

Date: 16 November 2020

Amendment C126macr to the Macedon Ranges Planning Scheme

Errors, Anomalies and Minor Changes

Council submission – Part A

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Table outlining response to Panel Directions letter dated 30 October 2020

Part A content	Paragraph number/page number
A) background to the Amendment including chronology of events	Para. 1 to 26 / pg. 1 – 9.
B) clarification of the number of submitters (Council report dated 16th September 2020 states 27 and number of submissions provided is 28)	Para. 27/ pg. 9
C) Attachments to the Council Meeting Agenda of 16th September 2020.	Attachment A,B,C,D
D) a summary of the strategic context, including:	
i. relevant planning policies and controls	Para 28 to 33 / pg. 10 - 12
ii. background, timelines and process for implementing the Riddells Creek Structure Plan and Amendment C100macr, and relevance to the request to include the area south of the train line as a priority residential area.	Para 35 – 43 / pg. 20 - 20
iii. other amendments that may be under preparation or recently approved that may impact on the Amendment, including recently gazetted Amendment C134 (Errors and Anomalies).	Para 44 – 47 / pg. 20
iv. any current permit applications that may impact on the Amendment.	Para 48 – 55 / pg. 21
E) a summary of the conditions of authorisation and how each of those conditions have been met, including:	Para 56 – 57 / pg. 21 – 25.
i. consideration of the relevant Ministerial Directions, including Ministerial Direction No. 1 Potentially Contaminated Land.	Para 57 (vi.)
ii. consideration of relevant planning practice notes and the Practitioner’s Guide to the Victorian Planning Scheme (Aug 2019), specifically section 5.1.1.	Para 56 (vi.) / pg. 24
iii. how the Amendment meets the objective and gives effect to the strategies to address bushfire risk and outcomes of any consultation with the Country Fire Authority (CFA).	Para 32 (c.) / pg. 11

iv.	justification of each change, including proposed zoning of 51 Aitken Street, Gisborne from PUZ6 to C1Z.	Para 34 / pg. 12 – 19.
v.	details of notice to relevant authorities identified and any submission, consultation and response.	Para 57 (x.) / pg. 25.
F)	a summary of the main issues raised in submissions.	Para 58 – 62 / pg. 25 - 29
G)	any changes Council proposes to make to the Amendment in response to submissions.	Para 63 / pg. 64 - 74
H)	response to a range of specific issues, including:	Para 64 – 74 / pg. 29 - 30
i.	issues raised in Environment Protection Authority's submissions (25 March 2020 and 30 April 2020).	
ii.	response to the requirement to comply with Ministerial Direction No. 19 - specifically the section relating to requirements to be met - "For a planning scheme amendment, include in the explanatory report a statement of how the proposed amendment addresses the views of the EPA".	Para 75 – 78 / pg. 31
iii.	response to Planning for Biodiversity Guidance 2017 and other planning practice notes where relevant in justifying proposed changes to public land zones	Para 79 – 81 / pg. 31 - 32
iv.	justification of proposed alignment of Heritage Overlay – schedule HO89 with lot boundaries, with consideration of Planning Practice Note 1 – Applying the Heritage Overlay, Kyneton Conservation Heritage Study 1990 and any other relevant heritage studies.	Para 82 – 87 / pg. 32 - 34
v.	as relevant to the proposed Amendment: <ul style="list-style-type: none"> • Background, requirements and process undertaken by Council in relation to the proposed closure of an unnamed laneway to the north of 13 Malmsbury Post Office Road and west of Malmsbury Post Office Road. • Background, requirements and process undertaken by Council in relation to the rezoning and sale of 51 Aitken Street, including details of the Council resolution at its meeting in June 2016 	Para 88 – 90 / pg. 34 Para 91 – 107 / pg. 34 - 36
vi.	any other strategic material that Council intends to rely upon in support of the Amendment that has not yet been provided, or that might assist the Panel in its consideration of the Amendment.	Council has provided all documents relied upon as Attachments.

