

MACEDON RANGES PLANNING SCHEME
AMENDMENT C154macr
PLANNING PERMIT APPLICATION PLN/2022/198
EXPLANATORY REPORT

Overview

Amendment C154macr is a combined planning scheme amendment and planning permit application PLN/2022/198 that affects land located at 1 Wills Street and parts of the road reserves of Wills, Mitchell and Walsh Street, Malmsbury. The amendment seeks to rezone the land from the Farming Zone (FZ) to the Neighbourhood Residential Zone – Schedule 13 (NRZ13) and remove the heritage overlay (HO148) from the site. The planning permit application seeks approval to subdivide the land into nine lots ranging in size from 2,000 to 2,182 square metres in accordance with NRZ13.



Figure 1: The location of land at 1 Willis Street, Malmsbury

Where you may inspect this amendment

The amendment can be inspected free of charge via the Macedon Ranges Shire Council website at yoursay.mrsc.vic.gov.au, and during office hours at the following places:

- Gisborne Administration Centre 40 Robertson Street, Gisborne (opposite the police station)
- Kyneton Administration Centre 129 Mollison Street, Kyneton

The amendment can also be inspected free of charge at the Department of Transport and Planning website at <http://www.planning.vic.gov.au/public-inspection> or by contacting the office on 1800 789 386 to arrange a time to view the amendment documentation.

Submissions

Any person may make a submission to the planning authority about the amendment. Submissions about the amendment must be received by 5pm Monday 1 April 2024.

You can lodge your submission to Council via:

- Email - to mrsc@mrsc.vic.gov.au (*attn. Strategic Planning*)
- Post - addressed *to: Strategic Planning*, Macedon Ranges Shire Council, PO Box 151, Kyneton VIC 3444, or
- In-person - at a Council customer service centre in Gisborne, Kyneton, Romsey or Woodend.

Panel hearing dates

In accordance with clause 4(2) of Ministerial Direction No.15 the following panel hearing dates have been set for this amendment:

- directions hearing: 10 June, 2024
- panel hearing: 8 July, 2024

Details of the amendment

Who is the planning authority?

This amendment has been prepared by the Macedon Ranges Shire Council, and is the planning authority for this amendment in this instance.

The amendment has been made at the request of Deborah Barton and Steven Waldron.

Land affected by the amendment

The amendment applies to land at 1 Wills Street, Malmsbury, and parts of the road reserves of Wills Street, Walsh Street and Mitchell Street in Malmsbury. The approximate 1.9-hectare triangular site is bounded by and has frontages to Wills Street (west), Walsh Street (north) and Mitchell Street (south) road reserves and is located within the identified Malmsbury township boundary.

The amendment is a combined planning permit application and planning scheme amendment under section 96A of the Act.

The planning permit application applies to land at 1 Wills Street, Malmsbury.

What the amendment does

The amendment proposes to:

- Rezone approximately 1.9 hectares of land at 1 Wills Street, Malmsbury and parts of the road reserves of Wills Street, Walsh Street and Mitchell Street in Malmsbury from the Farming Zone (FZ) to the Neighbourhood Residential Zone, Schedule 13 (NRZ13) as shown on Planning Scheme Map No. 5.
- Delete the Heritage Overlay (HO148) from land at 1 Wills Street, Malmsbury as shown on Planning Scheme Map No. 5HO.
- Insert a new Schedule 13 to Clause 32.09 (NRZ13 – Malmsbury Township East) into the Macedon Ranges Planning Scheme that introduces new neighbourhood character objectives, a minimum subdivision area of 2,000 square metres and variations to the requirements of Clause 54 and Clause 55.

The combined planning permit application seeks approval for the subdivision of land at 1 Wills Street, Malmsbury into nine lots ranging in size from 2,000 to 2,182 square metres in accordance with NRZ13. The draft planning permit is attached as a separate document to this explanatory report.

Strategic assessment of the amendment

Why is the amendment required?

