



## AMENDMENT C185

# BALLARAT PLANNING SCHEME

Central Victoria Livestock Exchange

JUNE 2015

EXPERT EVIDENCE  
PREPARED BY  
ROBERT MILNER DIP T&CP, LFPIA, FVPELA



Expert Evidence | Strategic Advice | Development Approvals



© 10 Consulting Group Pty Ltd

The information contained in this document is intended solely for the use of the client identified on the report cover for the purpose for which it has been prepared and no representation is made or is to be implied as being made to any third party. Other than for the exclusive use of our client, no part of this report may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying or otherwise, without the prior written permission of 10 Consulting Group Pty Ltd.

## Contents

<b>1</b>	<b>INTRODUCTION .....</b>	<b>1</b>
1.1	Purpose and Instructions .....	1
1.2	Expert Witness Statement.....	1
<b>2</b>	<b>OVERVIEW AND SUMMARY .....</b>	<b>3</b>
<b>3</b>	<b>THE LIVESTOCK SALEYARDS AND CORPORATE CONTEXT .....</b>	<b>6</b>
3.1	Overview .....	6
3.2	Background – Amendment C87 Setting a New Direction for the Saleyards.....	6
3.3	Council Plans .....	7
3.4	The Ballarat Planning Scheme .....	7
3.5	The Ballarat Strategy – Our Vision for 2040 .....	8
3.6	Potential Relocation of the Ballarat Livestock Selling Centre – Strategic Planning Analysis Report 2007 (Draft).....	10
<b>4</b>	<b>IS THE LOCATION OF THE LIVESTOCK EXCHANGE STRATEGICALLY JUSTIFIED?. 12</b>	
4.1	Overview .....	12
4.2	Ballarat Planning Scheme – Strategic Land Use Directions.....	12
4.2.1	Settlement – Miners Rest.....	14
4.2.2	Rural Land Use .....	14
4.2.3	Industry.....	17
4.2.4	Mining.....	19
4.3	Amendment C185 - The Proposal.....	19
4.4	Assessment.....	20
<b>5</b>	<b>THE SALEYARDS AND THE DEVELOPMENT OF MINERS REST .....</b>	<b>21</b>
5.1	Overview .....	21
5.2	Miners Rest Outline Development Plan 1994.....	21
5.3	Miners Rest Outline Development Plan 2007.....	22
5.4	The Ballarat Strategy – Our Vision for 2040 .....	23
5.5	Conclusion .....	23
<b>6</b>	<b>AMENDMENT C185 – A CRITIQUE .....</b>	<b>25</b>
6.1	Overview .....	25
6.2	Structure and Function of the Amendment Documents.....	25
6.2.1	Special Use Zone – Schedule 15 Central Victoria Livestock Exchange.....	26

6.2.2	Clause 52.03 Incorporated Document – Central Victoria Livestock Exchange, Ballarat December 2014 .....	28
6.3	Assessment – The Special Use Zone .....	28
6.3.1	The Special Use Zone is not an appropriate use of the Victoria Planning Provisions .....	28
6.3.2	The Concept Plan contains insufficient detail .....	29
6.3.3	Inappropriate to require a Development Plan to be in accordance with a Works Approval .....	30
6.3.4	Other matters.....	31
6.4	Assessment – The Incorporated Document .....	32
6.5	Conclusion .....	33
<b>7</b>	<b>CONCLUSIONS .....</b>	<b>34</b>

## Attachments

- 1 Expert Witness Statement
- 2 Curriculum Vitae – Robert Milner

## 1 INTRODUCTION

### 1.1 Purpose and Instructions

1 I have been instructed by Kings Lawyers on behalf of Clark Developments Pty Ltd to review the merits of Amendment C185 to the Ballarat Planning Scheme.

2 Amendment C185 seeks to facilitate the relocation of the existing Ballarat Saleyards (the 'Central Victorian Livestock Exchange' ('CVLX')) to the outskirts of Miners Rest, on part of the land at 22-76 Victoria Street, Miners Rest (specifically Lot 1 and 2 on TP840697G, Lot 2 on PS341031L and Lot 1 on TP944606J) (the 'subject site') (Figure 1).

3 In particular, Amendment C185 seeks to rezone the subject site from the Farming Zone to the Special Use Zone – Schedule 15 (Central Victoria Livestock Exchange), and introduce the *Central Victoria Livestock Exchange Ballarat, December 2014* as an Incorporated Document<sup>1</sup> of the Ballarat Planning Scheme.

4 In effect, Amendment C185 would provide for the use and development of the Central Victorian Livestock Exchange (CVLX) to be approved via a Development Plan mechanism, removing any requirement for a planning permit application and third party review.

5 My instructions seek an opinion on the following matters:

- The appropriateness of progressing the establishment of the Ballarat Saleyards via a Planning Scheme Amendment;
- Whether the amendment has had proper regard for the potential future role and growth options for Miners Rest; and
- Whether the Ballarat Planning Scheme provides strategic support for the relocation of the saleyards to the subject site.

### 1.2 Expert Witness Statement

6 An Expert Witness Statement and curriculum vitae are provided at Attachment 1 and 2 of this report, respectively.

---

<sup>1</sup> Clause 52.03 Specific Sites and Exclusions and Clause 81 Documents Incorporated in this Scheme



IO CONSULTING GROUP

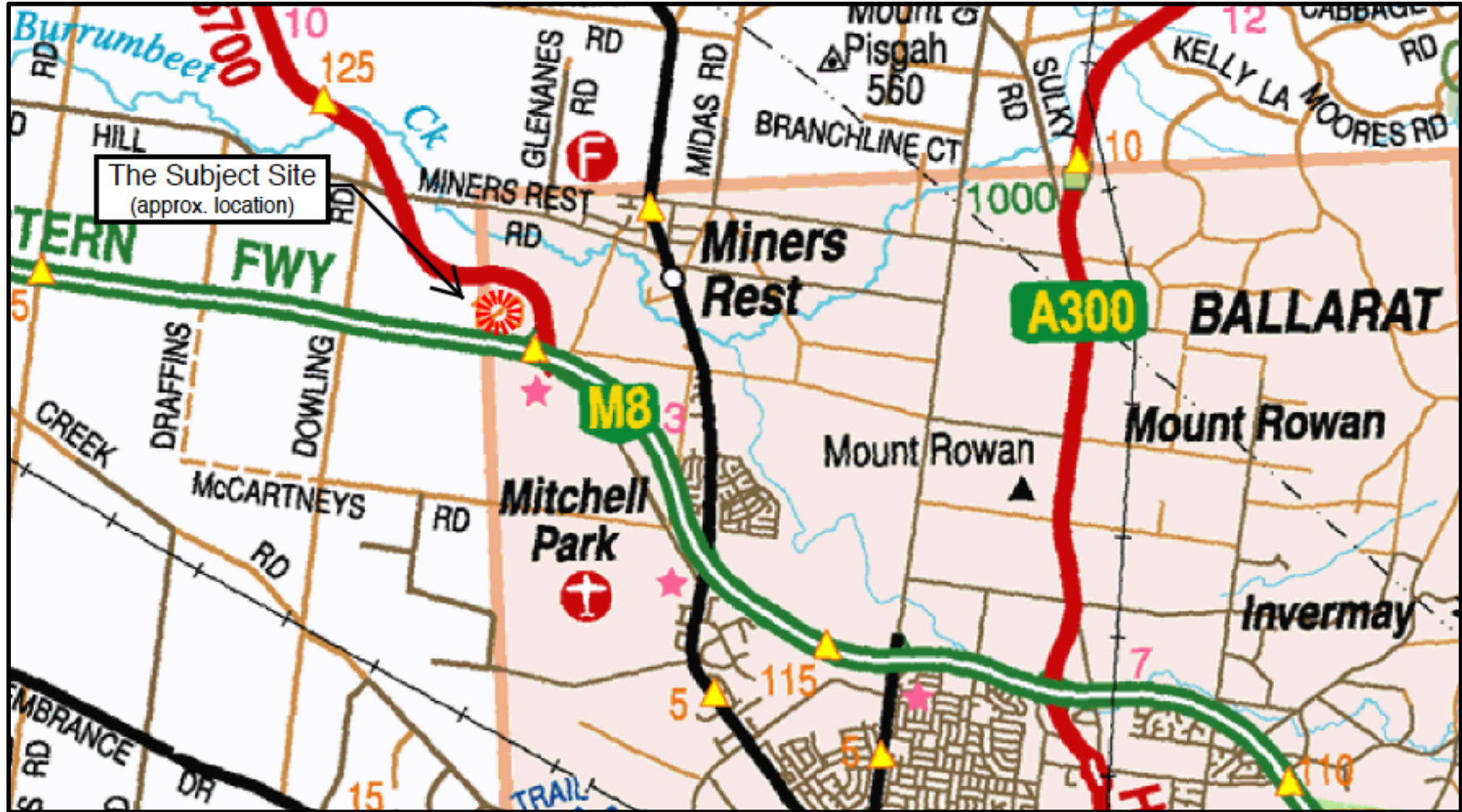


Figure 1: Subject Site Context Plan (Source: Interactive Maps Online)

---

## 2 OVERVIEW AND SUMMARY

- 7 The need to relocate and redevelop the Ballarat Saleyards should almost be beyond question.
- 8 Council has undertaken considerable work over a number of years to establish the conditions and justification for the location.
- 9 It has also previously unsuccessfully sought to relocate the saleyards to Learmonth via Amendment C87.
- 10 I had a direct involvement in that task assisting Council to prepare the application material and providing evidence to the Panel considering the combined amendment and planning permit application.
- 11 Through that experience I established a considerable body of knowledge and understanding of the relevant issues.
- 12 A core issue then and now is choosing an appropriate and strategically justified site. In the case of Learmonth, the site had been chosen and committed prior to my involvement.
- 13 Before assisting Council to put its best case forward, I advised Council that the chosen site had a series of limitations that might mean that it may ultimately prove unsuitable.
- 14 I was also involved in the preparation of the subsequent *Potential Relocation of the Ballarat Livestock Selling Centre – Strategic Planning Analysis Report 2007 (Draft)*, which was not finalised or formally considered by Council.
- 15 In independently reviewing Amendment C185 there is a sense of déjà vu. The core issues are not whether there is a need to relocate the saleyards, but whether the chosen site is strategically justified in its policy and spatial context.
- 16 Regrettably, like Learmonth, there are shortcomings which caution against this amendment being approved.

