

NOVEMBER 2018

# **Amendment C105 Expert Statement Rural Land Use Strategy**

City of Latrobe

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# 1 Expert Statement

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Experience: Curriculum vitae provided in Appendix 1.

## 2 Reports

Planisphere (now Ethos Urban) was engaged by the City of Latrobe to undertake Stage 2 of Live Work Latrobe project and prepare a Housing Strategy, Industrial Land Use and Employment Strategy; and Rural Land Use Strategy. RMCG was engaged by Planisphere as a sub-consultant to provide input to the preparation of the Rural Land use Strategy for as part of the broader project. I made the following contributions to the preparation of the Rural Land Use Strategy:

- Desktop review of reports and compilation of data to provide an understanding of:
  - The policy and strategic context for rural land
  - The agriculture and forestry industries
  - Land capability for agriculture and forestry
  - Issues and opportunities for agriculture and forestry in the municipality
- Targeted consultation
- Input to the drafting of the Rural Land Use Strategy with regard findings and policy recommendations in relation to agriculture and forestry. Findings and policy recommendations in relation to rural living and environmental values were provide by other members of the project team, other than where integration with or consideration of agricultural or the forestry industry was required. I was Lead Author of the following sections of the Strategy.
  - Section 1.3 Current planning controls
  - Section 1.4 Drivers of change
  - Section 2.1 Strategic Objectives
  - Section 3 Agriculture
  - Section 4 Forestry
  - Section 5 Intensive Agriculture
  - Section 6 Rural Tourism
  - Section 7 Environment
  - Section 9 Implementation
- Participated in project team discussions on implementation options
- Participated in briefings to Councillors and the Project Steering Group

Questions outside my expertise for this report include:

- Project management and overall project methodology.
- Rural living supply and demand and policy recommendations.

I adopt the Rural Land Use Strategy (2017) to the extent of my involvement as evidence.

## 3 Instructions

My instructions were received directly from Council's strategic planning team and were limited to reviewing submissions made in relation to the rural land use elements of the Amendment.

# 4 Rural Land Use Strategy Methodology

## 4.1 OVERVIEW OF METHODOLOGY

The methodology used in preparation of the Rural Land Use Analysis report and development of the Rural Land Strategy was based on:

- Past projects undertaken in rural land strategic studies;
- Planning Practice Note 42: Applying the Rural Zones, Department of Environment, Land, Water and Planning (2015) which notes:

*There is no prescribed content or format for a rural strategy or study, however it should:*

- *develop a vision, role and purpose for the rural area*
- *identify the values and features within the rural area*
- *identify the key opportunities and constraints*
- *establish a strategic direction for land use and development within the rural area*
- *articulate how the strategic vision for the rural area is to be implemented through the planning scheme.*

*The information used to develop the strategy should be tailored to suit the area. In general, it should include an assessment of:*

- *the state, regional and local strategic planning policies and objectives for the area, including relevant regional growth plans or strategies*
- *the housing needs of the municipality and likely future trends which is particularly relevant if one of the aims of the strategy is to provide for rural living development*
- *the physical attributes of the land and its capacity to support productive agricultural uses including soil type, climate, vegetation cover, access to water, slope and drainage*
- *agricultural trends in the area, including agricultural productivity, changes in farming practices and processes, and farm investment patterns*
- *the natural resources and environmental features in the area and their importance including flora and fauna, significant habitats, wetlands, scenic landscapes and sites of archaeological or cultural significance*
- *environmental hazards that could affect how the land is used and developed, such as erosion, salinity, flooding and wildfire risk*
- *the existing lot size and land use patterns*
- *infrastructure available for agriculture and other relevant land uses*
- *settlement patterns in the area.*

## 4.2 STUDY METHODOLOGY

### 4.2.1 RURAL LAND USE STRATEGY TASKS

The methodology used in the preparation of the Rural Land Use Strategy included the following tasks:

- Review of the current planning policy relevant to rural land in the Shire.
- Review of the agricultural industries including an analysis of the economic value of agricultural industries, and identification of issues and opportunities for agriculture in the City of Latrobe.
- Review of timber production in the Shire to establish its extent and significance in the municipality and identification of issues and opportunities for forestry in the City of Latrobe.
- Review of environmental plans and strategic documents
- Preparation of a Scoping Paper summarising the key findings of the desktop review
- The productive potential of the land for agriculture and forestry in the Shire was mapped taking into consideration agricultural capability mapping, climate, access to irrigation, lot size and land ownership.