The proposed combined amendment/permit facilitates a modest residential subdivision on the eastern edge of Malmsbury that seeks to rezone some of the last remaining land parcels zoned FZ within the township boundary. The amendment will help facilitate growth in line with Clause 11.01-1L of the Macedon Ranges Planning Scheme, which seeks to contain development within the township boundary and facilitate development of the periphery of the town that feature larger lots, significant landscaping and generous setbacks.

The land is located near the town centre and has good access to a range community facilities and services. Malmsbury is estimated to have a population of 905 residents within 416 dwellings (Area Code SAL21585, ABS 2021 Census). Macedon Ranges Settlement Strategy, 2011 outlines that the existing land supply in Malmsbury may have the potential to accommodate as many as 1,200 people within the township boundary and surrounding area.

The *Macedon Ranges Shire Settlement Strategy* (July 2012) estimated that there were theoretically 230 vacant lots in Malmsbury, but a more recent land supply figure is unknown. While this strategy did not anticipate further rezoning until 2036, it is considered that the addition of nine residential lots is not excessive and provides a limited increase in the amount of available residential land in Malmsbury. Further, this limited increase in residential lots will not change the designation of Malmsbury as a small town as outlined in Clause 02.03-1 (Strategic directions – Settlement) of the Municipal Planning Strategy.

The proposed new Schedule 13 to Clause 32.09 (NRZ13) inserts new neighbourhood character objectives, a minimum subdivision area and variations relating to the minimum street setback, site coverage, permeability, landscaping and side setbacks to reflect that the land is in a transition area between more traditional residential areas of Malmsbury and the rural living areas to the east and south.

The proposed neighbourhood character objectives seek to provide a lower density built form with larger lots, significant landscaping, including the planting of canopy trees, and generous setbacks normally associated with residential development on the edge of a township. The proposed NRZ13 seeks to insert:

- A 12-metre minimum street setback to provide a generous setback to recognise that the land is located on the fringe of the urban area of the township and provide a level of spaciousness and transition from residential areas to a rural living/rural setting.
- A 20 per cent site coverage to ensure that buildings do not dominate the spacious landscape setting and that the landscape elements (i.e., openness, trees and green space) are the dominate feature of any development.
- A 50 per cent permeability to ensure development of the lots provide an open, green, transitional landscape that is appropriate for residential development at the edge of a small town.
- A landscaping requirement to plant at least two canopy trees in the front setback to ensure residential development is consistent with the Malmsbury township's existing character of large canopy trees in both the road verges and within the front setbacks of residential properties.

The proposed amendment is consistent with Clause 02.03-1 (Malmsbury) of the MSS and supports the 'small town and rural village' setting. The proposed NRZ13 is preferred rather than the Low-Density Residential Zone because NRZ13 enables specific variations to Clauses 54 and 55.

The amendment also proposes to delete HO148 (Malmsbury Precinct) from the land given the land is not identified as having any heritage significance in the *Shire of Kyneton Conservation (Heritage) Study (1990)*. The dwelling was constructed in 2017 and council's Heritage Planner has noted that there is little or no visible heritage in the streetscape or immediate area. It is considered that future development on the land will not impact on the heritage significance of HO148 (Malmsbury Precinct).

Council's Heritage Planner has also noted that HO148 applies to an area of Malmsbury much larger than its historic town core. The *Shire of Kyneton Conservation (Heritage) Study (1990)* says that the intention was to capture the natural heritage of the course of the Campaspe River, but also an amount

of open farmland at the edges of the township. In effect, HO148 is operating as a de facto neighbourhood character control in this area of the township, which is an inappropriate use of the Heritage Overlay.

The *Report of the Advisory Committee and Panel on the New Format Planning Scheme for Macedon Ranges* (March 1999) also specifically noted that the implementation of the heritage controls had a number of issues including the incorrect locations of sites on the maps and the size of sites in excess of the actual heritage. The proposed amendment deletes HO148 because it is not required, is out of date given it was implemented two decades ago and does not reflect contemporary heritage industry practice or planning. The department's *Planning Practice Note 1 'Applying the Heritage Overlay'* (August 2018) specifically recommends that the curtilage of the Heritage Overlay polygon be reduced in instances like this, where the land has no heritage significance.

The combined amendment/permit also allows for the subdivision of the affected land into nine lots to facilitate a modest increase in housing that responds to the character of the area in accordance with the neighbourhood objectives proposed in NRZ13.

