlay is simple when it relates to the deletion of land having clearly met the intended purpose of the Overlay, such as through lot consolidation. However, the suitability of other land for removal is often difficult to

establish owing to the original intentions of the Overlay areas no longer being known (e.g. whether original concerns related to landslip, bushfire, provision of services, environmental or landscape considerations, all of the above, etc).

It must be acknowledged that because many of these restructure plans were prepared over 30 years ago, they arguably do not now hold the central importance in the preservation of environmental and green wedge values they once did. This is partly due to a raft of contemporary, performance-based planning controls now coexisting with the Restructure Overlay in the planning scheme (i.e. Bushfire Management Overlay, Erosion Management Overlay, Significant Landscape Overlay, etc), largely addressing the same concerns in a more current, accurate and site-specific manner. It is also due to developments over time in the way land is used and dwellings are constructed (i.e. advanced waste-water treatment technology, new building construction techniques and materials, etc).

Nevertheless, the Restructure Overlay has been instrumental in reducing development densities in environmentally sensitive and constrained areas of Yarra Ranges since its inception, and its ongoing application continues to play a role in directing development and subdivision.

## 4.0 PROPOSED CHANGES TO THE RESTRUCTURE OVERLAY

### 4.1 REVISED APPROACH TO DWELLINGS AND OTHER BUILDINGS IN THE RESTRUCTURE OVERLAY

The Restructure Overlay currently requires a planning permit for construction or extension of a dwelling or 'other building'. An 'other building' could refer to residential buildings such as hotels or dependent persons units, or other types of buildings such as agricultural buildings.

The Restructure Overlay states that any permit application for extension of a dwelling, or construction or extension of an 'other building', must be consistent with the restructure plan listed in the Schedule to the Overlay, being the Incorporated Document titled Restructure Plan for Old and Inappropriate Subdivisions in the Yarra Ranges Council (the Incorporated Document).

In cases where land owners have consolidated titles to satisfy the Restructure Overlay, this poses no problems – land owners can apply for a planning permit to extend a dwelling, or construct an outbuilding or other form of building. However, in other cases where land titles have not been consolidated to satisfy the Restructure Overlay, owners are currently prevented from improving and developing their land.

The original intention of the Restructure Overlay was to direct these owners to consolidate titles to satisfy the Restructure Overlay, however in many cases this has

proven to be impossible as land needed for consolidation is owned by different parties.

Overall, given the length of time since the Restructure Overlays were created in Yarra Ranges (late 1970s to early 1980s) and that the intention of many restructures is now unknown as explained below under 'Background', the level of restriction for these owners appears unreasonable. It is proposed to add wording to the Incorporated Document to specify that planning permit applications can be made in these cases, as set out in the accompanying Technical Report. Importantly, this change could benefit affected areas of Yarra Ranges by enabling the upgrade and renewal of septic tank systems that often accompanies planning permit applications in unsewered areas.

Council officers consider that the change is generally consistent with the spirit of the Incorporated Document, which tries to limit the potential for new dwellings to be constructed on land areas that were inappropriately subdivided in the past, and to determine the future pattern of development in these places. The Incorporated Document does not suggest that owners of existing dwellings should be prevented from reasonably adapting, renovating or updating their houses. Similarly, it does not include any mention of 'other buildings'.

The revised Incorporated Document sets out the changes proposed to the Incorporated Document. It defines an extension as an increase in gross floor area of no more than 50 per cent of the building's existing gross floor area. This threshold is intended to recognise the needs of residents in Restructure Overlay affected areas to improve and change their properties, but to distinguish this from larger extensions that would substantially change the land use intensity. It is similar to the logic used in the Bushfire Management Overlay to exempt permit requirements for extensions to dwellings of under 50 per cent of the existing floor area. As most Restructure Overlay affected areas are within the Bushfire Management Overlay, it is considered logical to apply similar allowances for building extensions.