- Based on the analysis, agreed vision and strategic objectives policy recommendations were prepared in conjunction with the project team including:
  - Recommendations for zone application and changes to the minimum lot size schedules
  - Recommendations for local policies

#### **4.2.2 CONSULTATION**

Community views on rural land issues and opportunities was gathered in Stage 1 of the Live Work Latrobe project and informed the preparation of the Rural Land Use Strategy. Further community consultation on the Rural Land Use Strategy was not undertaken in Stage 2. Consultation with key stakeholders included presentation and discussion of research findings and recommendations with the Project Reference Group, workshops with Latrobe Planning Officers to discuss planning scheme performance and policy recommendations and Councillor briefings.

## **5 Rural Land Use Strategy**

### **5.1 KEY FINDINGS**

#### **5.1.1 AGRICULTURE AND FORESTRY**

Latrobe City plays an important role in Gippsland's and the state's agriculture and forestry industries. While the City makes a relatively small contribution to the value of agricultural production, it makes a significant contribution to timber production. It also has a significant regional role with regard value adding in both industries including: manufacturing of food and timber, provision of professional services and skilled and unskilled labour. The most widespread rural land uses are broadacre farming (grazing and cropping) and timber production.

The main agricultural commodities produced in Latrobe include milk, meat (mainly beef and poultry) and eggs. Both softwood and hardwood timbers are grown in Latrobe. The main agricultural trends to 2010-11 include:

- Doubling of the value of agricultural production between 1996/96 and 2015/16
- Modest growth in milk and cattle production. There is evidence of consolidation of dairy farms (total dairy business numbers have reduced, while dairy cattle numbers are unchanged and gross value of agriculture has increased)
- Increase in the value of poultry for meat and egg production with an increase in the number of broiler and egg producers.

Productive agricultural land and forestry land were mapped using a combination of the following data:

- Agricultural capability (Swan and Volum (1984) Assessment of agricultural quality of land in Gippsland (1:250,000 scale which indicates the general pattern of the agricultural quality of land)
- Access to irrigation
- Annual rainfall
- Low size and patterns of land ownership
- Current land use

Issues and opportunities for agriculture and forestry include:

- Encourage continued industry investment by protecting of productive agricultural and forestry land to
- Expansion of irrigation through the Southern Victoria Irrigation Development Project
- Expansion of intensive animal husbandry, particularly on land covered by the State Resource Overlay
- Growing hobby farm and lifestyle farming land use.

#### **5.1.2 ENVIRONMENT AND LANDSCAPE**

Significant environmental values were identified in the background research including:

- Rare and Endangered Ecological Vegetation Classes; Flora & Fauna Guarantee listed plant communities, Environment Protection and Biodiversity Conservation listed bird species on public and private land.
- Potential to improve ecological connectivity through vegetation protection, enhancement and restoration of an identified biolink.

However, further work was required to map the extent and location of important environmental values, identify areas requiring policy protection and investigate the appropriate suite of tools to protect these values.

The rural landscape of the City is varied and currently there are no strategic policy directions for landscape protection. Further strategic work was required to describe and characterise the City's rural areas, identify significant landscape values and prepare appropriate supporting policy.

### **5.1.3 RURAL TOURISM**

Tourism is an important component of the Latrobe economy. Latrobe's tourism offer is focused on hosting events in Traralgon and Morwell and mainly urban based attractions or as a base to explore regional attractions. An opportunity to build on existing tourism strengths and the City's attractive rural areas to provide a wider choice of tourism experiences by supporting rural based tourism such as farm stays and bed and breakfasts. The potential for the City to accommodate large scale tourism facilities was also identified.

### **5.1.4 PLANNING SCHEME PERFORMANCE**

Direct translation to the Latrobe City Planning Scheme of a new suite of rural zones in January 2006 (Amendment C43) resulted in the application of the Farming Zone to land previously zoned Rural Zone and Rural Conservation Zone and Environmental Rural Zone.

