

ATTACHMENTS

**Under Separate Cover
Ordinary Council Meeting**

6.00pm Tuesday 26 June 2018

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Planning and Environment Act 1987

Panel Report

**Golden Plains Planning Scheme Amendment C75
385 Common Road, Inverleigh**

28 March 2018



Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

Golden Plains Planning Scheme Amendment C75

385 Common Road, Inverleigh

28 March 2018



David Merrett, Chair

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List of Abbreviations

the Act	Planning and Environment Act 1987
DDO	Design and Development Overlay
DDO5	Schedule 5 to the Design and Development Overlay
DLA	David Lock Associates
DPO	Development Plan Overlay
DPO15	Schedule 15 to the Development Plan Overlay
ISP	Inverleigh Structure Plan 2005
ISP review	Inverleigh Structure Plan review
LCA	Land Capability Assessment
LDRZ	Low Density Residential Zone
PPN37	Planning Practice Note 37 Rural Residential Development
PPRZ	Public Park and Recreation Zone
the proponent	Ramsey Property Group

Overview

Amendment summary	
The Amendment	Golden Plains Planning Scheme Amendment C75
Brief description	Rezone the land from Farming Zone to part Low Density Residential Zone and part Public Park and Recreation Zone and apply Schedule 5 of the Design and Development Overlay control
Subject land	385 Common Road, Inverleigh
The Proponent	Ramsey Property Group
Planning Authority	Golden Plains Shire Council
Authorisation	25 August 2017
Exhibition	18 September to 6 November 2017
Submissions	Number of Submissions: 6 Opposed: 2 <ul style="list-style-type: none"> - Country Fire Authority - Environment Protection Authority Victoria - Department of Environment, Land, Water and Planning - John and Anne Bolitho - Matthew Wilson and Anna Shaw - AusNet Services
Panel process	
The Panel	David Merrett, appointed on 6 February 2018
Directions Hearing	Bannockburn Cultural Centre, 21 February 2018
Panel Hearing	Inverleigh Golf Club, 16 March 2018
Site inspections	Accompanied, 16 March 2018
Appearances	<ul style="list-style-type: none"> - Fiona Maw, Sarah Fisher and Tim Waller on behalf of Golden Plains Shire Council - Paul Chiappi of Counsel, assisted by Ellen Tarasenko of Minter Ellison lawyers, on behalf of Ramsey Property Group who called planning evidence from Andrew Clarke of Matrix Australia - John and Anne Bolitho - Matthew Wilson
Date of this Report	28 March 2018

Executive summary

(i) Summary

Golden Plains Planning Scheme Amendment C75 (the Amendment) seeks to rezone part (85.4 hectares) of the *Lullote* farm at 385 Common Road, Inverleigh to part Low Density Residential Zone and part Public Park and Recreation Zone and apply Schedule 5 of the Design and Development Overlay control to the Low Density Residential Zone.

The land is identified within an area of “*future low density residential*” in the Inverleigh Structure Plan 2005 and in the planning scheme as “*longer term growth area*”. As Inverleigh does not have a reticulated sewerage system, this latter designation refers to low density development.

Land to the north is part of a vegetation reserve and the southern part of the Amendment land drops sharply to the Leigh River. Land adjacent to the Leigh River will be transferred to Council as part of the public open space contribution to provide for public access to the river and a public walkway.

Council is currently reviewing the structure plan however it is in the early stages and a draft is not available.

The key issues raised in submissions were:

- the Amendment should be delayed pending the review of the structure plan
- the rezoning and development of the land is not consistent with the staging plan of the structure plan
- the eastern boundary of the land should form the extent of the town and not include the *Lullote* farm
- lot size should be 1 - 2 hectares, similar to the estates to the east
- a Development Plan Overlay should be applied to this land and all the *Lullote* farm.

The Amendment was supported by seven technical assessments that addressed land capability, vegetation, traffic, landslip and geotechnical risk, cultural heritage, stormwater management and bushfire risk. The Panel noted the lack of any reference to these reports in the proposed Amendment controls and any requirement to master plan the land. The Panel issued a Direction for Council and the Proponent to draft a schedule to the Development Plan Overlay for discussion at the Hearing. All parties supported the use of the Development Plan Overlay, although the resident submitters were concerned this would provide an exemption for notification and third party review rights if it was consistent with a development plan.

The Panel has considered all issues and concludes:

- the Amendment is strategically supported by the Inverleigh Structure Plan 2005 and there is no justification for the Amendment to be delayed until the current structure plan review has been completed
- Figure 2 of the Inverleigh Structure Plan 2005 does not act as a staging plan for land release for Inverleigh and the planning scheme does not require this. The planning scheme does require the logical sequencing of land release which this Amendment is consistent with

- the growth areas define the current extent of Inverleigh and there is no justification to redefine this at the eastern boundary of the land
- the Inverleigh Structure Plan 2005 and Clause 21.07-5 do not contain any direction on lot sizes for the land, unlike other areas, and should be considered as part of the master planning of the land
- the constraints of the land can be addressed more fully by the development plan. The Panel has proposed changes to the schedule which is located at Appendix B.

The qualitative, not quantitative, approach taken by the Schedule 15 to the Development Plan Overlay defers the identification of prescriptive requirements to the master planning phase. On this basis, Council should consider whether it is appropriate to informally seek comment from the community on the development plan before it is approved.

