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T O W N P L A N N E R S

**PLANNING PANELS VICTORIA:
GREATER SHEPPARTON PLANNING SCHEME AMENDMENT C195**

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GRAHAMVALE DEVELOPMENT GROUP PTY LTD

1. Our clients are an ownership group with landholdings in Shepparton East, generally identified as being within Investigation Area 4 within Clause 21.04 and located east of Doyles Road, north of Old Dookie Road, and South of New Dookie Road.
2. It is our submission that rezoning land within Investigation Area 3 is inappropriate at this time.
3. There are unresolved issues with respect to the staging and timing of the amendment, and we say that undue weight has been given to future planning scheme amendments which will relate to;
 - a) updating the Greater Shepparton Planning Scheme's flooding controls and,
 - b) future Precinct Structure Planning of the area that is proposed to be rezoned as part of Amendment C195.
4. The Water Technology Report used to support C195 does not adequately justify Councils request for this planning scheme amendment, and the work undertaken does not provide sufficient direction in relation to how flood risk will be managed as the land is developed.
5. Council and the GBCMA have indicated that the Shepparton and Mooroopna Flood Intelligence Study has not yet been finalized, and that once it is completed it will form the basis of a future planning scheme amendment.
6. It stands then that a holistic approach to flood risk and management in the broader area is required, and that until the above work has been completed a precautionary approach to piecemeal rezoning and flood modelling should be adopted.
7. For the reasons that are laid out within these submissions we say that Amendment C195 is premature and that Council have not adequately demonstrated that the risks associated with future residential development can be readily or efficiently managed.

AMENDMENT C195

8. Amendment C195 seeks to implement the findings of *Investigation Area 3 – Model of Flood Behaviour and Conceptual Masterplan, July 2016 (Water Technology)*.

9. It proposes to rezone land in Investigation Area 3, as identified within Clause 21.04 of the Greater Shepparton Planning Scheme, from the Rural Living Zone to the Urban Growth Zone.
10. The amendment updates the provisions of the Scheme to reflect the status of Investigation Area 3, which will allow for future residential uses in accordance with a yet-to-be-developed Precinct Structure Plan.

AMENDMENT C195– RATIONALE

11. The initial and most crucial test for any amendment is to demonstrate why it is required and provision of evidence as to why the existing planning provision(s) do not allow particular objectives to be met, and whether the Amendment has strategic merit based on the provisions of the Planning Scheme and any supporting documents.
12. Prior to assessing the merits of an Amendment, the Ministerial Direction No.11 requires us to commence with the critical question “*why is the amendment required?*”¹
13. A Planning Scheme Amendment must be underpinned by strategic justification and assessment of both the failures of the particular existing provision (i.e. a need) and the attributes of the new provisions which remedy the identified issues (i.e. Ministerial Direction No.11 - 3 (1)).
14. Following the initial test, an assessment of merit then considers:

...“Is the amendment consistent with broader urban planning objectives (at a sub-regional, metropolitan or State level) or is it contrary to these objectives?”

...“What is the rationale for the amendment...is this rationale strategically justified?”

15. We are equipped with a suite of Ministerial Directions, Practice Notes, Principles and Policies which assist the assessment of the Amendment to answer these questions.

¹ Or put another way, “*what is it in the current suite of planning provisions which is not allowing objectives to be met, and what evidence is there to support this deficiency?*”

16. Following our review of C195, we say that while the proposed amendment may be borne from a demonstrated need (resolution of flooding issues prior to future development), the information that supports the amendment does not possess sufficient rigor to address the issues faced.
17. Further, the Amendment as it is proposed does not sufficiently justify why the existing Zoning of the land is no longer appropriate given that the provisions of the Scheme essentially protect the strategic integrity and Investigation Area status of the land.

GREATER SHEPPARTON PLANNING SCHEME AMENDMENT C93

18. Planning Scheme Amendment C93 sought to implement the objectives of the *Greater Shepparton Housing Strategy 2009*, and included the land which is currently being considered by this amendment as an Investigation Area within Clause 21.04 of the Scheme.
19. That amendment was considered by an Independent Planning Panel, and one of the key issues raised within that Panel report was;
- a) *Should the residential development potential of land in the Rural Living Zone between Archer and Doyles Roads Kialla West be investigated?*
20. The Panel acknowledged that while the accessibility of this area to services was apparent, the flooding constraints for the area were substantial and need to be resolved prior to any future development occurring.
21. The Panel formed the view that planning for the area should be on the basis of a comprehensive areawide assessment of flooding issues with an integrated response, noting at pg 44 of the Panel report that;
- The exhibited amendment C93 already indicates that more intensive development of land in the rural living zone is encouraged in appropriate locations and the proposed extension of Investigation Area 3 specifically identifies the need to resolve flooding as a critical issue. The panel considers this is appropriate.*
22. That view was also shared by the GBCMA, as is apparent in their letter of 1 February 2011 which forms part of the appendices of Councils Part A submission for this amendment.
23. This is also clear in the GBCMA's letter of 12 February 2014 where they provided similar advice in relation to proposed residential subdivision of 690A Doyles Road, Kialla.