## 4.2 DELETING REDUNDANT LAND

A review of land in the Restructure Overlay has identified that its application to 56 per cent of properties it currently affects is redundant. These cases fall into three basic categories:

- Lots that have previously been consolidated to satisfy the intent of the Restructure Overlay
- Lots that have previously been resubdivided in a way that satisfies the intent of the Restructure Overlay (see the accompanying Technical Report)
- Single lots in the Restructure Overlay with no restructure or other requirements.

While the first two categories are relatively clear, the third raises a contradiction in the planning scheme because it refers to land included in a restructure planning control that has no requirements for restructure. Research into this has identified historical reasons for the application of restructure controls in these cases, which is included in the Technical Report accompanying this report. There are no ongoing reasons for the Restructure Overlay to continue to apply to these properties.

#### 4.3 CHANGES TO ADDRESS ANOMALIES, INCONSISTENCIES AND LACK OF CLARITY

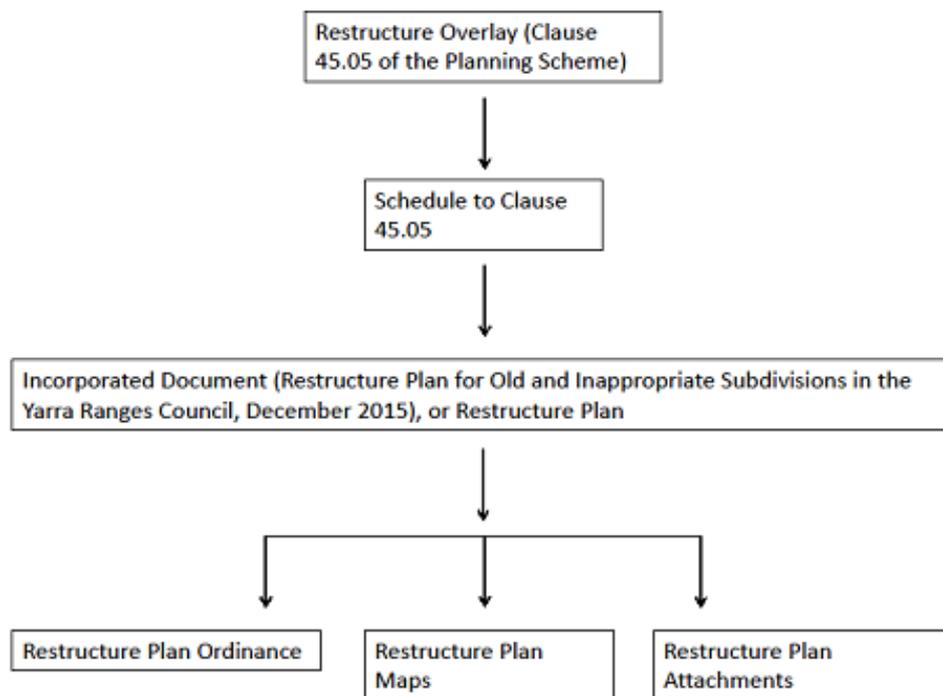
The review of the Restructure Overlay also seeks to clarify a number of anomalies and ambiguities. These largely derive from the time when the four former Planning Schemes were combined to form the Yarra Ranges Planning Scheme in 2000. At that time, the Restructure Overlay, along with other planning controls, was converted from a hard copy format to an electronic one. However, the newly created electronic mapping included a number of errors. In some cases, properties were included in the Restructure Overlay which had never been shown in the Incorporated Document. In other cases, properties were omitted in error.

Strategic Planning has researched these cases in detail by looking into the history of the restructure maps and any Amendments that have been made over time to them. Any changes to the maps that are not the result of Planning Scheme Amendments are concluded to be errors. Changes are proposed to improve the clarity and transparency of the Restructure Overlay in these cases, which are explained in the Technical Report accompanying this report.