<p>vii. other information or attachments relevant to the Amendment including:</p> <ul style="list-style-type: none"> • Environmental Management Plan, Bald Hill Reserve, Kyneton, July 2012 • Environmental Management Plan, Mt Gisborne Reserve • Environmental Management Plan, Hobbs Road Bushland Reserve • Riddells Creek Structure Plan • Macedon Ranges Planning Scheme Amendment C100macr – Panel Report • Biodiversity Strategy 2018 • Open Space Strategy 1999 • Kyneton Conservation Heritage Study 1990 	<p>See Attachments.</p>
<p>viii. any suggested changes to the Amendment in response to submissions.</p>	<p>Nil.</p>

Background and Introduction

1. Council is undertaking an errors, anomalies and minor changes amendment to the Macedon Ranges Planning Scheme. Council is actively working to recognise any errors or anomalies so that the planning scheme and planning controls are applied correctly and as they were intended. The amendment affects many properties throughout the Shire.
2. The last administrative amendment completed by Council was Amendment C109, gazetted in December 2016. Since then further errors, anomalies and minor changes have been identified by Council and users of the Planning Scheme. The adopted Macedon Ranges Planning Scheme Review (February 2019) made a recommendation to undertake regular anomalies amendments on an annual basis.
3. This submission relates to Amendment C126macr, which proposes 34 changes to the Planning Scheme with the aim of correcting a number of errors and anomalies and making minor changes. All of these changes, and their reasoning, are listed within the provided Explanatory Report.
4. The attachments included in this submission either contain documentation previously not submitted to Panels, or are included for ease of reference. These are alphabetically numbered for distinction from the numbered submissions previously submitted to panel.
5. At the Ordinary 26 June 2019 Council Meeting it was resolved to:
 - *Endorse the list of changes and corrective actions as detailed in Attachments One and Two as the basis to prepare planning scheme amendments C126macr and C134macr.*

- *Request authorisation from the Minister for Planning to prepare Amendment C126macr pursuant to Section 9 of the Planning and Environment Act 1987 to correct errors, anomalies and make minor changes*
 - a. *Upon receipt of authorisation, make any changes necessary to comply with conditions of authorisation.*
 - b. *Upon satisfaction of any conditions of authorisation, exhibit Amendment C126macr pursuant to Section 19 of the Planning & Environment Act 1987.*
- *Request a Ministerial Amendment, Planning Scheme Amendment C134macr, under Section 20A of the Planning and Environment Act 1987 to correct errors, anomalies and make minor changes.*

Authorisation

6. On 15 November 2019, Council wrote to the Department of Environment, Land, Water and Planning (DELWP) requesting authorisation to prepare the Amendment. Authorisation was issued by the Minister for Planning on 31 December 2019 subject to a number of conditions. Detail on how Council responded to these conditions will be provided under below.
7. The amendment is consistent with the *Planning and Environment Act 1987* (PE Act) requirements for regular review of planning schemes.

Exhibition of amendment

8. C126macr was exhibited from 27 February 2020 to 30 March 2020. The consultation program comprised the following activities:

Direct notification

- Over 1,300 letters were sent including a fact sheet with each letter to explain the changes proposed to:
 - all land owners and occupiers impacted by the changes.
 - landowners adjacent or abutting the land impacted by the change.
 - relevant government departments and agencies and other stakeholders

Advertisements and publicity

- Public notice in the Government Gazette.
 - Notices in local papers – Midland Express, Macedon Ranges Leader and Star Weekly.
 - Article on Council's website.
9. Two drop in sessions were scheduled on 17 March 2020 and 19 March 2020. A total of two (2) people provided an RSVP to these sessions. Due to

the ongoing COVID-19 pandemic, the drop-in-sessions were cancelled and phone meetings were held with the people that provided an RSVP. A further twenty-seven (27) phone and over the counter enquiries were also received and responded to over the course of the exhibition period.

10. The over the counter enquiries were received between 27 February 2020 to 17 March 2020. These kind of enquiries ceased after Council's offices closed on 18 March 2020.
11. Council was undertaking exhibition when a State of Emergency was declared for Victoria on 16 March 2020. Following the declaration, Council offices were closed to the public from 18 March 2020 and have remained closed since.
12. Prior to 24 April 2020, the PE Act required Council to make an amendment and all its documents and any submission received available at its offices free of charge for anyone to inspect.
13. On 24 April 2020 the Victorian State Government passed the COVID-19 Omnibus (Emergency Measures Bill) 2020 which amended the PE Act to allow Council to display documents and submissions on its website rather than have a physical document at an office.
14. Between Council office closure on 18 March 2020 and the amendment of the PE Act on 24 April 2020, the exhibited C126macr amendment documents were not available for inspection in accordance with the PE Act. Council did however have all documents available online during this time and no requests were received asking to inspect the documents at any Council Office during lockdown.
15. Council received advice that despite the above it should recommence exhibition of the amendment for an additional month to ensure it remains compliant with the requirements of the PE Act.
16. The amendment was therefore exhibited for a second time from 25 June 2020 to 3 August 2020. The consultation program comprised the following activities:

Direct notification

- Letters were again sent to the same owners and occupiers of previously notified properties including an explanatory letter, explanatory report and a copy of the gazette notice with each letter to explain the changes proposed to:
 - all land owners and occupiers impacted by the changes.
 - landowners adjacent or abutting the land impacted by the change.
 - relevant government departments and agencies and other stakeholders

Advertisements and publicity

- Public notice in the Government Gazette.
 - Notices in local papers – Midland Express and Star Weekly (note: Macedon Ranges Leader was not currently in circulation for the second round of exhibition).
 - Article on Council's website.
17. Six (6) additional inquiries were received from the public during the second exhibition period.
18. Overall a total of twenty-eight (28) submissions were received.
19. At the Scheduled Meeting of Council on 16 September 2020, Council considered Item 'PE.1 Planning Scheme Amendment C126 – Submissions' in which twenty-seven submissions were considered. A late submission (Submission 28) from the Country Fire Authority was provided on 4 September 2020 dated 30 August 2020. This submission was received late and so was not included in the final officer report 'PE.1 Planning Scheme Amendment C126 – Submissions'. It was referred to panel due to its relationship between the authorisation requirements from DELWP and to gain a holistic view of the submissions received. Furthermore it offers no objection or request for changes that required Council consideration.

Consideration of Submissions & Panel Request

20. Council considered the submissions at its Scheduled Meeting on 16 September 2020 and resolved to:
- 1. Review and consider the issues raised in submissions to Amendment C126macr and officer responses provided in Attachment One.**
 - 2. Request the Minister for Planning to appoint an independent Planning Panel under Part 8 of the Planning and Environment Act 1987 to consider the submissions to Amendment C126macr to the Macedon Ranges Planning Scheme.**
 - 3. Refer all submissions on Amendment C126macr to the Panel appointed by the Minister for Planning in accordance with Section 23 of the Planning and Environment Act 1987.**
 - 4. Notify all submitters of Council's resolution.**

21. Attachment A, B, C and D contain the attachments to the Council Meeting Agenda of the Scheduled Meeting of 16 September 2020.
22. Following the meeting, Council requested a Panel on 28 September 2020.
23. A Panel was appointed on 30 September 2020.
24. Council provided Planning Panels Victoria on 28 September 2020 with a folder containing the following documentation:
 1. *Correspondence authorising the amendment to proceed.*
 2. *Council report resolving to exhibit the amendment.*
 3. *The exhibited planning scheme amendment including:*
 - a) *Instruction sheet.*
 - b) *Explanatory report.*
 - c) *Map sheets.*
 - d) *Amended clause 21.13.*
 - e) *Amended clause 43.02.*
 - f) *Amended schedule 1 to clause 72.03.*
 4. *Council report resolving to request a Panel.*
 5. *Submitter, proponent and Council contact details (with email addresses) to be used for communication purposes attached as an excel spreadsheet.*
 6. *All submissions received (including public agencies), numbered in correlation with the submitter contact list*
25. The above documents, which are sequentially numbered, are not attached to this submission.

Directions Hearing

26. A Directions Hearing was held on 29 October 2020 online.

Response for referring 28 submissions to Panel

27. At the Scheduled Meeting of Council on 16 September 2020, Council considered Item 'PE.1 Planning Scheme Amendment C126 – Submissions' in which twenty-seven submissions were considered. Submission 28 from the Country Fire Authority was provided on 4 September 2020 dated 30 August 2020. This submission was received late and so was not included in the final officer report 'PE.1 Planning Scheme Amendment C126 – Submissions'. It was referred to panel due to its relationship between the authorisation requirements from DELWP and to gain a holistic view of the submissions received. Furthermore it offers no objection or request for changes that required Council consideration.