24. Ultimately the questions facing this Panel are;

- a) Does the flood modelling prepared in support of the proposed amendment appropriately address the flood issues in a matter which is achievable and deliverable?
- b) Has the information provided to support the conceptual masterplan considered flooding in a holistic manner as was understood to be the minimum bar for assessment by the panel within Amendment C93?
- c) If further investigation in relation to flooding is required during the foreshadowed planning scheme amendments which will ultimately deliver the precinct structure plan for this site, is there a need to rezone the land to urban growth zone, given that the panel in C93 was satisfied that the Rural Living Zone was sufficient to secure the land's designation as an investigation area for future residential development within the planning scheme?

25. We don't accept that this amendment has appropriately addressed the concerns of the panel within C93, and say that this panel does not have the comfort of certainty that the findings of the water technology report or conceptual masterplan can be implemented without further robust assessment.

WATER TECHNOLOGY - INVESTIGATION AREA 3

26. This amendment essentially hinges on the findings of Water Technology's report in relation to Investigation Area 3, and the subsequent conceptual masterplan which was prepared in order to demonstrate the preferred development scenario for the land.

27. It is our view that there are a number of issues in relation to the report, particularly having regard to the limitations of the findings and the level of future work which will be required should the land be developed.

28. Those limitations are recognised within the report, notably as per the below

- a) At page 7; *"currently the development layouts utilised in this report are conceptual and require more detail in regards to the location of services and roadways et cetera. At a detailed design level, Flood behaviour should again be assessed to ensure development is occurring in an appropriate manner with regards to flood risk associated with the broken River and associated branches"*

- b) At page 32, Conclusion; *“further detail design may modify the layout of development and therefore cause changed flood levels and floodplain storage volumes quoted within this report. Further investigation of the flood behaviour should be addressed at the detailed design stage of the development”*
29. It is also clear that extensive amounts of cut and fill be required in order to mitigate flooding impacts, and the cost associated with that have not been fully addressed.
30. We note from Councils Part A submissions that the quantum of earthworks required was also raised within the resolution at the Council meeting where this amendment was adopted, and that future detail design would be required to ensure that future development of the land was feasible.
31. At this stage, we say that flood risk is being treated as a “broad brush-stroke” engineering problem without appropriate regard being had for the costs associated with solving that problem, and for implementing area wide responses to the problem.
32. It is likely that any future problems will be different once a more fully formed proposal for this site is explore. Either way, the flooding information provided does not instil confidence in relation to how future development will be delivered, or whether or not it will be able to be managed in a way that is equitable and achievable as required by state policy and Ministerial directions.
33. There are also unresolved issues in relation to the modelling information that has been used within this report, namely that it relies upon the *Shepparton-Mooroopna Flood Mapping and Intelligence Study*, which has not been completed and is not able to be peer-reviewed.
34. The *Flood Intelligence Study* and subsequent planning scheme amendments which may be based on its findings are issues that have been raised by other submitters in this amendment.
35. Council’s response that that information will be made available for review and comment at the appropriate time does not change the fundamental issue, which is that this amendment is proceeding forward on the basis of a report which draws from an unreleased flood study which may fundamentally change the zoning and overlay provisions of the planning scheme as they relate to flooding.
36. The *Investigation Area 3* flood report should at best be regarded as preliminarily advice in relation to managing the flood risk and development potential of the site, particularly given

that it presents itself as such and rightly foreshadows that more detailed information is required in order to successfully determine how develop the site.

37. We say that based on the above it is premature to proceed with a rezoning that fundamentally primes the land for residential use, particularly in the context of a previous Panel which specifically made recommendations that flooding issues need to be resolved prior to investigating this area for urban intensification.
38. We do not consider that the issue of flooding has been resolved to the extent that was expected by the C93 Panel, or as adopted by Council to the extent that Clause 21.04 requires.