(ii) Recommendations

Based on the reasons set out in this Report, the Panel recommends that Golden Plains Planning Scheme Amendment C75 be adopted as exhibited subject to the following:

- 1. Introduce and apply Schedule 15 to the Development Plan Overlay that is contained in Appendix B.**

1 Introduction

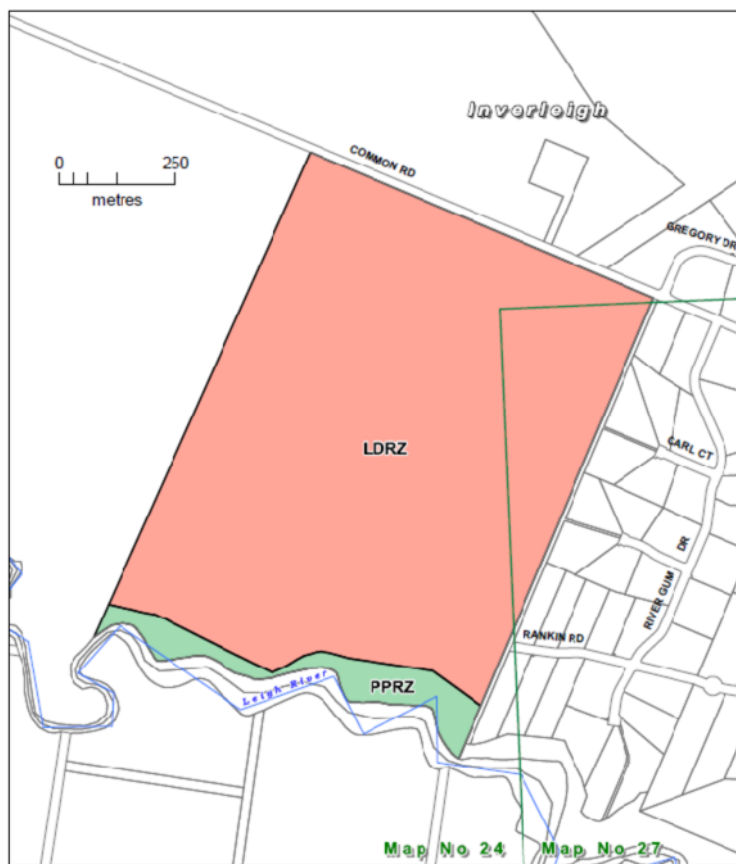
1.1 The Amendment

(i) Amendment description

The Amendment applies to 385 Common Road, Inverleigh (parts 26, 27, 28, 29).

The Amendment proposes to rezone the land from Farming Zone to part Low Density Residential Zone (LDRZ) and part Public Park and Recreation Zone (PPRZ) and apply Schedule 5 to the Design and Development Overlay (DDO5) control to the LDRZ part. Figure 1 contains the rezoning map.

Figure 1 Proposed zone map



The Amendment request was lodged by the Ramsey Property Group (the Proponent). The purpose of the Amendment is to facilitate low density residential development in an area that was identified in the Inverleigh Structure Plan 2005 (ISP) as *“future low density residential”*.

The PPRZ is to be transferred to Council as part of the public open space requirement under Clause 52.01 of the planning scheme.

The DDO5 is a current overlay control in the planning scheme and seeks to protect existing character by applying the following low density residential zone setbacks:

- 20 metres from a Road Zone Category 1 or land in a Public Acquisition Overlay to be acquired for a road, Category 1
- 10 metres from any other road
- 5 metres from any other boundary
- 15 metres from a dwelling not in the same ownership.

Appendix A contains the document list.

(ii) The Amendment land

The Amendment applies to land shown in Figure 2. The land has an area of 85.4 hectares and is located 2 kilometres to the north west of the Inverleigh township. It is bound by Common Road to the north, rural residential development to the east, the Leigh River to the south and open grazing land to the west. The land is part of a larger farm (*Lullote* – 221.5 hectares), the homestead of which is shown further west of the subject land and is listed on the Victorian Heritage Register. The Inverleigh Golf Club and the Common Flora and Fauna Reserve are located to the north of Common Road, opposite the land.

The land is generally flat grazing land which drops off sharply to the Leigh River. There are many mature scattered trees (River red gums) in the northern portion adjacent to Common Road and generally cleared land in the southern portion adjacent to the Leigh River.

The rural residential subdivision to the east created a reserve to be managed by Council that is intended to be a green biolink between the Common Flora and Fauna Reserve and the river and town centre. It has a width of 10 metres. Rankin Road has been constructed, not as a court bowl, but as a potential road link with the subject land. Pedestrian links have been provided from this subdivision to the biolink reserve.

Inverleigh lies at the junction of the Barwon and Leigh Rivers and is constrained by active floodway areas that limit development. Development is also constrained by the lack of a reticulated sewerage system.

1.2 Panel process

At its meeting of 23 January 2018, Council resolved to refer the submissions to a Panel. As a result, a Panel to consider the Amendment was appointed under delegation from the Minister for Planning on 6 February 2018 and comprised David Merrett.

Prior to the Directions Hearing, the Panel undertook an unaccompanied inspection of the Amendment land and its surrounds. An accompanied inspection was conducted prior to the commencement of the Hearing on 16 March 2018.

The Panel then met at the Inverleigh Golf Club on 16 March 2018 to hear submissions about the Amendment. Those in attendance at the Panel Hearing are listed in the overview table at the front of this report.

Figure 2 The subject land

1.3 Procedural issues

Panel Direction 9(f) required Council to address how the master planning of the land will be managed as the Amendment does not propose a suitable planning control such as the Development Plan Overlay (DPO). This Direction required Council and the Proponent to prepare a DPO schedule as part of the Council Part A submission that could be considered in a 'without prejudice' discussion at the Hearing. The Panel noted the amount of technical assessment of the land (as detailed below) that provides information that could be used as a basis for a DPO schedule. The exhibited controls make no reference to these assessments.