How does the amendment implement the objectives of planning in Victoria?

The proposed amendment will implement the following objectives of planning in Victoria under section 4(1) of the P&E Act:

- (a) to provide for the fair, orderly, economic, and sustainable use, and development of land.*
- (b) to provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity,*
- (c) to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria.*
- (f) to facilitate development in accordance with the objectives set out in paragraphs (a), (b), (c), (d) and (e).*
- (g) to balance the present and future interests of all Victorians.*

The amendment proposes to implement these objectives by providing for the orderly and balanced growth of Malmsbury within the existing Malmsbury township boundary. The land consists of a relatively small area of land zoned FZ within the township boundary that contains no significant environmental values and has limited productive farming capability.

The land has minimal agricultural value due to its location in close proximity to existing residential development, and its shape and size, which limits the range of agricultural activities or primary production that can occur on the land.

The proposed amendment facilitates a small residential subdivision with canopy tree planting and future gardens associated with residential development, which will provide a pleasant working, living and recreational environment for residents and visitors. Additionally, the residential subdivision will be connected to all relevant services inclusive of reticulated sewer that will ensure the protection of the water quality within the Eppalock Declared Special Water Supply Catchment.

Additional flora via street tree planting, canopy tree and garden planting may assist with improving the biodiversity values and presence of native fauna species within the area.

How does the amendment address any environmental, social and economic effects?

The proposed amendment will have positive environmental, social, and economic effects and result in net community benefit.

Environmental effects

The proposed amendment does not result in any significant environmental effects. An ecological report undertaken for the amendment identifies that there is little of ecological importance on the land, and no threatened or endangered species of flora or fauna have been recorded or are likely to be present.

The primarily grassed site is relatively small, and farming capability is severely limited. Previous history of the land indicates that the site was used for grazing and contained little vegetation and no

intensive agricultural use. The proposed amendment provides an opportunity to increase street tree planting and landscaping associated with future residential development to assist in improving biodiversity values within the area. The proposed setbacks within the NRZ13 assist in encouraging tree planting in the private realm.

The affected land is located within the Eppalock Declared Special Water Supply Catchment. The combined amendment/permit ensures that all created lots, inclusive of the lot to accommodate the existing dwelling, are connected to reticulated sewer to ensure that no additional effluent has the potential to impact upon the catchment.

Additionally, street trees and gardens associated with future residential development may assist in capturing and retaining natural water to reduce water flow traversing properties. The views of Coliban Water have been obtained and no concerns were raised about impacts to the catchment and Coliban Water has provided support for the combined amendment/permit subject to the inclusion of a number of permit conditions relating to infrastructure upgrades. These conditions have been included in the PLN2022/198 Permit Conditions document. In short, no waterways or the wider catchment will be adversely impacted, and all lots will be serviced appropriately with no requirement for septic tank systems or similar.

Research undertaken into the historical use of the land, specifically historical mining and farming operations concluded that the land is suitable for residential use and is not considered contaminated or potentially contaminated in accordance with Clause 13.04-1S (Contaminated and potentially contaminated land) and *Planning Practice Note 30 Potentially Contaminated Land (July 2021)*. Further, the amendment was referred to the Environmental Protection Agency and it concluded that due to Ministerial Direction 19 not being triggered, further action on the matter was not required.

Social and Economic effects

The proposed amendment also has positive social and economic effects by facilitating a modest increase in residential land supply, which will provide additional population growth and housing opportunities within a small town.

The proposed amendment ensures that any future development is respectful of the preferred neighbourhood character of the area reflecting the location of the affected land on the edge of Malmsbury.

The proposed amendment also supports existing businesses and community services and facilities available within the town and makes better utilisation of the existing transport system, including the road network and railway line, as well as existing service infrastructure.

Does the amendment address relevant bushfire risk?

The proposed amendment has addressed bushfire risk by seeking advice from Phoenix Wildfire Management on whether the proposed combined amendment and permit complies with the objectives and strategies of Clause 13.02-1S (Bushfire planning). Further, the Country Fire Authority (CFA) has advised that it is supportive of the proposal subject to the inclusion of a number of conditions in the draft planning permit PLN2022/198.