- 17 On one hand, a project that has been mooted for over a decade and which will be a major focus of investment, economic activity and employment is neither referenced nor alluded to in the Ballarat Planning Scheme.
- 18 Secondly, the further growth and development of Miners Rest has been the subject of an inconclusive review for a similar period, and yet this proposal is advanced on a site where there might be an interface and potential conflict with future residential use.
- 19 This is highlighted by the noise and odour impact assessments that accompany the application. Both assessments have both been advanced on the basis of no further residential growth to the south west of Miners Rest.
- 20 Thirdly, the saleyards might be contemplated for an identified industrial location. I have previously assisted Council in reviewing future industrial land requirements, including the identification of large tracts of land directly opposite the subject site.
- 21 The potential to reconcile this proposal with that adopted policy position is not addressed.
- 22 Finally, the statutory construction of the amendment and proposal is ill conceived:
- There is no attempt to build a policy justification for the use of the site for a Saleyard;
  - There is no need to rezone the subject site to the Special Use Zone as a planning permit may be granted for a Saleyard under the existing Farming Zone;
  - The construction of the documentation seeks to advance minimal information in the Planning Scheme and concurrently remove any opportunities for third party engagement and review; and
  - Finally, the use of the provisions of *Clause 52.03 Specific Sites and Exclusions* is not justified. There are no extraordinary circumstances in this matter that justify the applicant being exempt from the types of approvals and considerations that all similar use and development proposals would be evaluated against.



- 23 In the final analysis, a Saleyard on this site might be justified, but this proposal lacks sufficient justification, detail and certainty to be supported.

### 3 THE LIVESTOCK SALEYARDS AND CORPORATE CONTEXT

#### 3.1 Overview

24 The need to relocate and redevelop the old, obsolete and poorly sited Ballarat Saleyards is long established and evidenced by the previous, albeit failed, Amendment C87 that sought to establish a new facility at Learmonth.

25 It is evident that both planning for the saleyards, which has occurred over a period of 15 years, and development the City of Ballarat key strategies and strategic directions, including Council Plans; the Ballarat Planning Scheme and the current draft Ballarat 2040 Vision, have occurred in a simultaneous and parallel process, but without any genuine sense of integration or mutual recognition.

26 This is emphasised by Planning Scheme Amendment C185 insofar as it does not rely on any particular local vision, strategy or policy to substantiate the proposed relocation of the saleyards.

#### 3.2 Background – Amendment C87 Setting a New Direction for the Saleyards

27 Amendment C87 to the Ballarat Planning Scheme sought to establish a regional agri-business centre, including saleyards and abattoir, at Learmonth, which would have facilitated the relocation of the Ballarat Saleyards from its current site.

28 After considering Amendment C87, the Independent Panel recommended that that the proposal should be abandoned. The Panel drew conclusions, which, amongst others, identified that the proposal was inconsistent with the strategic intent of the Ballarat Planning Scheme.

29 Based on that process, Council withdrew from saleyard activities in 2010 and appointed an independent business to manage the saleyards and determine the location design and funding for a new saleyards facility.

30 In particular, the Council stated that<sup>2</sup>:

---

<sup>2</sup> Briefing paper: Ballarat Livestock Selling Centre Update

*“Ultimately, the private sector is best positioned to determine how and where a multi million investment into the livestock selling industry should be best made”.*

### 3.3 Council Plans

31 There have been two Council Plans since the relocation of the saleyards was contemplated by Amendment C87: *Council Plan 2009 to 2013 Ballarat: Today, Tomorrow, Together*<sup>3</sup>; and *Council Plan 2013 – 2017 Leading sustainable growth, strengthening our community and respecting our heritage*.

32 While both strategies are cognisant of the relocation project, Council’s actions were generally limited to:

- **2009 – 2013:** Continue to monitor Regional Infrastructure Pty Ltd in the planning and approvals process for the development of a new facility; and
- **2013 – 2017:** Continuing to support the current operator of the Ballarat Livestock Selling Centre whilst awaiting lodgement of the development application.

33 These actions are in contrast to other major projects, such as the Ballarat West Employment Zone, whereby Council has taken a leading role in preparing business cases and feasibility studies.

### 3.4 The Ballarat Planning Scheme

34 A formal review of the Ballarat Planning Scheme has not been undertaken since 2005<sup>4</sup>, limiting the opportunities for the Ballarat Saleyards relocation project to be recognised in the planning scheme.

35 However, in the intervening period a number of major and minor planning initiatives have been introduced to the planning scheme.

36 In particular Amendment C138 introduced the *Ballarat Review of Future Industrial Areas, 2009*, as a reference document and made consequential changes to the Local Planning Policy Framework (LPPF) regarding the location and development of key industrial sites.

---

<sup>3</sup> Revised 27 June 2012

<sup>4</sup> Amendment C65

37 While the *Ballarat Review of Future Industrial Areas, 2009* directly addressed potential future uses of the existing Ballarat Saleyards and cited a commitment of Council to relocate it within 3-5 years, the amendment did not provide for the same sentiment to be expressed in the planning scheme.

### 3.5 The Ballarat Strategy – Our Vision for 2040

38 In April 2015 the Ballarat City Council released the *Draft Ballarat Strategy Our Vision 2040* (the 'Draft Strategy') which will establish an integrated framework to address the growth and change of Ballarat to 2040.

39 While still in draft form, it is pertinent to note that as the most recent strategic publication from the Ballarat City Council, the Draft Strategy fails to recognise or substantiate the proposed CVLX despite being considered as a regionally significant project.

40 The significance of the CVLX being excluded from the Draft Strategy is emphasised by *Section 1 Productive Ballarat, which* addresses economic growth, industry, development infrastructure and township.

41 In particular, that section seeks to formally recognise Regionally Significant Precincts, including future and emerging precincts (Figure 2).

42 In addition, the Draft Strategy indicates that local area planning will be undertaken for Miners Rest and its surrounds, including the quarry, but does not include the subject site (Figure 3).

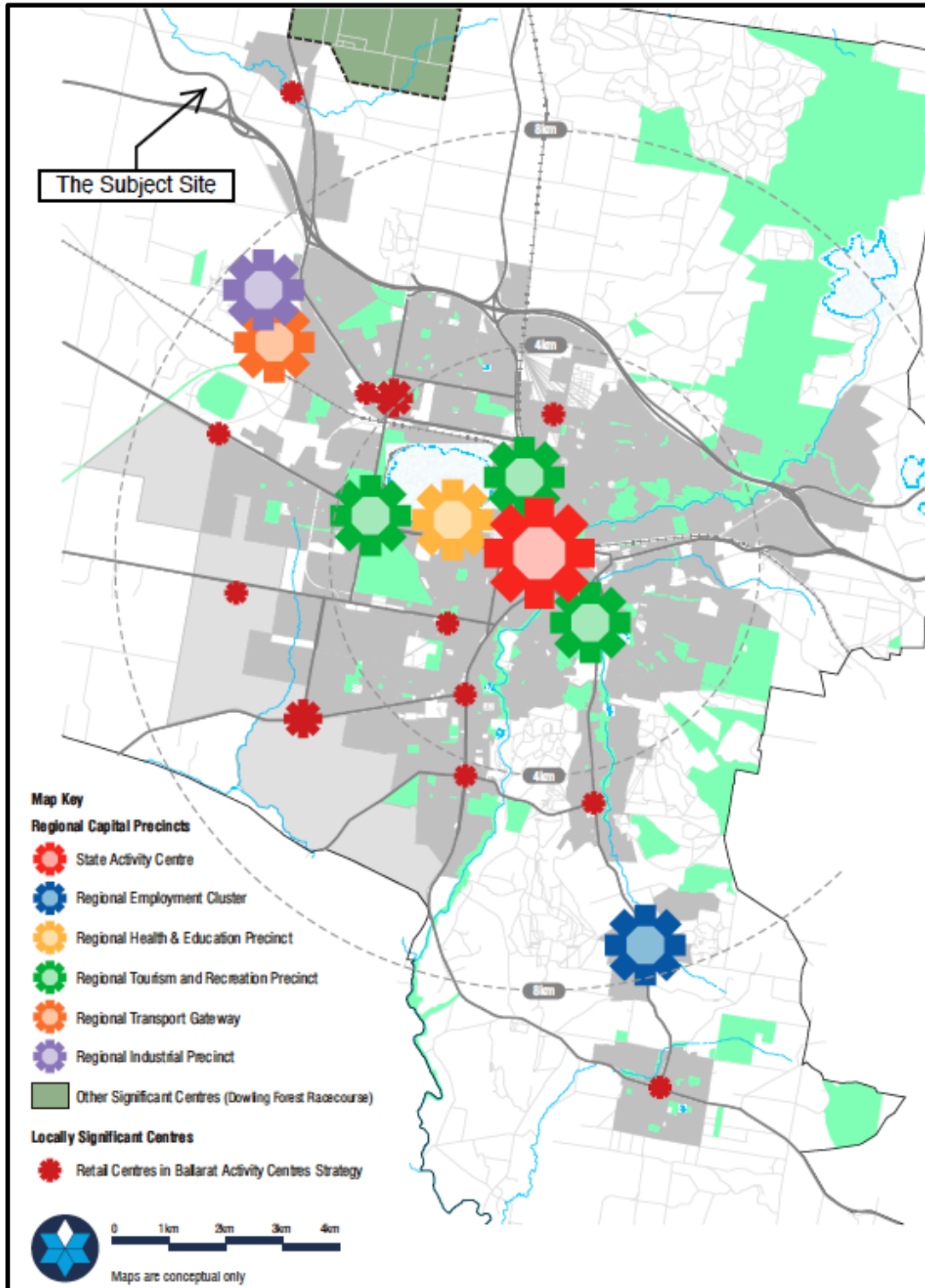


Figure 2: Regionally Significant Precincts (Source: Draft Ballarat Strategy Our Vision 2040)