At the Hearing, Council and the Proponent agreed that the use of the DPO had merit and broadly supported the draft DPO schedule circulated by Council, subject to further discussion at the Hearing. On this basis, the Panel supports the use of the DPO to guide the future development of the land subject to detailed drafting issues considered in Chapter 4.

The Panel acknowledges that a neighbouring property owner may have not made a submission to the exhibited Amendment on the basis that they would reserve their comment as part of a future permit application process. DPO15 removes this opportunity. Council should seek further advice on whether further notice should be conducted before adopting the Amendment.

Appendix B contains a version of DPO15 the Panel supports.

After the exhibition of the Amendment, a new Local Planning Policy Framework was introduced by Amendment C76 in December 2017, arising from a planning scheme review conducted in 2016. Some changes were relevant to Inverleigh and more specifically this Amendment. The parties to the hearing were given an opportunity to lodge a supplementary submission to address the changes. Mr Bolitho and Mr Wilson took this opportunity.

(i) Conclusion

The Panel concludes that the Development Plan Overlay be used to guide the master planning of the site.

1.4 Supporting reports to the Amendment

David Lock Associates (DLA) prepared the Amendment request on behalf of the Proponent. It referred to the following technical assessments:

- Land capability assessment (LCA) – *St Quentin Consulting*, August 2016.
- Stormwater management plan – *TGM*, August 2016.
- Traffic impact assessment – *Trafficworks*, August 2016.
- Bushfire planning assessment – *Ecotide*, August 2016.
- Cultural heritage assessment – *DIG International*, November 2016.
- Vegetation assessment – *Mark Trengrove Ecological Services*, August 2016.
- Geotechnical assessment – *St Quentin Consulting*, December 2016.

Some of the key issues that arose from these reports were:

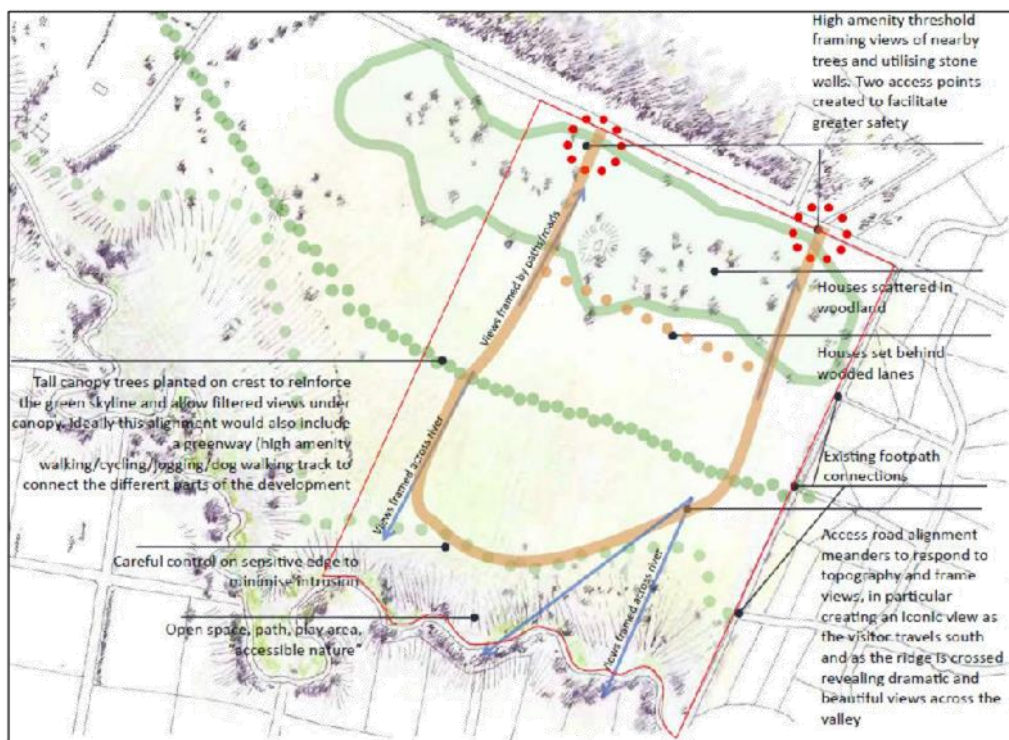
- the soil structure presents some constraint to the disposal of wastewater on site, however this is a low and manageable risk. Lots of 4500 square metres or less should not accommodate dwellings greater than 4 bedrooms in size. Larger lots could support larger dwellings
- stormwater will need to be treated on site using vegetated/grassed swale drains and a drainage retardation basin. There will be two legal points of discharge; one from the retardation basin and the other direct discharge to the Leigh River
- the surrounding road network can accommodate traffic generated by the development of the land based on a yield of 145 lots
- the main fire threat is from the Common Flora and Fauna Reserve to the north. To reduce this threat to an acceptable level there will need to be setbacks from the reserve and the escarpment, an internal road network that allows for emergency vehicle access, a fire hydrant system and compliance with BMO requirements including BAL 12.5 for most lots and BAL 19 for those that meet the setback requirements
- a Cultural Heritage Management Plan will be required
- lot configuration must accommodate and protect all River Red Gums
- the land generally has very low risk to low risk of land slip. The escarpment has a moderate risk and the river embankment has a high risk. These areas should remain free of buildings.

The DLA report synthesised this information and identified character areas, site capacity and sensitivity, a design response and ultimately a suggested conceptual framework which is

shown on Figure 3. An east/west high amenity pedestrian and cycling greenway is proposed at a mid-block location.