A review of planning permit data found that on average, 22 planning permits for new dwellings in the Farming Zone have been approved annually since 2009, while at the same time the number of Latrobe farm businesses participating in the Australian Bureau of Statistics agricultural census has not changed. This suggests that new dwellings are being constructed in the Farming Zone that are not for a farming purpose.

Council officers noted the high frequency of enquiries for new dwellings on lots under the Farming Zone minimum lot size from landholders wanting a rural lifestyle property. Ministerial amendment (VC 103) to the Farming Zone in 2013 resulted in removing the prohibition on some uses and making more uses discretionary. In deleting the requirement for an applicant to prove 'whether the dwelling is reasonably required for the agricultural activity conducted on the land', Council officers felt that further policy guidance would be beneficial in the assessment of planning permit applications in the Farming Zone. Opportunities to improve the performance of the planning scheme raised during the Live Work Latrobe Stage 1 Background Report (2016) and the Latrobe Planning Scheme Review (2014) include:

- Tailoring planning policy and controls to reflect diverse rural landscapes and address planning legacies, particularly small lots in the Farming Zone.
- Providing additional guidance to assess planning permit applications for dwellings and subdivision in the Farming Zone.
- Reviewing the need for policy to protect and enhance environmental values, support and promote forestry and rural based tourism.
- Clarifying the opportunity for agriculture on land covered by the SRO 1- Gippsland Brown Coalfields or ESO1 – Urban Buffer.

## **5.2 RECOMMENDATIONS**

The strategy established the following strategic objectives for rural land in response to the key findings:

- Recognise and protect productive agricultural land
- Support and promote the forestry industry
- Encourage rural tourism opportunities in appropriate locations across the city
- Protect and enhance the significant environmental and landscape values of Latrobe City.

The following planning scheme changes were recommended to achieve these objectives:

- Introduce two schedules to Farming Zone:
  - Farming Zone 1
    - Promote and encourage commercial scale agriculture and forestry including livestock grazing and cropping, horticulture, intensive agriculture and forestry
    - Minimum lot size of 80 ha for subdivision and 100ha for a dwelling
  - Farming Zone 2
    - Recognise areas where rural land use is a mix of commercial agriculture and hobby farming and provide support for a wider range of discretionary uses compatible with agriculture
    - Minimum lot size of 40 ha for subdivision and 40ha for a dwelling
  - Local policies to provide further guidance on assessment of planning permit applications:
    - Subdivision
    - Dwellings
    - Intensive animal husbandry
    - Rural tourism

## 6 Submissions

A number of submissions were received addressing the Rural Land use Strategy following exhibition of the Amendment C105.

Key themes or issues raised in submission have been summarised and addressed here:

### 6.1 RURAL DWELLING AND SUBDIVISION IN THE FARMING ZONE

***Clause is too onerous with regard excision in the Farming Zone and does not have sufficient flexibility to respond to agricultural needs.***

Past experience shows that the excision provisions in planning schemes have been abused, with excised lots being unrelated to the farm operation and the opportunity to excise being used on two, three and more occasions. Generally, small lot excisions (with or without houses) are inappropriate in rural areas. They are usually used as a way of circumventing the minimum lot size in the zone. The additional house entitlement created is rarely necessary to improve the farm operation on the land from which it was excised. Excisions have contributed to introduction of rural residential uses in farming areas, which is in direct conflict with the aims and objectives of the strategy.

House lot excisions that involve excision of an existing dwelling can be a legitimate requirement of farming, particularly associated with farm expansion. It should therefore be provided for where it can be reasonably demonstrated that it is required for the development of the agricultural business and does not increase the density of lots and dwellings. Given that an excised dwelling is inevitably used for rural residential purpose, it should be undertaken so that the risk of rural land use conflict is minimised. Small lot subdivisions, including facilitating housing excision, based solely on hardship, personal circumstances, retirement or superannuation grounds, are not relevant matters for the planning scheme.

The policy therefore is focused on providing additional guidance to that in the zone schedule to:

- Ensure that the excision is only for the purpose of divesting a property of an unwanted dwelling as part of farm expansion and consolidation.
- Ensure that the resultant lot and dwelling do not have a detrimental impact on use of surrounding land for agriculture.