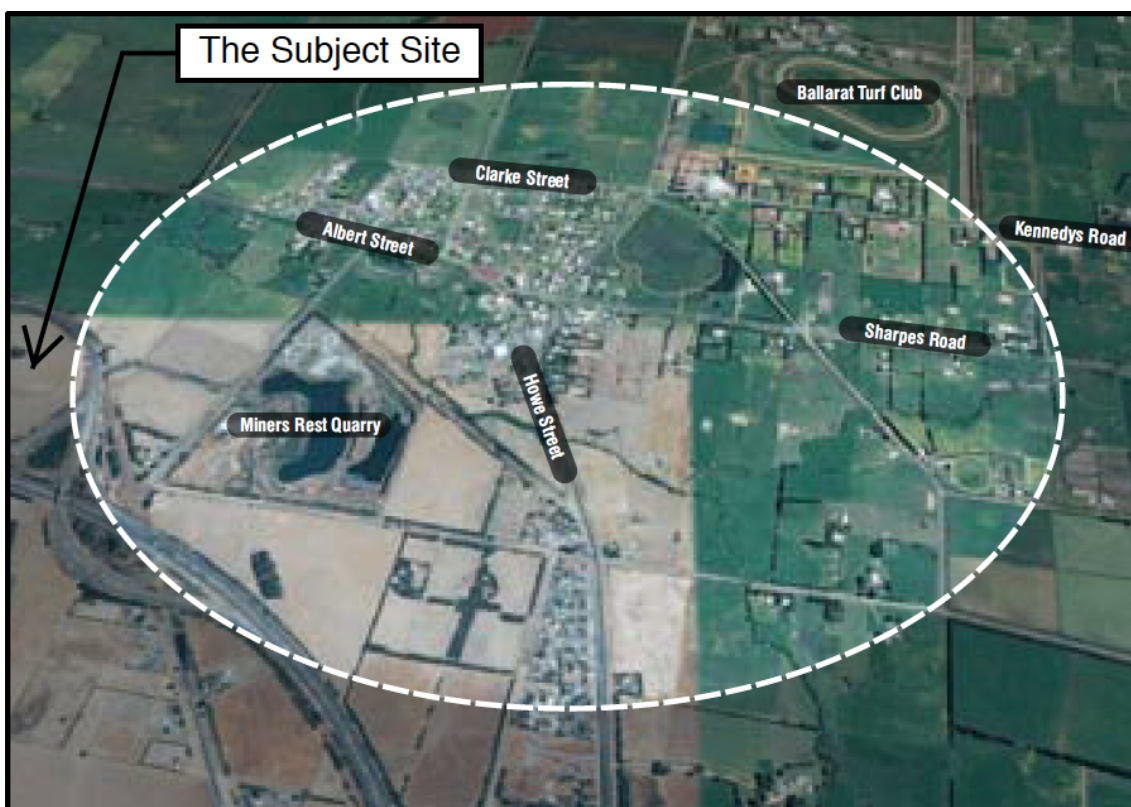


Figure 3: Miners Rest Local Area Plan (Source: Draft Ballarat Strategy Our Vision 2040)

### 3.6 Potential Relocation of the Ballarat Livestock Selling Centre – Strategic Planning Analysis Report 2007 (Draft)

43 Finally, I note that in August 2007 Coomes Consulting Group was commissioned by the Ballarat City Council to provide a strategic analysis of potential sites for the relocation of the Ballarat Saleyards.

44 That report was not finalised or formally considered by Council, and holds no standing in this matter.

45 However, it is important to note that while the report advanced the subject site as one of three sites that “... performed slightly better...” than the remaining sites, it did so on the basis that:

- Council had committed to undertaking a review of future industrial areas, which could investigate the potential of these sites in further detail.

That review, as discussed later in this report, did not identify the subject site for an industrial purpose.

- The assessment of the subject site took into regard the draft Miners Rest 2007 Outline Development Plan, including the recommendation for a future industrial area to the south west of the township which would present a suitable interface to a saleyard.

The Miners Rest 2007 Outline Development Plan has since been abandoned.

46 Further to this, the strategic planning analysis report was only intended to provide a preliminary recommendation of those areas strategically suited to potentially accommodate saleyards. It was not intended to provide an exhaustive list of suitable sites, but rather identify key areas strategically relevant to the exercise.

47 It was intended to form the basis upon which more sites could be explored and which more detailed investigations of specific sites could occur.

---

## 4 IS THE LOCATION OF THE LIVESTOCK EXCHANGE STRATEGICALLY JUSTIFIED?

### 4.1 Overview

48 The Ballarat Planning Scheme does not establish clear policy direction or advance the strategic justification for developing the CVLX on the subject site.

49 The absence of strategic justification for a project of regional significance<sup>5</sup> to be located on the subject site, particularly given the extensive area of land demanded, presents a number sensitive planning issues.

50 Recent strategic industrial land use studies that identify key industrial and regionally significant sites have not identified the subject site.

51 On the other hand, growth strategies for Miners Rest have remained unresolved despite the need for clarification extending over decades.

### 4.2 Ballarat Planning Scheme – Strategic Land Use Directions

52 The strategic direction for the future use and development of land within the City of Ballarat is established by the overarching Overall Framework Plan<sup>6</sup> (the ‘Framework Plan’) (Figure 4).

53 The directions of the Framework Plan are further informed by a suite of policies, including those that apply specifically to land use<sup>7</sup> (including settlement, housing, industry, activity centres / commercial development and rural land use), and local implementation strategies<sup>8</sup>.

54 Broadly, the Framework Plan identifies that the subject site is located within a rural area confined to the north, east, and south by major roads. Land surrounding the subject site generally forms part of the broader rural landscape, with the exception of an expansive ‘*Long Term Industrial Growth*’ precinct to the immediate south of the Western Highway and Miners Rest.

---

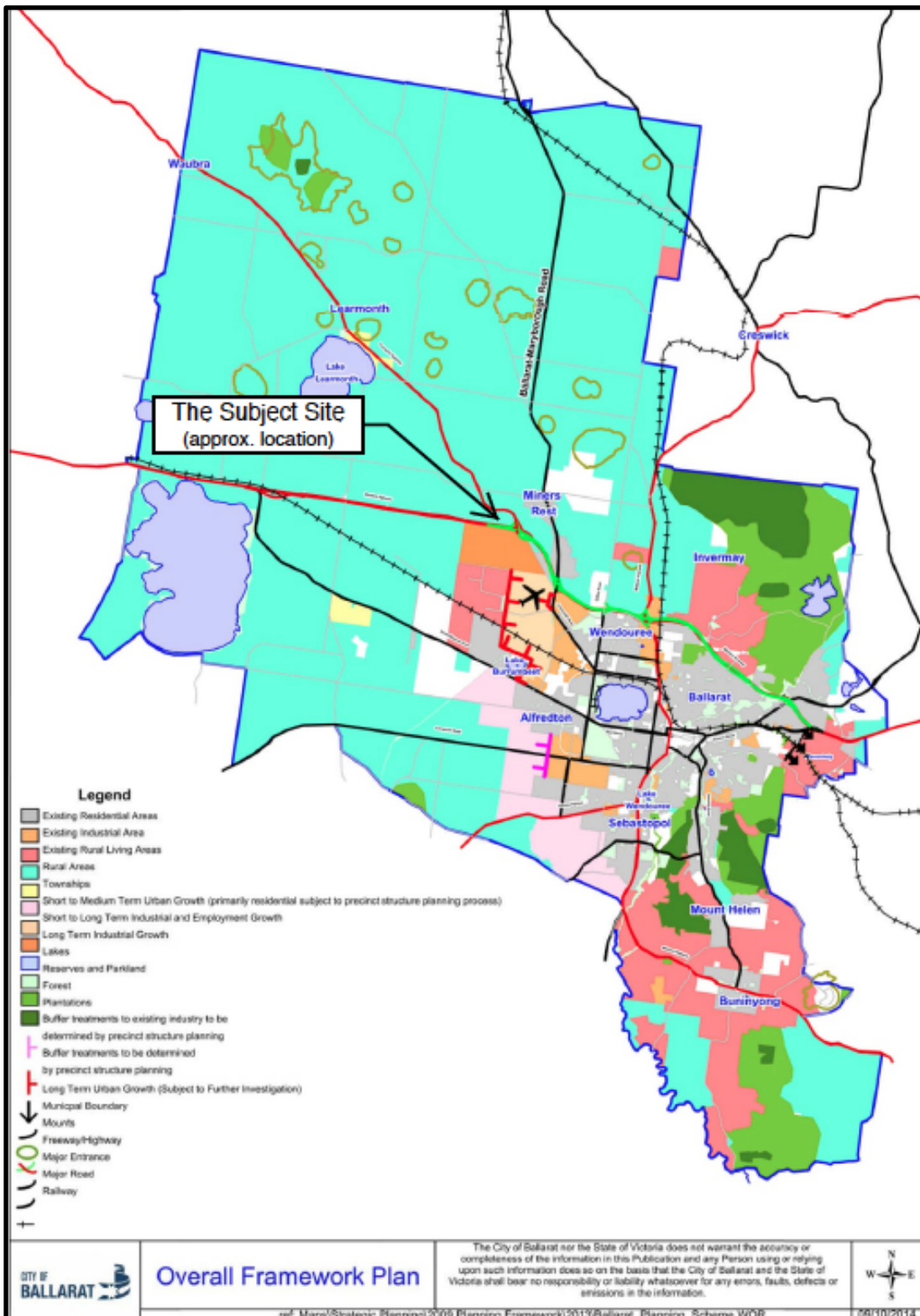
<sup>5</sup> *Amendment C185 Ballarat Planning Scheme – Explanatory Report*

<sup>6</sup> *Clause 21.03 Ballarat’s Strategic Framework*

<sup>7</sup> *Clause 21.04 Land Use*

<sup>8</sup> *Clause 21.08–1 Miners Rest*





55 While not acknowledged by the Framework Plan, the subject site is also located within an Extractive Industry Interest Area. It is not clear whether this amendment has been referred to the relevant State government department or authority for comment.