The assessment context

The land is within a designated bushfire prone area but is not subject to a Bushfire Management Overlay. Land in a designated bushfire prone area may be subject to bushfires.

The bushfire landscape in proximity to the affected land is at a medium landscape risk where the landscape risk is from grasslands (broader landscape type 2) as described in *Planning Permit Applications Bushfire Management Overlay Technical Guide* (DELWP, 2017). The vegetation beyond 150 metres of the site is predominantly unmanaged or grazed grasslands and shrubland primarily gorse and mixed woody weeds including hawthorn (apart from Fryers Ranges, 4 kilometres due west from the site). It is considered possible that extreme bushfire behaviour is possible to the south although the landscape is fragmented by the railway line.

The proposed amendment prioritises the protection of human life over all other policy considerations by directing development to a low-risk location on the eastern boundary of Malmsbury. Victoria's dominant bushfire weather usually occurs from the north-west and the south-west. Directing growth to the east of a settlement avoids the highest risk aspect. This site is considered preferable compared to rezoning rural living zoned land to the north-west and south-west of Malmsbury.

The draft permit facilitates a modest residential subdivision with a minimum subdivision area of 2,000 square metres. While 800-1,200 square metres is the optimal range as outlined in the *Design guidelines for the settlement planning at the bushfire interface* (DELWP, 2020) the larger lots are considered appropriate for this area given that the land provides a transition from the township to rural living/rural areas. The draft permit also includes conditions to upgrade the road network, which will provide safer access to and from the land in the event of a potential fire affecting the settlement edge. The nearest place of last resort is at the Malmsbury Botanic Gardens approximately 1 kilometre to the west.

A key matter for planning is ensuring an adequate separation distance between dwellings and the bushfire hazard and to prevent a bushfire front from continuing into the settlement.

A condition has been included on the draft planning permit for a section 173 agreement including building envelopes to ensure that each lot maintains a 19 metre defendable space separation distance to unmanaged or grazed grasslands to ensure that the development achieves a radiant heat flux of less than 12.5 kilowatts per square metre under the AS3959-2018 *Construction of Buildings in Bushfire-prone Areas* (Standards Australia, 2018). Conditions have also been included for the provision of fire hydrants to the satisfaction of the Country Fire Authority and street trees, which tie in with the surrounding character and are predominantly deciduous.

The road reserves will be appropriately managed under the Council's Township Hazard Reduction Program. As a part of this program grass within the road reserve is managed to a height of 75 millimetres over the entire area prior to the fire danger period.

Does the amendment comply with the requirements of any Minister's Direction applicable to the amendment?

The proposed amendment complies with the requirements of the *Ministerial Direction – The Form and Content of Planning Schemes* under Section 7(5) of the Act. The proposed Schedule 13 to Clause 32.09 is consistent with the template in the ministerial direction.

The proposed amendment is also consistent with the *Ministerial Direction No. 11 - Strategic Assessment of Amendments*. The explanatory report has discussed and evaluated how the proposed amendment addresses the relevant strategic considerations outlined in the ministerial direction.

No other ministerial directions apply to the proposed amendment, with the exception of *Ministerial Direction No 15 – The Planning Scheme Amendment Process*. The panel hearing dates are set below.

How does the amendment support or implement the Planning Policy Framework and any adopted State policy?

The proposed amendment supports and implements the Planning Policy Framework as follows:

- *Clause 11.01-1S (Settlement) and Clause 11.01-1R (Settlement - Loddon Mallee South)* by facilitating a small-scale residential subdivision and limited population growth within the Malmsbury township boundary consistent with Malmsbury's role in the settlement hierarchy as a small town.
- *Clause 11.01-1L (Malmsbury) - by rezoning land that Facilitates residential development within the township boundary that feature larger lots and generous setbacks.*
- *Clause 11.02-1S (Supply of urban land)* by providing a sufficient supply of land within Malmsbury for residential uses and to support existing infrastructure.
- *Clause 11.03-3S (Peri-urban areas)* by managing growth within the township boundary of Malmsbury and protecting and enhancing Malmsbury's identified values attributes via the NRZ13.
- *Clause 11.03-5S (Distinctive Areas and Landscapes)* by recognising the importance of the Macedon Ranges distinctive areas and landscapes and protecting valued attributes via the NRZ13.