*Want consideration of more flexible excision policy for lots in the Farming Zone 2.*

Farming Zone 2 has been applied to relatively fragmented rural land and seeks to provide for a range of agricultural enterprises including commercial scale agriculture and hobby farming and provide for a range of uses, compatible with

agriculture, such as rural tourism. Two lot subdivision are not considered appropriate in the Farming Zone 2 because they:

- Add to an already substantial supply of small lots that is inconsistent with the main forms of agriculture in the City
- Generally lead to an expectation that a dwelling could be constructed on the balance lot further compounding fragmentation issues.

The proposed local policy sets out tests to ensure that excision of an existing dwelling will result in a beneficial agricultural outcome. It is considered that this responds to the issues and desired outcomes for the Farming Zone 2 and provides sufficient 'flexibility.'

## 6.2 MINIMUM LOT SIZE INCREASE IN SCHEDULE 1 OF THE FARMING ZONE

Farming Zone 1 seeks to support and promote commercial agriculture, which in Latrobe City, is primarily broadacre dairy and livestock production, and forestry. The subdivision minimum lot size should therefore:

- Provide land parcels suited to broadacre agriculture and forestry production and management practices.
- Provide for incremental growth of properties
- Facilitate transfer of land parcels between enterprises.

80% of lots in the Farming Zone are less than 40ha and 96% of lots are less than 100ha. Therefore, there is an ample supply of lots in a range of sizes to provide for new investors, incremental business growth and agricultural enterprises at a range of scales. Demand for rural lifestyle properties and the effects of land fragmentation (land use conflict, inflated land values) were noted as an issue for agriculture and forestry in the consultation. The minimum lot size for subdivision was therefore set to a size that focused on providing for subdivision of remaining very large lots in the Farming Zone and ensure that a supply of larger land parcels was retained. The minimum lot size for subdivision was therefore set at 80ha.

The permit trigger or minimum lot size for which a permit is not required for a dwelling in Farming Zone 1 was specifically focused on ensuring that Council was provided with an opportunity to test if a dwelling is genuinely required for the agricultural use of the land, given this test was removed from the Farming Zone via Ministerial Amendment VC 103.

This is consistent with the objectives and land use outcomes for Farming Zone 1 which seeks to promote and support commercial agricultural enterprises by:

- Ensuring that the development of dwellings does not prejudice existing and future agricultural or forestry activities on surrounding land.
- Enabling the agricultural industry to access to affordable land unencumbered by unwanted infrastructure, particularly dwellings.
- Ensuring that agricultural and forestry land is maintained for the cost-effective production of food and raw materials.

The minimum lot size was set, not to reflect the size of an average farm enterprise, but to break the nexus between subdivision and dwellings and afford Council the opportunity to ensure that a new dwelling in the Farming Zone is genuinely required for an agricultural purpose or compromise forestry practices. The minimum lot size above which a permit is not required for a dwelling was therefore set at 100ha.

The following issues were raised by submitters with regard the change to the minimum lot size.

***The increase in the minimum lot size for dwellings from 40ha to 100ha in the Farming Zone Schedule 1 will restrict new entrants to farming***

80% of lots in the Farming Zone are less than 40ha and 96% of lots are less than 100ha. Therefore, there is an ample supply of lots in a range of sizes to provide for new investors, incremental business growth and agricultural enterprises at a range of scales.

***The increase in the minimum lot size for dwellings from 40ha to 100ha in the Farming Zone Schedule 1 will result in a decrease in the value of 40ha lots***

The value of land is one of a number of factors that banks consider in farm finance. The value of the land, established by a valuer depends on how the land is classified. Generally, land is valued as a rural lifestyle block when:



- Has a land area of 75 hectares or less; and
- Has a building entitlement or a single approved dwelling; and
- Is incapable of sustaining a gross income in excess of \$30,000 per annum; and
- Is not being run as a commercial operation.

For properties, which do not meet this definition then the land is valued against a much wider set of criteria, of which the dwelling/subdivision potential is just one consideration<sup>1</sup>.

Demand for rural lifestyle properties and the effects of land fragmentation (land use conflict, inflated land values) were noted as an issue for agriculture and forestry in the consultation. Farming Zone 1 seeks to address these issues, support and promote commercial agriculture and send a clear signal to landholders and the land market that this is the primary objective for this land.