URBAN GROWTH ZONE

39. PPN47 explains the purpose and provisions of the Urban Growth Zone and the role of PSP's, and outlines the purpose of the Zone as follows;
- a) To manage the transition of non-urban land into urban land.*
 - b) To encourage the development of well planned and well serviced new urban communities in accordance with an overall plan.*
 - c) To reduce the number of development approvals needed in areas where an agreed plan is in place.*
 - d) To safeguard nonurban land use and development that could prejudice its future urban development*
40. Outside of Melbourne's UGB, the Urban Growth Zone is essentially applied to land within regional cities and towns where a strategy has been prepared that clearly identifies the land as suitable for future urban development. In this case, that is the Greater Shepparton Housing Strategy.
41. As per the above discussion on Amendment C93, the Panel that considered the implementation of that Strategy into the Scheme concluded that the Rural Living Zone was an appropriate control that protected the land's designation as an investigation area within Policy.

42. While the Housing strategy does identify the land as having potential for future urban use, we do not believe Council have demonstrated that the land remaining zoned as Rural Living is prejudicial to its future urban development.
43. The Section 1 uses allowed within the zones are similar, and any application for planning permit within either zone must anyway consider Clause 21.04 and the investigation area status of the land, as well as the Housing Strategy.
44. Ultimately, should the Panel conclude that the flooding information provided in support of this amendment is insufficient, the Investigation status of the land would remain unchanged, and the use of the land for future residential development would not be compromised pending a more robust assessment of the issues associated with its intensification.

STAGING & FUTURE AMENDMENTS

45. Within their explanatory report and Part A submissions, Council have foreshadowed a number of future planning scheme amendments.
46. One relates to the “fine tuning” of further information which would be required in order to begin transitioning this land into more intensive residential development.
47. The other relates to implementing the *Shepparton-Mooroopna Flood Intelligence Study*, and would involve amending the coverage of various flood zones and overlays based on the findings of the study.
48. While Council believes that it is appropriate for these matters to be treated separately and in the order currently proposed, we believe that the rationale behind that approach is fundamentally flawed, and that there has been a misstep in process in relation to how these matters should be treated.
49. Having regard to the *Flood Intelligence Study*, it is our understanding that it is nearing completion and will form the basis of a planning scheme Amendment scheduled for 2018.
50. Given that the flood information provided in relation to this amendment is based on the modelling calibration of that study, and if the panel accepts our submission that the Rural Living Zone will not prejudice the future development of this land, it would seem reasonable for that information to be completed and implemented prior to individual areas being targeted and assessed as to their flood risk.

51. This is particularly relevant given that at this stage there is no certainty around what the *Flood Intelligence Study* will say, and what the wider municipal ramifications of its implementation will be.
52. Flooding is a municipal wide issue, and we do not believe that it is unreasonable for that to be resolved prior to further investigation of this land being undertaken - noting that the two issues are inextricably linked, and that Council have given undertakings in relation to the implementation of the *Flood Intelligence Study* in the near future.
53. Council also recognise that further flood investigation work will be required in relation to delivering housing in Investigation Area 3 at the Precinct Structure Planning Stage, and have made this the remit of a future planning scheme Amendment which will purportedly resolve all the outstanding issues not appropriately addressed or considered within this amendment.
54. We say that the danger with this approach is that Council do not have enough information to know with sufficient certainty what those issues will be or whether they can be resolved in a way that is manageable or able to be afforded.
55. Following that, we say that by rezoning this land to the Urban Growth Zone Council are essentially locking the municipality into a foregone conclusion which is not been adequately tested are appropriately justified, and that this will commit resources which may be better spent elsewhere, including in the investigation of other areas identified within Clause 21.04.
56. If Council proceed with this amendment, it would effectively frame land that has not been appropriately investigate as automatically suitable for intensified residential uses, and will functionally give weight and credence to a future amendment which would be required to justify and respond to the issues which should have been considered within this process were not.
57. We reiterate that the flooding information provided is preliminary in nature, and does not provide certainty in relation to the delivery of housing and infrastructure from a cost and functionality point of view.
58. We ultimately say that this is not sound planning, particularly in light of supporting documentation which explicitly recognises that further work will need to be conducted in order to appropriately manage the risks associated with development of the land.

CONCLUSION

59. We submit on behalf of The Grahamvale Development Group that Amendment C195 lacks the strategic justification required to support the rezoning of this land.
60. The flooding information provided does not give enough certainty with respect to the development viability of this land, is preliminarily in nature, and does not appropriately address the requirements of clause 21.04 with respect to investigation area 3 or the recommendations of the panel who considered amendments C93.
61. The amendment is premature, and does not have sufficient strategic or technical support to be supported at this time or until further information with respect to flooding is provided.
62. The rural living zone is an appropriate control which maintains the status of the land until it has been appropriately and robustly investigate.
63. This amendment does not represent the structured and well ordered planning of growth areas, and we respectfully request that the panel recommend it be abandoned for all of the reasons laid out in the submissions.

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APPENDICES