In addition, it is proposed to clarify two wording ambiguities identified in the Incorporated Document. The first relates to the use of the expressions 'Restructure Plan' and 'Restructure Map'. Restructure Plan is commonly used to refer to both the entire Incorporated Document, as well as to the localised maps showing required patterns of title consolidation. It is clear from the Schedule to the Restructure Overlay that the meaning of Restructure Plan includes everything contained within the Incorporated Document. This includes a written section and a series of localised maps. It is therefore proposed to change the wording to refer consistently to the Restructure Plan as referring to the entire Incorporated Document.

By extension, the localised maps are proposed to be referred to consistently as Restructure Maps, and the Incorporated Document's written section referred to as its Ordinance. This change is important in order to clarify how the Incorporated Document relates to Clause 45.05 (Restructure Overlay), where it is stated that permit applications for subdivision and development must be in accordance with the 'Restructure Plan'. The interpretation of the term 'Restructure Plan' is therefore critical to an understanding of the Restructure Overlay.

The hierarchy of terms used to describe the Restructure Overlay would therefore be clearly established in accordance with the diagram below:



Secondly, it is proposed to replace a reference in the Incorporated Document to ‘dwelling entitlements’ for each restructure lot, to a more cautiously worded ‘potential dwellings allowed by the Restructure Overlay’. Dwelling entitlements implies that land owners who consolidate their titles in accordance with a restructure map can then construct a dwelling as of right.

Land in the Restructure Overlay is typically highly constrained and subject to a number of restrictive controls such as the Bushfire Management Overlay and Erosion Management Overlay. The proposed wording change will help to clarify that title consolidation is not a vehicle to bypass all other planning scheme requirements, but simply a way to satisfy the requirements of the Restructure Overlay amongst other parts of the Planning Scheme.

#### 4.4 REZONINGS

The review of the Restructure Overlay has identified land areas that are incorrectly zoned and proposed to be corrected. One site is Lot CA80D6 in Blacksands Road, Three Bridges (RO105). This is publicly owned land formerly intended to be rezoned to a Public Conservation and Resource Zone to correct an error.

There are two other zone anomaly changes where it is identified that zone boundaries do not align with property boundaries. These are ‘tidy up’ changes. The

first relates to land at 58 Glenfern Avenue, Upwey and 12-14, 16, 18, and 20 Torry Hill Road, Upwey (RO36). The second relates to land at 32 Dunstan Crescent, Tremont and 1 Mt Dandenong Tourist Road, Tremont (RO9).

Further information about the rezonings is provided in the Technical Report accompanying this report.

#### 4.5 OTHER REQUIREMENTS IN THE INCORPORATED DOCUMENT

The Incorporated Document refers to a number of other requirements besides lot consolidation. The Incorporated Document has requirements for building envelopes, creation of easements, closure of roads (sometimes with consolidation requirements for particular properties), site coverage, and others. In general this Amendment avoids removing the Restructure Overlay from properties where these 'other requirements' apply. However, a review of these requirements has led to some proposed rationalisations and changes as set out in in the Technical Report accompanying this report.

#### 4.6 REFORMATTING

The restructure maps set out in the Incorporated Document were created before modern GIS systems and computer software, and are antiquated.

It is proposed to improve the presentation and legibility of the Restructure Overlay by making changes to the form and layout of mapping information (Attachment 1 shows the proposed Incorporated Document mapping). The changes will have the added benefits that they will enable Restructure Overlay information to be better integrated with Council's GIS information, and enable the Restructure Overlay to be more easily amended over time as needed.

### 5.0 OTHER CONSIDERATIONS

#### 5.1 UPPER YARRA VALLEY AND DANDENONG RANGES REGIONAL STRATEGY PLAN

The Upper Yarra Valley and Dandenong Ranges Regional Strategy Plan (RSP) specifically addresses the issue of old and inappropriate subdivisions, referring to them as 'Special Study Areas' at Chapter 11. The relevant section of the RSP refers to the need to continue with and expand upon subdivision restructure programs.