***The increase in the minimum lot size for dwellings from 40ha to 100ha in the Farming Zone Schedule 1 will mean that the opportunity to provide a house for farm labour is lost***

A managers/caretakers residence can be applied for in the Farming Zone

***The increase in the minimum lot size for dwellings from 40ha to 100ha in the Farming Zone Schedule 1 means that there is no allowance for incremental retirement.***

Small lot subdivisions, including facilitating housing excision, based solely on hardship, personal circumstances, retirement or superannuation grounds, are not relevant matters for the planning scheme.

***The Australian Tax Office regards 40ha as an operational farm. The amendment should also reflect this.***

The Australian Tax Office<sup>2</sup> criteria for determining if a business is carrying on a business of primary production considers a range of factors, including farm size, but does not specify a particular threshold area. The Australian Tax Office criteria include the following:

- whether the activity has a significant commercial purpose or character;
- whether the taxpayer has more than just an intention to engage in business
- whether the taxpayer has a purpose of profit as well as a prospect of profit from the activity
- whether there is repetition and regularity of the activity
- whether the activity is of the same kind and carried on in a similar manner to that of the ordinary trade in that line of business
- whether the activity is planned, organised and carried on in a businesslike manner such that it is directed at making a profit
- the size, scale and permanency of the activity (no farm sizes are specified)
- whether the activity is better described as a hobby, a form of recreation or a sporting.

## 6.3 FARMING ZONE 2 IN CALLIGNEE

Farming Zone 2 has been applied to relatively fragmented rural land and seeks to provide for a range of agricultural enterprises including commercial scale agriculture and hobby farming and rural tourism. The following issues were raised with regard the introduction of the Farming Zone 2 in Callignee.

***Farming Zone 2 is a poor use of land in Callignee. It is the best agricultural land in Latrobe City and policy, such as excision, should support return of existing small allotments to agriculture.***

The land in Callignee was nominated for Farming Zone 2 based on the following considerations:

- The land around Callignee has been mapped as having agricultural capability of Class 2 (Figure 1, see Table 1 for agricultural capability definitions). Noting previous comments regarding the scale of the agricultural capability mapping, the agricultural capability of the land is considered to be between Class 3 or Class 4 because:
  - The moderately to steeply undulating topography (Figure 2) is a constraint to cropping
  - Lack of water for irrigation, either by surface diversion or groundwater, is a constraint to horticulture.

<sup>1</sup> <https://www.homeloanexperts.com.au/property-types/acreage-loan/>.

<sup>2</sup> Taxation Ruling 97/11. Income Tax: Am I carrying on a business of primary production,

- The land is relatively fragmented with clusters of small lots in single ownership (Figure 3).
- Some land is heavily vegetated (Figure 4) and therefore not suited to agriculture.
- The land is adjacent to established rural living areas and the Farming Zone 2 serves as a transition between this more intensive land use and surrounding farming and forestry.

The proposal to support return of existing small lots to agriculture is considered unrealistic due to:

- The small lots yielded for agriculture by excision are not suited to commercial scale agriculture enterprises
- Amalgamating small, vacant lots for a commercial scale agriculture enterprises involves significant transaction costs.

**Table 1: Definition of Agricultural Quality Classes <sup>3</sup>**

Class 1	Most versatile with the highest inherent productivity. Capable of the majority of agricultural uses or is very highly productive under irrigation. Growing season is 12 months
Class 2	Highly versatile but has a lower inherent productivity than Class 1. Capable of the majority of agricultural uses but requires greater inputs than class 1 to achieve high production. Growing season is 11 months
Class 3	Generally, land is of limited versatility but is very good dairying and grazing land. Sometimes suitable for orchards and extensive area cropping, but not suitable for vegetables. Growing season is 10 months.
Class 4	Capable of extensive grazing but generally unsuitable for cropping. Growing season of 9 months.
Class 5	Marginal agricultural land wither because of steep slopes and thin skeletal soil, very steep slopes or a growing season of less than 9 months
Class 6	Non-agricultural land because it unavailable for agriculture.