The DLA report, in relation to land supply, noted the yearly dwelling construction in the ISP was 11 per year, yet the actual growth rate was 15 dwellings per year between 2005-2015. Low density residential development in the Barrabool Views and Mannagum estates to the east of the land had a take up rate of 23 dwellings per year which has resulted in both estates at full development capacity in 2018. The DLA report found there was a very limited LDRZ land supply and there was a need to release more land to meet the State policy requirement of at least 15 years land supply. This is consistent with one of the drivers of the ISP review that there was a lack of land supply that needed to be addressed.

Figure 3 Conceptual framework



1.5 Summary of issues raised in submissions

The key issues raised in the submissions of the various parties are briefly summarised as follows:

(i) Golden Plains Shire Council

The key issues for the Council were:

- the Amendment rezones land that has been recognised as future low density residential land for many years by the ISP

- the technical assessments have demonstrated the land can be developed for low density residential purposes with suitable setbacks, lot sizes, on site drainage, pedestrian and vehicle access, vegetation retention and no build areas to address site constraints
- how the land is to be developed will be addressed at the permit stage for subdivision, however Council accepts a Development Plan Overlay could be used to master plan the site
- the Amendment should not be delayed pending the completion of the Inverleigh Structure Plan review (ISP review) in 2018.

(ii) Ramsey Property Group (Proponent)

The key issues for the Proponent were:

- the use and development of the land for low density residential is strategically supported
- the Amendment should not be delayed pending the completion of the ISP review
- acceptance that a Development Plan Overlay should be applied to guide the future development of the land.

(iii) Relevant agencies

The Country Fire Authority did not object to the Amendment yet noted there is a fire threat from the Common Flora and Fauna Reserve to the north and agreed with the *Ecotide* bushfire assessment that this could be managed with adequate setbacks from Common Road, larger lots and a perimeter road that would provide emergency vehicle access along the escarpment above the Leigh River. This matter will be addressed in the next phase of planning for the site.

The Environment Protection Authority Victoria noted Council needed to satisfy itself that the environmental conditions of the land are or will be suitable for the intended sensitive use and that each lot will require individual sewerage treatment systems.

Ausnet Services did not object to the Amendment.

The Department of Environment, Land, Water and Planning did not object to the Amendment.

(iv) Individual submitters or groups of submitters

The key issues by submitters were:

- the Amendment should be delayed or postponed until the ISP review has been completed in 2018, which would be consistent with Council's deferment of Amendment C75
- lot sizes should be 1-2 hectares as described in the ISP, consistent with lot size character to the east and be administered by restrictive covenants
- consultation for the Amendment was inadequate and further discussion with the community should take place
- the Amendment is premature as it is not consistent with the preferred staging plan in the ISP

- the land should not be developed as it is not required to meet a 10-year land supply, it entrenches car dependence and is not within walking distance of services and facilities
- the biolink should form the western extent of Inverleigh
- unregulated stormwater runoff into the Leigh River should not be allowed
- if the rezoning is to go ahead, all the *Lullote* farm should be rezoned with the application of the Development Plan Overlay to guide its future development.

These issues have not been resolved and are addressed in the following chapters.

1.6 Issues dealt with in this Report

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material presented to it during the Hearing.

All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Planning context
- Amendment C75
 - deferral of Amendment C75
 - sequencing of development
 - lot size
- The drafting of the Development Plan Overlay.

1.7 Limitations

Mr Bolitho considered the notification of the Amendment to the local community was inadequate. The Panel sought clarity from Council and Documents 6 and 7 were provided that contained a map and list of those notified. The Panel is satisfied that Council met the requirements of section 19 of the *Planning and Environment Act 1987* (the Act) and does not consider this issue further. Both resident submitters own land outside of those directly notified which is an indication that other notification requirements, perhaps by a notice in a paper circulating locally (the *Leigh News*), had been effective.

Detailed development issues such as stormwater management, vegetation management and wastewater disposal have been addressed by the technical assessments and, without evidence to the contrary, the Panel accepts that these matters can be more fully addressed at the development plan stage. On this basis, the Panel does not explore these issues further.

2 Planning context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report.

The Panel has reviewed Council's response and the policy context of the Amendment and has made a brief appraisal of the relevant zone and overlay controls and other relevant planning strategies.

2.1 Policy framework

(i) State Planning Policy Framework

Council submitted that the Amendment is supported by the following clauses in the State Planning Policy Framework:

- Clause 11 - Settlement is supported because the Amendment will;
 - assist in alleviating land supply pressures through the provision of residential zoned land, in an area identified in the ISP, to accommodate future residential growth
 - extend a public open space corridor along the Leigh River to allow for a walking track and the transfer of environmentally significant land to public ownership
 - the G21 Regional Growth Plan supports residential growth within identified structure plan boundaries.
- Clause 12 - Environment and landscape values is supported because the Amendment will facilitate the protection of the established vegetation on the land and extend a habitat corridor along the Leigh River which will be transferred to public ownership.
- Clause 13 - Environmental risks is supported because the flood prone and landslip risk areas will be protected from development and larger lots will be provided to accommodate the setback requirements of the Country Fire Authority.
- Clause 14 - Natural resource management is supported because the loss of agricultural land is minimised as the land is immediately adjacent to an established rural residential area so the ability to more intensively farm the land is limited. The land is not considered to be of state agricultural significance. Water quality in the Leigh River will be maintained as wastewater treatment facilities will be located away from the escarpment area and be designed in accordance with a LCA.
- Clause 16 - Housing is supported because the rural residential development is proposed in an area which is anticipated by the planning scheme and has addressed all environmental constraints and can be connected to the sealed road network, town water and electricity.

The primacy of state policy has been protected as the Amendment proposes rural residential development in an area that is anticipated by the planning scheme and can address all environmental issues. The DLA report has demonstrated there is a lack of LDRZ land supply which is the main driver of the ISP review.