The current expression of the 'restructure programs' in the Planning Scheme is the Incorporated Document Restructure Plan for Old and Inappropriate Subdivisions in the Yarra Ranges Council, December 2015.

The proposed deletion of the redundant Restructure Overlays areas simply recognises that the controls on the relevant land have served the purpose for which they were originally created and can now be deleted. There is no conflict with the RSP in this change.

The deletion of single restructure lots seeks to remove any lots from the Overlay which have no restructure requirements. As described in the Technical Report, the existence of these lots in the Overlay is inherently contradictory and due to the way restructure requirements have been translated into versions of the planning scheme over time. Their removal is consistent with the intent of the RSP as explained in the Technical Report under 'Regional Strategy Plan'.

The proposed change to the Incorporated Document to allow planning applications to be made for extension of dwellings and the construction or extension of other buildings on land not yet consolidated in accordance with the Restructure Overlay has no particular conflict with the RSP. The focus of the RSP is rather on subdivision patterns and new dwelling development in areas identified as inappropriately subdivided. The proposed change will simply allow a planning assessment of whether these application types are consistent with the Restructure Overlay, and by association the RSP.

## 5.2 LAND IN THE LOW DENSITY RESIDENTIAL ZONE AND NEIGHBOURHOOD RESIDENTIAL ZONE

Unlike the Green Wedge Zone, the Green Wedge A Zone, and the Rural Conservation Zone, which allow only one dwelling per lot, the Low Density Residential Zone (LDRZ) and Neighbourhood Residential Zone (NRZ) have the potential for multiple dwellings per lot subject to a planning permit. If the Restructure Overlay were removed from single lots within these zones, the development potential of these areas would be increased.

An increase in development potential would contradict the objectives of the RSP relating to restructure requirements, and would be inequitable to land owners in the Restructure Overlay who have previously consolidated their land titles. Consequently, no land in these zones has been included in the land proposed to have the Restructure Overlay removed, except in situations where there is an identified anomaly and the removal of the Restructure Overlay from LDRZ or NRZ zoned land is considered necessary.

## 5.3 LAND IN PUBLIC ZONES

Under Section 46AF of the Planning and Environment Act 1987, parliamentary ratification is required for any change to the Planning Scheme which:

*...has the effect of altering or removing any controls over the subdivision of any green wedge land to allow the land to be subdivided into more lots or into smaller lots than allowed for in the planning scheme.*

This amendment seeks to remove the Restructure Overlay from some properties in public zones outside the urban growth boundary, which have no minimum subdivision sizes. A small number of rezonings are also proposed to address errors.

Council officers have communicated with officers from the Department of Environment, Land, Water and Planning, who have confirmed that land in public zones can be removed from the Restructure Overlay without the need for parliamentary ratification.

#### 5.4 AMENDMENT C159

Amendment C159 proposes to rezone towns along the Warburton Highway (Launching Place, Millgrove and Wesburn) from the Rural Living Zone to a combination of the Township Zone, the Neighbourhood Residential Zone and the Low Density Residential Zone. As these zones would allow for more than one dwelling per lot, the Restructure Overlay is not proposed to be removed from this land (RO87 in Wesburn). No decision on C159 has yet been made by the Minister for Planning.

#### 6.0 CONCLUSION

The proposed changes will increase the efficiency, effectiveness and fairness of the planning scheme.

The deletion of redundant Restructure Overlay controls will improve the transparency of the planning scheme, while also reducing the burden on Council resources of planning applications triggered by these controls.

The revised approach proposed to dwelling extensions and construction and extension of 'other buildings' in the Restructure Overlay, will better enable land owners with existing dwellings to appropriately extend their dwellings as needed. It will also enable owners of agricultural enterprises to upgrade their operations over time in a way that is in keeping with the capacity of the land, and with environmental and landscape characteristics.