***Area is also subject to land management constraints including landslip and bushfire and therefore unsuitable for dwellings.***

This would seem to contradict the contention that the land is the best agricultural land in the City. The Bushfire Management Overlay applies to the land in Callignee and is considered the appropriate tool to ensure consideration of bushfire risk to human safety and buildings. Further evidence of landslips would need to be provided as the desktop review did not identify this as a hazard in the area.

<sup>3</sup> Swan, I.R and Volum, A.G. (1984) Assessment of agricultural quality of land I Gippsland

Figure 1: Agricultural capability and land in single ownership with an area less than 40ha.

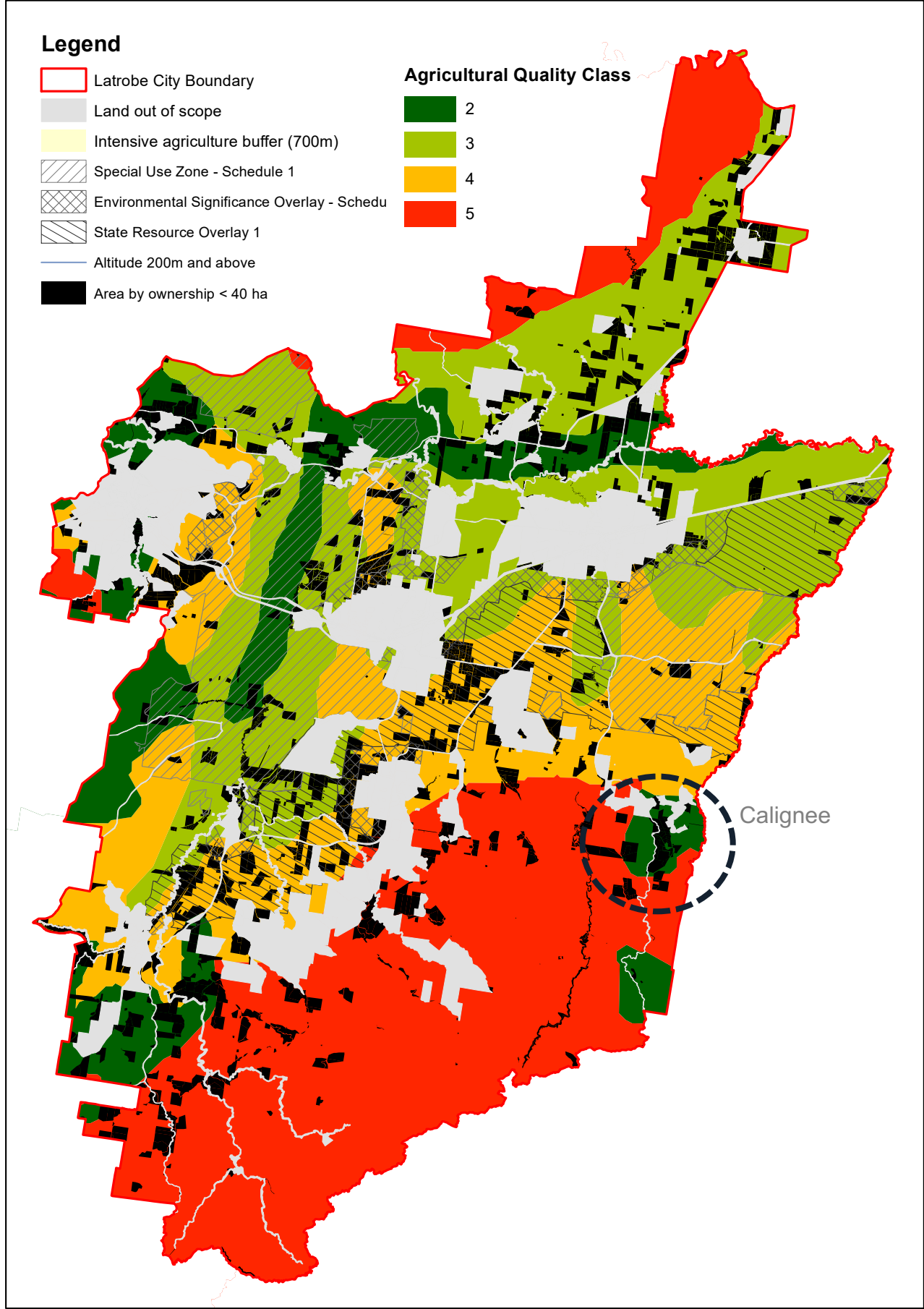
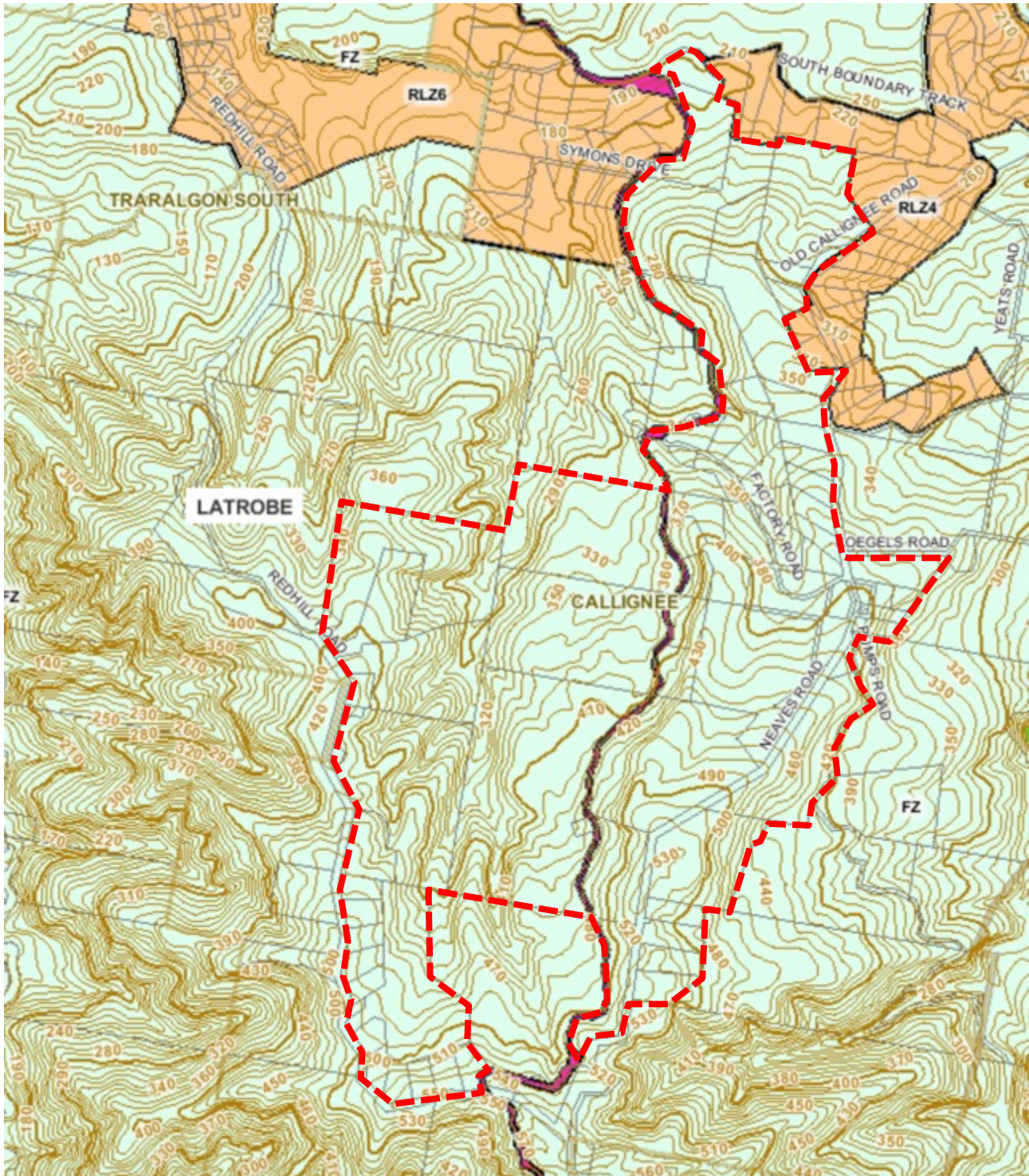