56 The key local planning policy themes that influence the subject site include settlement, industry, rural land use and mining.

#### 4.2.1 Settlement – Miners Rest

57 The LPPF identifies that Ballarat has undergone significant urban development over recent years with many areas available for residential, industrial and commercial use having been taken up.

58 Miners Rest is designated as a short to medium term residential growth area with an anticipated capacity to accommodate a total of 970 lots (or an additional 2000 people), subject to development constraints including the Western Highway by-pass, flood prone land and airport flight paths<sup>9</sup>.

59 In particular, the 1994 Outline Development Plan for Miners Rest (Figure 5) provides for further expansion of the township towards the subject site via re-subdivision of existing small farm lots. The plan also indicates that future use of the quarry should be subject to review.

60 The Miners Rest plan does not address future uses of the subject site.

#### 4.2.2 Rural Land Use

61 The LPPF identifies that the rural areas within the City of Ballarat are some of the richest agricultural areas in Victoria and seeks to ensure that productive agricultural land remains available for agriculture and sustainable resource use<sup>10</sup>.

62 Despite this, the reference document *Ballarat Rural Land Use Strategy, November 2010* (the 'Rural Land Use Strategy') identifies that the subject site is located within a precinct (Figure 6) characterised by 'pseudo rural residential development' combined with some productive agricultural activity.

---

<sup>9</sup> Clause 21.08-1 Miners Rest

<sup>10</sup> Clause 21.08-8 Rural Land Use

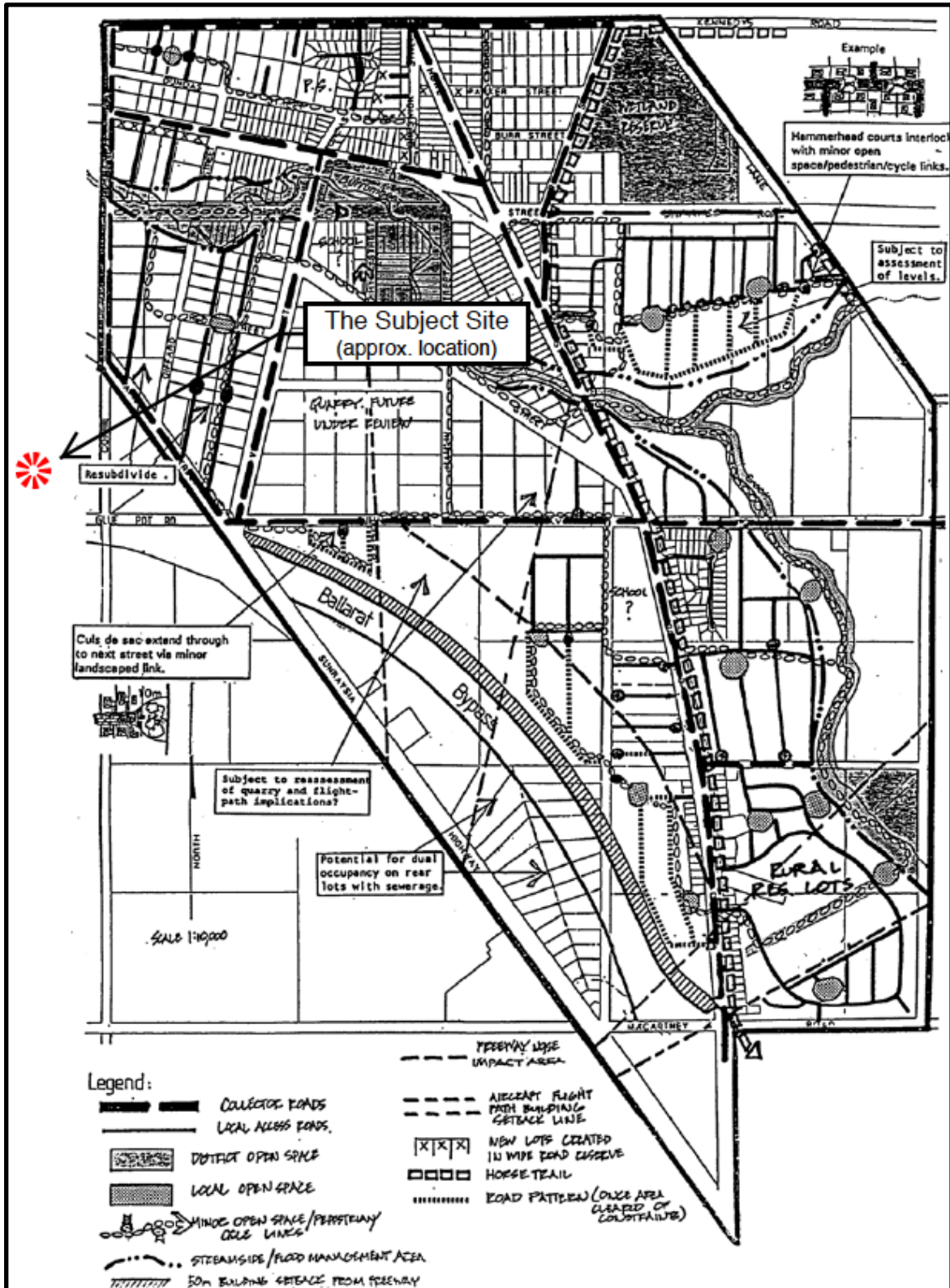
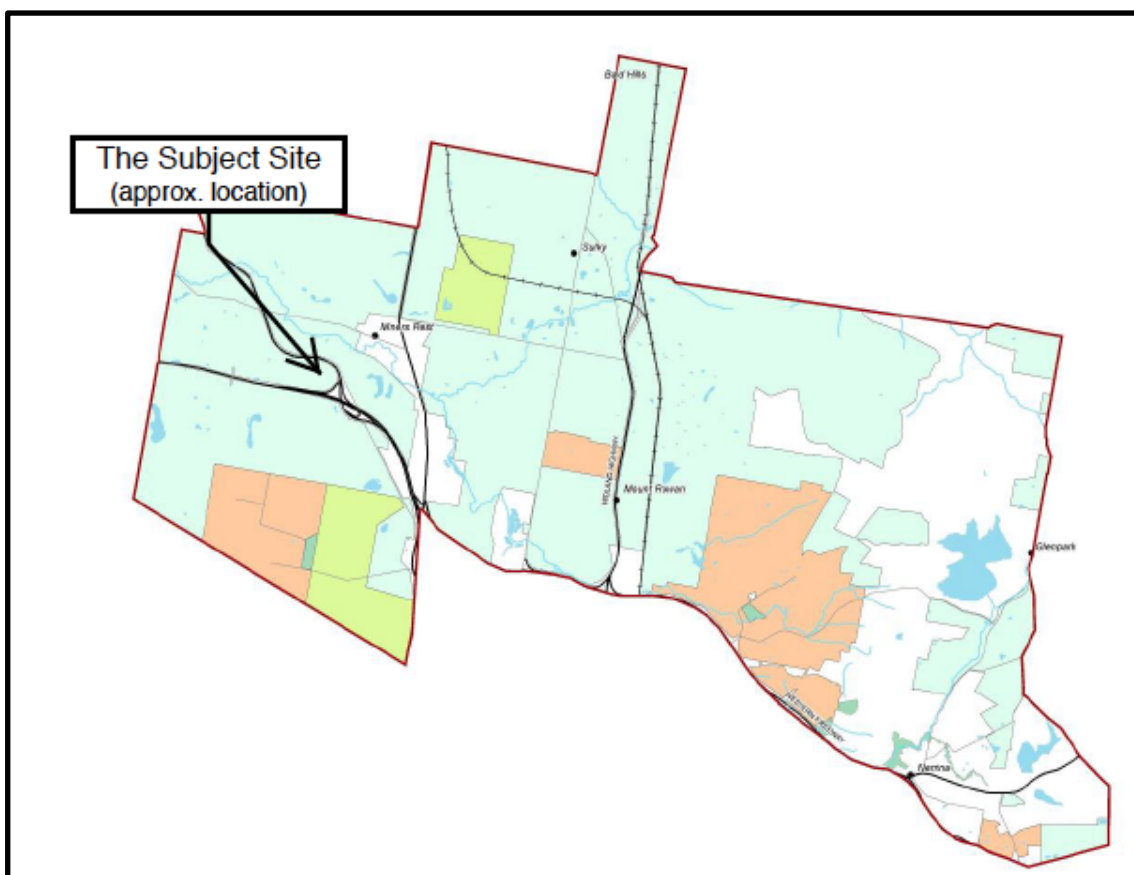


Figure 5: Miners Rest Outline Development Plan – Extract (Source: Clause 21.08-01 Miners Rest)



*Figure 6: Precinct 2: Sulky, Mount Rowan, Bald Hills and Miners Rest*  
 (Source: Ballarat Rural Land Use Strategy, November 2010)

- 63      The precinct serves as a “... *transition zone from the highly productive and viable farm sizes to the north west and urban extent of Ballarat to the south*”.
- 64      Key objectives relevant to the precinct seek to retain productive farming land for agriculture; protect and grow the equine industry; protect and enhance biodiversity and landscapes; and protect water catchments.
- 65      Other objectives seek to acknowledge the strategic location of the precinct; strategically manage diverse future land use; and retain opportunities for rural living.
- 66      The Rural Land Use Strategy is silent on the future of the Ballarat Saleyard.

### 4.2.3 Industry

67 The LPPF seeks to protect strategically important, large industrial land holdings close to transport routes and other infrastructure to ensure that the long-term demand for industrial land is satisfied.

68 In particular, the Industrial Framework Plan (Figure 7) identifies the expansive Dowling Road and Sunraysia Drive industrial growth areas to the immediate south of the subject site, beyond the Western Highway<sup>11</sup>.

69 These sites have been designated for long-term growth based on the *Ballarat Review of Future Industrial Areas Final Report, June 2009*, which determined the quantity and location of land necessary for future industrial use.