The proposed amendment affects land within the Macedon Ranges declared distinctive area and landscape. The overarching settlement objective of the Macedon Ranges Statement of Planning Policy (VC185, April 2021) is *to plan and manage growth of settlements consistent with protection of the area's significant landscapes, protection of catchments, biodiversity,*

ecological or environmental values consistent with the role and function of each settlement.

Strategies to implement the objective include:

- Direct urban development to a hierarchy of settlements identified for growth etc. Malmsbury is identified as a small town with minimal change and limited growth within the township boundaries.
- Encourage infill development that respects the townships' character. The affected land is within the town boundaries. The NRZ13 provides guidance for new development that respects the identified character of the area and Malmsbury.
- Limit expansion of settlements in high-risk locations etc. The affected land is not located in a high bushfire risk location and bushfire risk is managed via the subdivision design. The proposed amendment also ensures no waterway or catchment are impacted.
- Encourage a range of housing types within settlement boundaries etc. The combined amendment/permit facilitates a small residential subdivision to be fully serviced that will provide additional housing choice in Malmsbury.
- *Clause 12.01-2S (Native Vegetation Management)* by avoiding the removal of any native vegetation.
- *Clause 12.03-1S (River and riparian corridors, waterways, lakes, wetlands and billabongs)* by avoiding development of the existing dam on the land and its ecological values via a building envelope, protecting and restoring the designated water catchment via conditions on the permit to connect to reticulated services and encouraging landscaping of future residential lots.
- *Clause 12.05-1S (Environmentally sensitive areas)* by protecting a sensitive area with Macedon Ranges from development that would diminish the identified values of Malmsbury via the use of NRZ13.
- *Clause 13.02-1S (Bushfire planning)* by strengthening the resilience of Malmsbury and its community to bushfire through risk-based planning that prioritises the protection of human life as discussed above.
- *Clause 13.04-1S (Contaminated and potentially contaminated land)* by considering previous land uses on the site, which has included limited grazing and rural living. Further research was undertaken in line with Planning Practice Note 30 Potentially Contaminated Land (July 2021) and it was considered no further action on the matter is required.
- *Clause 14.01-1S (Agriculture)* by rezoning land within the township boundary that has limited capability for farmland due to its location, size and shape.
- *Clause 15.01-3S (Subdivision design)* by ensuring the design of the subdivision achieves an attractive, safe, accessible neighbourhood. The proposed subdivision design results in appropriate lot dimensions and sizes that allow for generous building envelopes that provide spaciousness between dwellings and landscaping opportunities. The design allows for an attractive future neighbourhood, that provides visual continuation of established residential areas to the west.
- *Clause 16.01-1S (Housing supply)* by facilitating a residential rezoning and subdivision, which is well-located and provides a diversity of housing opportunities in Malmsbury.
- *Clause 16.01-3L (Rural residential development)* by supporting development that, through the application of NRZ13, reflects the rural character of the area and limits the visual prominence of buildings on the landscape.
- *Clause 18.02-4S (Roads)* by facilitating a subdivision that supports an efficient and safe road network. A traffic and transport assessment report prepared for the proposed combined amendment/permit identifies that the subdivision will not adversely affect the existing road network, which is capable of accommodating a minor increase in vehicular traffic; whilst the proposed extensions to Walsh and Mitchell Streets will be designed and constructed in accordance with conditions on the draft permit.
- *Clause 19.03-2S (Infrastructure design and provision)* by providing development infrastructure and services to the new subdivision via conditions on the draft permit.

- *Clause 19.03-3S (Integrated water management)* by managing wastewater, drainage and stormwater so that the catchment is protected by providing large lots with limited site coverage and greater permeability via the NRZ13 and ensuring the proposed subdivision is fully serviced and meets the requirements of relevant authorities via conditions on the draft permit.
- *Clause 19.03-4S (Telecommunications)* by facilitating orderly development of telecommunications via conditions on the draft permit.