Summary of the strategic context of Amendment C126macr

28. The amendment implements the objectives of planning in Victoria as outlined in section 4(1) of the PE Act.
29. The amendment corrects zoning and planning scheme provisions that impact on the fair and orderly use and development of the land. The amendment corrects the inadvertent application of incorrect zones and ensures overlays are correctly applied. It applies zones that are appropriate to the use and development of land in other instances to reflect public or private ownership.
30. Under section 46AZC(2) of the *Planning and Environment Act 1987* a responsible public entity which is a planning authority must not prepare an amendment to a declared area planning scheme that is inconsistent with a Statement of Planning Policy for that declared area. The Macedon Ranges Statement of Planning Policy (SPP) was approved on 10 December 2019 and gazetted on 12 December 2019.
31. The proposed amendment is considered consistent with the following objectives and strategies of the SPP:
 - a) *Objective 1 – To ensure the declared area’s natural and cultural landscapes are conserved and enhanced.* The amendment will ensure that Council’s bushland reserves are correctly zoned to ensure the correct identification and purpose of the reserve. 6-8 and 10 Clarke Street will be rezoned to RCZ and covered by the VPO will offer greater protection to native vegetation and wider landscape.
 - b) *Objective 2 – To ensure that the significant biodiversity, ecological and environmental values of the declared are conserved and enhanced.* The PCRZ will be applied to a number of the council’s bushland reserves to provide clear identification of the reserve’s purpose and identify the environmental values of these sites.
 - c) *Objective 3 – To prioritise the conservation and use of the declared area’s water catchments to ensure a sustainable local, regional and state water supply, and healthy environment.* Several parcels are to be zoned PUZ1 to reflect the purpose of the land and its use by Coliban Water. This will allow Coliban Water to continue its function to manage its land around important water supply catchments. •
 - d) *Objective 5 – To recognise, conserve and enhance the declared area’s significant post contact cultural heritage values.* The amendment will apply the HO to identify the extent heritage places along property boundaries. This will ensure the conservation and enhancement of the post-contact cultural heritage values within Kyneton. It will also ensure sites previously excluded from previous heritage controls have the modern HO applied.
32. The amendment supports and implements the Planning Policy Framework as follows:

- a) *Clause 01 Purposes of this planning scheme* by providing a clear and consistent framework within which decisions about the use and development of land can be made.
- b) *Clause 12.01-1S Protection of biodiversity* by assisting the protection and conservation of nine bushland reserves with significant environmental values in various localities by applying the PCRZ and applying the VPO9 to land in Macedon.
- c) *Clause 13.02-1S* seeks to strengthen the resilience of settlements and communities to bushfire through risk-based planning that prioritises the protection of human life. This amendment seeks to ensure land is accurately covered by the appropriate planning provisions in accordance with the Practitioner's Guide to Victorian Planning Scheme 2020. Many of the changes reflect the existing conditions or underlying zoning controls that are already present on the land. The changes are corrections, which do not introduce or intensify development or increase the net risk to life, property, community infrastructure and the natural environment from bushfire. Where appropriate, the land is covered by bushfire protection measures that will mitigate risk in accordance with clause 13.02-1S such as the Bushfire Management Overlay. The amendment will not introduce or intensify development in an area that has more than a BAL 12.5 rating under AS3959-2009 Construction of Buildings in Bushfire-prone Areas (Standards Australia, 2009) due to the nature of the changes being the correction of errors and anomalies. The other proposed changes such as the amendment to clause 21.13 are administrative in nature and do not impact on the sections of the planning scheme which inform the consideration of bushfire risk. Therefore, the proposed amendment meets the objectives of Clause 13.02-1S and that the amendment will not increase the risk of bushfire to existing or future residents, property and community infrastructure. Consultation has been undertaken with the Country Fire Authority (CFA) as the relevant fire authority for the land affected by the amendment and no objection has been raised.
- d) *Clause 15.01-2S Building design* by ensuring that DDO24 is accurately mapped to achieve building design outcomes that contribute positively to the town centre of Riddells Creek.
- e) *Clause 15.03-1S Heritage conservation* by ensuring the conservation of places of heritage significance by correctly identifying and mapping heritage places within the planning scheme.
- f) *Clause 16.01-3S Housing diversity* by applying the correct residential zone to land to provide a range of housing types to meet the community's needs.
- g) *Clause 17.02-1S Business* by applying the correct zone to land within the town centre of Riddells Creek to encourage commercial development that meets the needs of the community.