(ii) Local Planning Policy Framework

Council submitted that the Amendment supports the following local planning objectives:

- Clause 21.02 – Settlement is supported because residential development will occur in an area anticipated by the planning scheme and the ISP and provide a range of lot sizes that will respond to the environmental and character constraints of the land.
- Clause 21.07-5 – Inverleigh is supported by containing development within the identified growth area of Inverleigh, protecting the natural environment and promoting the development of open space networks and continuing to enhance the river corridors and landscape of the town. The application of the DPO in association with a low density residential rezoning is a requirement.
- Clause 22.09 – Low Density Residential Subdivision policy will be addressed as part of the next planning phase for the land when land capability, lot size and character will be considered.
- Clause 22.11 – Floodplain Management is supported as the Amendment does not facilitate any development within the Leigh River floodplain.

The Amendment is consistent with the Local Planning Policy Framework, apart from the specific direction to use the DPO for new LDRZ areas. From a strategic perspective, the LDRZ rezoning is consistent with Clause 21.07-5 which identifies the land as a longer-term growth area, which in the context of Inverleigh without a reticulated sewerage system, is for low density residential development. One relevant change from the ISP is the Clause 21.07-5 plan contains a strip along Common Road within the Amendment land that is designated as “*buffer zone (1 Ha)*”.

(iii) Inverleigh Structure Plan 2005

The ISP was implemented in the planning scheme by Amendment C37 (approved 3 September 2009) and forms the basis of Clause 21.07-5 (Inverleigh) of the Municipal Strategic Statement. The land is highlighted in red in Figure 4 in a “*longer term growth area*”. This area accommodates all the *Lullote* farm.

A “*green link*” is identified to the east of the land between it and an established rural residential area. It is sometimes referred to as a green biolink and it connects the town centre and river to the Common Flora and Fauna Reserve.

The ISP does not contain a town boundary, however Council advised this is reflected by the extent of the growth areas.

Preferred lot sizes are not shown for the *Lullote* farm, yet they are for other more constrained (from fire or flood threat) areas.

The Amendment C74 land referred to by submitters is marked with a red arrow on Figure 4.

(iv) Current Inverleigh Structure Plan review

The ISP review is in early development stages that has involved engagement with the community. A draft or background document is not available. Council advised the Panel the need for the review has been driven by the lack of land supply (particularly LDRZ land) and to

review the minimum lot sizes (1, 2 and 4 hectares) that have been used to develop other LDRZ estates.

Figure 4 Inverleigh Structure Plan 2005



2.2 Ministerial Directions and Practice Notes

Ministerial Directions

Council submitted that the Amendment is consistent with:

- Ministerial Direction 1 (Potentially Contaminated Land)
- Ministerial Direction 11 (Strategic Assessment of Amendments)
- Ministerial Direction 15 (The Planning Scheme Amendment Process)
- Ministerial Direction on the Form and Content of Planning Schemes under section 7(5) of the Act.

Planning Practice Notes

Council submitted that the Amendment is consistent with:

- Planning Practice Note 13 (PPN13) Incorporated and Reference Documents, June 2015
- Planning Practice Note 30 (PPN30) Potentially Contaminated Land, June 2005
- Planning Practice Note 37 (PPN37) Rural Residential Development, June 2015
- Planning Practice Note 46 (PPN46) Strategic Assessment Guidelines, June 2015.

2.3 Discussion

The ISP and Clause 21.07-5 provide a sound strategic framework for the rezoning of the land for rural residential development. The Panel does not have the capacity to review the extent of the growth areas. Mr Wilson considered the green biolink should form the western extent of this part of Inverleigh, however this is inconsistent with the current strategic framework for the land; a framework that has been in place for some years and one, Council has advised, is unlikely to change in the current review.

As broadacre grazing land, the Panel accepts that Council has satisfied itself the environmental condition of the land is suitable for its intended use and there is no potential for land contamination.

The Panel notes the DLA report addresses the requirements of PPN37, as it contains a site and context description, reviews current planning strategy, analyses housing need, will facilitate the protection of natural resources and protection of areas of environmental and landscape significance, reviews the capability of the land and integrates with existing rural residential areas.

The lack of an appropriate planning overlay to guide the future development of the land perplexed the Panel. The planning scheme specifically requires the use of the DPO for new LDRZ areas and the completion of seven technical assessments forms a good basis upon which to develop a DPO schedule. As exhibited, the Amendment makes no reference to these assessments. Council and the Proponent accepted early in the Hearing that a DPO was appropriate and the draft schedule was used as a basis for discussion. The detail of the DPO15 is considered in Chapter 4.

Submitters referred to the ISP that allocated numbers to each of the future development areas (refer to Figure 2 *Inverleigh residential growth areas*) to demonstrate that the rezoning of the land was out of sequence. This matter is considered in Chapter 3.2.

Mr Bolitho and Mr Wilson referred to individual policy statements (such as the need for integrated public transport and providing housing close to activity centres that offer good access to jobs, services and transport) from the policy frameworks to justify that the Amendment was inconsistent with policy. The Panel acknowledges this; however, this is not how the Act and the planning scheme requires the exercise of discretion to be addressed. One of the objectives of planning is *“to provide for the fair, orderly, economic and sustainable use and development of land”* and Clause 10.02 of the planning scheme seeks to foster the objectives of planning *“through appropriate land use and development planning policies and practices which integrate relevant environmental, social and economic factors in the interests of net community benefit and sustainable development.”* In other words, an integrated approach to planning policy is required, not providing statutory weight to individual policy in isolation from all others.