How does the amendment support or implement the Municipal Planning Strategy?

The proposed amendment supports and implements the Municipal Planning Strategy as follows:

- *Clause 02.02 (Vision)* and *Clause 02.03-1 (Strategic directions – Settlement)* by rezoning land that provides for the orderly development of Malmsbury and does not influence the designated settlement hierarchy of Malmsbury as a small town.
- *Clause 02.03-2 (Environmental and landscape values - Significant environments and landscapes)* By encouraging development that responds to Malmsbury's provides addition canopy tree plantings of native vegetation and exotic species.
- *Clause 02.03-4 (Natural resource management - Catchment management and water quality)* by rezoning land that locates new development within the town boundary and the township sewerage district.
- *Clause 02.03-5 (Built environment and heritage – Urban design, built form and neighbourhood character)* by supporting development and the application of the NRZ13 schedule ensures the rural character of Malmsbury is maintained and that there is an orderly and appropriately transitions of development to the Rural Living Zone 2 to the south.

Does the amendment make proper use of the Victoria Planning Provisions?

The amendment makes proper use of the Victoria Planning Provisions by applying the NRZ13 to ensure that development of the land is consistent with the identified neighbourhood character of Malmsbury. Malmsbury contains predominantly single and double storey dwellings with a 'small country town' atmosphere, historic bluestone buildings and streetscapes and sweeping views of the surrounding landscape.

The application of the NRZ13 is also consistent with *Planning Practice Note -91 – Using the Residential Zones* (PPN91). PPN91 says that the NRZ should be applied to areas where there is no anticipated change to the predominantly single and double storey character and the NRZ can be applied to areas that have been identified as having specific neighbourhood, heritage, environmental or landscape character values that distinguish the land from other parts of the municipality or surrounding area. The use of NRZ13 is also more consistent with the settlement objective of the Macedon Ranges Statement of Planning Policy given the NRZ13 supports low scale development on larger lots with generous setbacks and landscaping consistent with Malmsbury's character.

While a minimum subdivision area of 2,000 square metres is proposed, the application of the NRZ is more appropriate than the Low-Density Residential Zone because the NRZ provides the ability to vary standards relating to site coverage, permeability, setbacks and landscapes. The proposed variations to these standards will ensure all future development on the land will be consistent with character of the Malmsbury township and provides a transition area between the urban area to the surrounding rural living areas. The Low-Density Residential Zone does not provide the ability to vary any standards and ensure that any future development responses to the existing and preferred neighbourhood character for the area.

The amendment proposes to delete (HO148) from the land because the heritage control is no longer warranted, and the revision of the HO boundaries is consistent with PPN1 as discussed above.

How does the amendment address the views of any relevant agency?

Prior to exhibition, the relevant referral authorities under Clauses 66.01, 66.03 and 66.02-5 of the Macedon Ranges Planning Scheme were notified of and responded to the combined amendment and planning permit. Coliban Water provided recommended water and sewerage conditions, which have been included in the draft planning permit.

The views of other agencies and affected parties will be sought during the public exhibition of this amendment and permit application.

The draft planning permit is attached as a separate document to this explanatory report.

Does the amendment address relevant requirements of the *Transport Integration Act 2010*?

The proposed amendment will not have any significant impact on the transport system as:

- The amendment does not impact existing public transport networks.
- The amendment will enable limited additional residential land supply that is supported by the existing road infrastructure and network.

What impact will the new planning provisions have on the resource and administrative costs of the responsible authority?

The proposed amendment has a low, future administrative cost and burden on the responsible authority given that a combined amendment/permit process is being used to streamline planning approvals. The land is covered by the existing Environmental Significance Overlay, Schedule 4 that already triggers the need for permits for a dwelling on the land.

It is considered that any additional planning permit applications as a result of this amendment can be accommodated by the existing available resources of the responsible authority, and no specific miscellaneous costs would be incurred. The relevant planning permit application fees will assist and support the responsible authority in decision making.

As the proposed residential development is modest in nature, it is not expected to put any significant burden on the services of the responsible authority.