- h) *Clause 19.02-5S Emergency services* by supporting the location of emergency services by applying the most appropriate zone to land used for emergency services.
33. The amendment also supports or implements the Local Planning Policy Framework, in particular, the Municipal Strategic Statement as follows:
- a) *Clause 21.05 Environment and landscape* by protecting and enhancing the natural environment by ensure the correct zoning and overlays apply where required.
- b) *Clause 21.08-1 Heritage conservation* by protecting and enhancing important heritage features and values for residents, visitors and future generations. It will ensure the correct application of the HO applies to properties within Kyneton.
- c) *Clause 21.09-1 Housing* in towns by supporting the provision of a diversity of housing in appropriate locations. The amendment will ensure the removal of zoning anomalies to provide clear controls on the correct parcels of land.
- d) *Clause 21.10-1 Commercial and industry* by supporting commercial development to increase employment opportunities. The rezoning of various properties to fix anomalies or rezone commercial land will support these uses in appropriate locations and support the local economy.
- e) *Clause 21.12-3 Rural infrastructure* by protecting infrastructure such as water supply. The amendment will ensure Coliban Water is able to continue its role on land owned by Coliban Water.

Amendments and justification

34. The finalised 34 changes proposed by C126 can be categorised as follows:

Zone Changes		
1	Rezone land known as part of Plan CP166908, 1 Bolithos Road, Riddells Creek and part of Lot CM1 on PS733771 and Lot 4, PS733771, Unit 4/27 Mahoneys Road, part of Lot 3 on PS733782, Unit 3/29 Mahoneys Road and part of Lot 2 on LP27936, 31 Mahoneys Road, Riddells Creek from Commercial 1 Zone (C1Z) to Neighbourhood Residential Zone, Schedule 8 (NRZ8) as shown on Planning Scheme Map No. 39.	The land is being rezoned to remove dual zoning and ensure that a single zone applies to each parcel. The NRZ8 was selected as these parcels are developed with an existing dwelling each and reflect the remainder of each site.

2	Rezone land at Lot 1 on TP216489, 67 Baynton Street, Kyneton from Public Use Zone - Other Public Use (PUZ7) to Neighbourhood Residential Zone, Schedule 10 (NRZ10) as shown on Planning Scheme Map No. 13.	The land is privately owned and not used for a public purpose. This makes the PUZ7 inappropriate. The underlying zone is the NRZ10.
3	Rezone land at Plan CP160289, 37 Margaret Street, Macedon from C1Z to Low Density Residential Zone (LDRZ) as shown on Planning Scheme Map No. 27.	The land is being rezoned to remove dual zoning and ensure that a single zone applies to each parcel. The LDRZ was selected as this property is developed with an existing dwelling and reflects the zoning of the remainder of each site.
4	Rezone land at Lot 4 on PS402075, 51 Aitken Street, Gisborne from PUZ6 to C1Z as shown on Planning Scheme Map No. 36. The land is privately owned and the PUZ6 is inappropriate.	The land is to be used in association with a commercial development at 45 Aitken Street, Gisborne for car parking. The C1Z reflects the zoning of the land to the north and therefore 51 Aitken Street, Gisborne should have the same zoning.
5	Rezone land known as part of Lot 1 on LP27936, 82 Main Road and part of Lot 1 on TP707988, 84 Main Road, Riddells Creek from NRZ8 to C1Z as shown on Planning Scheme Map No. 39.	The land has dual zoning of C1Z and NRZ8. The dual zoning is anomalous. The C1Z is the appropriate zoning as the land form part of the commercially zoned land in the township.
6	Rezone land known as Lot RES1 on PS645159, Youngs Road, Kyneton from Farming Zone (FZ) to PUZ1 as shown on Planning Scheme Map No. 4.	Coliban Water has requested that this land be rezoned from FZ to PUZ1. The land is required for public purposes and therefore the PUZ1 is the most appropriate zoning.
7	Rezone land known as part of Lot 1 on TP567294 and part of Lot 1 on TP405790, Rippers Lane, Fern Hill from Rural Conservation Zone, Schedule 1 (RCZ1) to PUZ1 as shown on Planning Scheme Map Nos. 14 and 21.	Coliban Water has requested that this land be rezoned from RCZ1 to PUZ1. The land is required for public purposes and therefore the PUZ1 is the most appropriate zoning.
8	Rezone land known as part of Lot 1 on TP58189, Rippers Lane, Fern Hill from RCZ1 to PUZ1 as shown on Planning Scheme Map No. 22.	Coliban Water has requested that this land be rezoned from RCZ1 to PUZ1. The land is required for public purposes and therefore the PUZ is the most appropriate zoning.
9	Rezone land at Allot. 20, Sec. 42, Township of Woodend, 24 Urquhart	The land is used for a Country Fire Authority (CFA) fire station and by the State Emergency