70 This reference document is relevant in this proceeding for a number of reasons:

- It was required to comment directly on appropriate land use and planning controls for the existing Ballarat Saleyard on the basis that it would be relocated in 3 – 5 years;
- Despite the foregoing, it did not advance any suitable alternative sites for the saleyards;
- While it supported the Sunraysia Drive and Dowling Road sites to the immediate south of the subject site for “*Future Long Term Industrial*” subject to further investigation, it did not consider the subject site for a similar purpose; and
- It discounted another site proximate to Miners Rest as being suitable for a future industrial purpose.

---

<sup>11</sup> *Clause 21.04-3 Industry*

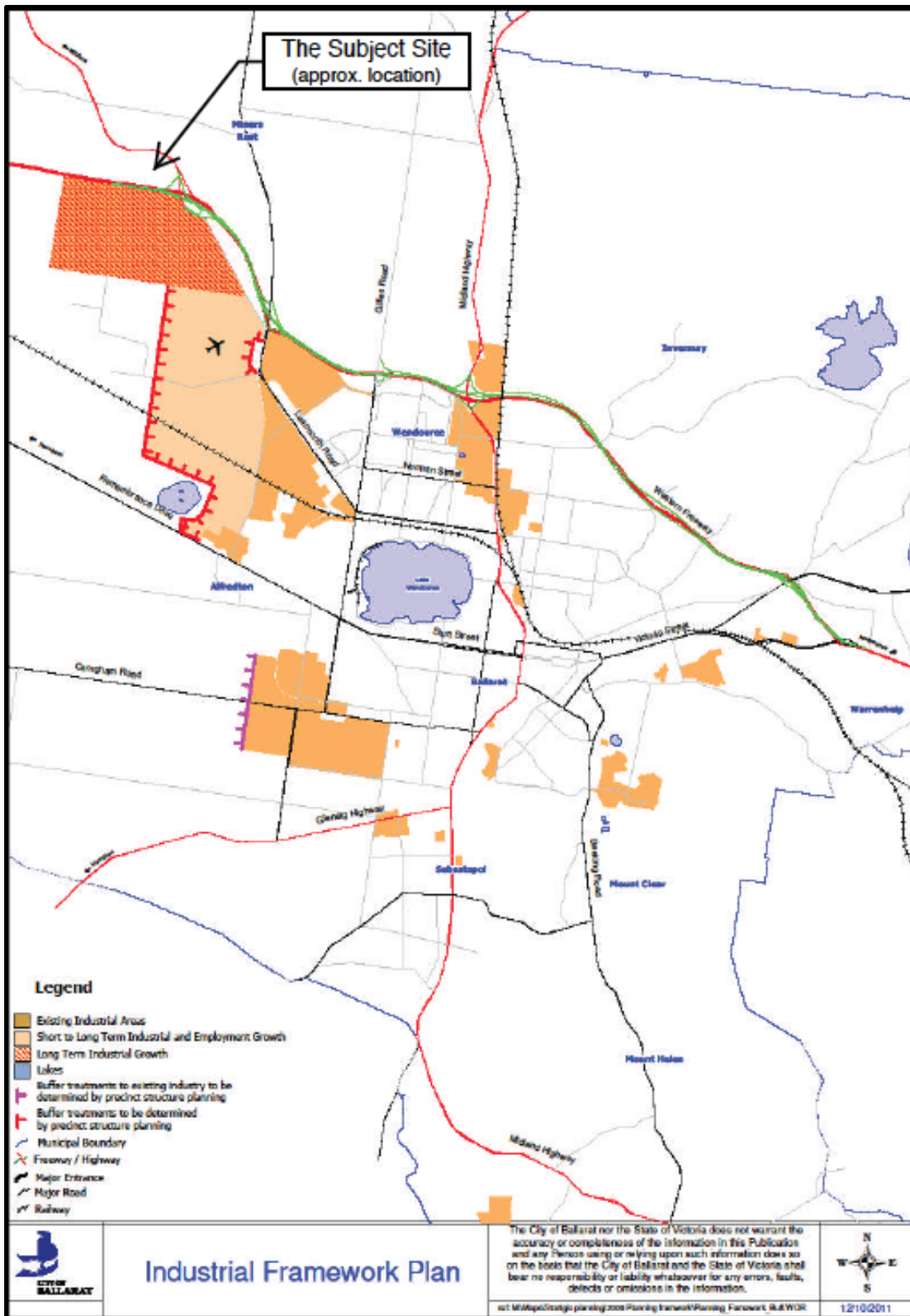
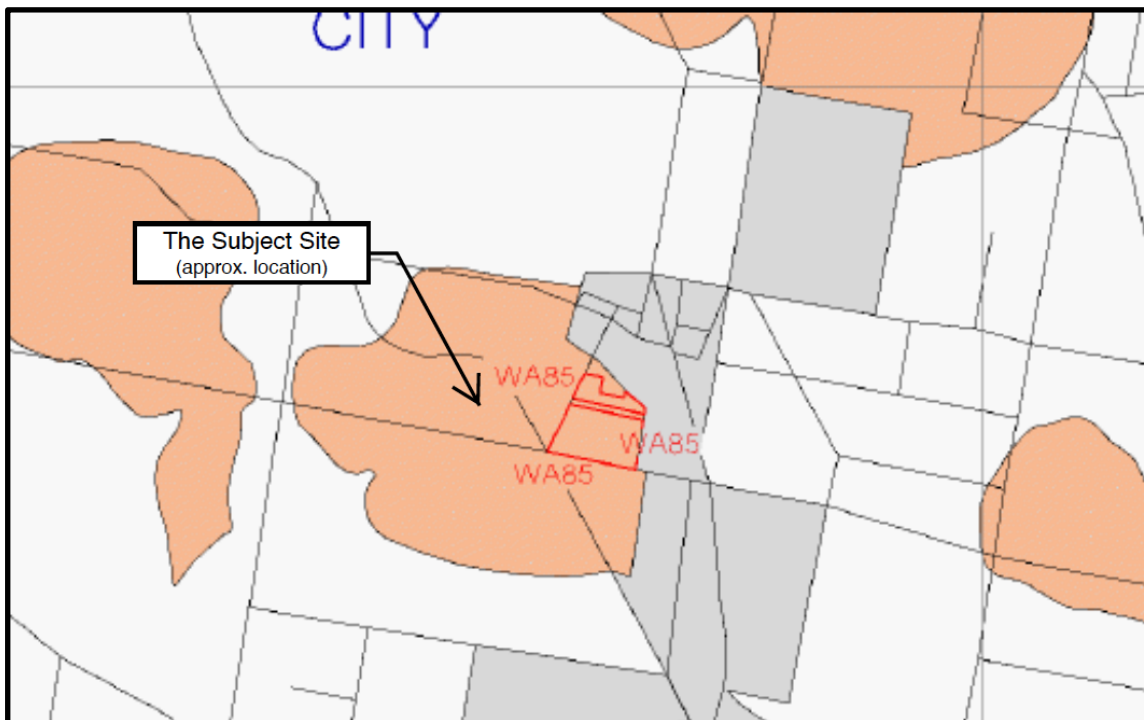


Figure 7: Industrial Framework Plan (Source: Clause 21.04-3 Industry)

#### 4.2.4 Mining

- 71 The subject site is located within an Extractive Industry Interest Area (Figure 8).
- 72 The LPPF supports the continued growth of mineral and stone mining activities and recognises that such activities have the potential to make a significant contribution to the economy and surrounding region.
- 73 It is not clear whether this amendment has been referred to the relevant State government department or authority for comment.



*Figure 8: Extractive Industry Interest Areas Ballarat Supply Area – Extract* (Source: Extractive Industry Interest Areas Ballarat Supply Area Geological Survey of Victoria Technical Record 1997/3)

#### 4.3 Amendment C185 - The Proposal

- 74 Amendment C185 to the Ballarat Planning Scheme has been advanced on the basis of State and local planning policy that broadly supports the development of regional scale facilities that are in close proximity to Ballarat; support existing industries; and utilise existing infrastructure.

75 While these broad principles are sound, the amendment offers minimal strategic justification for locating the CVLX on the subject site.

76 In particular, the key points advanced by the amendment documents include:

- Being confined to the north, east and south by major road and within a rural area, the subject site is appropriately located to avoid offsite impacts;
- The subject site is well located in relation to major transport corridors; and
- The subject site is located in close proximity to existing water, electricity and telecommunication infrastructure.

77 Notably, the Planning Assessment incorrectly identifies that growth of Miners Rest towards the subject site is not currently supported by the Ballarat Planning Scheme.

78 The amendment is also supported by a number of technical assessments that address issues including flora and fauna, traffic engineering, noise impacts and odour impacts.

#### **4.4 Assessment**

79 The need to relocate and redevelop the old, obsolete and poorly sited Ballarat Saleyards has been known for in excess of a decade.

80 However, despite this and the findings against Amendment C87 in 2006 the Ballarat Planning Scheme is still silent on the need for, or a suitable location of, a new saleyard facility.

81 While the 2009 review of future industrial areas explored areas suitable for industrial growth, it did not contemplate the subject site, and discounted one other site proximate to Miners Rest north of the highway.

82 Furthermore, growth area planning for Miners Rest, albeit undertaken in 2004, foreshadows residential growth towards the subject site creating conflict with the proposed location of the CVLX.

83 There is no strategic justification for Amendment C185.



## 5 THE SALEYARDS AND THE DEVELOPMENT OF MINERS REST

### 5.1 Overview

84 Detailed planning for the future growth and development of Miners Rest has been undertaken on two separate occasions during the past three decades, with outline development plans (ODP) prepared in 1994 and 2007.

85 The more recent 2007 ODP was abandoned following the recommendations of the Panel appointed to consider Amendment C127 in 2010.

86 Accordingly, the current Miners Rest implementation strategy set out at Clause 21.08 of the Ballarat Planning Scheme continues to rely on the 1994 ODP, now in excess of 20 years old.

87 The recent *Draft Ballarat Strategy Our Vision 2040* indicates however that further local area planning will be undertaken for Miner's Rest in the future.