Figure 2: Land slope<sup>4</sup>



<sup>4</sup> <http://services.land.vic.gov.au/maps/pmo.jsp>

Figure 3: Land area in single ownership

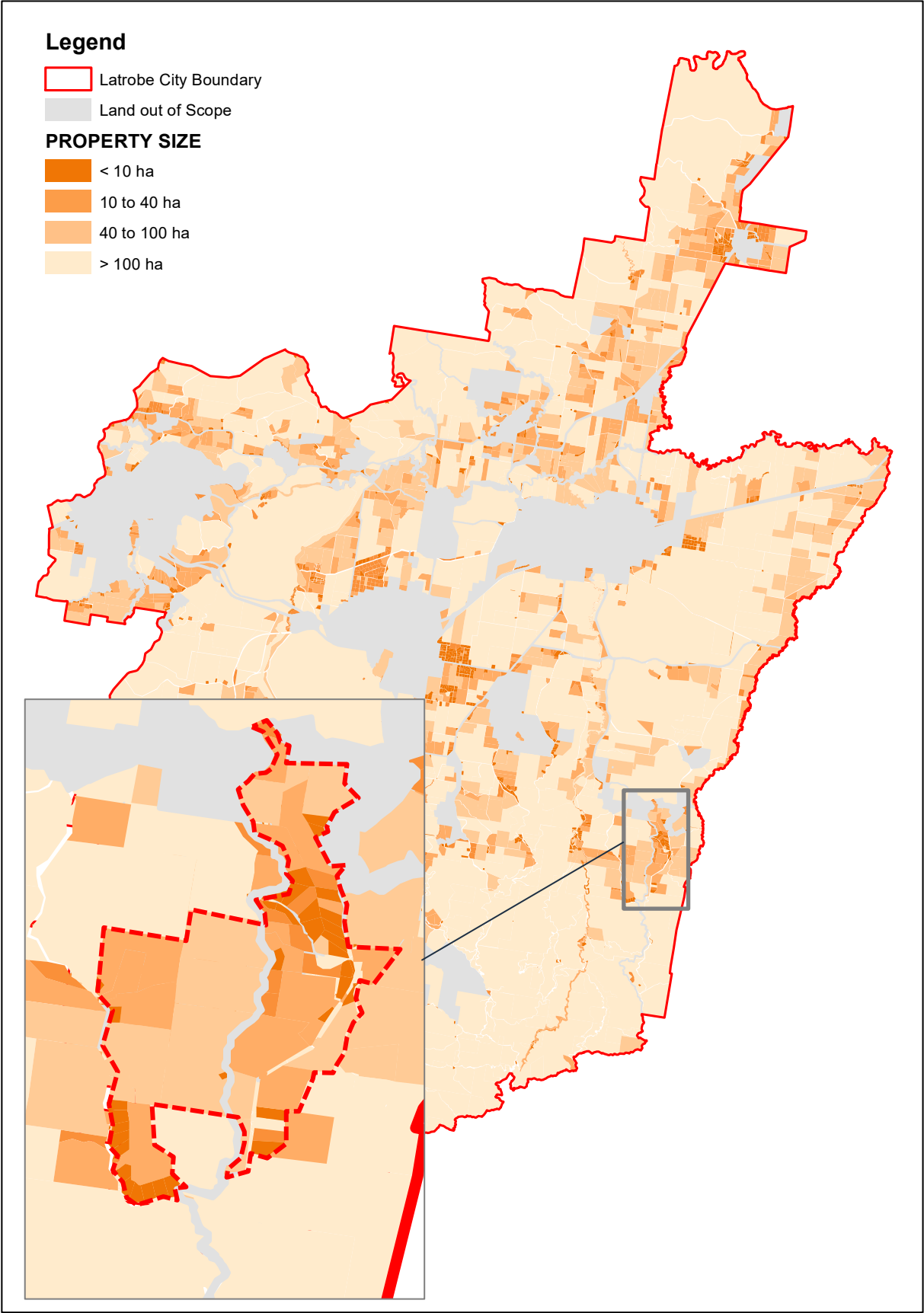




Figure 4: Aerial photo Calignee



## 7 Declaration

*I have made all the 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.*

## Appendix 1: Curriculum Vitae

Body normal

This report has been prepared by:

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