	Street, Woodend and Allot. 19, Sec. 42, Township of Woodend, 26 Urquhart Street, Woodend from PUZ4 to PUZ7 as shown on Planning Scheme Map No. 24.	Service. The PUZ4 reflects a transport use rather than the use of the land. The PUZ7 is the most appropriate zone reflecting the type of public use on the site.
10	Rezone land at known as part of Lot 1 on TP339680, 705 Bacchus Marsh Road, Bullengarook from Rural Conservation Zone, Schedule 3 (RCZ3) to Public Use Zone – Education (PUZ2) as shown on Planning Scheme Map No. 33.	The land consists of two abutting parcels, Crown Allotment 8M and Lot 1. The land is used by the Sunbury and Macedon Ranges Specialist School for the purpose of a secondary school. The buildings and their use associated with the current school were originally confined to the Crown Allotment 8M land zoned PUZ2. Works to extend the school buildings have since occurred on Lot 1. The land is owned by the Ministry of 6 Education and is considered public land. In accordance with A Practitioners Guide to Victorian Planning Schemes 2020, the PUZ2 is the appropriate zone for Lot 1.
11	Rezone land at Plan CP107942, 92 Mollison Street, Malmsbury from Rural Living, Schedule 5 (RLZ5) to Public Park and Recreation Zone (PPRZ) as shown on Planning Scheme Map Nos. 5 and 6.	The land is occupied by the Malmsbury Cricket and Recreation Reserve, which is council owned and used as public open space. One parcel of land forming part of the site is zoned RLZ5, with the remaining parcel zoned PPRZ. The situation of two different zones for the area of public open space is anomalous. In accordance with A Practitioners Guide to Victorian Planning Schemes 2020, the PPRZ is the appropriate zone.
12	Rezone land known as part of Allot. 15, Sec. 23, Township of Woodend, 142 High Street and part of Allotment 2005, Township of Woodend, 14 Nicholson Street, Woodend from part Neighbourhood Residential Zone, Schedule 3 (NRZ3) and part Neighbourhood Residential Zone, Schedule 4 (NRZ4) to PPRZ as shown on Planning Scheme Map No. 24.	Crown Allotment 2005 is a former government road. It no longer serves as a road and is now closed. Crown Allotment 15 forms part of the Campaspe Park Reserve. The land is used for public and community uses. The council is the Crown Land Administrator. The parcels are part NRZ3, NRZ4 and PPRZ. This is anomalous and in accordance with A Practitioners Guide to Victorian Planning Schemes 2020, the PPRZ is the most appropriate zone for CA15 and CA 2005.
13	Rezone land at Lot 1 on TP228666, 531 Hobbs Road, Bullengarook from PUZ6 to PCRZ as shown on Planning Scheme Map No. 33.	The changes 13 -21 are land which is a council owned and managed bushland reserve. The primary role of this reserve is to protect biodiversity and provide habitat for wildlife. This reserve also has an environmental management plan providing direction for protecting and enhancing the conservation values of the reserve and managing threats. DELWP's Planning for Biodiversity, December 2017 guidance note advises that reserves established for conservation purposes should be zoned
14	Rezone land at Lot RES on LP111376, 198 Mount Gisborne Road, Gisborne from PPRZ to PCRZ as	

	shown on Planning Scheme Map No. 43.	PCRZ. As such, it is recommended that most of the council's managed bushland and conservation reserves be zoned PCRZ. In accordance with the guidance note, the PCRZ is the most appropriate replacement zone.
15	Rezone land at Bald Hill Reserve, Lot 1 on TP224233 and Lot 3, TP745680, 281 Pipers Creek Road, Kyneton from PPRZ to PCRZ as shown on Planning Scheme Map Nos. 7 and 16.	
16	Rezone land at Malmsbury Common Bushland Reserve, Allot. 7, Sec. B, Township of Malmsbury, 96 Mollison Street, Malmsbury from part RLZ5 and part PPRZ to PCRZ as shown on Planning Scheme Map Nos. 5 and 6.	
17	Rezone land at Stanley Park Reserve, Lot 1 on TP442741, 15 Salisbury Road, Mount Macedon from PPRZ to PCRZ as shown on Planning Scheme Map No. 27.	
18	Rezone land at Barringo Reserve, Lot 1 on TP169619, 18 Shannons Road, New Gisborne from PPRZ to PCRZ as shown on Planning Scheme Map Nos. 26 and 35.	
19	Rezone land known as Magnet Hill Bushland Reserve, Allot. 62, Sec. 34, Parish of Gisborne, Lot 1 TP123699, Lot 1 on TP124615 and Lot 1 on PS348543, Station Road, New Gisborne from Rural Living Zone, Schedule 2 (RLZ2) to PCRZ as shown on Planning Scheme Map No. 36.	
20	Rezone land at Sandy Creek Bushland Reserve and part of the road reserve, Sandy Creek Road,	