88 Despite the history and future intent of planning for Miners Rest, Amendment C185 has sought to leverage the lack of recent and clear direction as justification for the use and development of the CVLX on the subject site.

89 In particular, the amendment goes so far as to state that the growth of Miners Rest towards the subject site is not currently supported in the planning scheme, contrary to the Miners Rest implementation strategy at Clause 21.08-1.

90 Accordingly, the amendment fails to take into account many of the potential implications for the future growth and development of Miners Rest.

### 5.2 Miners Rest Outline Development Plan 1994

91 The *Miners Rest Outline Development Plan 1994* (the '1994 ODP') underpins the current Miners Rest implementation strategy at Clause 21.08-1 of the Ballarat Planning Scheme.

- 92 The 1994 ODP directs short, medium and long-term expansion (0-20 years) of Miners Rest to the area north of Burrumbeet Creek. It provides for longer-term future growth (20 years +) in the area south of Burrumbeet Creek and towards the freeway bypass, including land within 100m of the subject site (Figure 5).
- 93 Specifically, the 1994 ODP identifies that the area closest to the subject site for re-subdivision in accordance with Vic Code (i.e. 10 houses per hectare).
- 94 The long term potential of this land was tied to the future of the quarry, with the 1994 ODP indicating that residential development and other sensitive land uses be withheld until extraction of the quarry ceased.
- 95 Other non-sensitive uses, such as industry, business, recreation, farming and other open spaces uses were however considered to be appropriate uses of the land during the intervening period.
- 96 While not making any specific recommendation in relation to the quarry, the 1994 ODP indicated that Council should give early consideration to its future.

### **5.3 Miners Rest Outline Development Plan 2007**

- 97 The *Miners Rest Outline Development Plan, 2007* (the '2007 ODP') was prepared as a review of the 1994 ODP with the intent of establishing *...a clear framework for the future development...* of Miners Rest.
- 98 Despite the intent of the 2007 ODP, it was abandoned by Council following the recommendations of the Panel appointed to consider Amendment C127 in 2010.
- 99 While the 2007 ODP holds no statutory weight and has no bearing on the current proceeding, it serves to demonstrate Council's ongoing commitment to planning for the future growth and development of Miners Rest.
- 100 In particular, while the 1994 ODP identified the land to the south west of Miners Rest and proximate to the subject site for long-term residential growth, the 2007 ODP recommended that the same land, including the quarry, be rezoned for light industrial use.

101 Furthermore, with specific reference to the future use of the quarry, the 2007 ODP included the following recommendation:

*“No specific recommendations are made with respect to a relocated Saleyards, excepting that by retaining the existing Farming zone within the Study Area, an that application can be made for a planning permit under the current provisions of this zone”.*

102 The 2007 ODP provided no further discussion in relation to the prospect of ‘saleyards’ being relocated to Miners Rest.

103 The Panel appointed to consider Amendment C127 ultimately concluded that many of the key recommendations of the 2007 ODP lacked strategic justification and that they be removed from the amendment.

#### **5.4 The Ballarat Strategy – Our Vision for 2040**

104 The importance of long-term strategic planning is highlighted by the *Draft Ballarat Strategy Our Vision 2040* (the ‘Draft Strategy’).

105 In particular, the Draft Strategy identifies that while townships and rural communities are not forecast to grow significantly over the next 30 year, they are expected to change. In this regard Council considers that it has a significant role to play in supporting townships areas to manage change.

106 In particular, the Draft Strategy states that:

*“Having a long-term vision for these areas is important to ensure incremental decisions during the coming decades help support the inevitable changes of these areas in a way which represents the shared aspirations of local communities.”*

107 Accordingly, the Draft Strategy identifies that local area planning will be undertaken for small township areas, including Miners Rest (Figure 3) and the land proximate to the subject site.

#### **5.5 Conclusion**

108 The amendment establishes the potential for a short to medium term conflict.

- 109 This is highlighted by the noise and odour impact assessments that accompany the application. Both assessments have both been advanced on the basis of no further residential growth to the south west of Miners Rest.
- 110 The opportunistic approval of the amendment and rezoning for saleyards will have the effect of establishing strategically significant constraints on the further use and development of land south west of Miners Rest for any future of residential use.
- 111 If the amendment was to proceed, it should be within the context of a structure plan or similar planning tool that evaluates if and how the CVLX and residential land use might co-exist on adjacent precincts.
- 112 Advancing the amendment in the absence of such settlement planning prematurely forecloses on growth options for Miners Rest.

---

## 6 AMENDMENT C185 – A CRITIQUE

### 6.1 Overview

113 Amendment C185 seeks to facilitate the relocation and redevelopment of the existing Ballarat Saleyard to the subject site without any further requirement for a planning permit application or the opportunity for third party review.

114 It does so with a paucity of information to be included within the Planning Scheme and provisions, and a lack of specificity about the final form and scale of the CVLX.

115 The amendment is flawed as it:

- Fails to explain why the subject site will offer the community a net benefit relative to other sites that might have some strategic policy support for industrial purposes;
- Fails to evaluate the merits of the site relative to other sites adjacent to Miners Rest; and
- Relies on statutory documents that inadequately specify the scale and form of the proposal and are too imprecise to be consistently applied.

### 6.2 Structure and Function of the Amendment Documents

116 The amendment relies on the provisions of *Clause 37.01 Special Use Zone (SUZ)* and *Clause 52.03 Specific Sites and Exclusions* to establish a statutory framework that provides for the responsible authority to endorse a Development Plan for the CVLX, removing the requirement for any further planning permit applications or third party review.

117 The amendment seeks to achieve this via the proposed Special Use Zone Schedule 15 (Central Victoria Livestock Exchange) and the Incorporated Document to *Clause 52.03 Central Victoria Livestock Exchange, Ballarat December 2014*.

118 The content and statutory function of each is summarised below.

### 6.2.1 Special Use Zone – Schedule 15 Central Victoria Livestock Exchange

119 The proposed SUZ includes the following purposes:

*“To provide for the use and development of the land as a livestock exchange (saleyard) facility and ancillary facilities as part of the Central Victorian Livestock Exchange Project.”*

And

*“To provide for the use and development of the land in accordance with the Incorporated Document entitled ‘Central Victorian Livestock Exchange, Ballarat August 2014’.”*

120 While SUZ15 provides for a limited number of Section 1 and Section 2 Uses (permit not required and permit required, respectively), the provisions are tailored for the use and development of a saleyard.

121 Specifically, SUZ15 requires the preparation of a Development Plan for *“the use of land for the Central Victoria Livestock Exchange”*. The Development Plan must be prepared, submitted and endorsed to the satisfaction of the responsible authority.

122 The Development Plan must be generally in accordance with the Concept Plan contained within the schedule (Figure 9) and must also be consistent with any Works Approval or other approval / licence required under the *Environment Protection Act 1970* and any Cultural Heritage Management Plan approved under the *Aboriginal Heritage Act 2006*.

123 The Development Plan must include the following information to the satisfaction of the responsible authority: existing conditions; site layout plan; landscaping; vegetation management; car parking and traffic management; flood investigation; drainage report; stormwater management; and operations and environmental management.

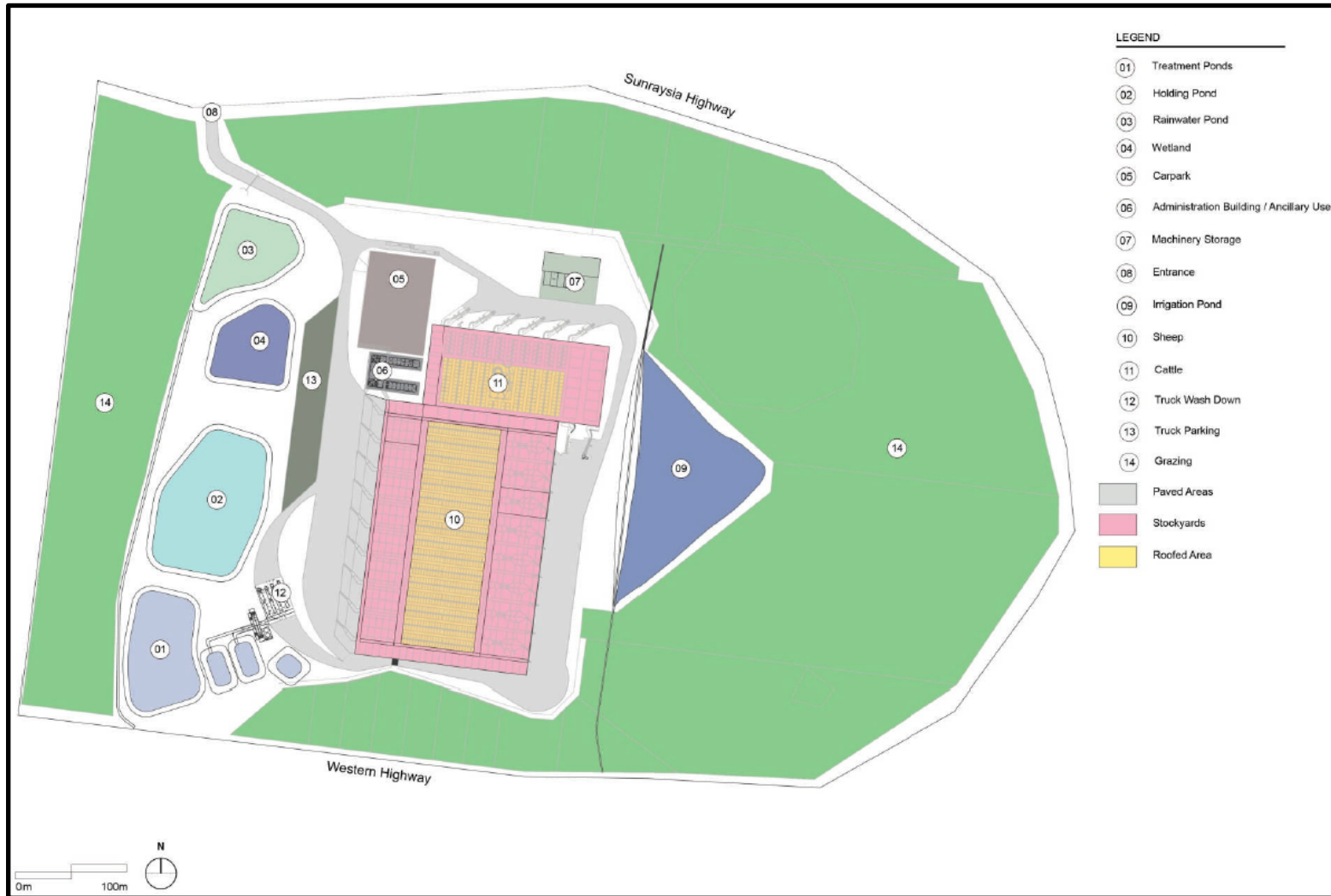


Figure 9: Concept Plan (Source: Special Use Zone – schedule 15 Exhibited)

## **6.2.2 Clause 52.03 Incorporated Document – Central Victoria Livestock Exchange, Ballarat December 2014**

124 The proposed Incorporated Document would use the provisions of Clause 52.03 to ‘turn-off’ a number of Particular Provisions of the Ballarat Planning Scheme, including those applying to advertising signs; car parking; loading and unloading of vehicles; native vegetation; and land adjacent to a road zone.