2.4 Conclusion

The Panel concludes that the Amendment is supported by, and implements, the relevant sections of the State and Local Planning Policy Framework and is consistent with the relevant Ministerial Directions and Practice Notes. The Amendment is well founded and strategically justified, and the Amendment should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

3 Amendment C75

3.1 Deferral of Amendment C75

(i) The issue

The issue is whether the Amendment should be deferred until the completion of the Inverleigh Structure Plan review in 2018.

(ii) Evidence and submissions

Council did not support the deferral of the Amendment as it was strategically justified in the existing structure plan for Inverleigh.

Mr Bolitho cited the deferral of Amendment C74 for land in Area 9 (Hopes Plain Road) of the ISP until the current ISP review is completed sometime in 2018. He submitted this Amendment should similarly be deferred as both amendments dealt with LDRZ rezonings. Council advised Amendment C74 has a road funding issue that may affect the viability of the proposal, an issue that is not present in Amendment C75.

Mr Chiappi submitted:

It cannot be said that the consideration of this Amendment, and its adoption should that occur, will prejudice any seriously entertained proposal or review. Given the strong conformity of the Amendment with the existing structure plan, and the increasing demand for residential development land, the greater likelihood is that a review will recognise the merit of the proposal.

Mr Clarke considered the current ISP review could not be considered as a “seriously entertained planning proposal” as the review is only in its infancy with no draft available. Mr Clarke submitted:

The submitters argument for deferral would have greater weight if there was no existing structure plan. That is, if there was no structure plan in place, what would be the strategic justification for the Amendment? The existing structure plan is beyond the stage of a seriously entertained planning proposal because it is already a part of the planning scheme and provides that strategic justification.

I also make the observation that there are frequent circumstances where there is structure or forward planning for a particular area under review. Generally speaking, that is no reason to defer a planning scheme amendment implementing an existing structure plan. It simply demonstrates that the process of strategic planning is an ongoing continuum.

(iii) Discussion

The Panel agrees with Mr Clarke that planning is an ongoing continuum and the updates of strategic documents should only result in the deferral of issues if there was currently no strategic basis for a proposal. This is not the case with this Amendment. In Chapter 2, the Panel has found the ISP provides a sound strategic basis for the rezoning of the land as it is

included within a LDRZ growth area. Even though the review of the ISP is in its early stages, Council submitted that the town boundary, as determined by the growth areas, was unlikely to change. The review is not at a stage where it could be considered as a seriously entertained planning proposal.

(iv) Conclusion

The Panel concludes the Amendment should not be deferred until the ISP review has been concluded.

3.2 Sequencing of development

(i) The issue

The issue is whether the rezoning is out of sequence.

(ii) Evidence and submissions

Council referred to Figure 2 and submitted:

While numbering has been applied to areas indicating preferred staging of development, the intention of this control is to ensure that appropriate infrastructure is provided to support residential development. Furthermore, an initiative of the ISPR 2005 is the staging of development in growth areas to be undertaken in logical, orderly sequence.

Mr Wilson considered the numbering of the growth areas represented a preferred sequencing of land development. That is, the development of land in Area 8 should only proceed after Areas 1-7 have been developed; otherwise it is out of sequence.

Mr Clarke noted the ISP is over 10 years old which, for the Amendment land, *“could now be considered to implement its function as a longer term growth area. This is particularly so given the apparent shortage of zoned greenfields rural residential land in Inverleigh. In planning parlance “longer term” often, if not usually, refers to a timeframe of 10+ years.”*

In relation to the numbering of growth areas, Mr Clarke submitted:

I find no reference in the existing Inverleigh Structure Plan Review Figure 2, which applies a numbered system of labelling to (sic) different “precincts” in growth areas, is a staging plan, and that being in Area 8 the subject site is therefore the eighth stage to be developed. On the contrary, Figure 2 is simply an inventory of different “precincts” and their land areas of the entire growth area. Figure 2 is not titled “Proposed Staging” but rather as “Area Calculations”, supporting this opinion.

(iii) Discussion

The Panel agrees with Mr Clarke that Figure 2 contained in the ISP does not represent a staging plan; it simply provides land area calculations for the growth areas. The land is adjacent to an established rural residential area and its development is consistent with the ISP which states *“staging of development in growth areas to be undertaken in logical, orderly sequence.”* The

Panel agrees with Council the provision of infrastructure within the growth areas is more important than the order of development. In effect, there has been a logical release of LDRZ land to the north of the town centre and this should continue.

Council should be wary of staging growth fronts unless there is an obvious need as it tends to select “winners and losers”, potentially leading to land banking and assumes all landowners have the same intent to develop their land, which is not usually the case.

A matter that Council should consider in the ISP review is the use of a town boundary to avoid relying on the boundaries of future growth areas. This would resolve any ambiguity over the role of a town boundary and that of a future growth area.

(iv) Conclusion

The Panel concludes the development of the land for Low Density Residential is not out of sequence.

3.3 Lot size

(i) The issue

The issue is whether the Amendment should refer to or facilitate a lot size of one to two hectares.

(ii) Evidence and submissions

Council referred to the ISP, Clause 21.07-5 and the schedule to the LDRZ to demonstrate the default minimum subdivision lot size (0.4 hectare) applies to the land. The Schedule to the LDRZ refers to the ISP to guide lot size which, in the case of the Amendment land, does not have a minimum lot size.