125 The Incorporated Document indicates that these provisions are to be dealt with via the Development Plan process required by the proposed SUZ15.

126 Notably, while addressing these issues in part, SUZ15 does not set out any particular requirements that would give affect the relevant Particular Provisions.

## **6.3 Assessment – The Special Use Zone**

### **6.3.1 The Special Use Zone is not an appropriate use of the Victoria Planning Provisions**

127 The Planning Practice Note *Applying the Special Use Zone, February 1999* provides that the Special Use Zone can be considered when either:

- An appropriate combination of other available zones, overlays and local policies cannot give effect to the desired objectives or requirements; or
- Where the site adjoins more than one zone and the strategic intent of the site is unknown.

128 The Planning Practice Note also identifies principles that need to be understood when considering the application of the Special Use Zone, including:

- The complexity of planning requirements is reduced by keeping the number of zones used to a minimum;
- Detailed and complex site specific zones are discouraged in preference for clear policy guidelines as the primary tool for decision making on planning matters; and
- The planning permit should be the principal method for land use or development proposal.



129 The Planning Assessment that accompanies the amendment acknowledges that a Saleyard is a Section 2 Use (permit required) of the Farming Zone, which currently applies to the subject site and surrounding properties.

130 However, the Planning Assessment indicates that it is necessary to rezone the subject site to the Special Use Zone to provide “... a more tailored planning mechanism for this regional scale facility while retaining the underlying support for agricultural use of the site and surrounds.”

131 The applicant’s Planning Assessment goes on to state that this process follows the precedent established by the failed Amendment C87, which previously sought to relocate the saleyards to Learmonth.

132 The rationale of Amendment C185 is flawed for two main reasons.

133 Firstly, the outcome sought by Amendment C185 can be effectively achieved with a planning permit application and through the use of the existing Farming Zone, Development Plan Overlay and local policy, if it were proven to be a strategically justified outcome.

134 This method would provide for a “... tailored planning mechanism...” for the CVLX while retaining an opportunity for third party engagement and review of the use and development proposal to be implemented.

135 Secondly, while Amendment C87 did seek to rezone the Learmonth site to the Special Use Zone, a concept supported by the Panel, the amendment was combined with a concurrent planning permit application for the use and development of an abattoir and saleyard.

136 In contrast to Amendment C185, the concurrent application provided for a full and proper review of the merits of the proposal and did not seek to remove or curtail third party review rights.

### **6.3.2 The Concept Plan contains insufficient detail**

137 SUZ15 requires that the Development Plan must be generally in accordance with the Concept Plan contained within the schedule (Figure 9).

138 That plan is truly conceptual and provides only for a rudimentary spatial layout of components, including pondage and wetlands; car parking;

administration buildings and amenities; machinery storage; location of sheep and cattle; truck washes and parking; location of stockyards; roofs and paved areas.

139 The concept plan provides no details regarding the height and form of buildings; places no limit on livestock throughput; sale days; hours of operation; after hours access; the role of the grazing area; or how and where any growth or diversification of uses might be accommodated.

140 Given that the concept plan is the core statutory planning tool to guide the use and development of the CVLX, it is essential that it address these issues.

141 Ordinarily, these issues would be detailed in a planning permit application process and addressed via conditions permit, where appropriate.

142 While a number of studies and technical reports have been prepared to support the amendment request, and might support a Development Plan in due course, these reports hold no statutory weight and cannot be relied upon to determine the final form and scale of the CVLX.

### **6.3.3 Inappropriate to require a Development Plan to be in accordance with a Works Approval**

143 SUZ15 requires that the Development Plan must be in accordance with any Works Approval or other approval / licence required under the *Environmental Protection Act 1970*.

144 While the Works Approval is an important and concurrent mechanism designed to ensure appropriate environmental outcomes, it should not dictate the planning outcome.

145 In particular, it is important that where planning issues would limit the scope of an activity requiring a Works Approval, these issues should be identified and defined prior to a Works Approval application being assessed.

146 Accordingly, it follows that a Works Approval should either be assessed concurrently or after a planning permit has issued, or, in this case, the Development Plan is endorsed.

147 While it is acknowledged that Amendment C185 has been advanced as a combined Planning Scheme Amendment and Works Approval Application, it is not appropriate that the proposed SUZ15 requires that the Development Plan must be in accordance with any Works Approval, except insofar as the latter does not materially override requirements approved through the planning assessment

148 In particular, this provides for ongoing amendments to the Development Plan to meet any future Works Approval for the CVLX, without the Development Plan imposing any ultimate constraints on the CVLX.

#### **6.3.4 Other matters**

##### **First Purpose of the SUZ15**

149 The first purpose of the SUZ15 provides specifically for the use and development of land as a livestock exchange (saleyard) facility and **ancillary facilities as part of the Central Victoria Livestock Exchange Project.**

150 The second part of this purpose is unclear insofar as it refers to ‘ancillary facilities’ as part of the ‘Central Victorian Livestock Exchange Project’.

151 Any ancillary facilities should be defined. The use of the word ‘part’ is also ambiguous, inferring that there is another undisclosed part of the project.

152 The primary purpose of the amendment should be limited to providing for the use and development of a Saleyard.

##### **Second Purpose of the SUZ15**

153 The second purpose of the SUZ15 provides specifically for the use and development of the land in accordance with the Incorporated Document *Central Victoria Livestock Exchange, Ballarat December 2014.*

154 Given that the Incorporated Document is to be included in the schedule to Clause 52.03, performing a statutory role, there is no justified purpose or benefit of referencing in the purpose of the SUZ15.

## Drafting

- 155 The amendment should remove references to the 'CVLX' and provide for a saleyard.
- 156 For reasons that may not be evident now, the CVLX may not be the name of the vehicle to establish a saleyard on the site.
- 157 It would be more appropriate to apply a generic term throughout the SUZ15 to clearly identify that it is for the purpose of a Saleyard, as opposed to a particular business model.
- 158 In particular, the “*Central Victorian Livestock Exchange*” appears to be a brand name associated with the managing company Regional Infrastructure Pty Ltd. Similar branding is associated with saleyards in the NSW Central Tablelands, Northern Victoria, Central Queensland, Tamworth and Inverell<sup>12</sup>.

## 6.4 Assessment – The Incorporated Document

- 159 The relevant purposes of *Clause 52.03 Specific Sites and Exclusions* are to provide, in **extraordinary circumstances**, specific controls designed to achieve a particular land use and development outcome.
- 160 Despite the stated purpose of the SUZ15, the proposed Incorporated Document does not inform the use and development of the land and no extraordinary circumstances have been advanced.
- 161 The Planning Assessment accompanying Amendment C185 seeks to justify the use of Clause 52.03 as “*the site is relatively isolated and is sufficiently sized to internally accommodate parking, loading and unloading of vehicles, signage and suitable access arrangement which can sufficiently accommodate the intention of these clauses*”.
- 162 The assessment goes on to state “*the site is devoid of significant vegetation that contributes to Victoria’s biodiversity*”.
- 163 There appears to be no synergy between the proposal of Amendment C185 to ‘turn-off’ the requirements of a number of key Particular Provisions and the purpose of Clause 52.03.

---

<sup>12</sup> <http://www.cvlx.com.au/aboutus.html>

164 It appears only to be motivated by an opportunity to remove potential planning permit requirements and third party review rights, consistent with the Development Plan concept.

165 This is an inappropriate use of Clause 52.03.

166 The Incorporated Document is also notable for a lack of other detailed information regarding the use and development of the proposed CVLX.

## **6.5 Conclusion**

167 Based on the foregoing, I do not consider that Amendment C185 makes proper use of the Victoria Planning Provisions and ultimately fails to achieve the first and primary objective of planning in Victoria:

*“To provide for the fair, orderly, economic and sustainable use, and development of land.”*

---

## 7 CONCLUSIONS

168 This evidence finds that:

- The Ballarat Planning Scheme does not establish clear policy direction or advance the strategic justification for a regional saleyard on the subject site;
- The opportunistic nature of the amendment will prematurely foreclose on strategic land use and development options for the land south west of Miners Rest; and
- The amendment does not make proper use of the Victoria Planning Provisions and fails to achieve the first and primary objective of planning in Victoria.

Robert Milner

June 2015

## **Attachment**

### **1 Expert Witness Statement**





### **The name and address of the expert**

Robert Milner, Director of 10 Consulting Group Pty Ltd, 3/2 Yarra Street, South Melbourne, Victoria, 3205.

### **The expert's qualifications and experience**

Robert Milner holds an Honours Diploma in Town and Country Planning from Liverpool Polytechnic. He is a Life Fellow of the Planning Institute of Australia and a Fellow of the Victorian Planning and Environmental Law Association.

A Curriculum Vitae is included at Attachment 2.

### **The expert's area of expertise to make this report**

Robert has a broad range of expertise in planning and development matters enabling him to comment on a wide spectrum of urban and rural, statutory and strategic planning issues and processes.

### **Other significant contributors to the report**

Daniel Drum.

Daniel holds a Bachelor of Urban and Regional Planning and Bachelor of Natural Resources (Hons) from the University of New England, Armidale, NSW.

### **Instructions that define the scope of this report**

Robert Milner has been instructed by Kings Lawyers.

### **The identity of any person who carried out tests or experiments upon which the expert has relied on and the qualifications of that person**

Not applicable.

### **The facts, matters and all assumptions upon which this report proceeds**

Robert Milner has previously been involved in the Ballarat Planning Scheme Amendments C87 that sought to relocate the Ballarat Saleyard to Learmonth.

Robert Milner was also involved in the preparation of the *Ballarat Review of Future Industrial Areas Final Report, June 2009* and the draft *Potential Relocation of the Ballarat Livestock Selling Centre Strategic Planning Analysis Report 2007*.

There are no other facts, matters or assumptions upon which the report relies other than those explicitly stated in the report.

**Documents and other materials the expert has been instructed to consider or take into account in preparing his report, and the literature or other material used in making the report**

Rob Milner has reviewed the following material:

- *The Ballarat Planning Scheme;*
- *Exhibited Ballarat Planning Scheme Amendment C185;*
- *Exhibited Ballarat Planning Scheme Amendment C87;*
- *Panel Report to Ballarat Planning Scheme Amendment C87;*
- *Exhibited Ballarat Planning Scheme Amendment C127;*
- *Panel Report to Ballarat Planning Scheme Amendment C127;*
- *Council Plan 2009 to 2013 Ballarat: Today, Tomorrow, Together (Revised 27 June 2012);*
- *Council Plan 2013 – 2017 Leading sustainable growth, strengthening our community and respecting our heritage;*
- *Ballarat Review of Future Industrial Areas, 2009;*
- *The Draft Ballarat Strategy Our Vision 2040;*
- *The Miners Rest Outline Development Plan, 1994;*
- *The Miners Rest Outline Development Plan, 2007;*
- *Potential Relocation of the Ballarat Livestock Selling Centre – Strategic Planning Analysis Report, 2007 (Draft); and*
- *Applying the Special Use Zone, 1999*

Other material as referenced in the body of this report

**A summary of the opinion or the opinions of the expert**

A summary of Robert Milner's opinions are provided within the body of the report.

**Any provisions or opinions that are not fully researched for any reason**

Not applicable.

**Questions falling outside the expert's expertise and completeness of the report**

Robert Milner has not been instructed to answer any questions falling outside his area of expertise. The report is complete.

**Expert declaration**

I have made all inquiries that I believe are desirable and appropriate and no matters of significance which I regard as relevant have to my knowledge been withheld from the Panel.



**Robert Milner**

**June 2015**



## **Attachment**

### **2 Curriculum Vitae – Robert Milner**





## **ROBERT MILNER – DIRECTOR**

### **Qualifications and Positions**

- Director 10 Consulting Group Pty Ltd and The Milner Group Pty Ltd
- Diploma in Town and Country Planning (First Class Honours) Liverpool Polytechnic
- Life Fellow Planning Institute of Australia
- Fellow of the Victoria Planning and Environmental Law Association
- Former State and National President of the Planning Institute of Australia
- Member, Planning and Local Government Advisory Council (1994 – 1999)
- Deputy Chairman, Future Farming Expert Advisory Group (2009)

### **Employment History**

2010 – Current	Director 10 Consulting Group Pty Ltd
1999 – 2010	General Manager, Senior Principal and Adjunct Senior Planning Counsel – Planning, CPG Australia Pty Ltd (Formerly the Coomes Consulting Group)
1994 – 1999	Director, Rob Milner Planning Pty Ltd and Savage Milner
1991 - 1994	Project Director, Collie Planning and Development Services
1988 – 1991	General Manager, Town Planning, Jones Lang Wootton
1980 - 1988	City Planner, City of Box Hill
1977 – 1980	Planner, Perrott Lyon Mathieson, Architects and Planners
1976 – 1977	Planner, Kirklees Metropolitan Borough Council

### **Career Overview**

Rob Milner is a respected strategic and statutory planner. He is equally competent in urban and regional practice.

He is recognised as a leader of the planning profession in Victoria. He has had a high profile career spanning 40 years with extended periods of experience working for local government and private practice.

---



Until 2010 he worked with CPG Australia building that planning team to be one of the larger and most respected strategic and statutory practices in Victoria. The team was twice awarded planning consultant of the year in Victoria.

He now directs 10 Consulting Group, as a small boutique consultancy offering the highest level of advice and service to clients wanting the benefit of Rob's considerable experience, knowledge and understanding of planning in Victoria.

He is regularly retained to provide expert evidence to courts, panels and tribunals on the broadest range of land use and development planning issues. He is usually involved in 4 or 5 different matters monthly and has a reputation for objectivity, an original style of evidence and for providing clear and fearless advice. Particular expertise is in complex and controversial projects, gaming matters, acquisitions and compensation and restrictive covenants.

He is an acknowledged advocate and negotiator and is regularly engaged in development approval and rezoning projects where process and relationships need to be carefully nurtured to ensure a viable and timely outcome.

His ability to communicate effectively among a broad range of stakeholders means that he is regularly engaged to facilitate workshops, conferences, consultation and other situations where leadership and engagement of groups is required.

His clients have included many State government agencies (including planning, community development, justice, roads, growth areas and regional development), municipalities throughout metropolitan Melbourne and regional Victoria, as well as a broad range of corporate and other private sector interests.

Robert Milner brings a high level of integrity to his work, choosing to participate on those projects that accord with his professional opinion.

## **Areas of Expertise and Experience**

### **Strategic studies, policy development and statutory implementation**

Rob is widely acknowledged for his capacity to take a strategic perspective to urban and regional and planning challenges and provide direction and leadership that is responsive, creative and thoughtful in its strategic intent and detail.

---





When combined with his depth of experience with strategic policy based planning schemes he is powerfully equipped to deliver sound advice on the spectrum of land use and development planning issues.

His strategic planning skills are ground in work experience at the State, regional, local and site specific levels dealing with the issues that affect a town or sub region or examining themes or subjects that span geographical areas.

While working for CPG Australia he lead multi disciplinary planning teams that worked for clients that included DPCD, Department of Justice, Department of Innovation, Industry and Regional Development, and many municipal councils in metropolitan Melbourne and regional Victoria.

In 1994 he lead the planning consultancy that recommended the model for the Victorian Planning Provisions, the strategic policy driven planning scheme that is now consistently used throughout Victoria.

In 2009 Robert served as the Deputy Chairman on the Future Farming Expert Advisory Group reporting to the Minister for Planning. That work addressed a broad range of issues facing the next three decades of land use and development in regional Victoria.

### **Expert evidence and advocacy**

Rob is regularly called upon to provide expert evidence and reports to clients, courts, Independent Panels and VCAT. He has acted in this capacity or as an advocate in over 1,200 cases during his career.

He is often retained to provide the strategic perspective to planning disputes. He is equally capable in commenting on matters of urban design, and compliance with planning policy and provisions.

The scope of matters that he has addressed in this capacity is extremely diverse and includes:

- Medium density and high rise residential development,
  - Greenfield, master planned communities in growth areas,
  - Waste management, quarries and landfill proposals,
  - Major shopping centres and mixed use developments,
  - Industrial and residential subdivisions,
  - Hotels, motels, restaurants and other leisure facilities
-

- Retirement villages,
- Rail projects,
- Coastal developments,
- Office and CBD projects
- Heritage projects
- Compensation and land acquisition matters,
- Liquor licence and gaming proposal,
- Freeway service centres and petrol stations,
- Agribusiness centres.

### **Legislative and planning scheme reviews and amendments**

Aside from Rob's leadership of the consultant planning team that conceived the model for the Victorian Planning Provisions, he has been associated with many reviews of municipal planning schemes and amendments.

Planning scheme review usually takes the form of comprehensive research examining both the merits of the strategic policies as well as the statutory provisions. Wide ranging consultation is involved in the task.

Work associated with planning scheme amendments usually includes strategic justification of the proposal as well as statutory documentation and management of the process. The provision of expert evidence to independent panels is often involved.

In more recent times Rob has been involved in projects that entail a review of allied legislation as well as amendments to planning schemes. Recent relevant projects have included the following:

### **Reviews of Victorian planning provisions and allied legislation**

- Activity Centre Zone construction and application in Footscray, Doncaster, Knox and Sunshine
  - Tramway infrastructure and the VPP's,
  - Higher density living adjacent to tramway corridors
  - Liquor Licensing legislation and planning provisions
  - Gaming (EGM) policy and provisions for Councils
-

- Review of the Farming and Green Wedge zones for their economic implications

### **Planning scheme reviews**

- Shire of Surf Coast 2007
- Shire of Wellington 2009 -10
- Rural City of Horsham 2010
- Borough of Queenscliff 2011- current

### **Organisation audits and process reviews**

Rob has a long and established career providing reviews of planning documents, teams and processes, particularly in a local government environment.

Trained as a LARP facilitator in 1990 as part of a Commonwealth Government initiative his experience in this area commenced with the development of planning and building specifications for tenders as part of Compulsory Competitive tendering process and the coaching of bid teams.

Since then Rob has developed a specialisation in providing reviews and recommendations to State and Local Government, which audit planning schemes, the performance of planning teams and departments and development approvals processes.

In the last 20 years he has worked with the majority of metropolitan councils and many regional municipalities; he prepared the model audit process for the Department of Sustainability and Environment in 2003 and recently provided a facilitated program for the Department of Planning and Community Development reviewing how it processes planning scheme amendments.

He has worked with Councils in Victoria, New South Wales and South Australia.

He uses a range of audit techniques, extensive consultation with users of the processes and provides detailed strategies on necessary reforms.

His most recent work has been as a major contributor to the VicSmart program.

---



Expert Evidence | Strategic Advice | Development Approvals