Mr Bolitho’s primary submission was that he would accept lot sizes of 1 hectare, which is similar to those in the LDRZ estates to the east and be mandated by either this Amendment or a restrictive covenant. However, in his supplementary submission Mr Bolitho requested a minimum lot size of 2 hectares as it “*would be consistent with all of the adjoining and surrounding subdivisions off Common Road which (sic) appear to meet this Council requirement.*”

Mr Clarke referred to existing policy, in addition to Clause 22.09 (Low density residential subdivision policy), which relies on wastewater treatment on site and neighbourhood character to determine an appropriate lot size. He considered the character elements established on the development to the east on lots of 0.8 to 1 hectare could be replicated on lots of 0.4 hectare, such as the “*open, spacious and well landscaped settings could be achieved by a transition in lot sizes at the common boundary, for example the provision of larger lots along the common boundary transitioning to smaller 0.4 hectare lots beyond to the west.*” Mr Clarke considered this would be addressed at the subdivision stage of development “*and is not a matter to be addressed by the Panel (perhaps other than to note this possible subdivision design response).*”

(iii) Discussion

The ISP does refer to minimum lot sizes for LDRZ areas, but not in relation to the Amendment land. The reference in Clause 21.07-5 to a two hectare lot size for land adjacent to the Inverleigh Common Flora and Fauna Reserve and Inverleigh Golf Course relates to Area 9, not Area 8 and seeks to address fire risk. The Panel notes the St Quentin LCA and the CFA response highlight the need to have lots larger than 0.4 hectares to ensure the land has the capability to accommodate wastewater and address fire risk. The buffer (and one hectare lot size) referred to in Clause 21.07-5 seems to equate to the depth of the BMO as it affects the land.

The combination of the green biolink which provides an effective buffer to the estates to the east, DDO5 which applies setback requirements and the LCA will inform the choice of a lot size (or sizes) appropriate to the land.

The Panel agrees with Council, Mr Clarke and the Proponent that lot sizes and variations can be addressed at the development plan stage when more detailed design will take place.

Restrictive covenants are private agreements between the land developer and land purchaser and should not address lot size. As the Panel does not support a mandated lot size larger than the zone default minimum, the need for a scheduled minimum falls away.

(iv) Conclusions

The Panel concludes:

- the ISP does not impose a minimum subdivision lot size for the Amendment land
- it is not appropriate to mandate a minimum lot size through this Amendment.

4 The drafting of the Development Plan Overlay

4.1 The issue

The issue is to ensure the schedule to the Development Plan Overlay is appropriate to guide the future development of the land.

4.2 Submissions, discussion and conclusion

As discussed in this report, the exhibited Amendment did not include a DPO that would guide the future development of the land.

Both Council and the Proponent accepted that the Amendment would be improved with the introduction of a DPO schedule. The DPO15, as submitted by Council, provided the basis for discussion at the Hearing.

Council advised the Panel it had provided a copy of DPO15 to the proponent for review as required by Direction 9(f). Generally, the proponent was satisfied with its drafting. Both Council and the proponent preferred to take a qualitative, not quantitative approach (as in prescribing certain outcomes from the technical assessments that have been completed) to DPO15 as a subdivision design had not been settled. The Panel supports this approach and has made the following changes to DPO15:

- Naming the schedule 385 Common Road, Inverleigh.
- Deleting the preamble to the schedule.
- Requiring a design response as the first element of the development plan that incorporates the requirements of all other reports.
- Inserting the need for a traffic assessment and landslip assessment.
- Deleting the need for anticipated timing of development as this serves no planning purpose.
- Deleting references to Golden Plains Shire Local Law No.2 General Public Amenity in the Low Density Residential Zone as this repeats a requirement that will ordinarily apply.
- Renaming the “landscaping plan” as a “landscape masterplan” as this will apply to all the land.
- Delete reference to the archaeological survey, as this would be a requirement of a Cultural Heritage Management Plan and would repeat a requirement that will ordinarily apply under other legislation.

Some additional editing changes have been made.

Mr Wilson considered the application of the DPO should include all the *Lullote* farm. The Panel does not support this as it was not exhibited in this way and none of the technical assessments addressed the full land holding.

Mr Wilson and Mr Bolitho were concerned the use of the DPO would remove notification and third-party subdivision review rights. This is acknowledged, and Council advised it would not seek comment from landowners when considering the development plan. Given the qualitative approach taken by DPO15, Council may wish to seek informal feedback on the development plan before its consideration of the merits of it. This is not a recommendation

of the Panel as it is not a formal requirement of the Act and the approval of this Amendment is not contingent on this occurring.

The Panel agrees with Mr Chiappi that the introduction of the DPO15 to the Amendment does not represent a transformation of the Amendment as what is proposed is fundamentally unchanged from what was exhibited. However, this does not address the question of natural justice.

As outlined in Chapter 1.3, a neighbouring property owner may not have made a submission to the exhibited Amendment on the basis that they would reserve their comment as part of a future permit application process. DPO15 removes this opportunity. Council should seek further advice on whether further notice should be conducted before adopting the Amendment.

Appendix B contains DPO15 that is supported by the Panel.

4.3 Recommendation

The Panel recommends:

- 1. Introduce and apply Schedule 15 to the Development Plan Overlay that is contained in Appendix B.**

Appendix A Document list

No.	Date	Description	Tabled by
1	8/03/2018	Council Part A submission	Golden Plains Shire Council
2	8/03/2018	Ministers authorisation email	Golden Plains Shire Council
3	8/03/2018	Draft Development Plan Overlay 15	Golden Plains Shire Council
4	8/03/2018	Notification list	Golden Plains Shire Council
5	8/03/2018	Map showing objectors/notifications location	Golden Plains Shire Council
6	8/03/2018	Andrew Clarke (Matrix Australia) planning evidence statement	Minter Ellison
7	8/03/2018	Inspection route itinerary	Minter Ellison
8	16/03/2018	Council Part B submission	Golden Plains Shire Council
9	16/03/2018	Ramsey Property Group submission	Paul Chiappi
10	16/03/2018	Title and subdivision details for land to the east	Andrew Clarke
11	16/03/2018	Inverleigh Structure Plan 2017 consultation information	Matthew Wilson
12	16/03/2018	Aerial photo of fire ground	Matthew Wilson
13	16/03/2018	Schedule 7 to the Development Plan Overlay	Golden Plains Shire Council
14	16/03/2018	Golden Plains C17 and C18 Panel Report	Golden Plains Shire Council
15	24/02/2018	Bolitho supplementary submission	John Bolitho
16	20/02/2018	Wilson supplementary submission	Matthew Wilson

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Appendix B Schedule 15 to the Development Plan Overlay supported by the Panel

Cxx

SCHEDULE 15 TO CLAUSE 43.04 DEVELOPMENT PLAN OVERLAY

Shown on the planning scheme map as **DPO15**.

385 COMMON ROAD, INVERLEIGH

1.0 Requirement before a permit is granted

Cxx

A Development Plan must be approved by the responsible authority prior to a planning permit being granted to subdivide the land into two (2) or more allotments, or prior to granting a planning permit for a dwelling or ancillary building.

2.0 Conditions and requirements for permits

Cxx

A permit to subdivide land must include conditions regarding the following, as appropriate:

- All residential development must be serviced with sealed roads and footpaths to the satisfaction of the responsible authority.
- A concrete footpath must be provided along the frontage of the site on Common Road, extending from the existing footpath along Common Road and along at least one side of each proposed road within the subdivision.
- Common Road is to be upgraded along the frontage of the site to the satisfaction of the responsible authority.
- A section 173 agreement must be prepared to the satisfaction of the responsible authority regarding the Land Management Plan for all lots abutting the Public Park and Recreation Zone.
- A section 173 agreement must be prepared to the satisfaction of the responsible authority regarding the transfer of all public open space along the Leigh River and zoned Public Park and Recreation Zone to the Golden Plains Shire Council, which shall form the 5% public open space contribution for the subdivision of the subject land.

3.0 Requirements for development plan

Cxx

A development plan must include the following requirements:

- Provide a site analysis and design response that:
 - demonstrates the relationship between the proposed subdivision layout, landscaping and design features and the topographic, environmental, cultural heritage and rural qualities of the site.
 - demonstrates how the proposed subdivision and development will integrate with the adjoining residential development, the biolink, the river environs, the Inverleigh township and its setting.
 - responds to the recommendations of the technical reports below.
- A traffic assessment that addresses the traffic that will be generated from the development of the land, how this will impact the local street network and what, if any, mitigation measures are required.
- A stormwater management plan detailing how stormwater will be collected and treated within the subdivision and identifying the proposed methods for disposing of stormwater, with particular emphasis on the removal of sediments, prevention of erosion, mitigation of flows and ultimately the protection of the Leigh River to the satisfaction of the responsible authority.
- A Land Capability Assessment undertaken in accordance with Environment Protection Authority Publication 1364 Draft EPA Code of Practice – Onsite Wastewater Management 2010 which demonstrates that wastewater can be treated

and retained within each proposed allotment to the satisfaction of the responsible authority.

- A Landslip Risk Assessment that identifies risk categories for the land and how these areas should be managed.
- A Flora and Fauna Management Plan that identifies:
 - and provides assessment of the health and recommended treatment for all scattered trees in the Low Density Residential Zone.
 - and protects mature trees and specifies management prescriptions necessary to enhance the health and longevity and promotes recruitment of new plants in their vicinity for trees in the Public Park and Recreation Zone.
 - tree protection zones for all mature trees, to ensure their protection. All tree protection zones must be wholly contained within the subject lot.
- A Landscaping Masterplan incorporating the Flora and Fauna Management Plan recommendations and the location and species of proposed vegetation. Proposed species are to be to the satisfaction of the responsible authority.
- The staging of development.
- A Land Management Plan that:
 - applies to all land from the top of the escarpment to the northern boundary of the adjoining Public Park and Recreation Zone.
 - specifies no buildings or works aside from specified boundary fencing for the specified land.
 - restricts boundary fencing to post and wire construction, to the satisfaction of the responsible authority.
 - prohibits wastewater envelopes (wholly or partially) from the specified area.
 - permits access only to vehicles associated with the maintenance and/or rehabilitation of the specified land. Maintenance and/or rehabilitation treatment consists of pest plans and/or animals, revegetation, fencing repair or replacement.
 - prohibits motorbikes or other motorised vehicles in the specified area for recreation or other purposes, other than specified above

4.0

Reference

Infrastructure Design Manual (as revised), Local Government Infrastructure Design Association.

Cxx

Cxx

SCHEDULE 15 TO CLAUSE 43.04 DEVELOPMENT PLAN OVERLAY

Shown on the planning scheme map as **DPO15**.

385 COMMON ROAD, INVERLEIGH

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4.0

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infrastructure
Cxx

*Planning and Environment Act 1987***GOLDEN PLAINS PLANNING SCHEME****AMENDMENT C75****INSTRUCTION SHEET**

The planning authority for this amendment is the Golden Plains Shire Council.

The Golden Plains Planning Scheme is amended as follows:

Planning Scheme Maps

The Planning Scheme Maps are amended by a total of two (2) attached map sheets.

Zoning Maps

1. Amend Planning Scheme Map Nos. 24 and 27 affected in the manner shown on the one (1) attached map marked "Golden Plains Planning Scheme, Amendment C75".

Overlay Maps

2. Amend Planning Scheme Map Nos. 24DDO and 27DDO in the manner shown on the one (1) attached maps marked "Golden Plains Planning Scheme, Amendment C75".
3. Amend Planning Scheme Map Nos. 24DPO and 27DPO in the manner shown on the one (1) attached maps marked "Golden Plains Planning Scheme, Amendment C75".

End of document