	Riddells Creek from part PUZ6 and part LDRZ to PCRZ as shown on Planning Scheme Map No. 39.	
21	Rezone land at Browning Street Conservation Reserve, unmade road reserve between Bowen Street and Ladye Place, Woodend from LDRZ to PCRZ as shown on Planning Scheme Map No. 24.	
22	Rezone land known as part of Lot 1 on TP919785, 6-8 Clarke Street and part of Plan PC372104, 10 Clarke Street, Mount Macedon from PPRZ to RCZ1 as shown on Planning Scheme Map No. 27.	The land has a dual zoning of PPRZ and RCZ1. The dual zoning is anomalous and the site is privately owned making the PPRZ inappropriate. The RCZ1 is the most appropriate zone.
23	Rezone land known as part of the road reserve, Chisholm Avenue, Malmsbury from Road Zone, Category 1 (RDZ1) to FZ as shown on Planning Scheme Map Nos. 5 and 6.	Regional Roads Victoria has confirmed Chisholm Avenue is not a declared road. The road is still being used, but VicRoads has revoked its status as a declared road forming part of the Calder Highway. The FZ is the underlying zone and the most appropriate replacement zone.
Overlay Changes		
24	Delete Schedule 2 to the Environmental Significance Overlay (ESO2 – Monegetta Piggery) from land at Lot 4 on LP98345, 43 Chintin Road, Monegetta and the surrounding land generally 2.2km from this land as shown on Planning Scheme Map Nos. 28ESO, 30ESO and 40ESO.	ESO2 is for the purpose of protecting the former Monegetta piggery from any development which may jeopardise its operation. The piggery ceased operation in 2009 which means that the ESO2 requires consideration of factors which are now irrelevant to the land within the ESO2. A VCAT order made 21 September 2017 (Reference No. P1452/2017) finds that “ESO2 is for all intent meaningless”. The ESO2 is now redundant and unfairly imposes irrelevant regulation. For this reason, it is appropriate to remove ESO2.
25	Apply Schedule 9 to the Vegetation Management Overlay (VPO9 – Living Forest) to land known as part of Lot 1 on TP919785, 6-8 Clarke Street and part of Plan PC372104, 10 Clarke Street, Mount Macedon as shown on Planning Scheme Map No. 27VPO.	The VPO9 applies to the parts of the parcels zoned RCZ. The parts zoned PPRZ are not affected by the VPO9. Change 22 seeks to rezone the land from PPRZ to RCZ1. The Biodiversity Strategy 2018 (attachment E) states that VPO9 provides protection to the vegetation along the Great Dividing Range that extends from the Cobaw Ranges in the north-east of the Shire to Trentham East and Gisborne in the south west. The VPO9 applies to land zoned RCZ1 in this location. In line with change 22 and

		the Biodiversity Strategy 2018, it is appropriate to apply the VPO9 to land zoned RCZ1 under change 22.
26	Delete the Heritage Overlay (HO89 – High Street Precinct, Kyneton) from land known as part of Lot 1 on TP110768, 12-40 Market Street; part of Lot 1 on TP874226 and part of Lot 1 on TP122498, 12-20 Market Street; part of Lot 1 on TP318437, 51-53 High Street; Part of Lot 1 on TP424226, 47-49 High Street and part of Lot 1 and Lot S4 on PS729484, Unit 11/15 Ferguson Street, Kyneton as shown on Planning Scheme Map No. 13HO1.	Prior to the new format planning scheme, the boundary of HO89 aligned with property boundaries. When this mapping was translated to the new format planning scheme, this HO boundary changed to how it is currently shown. The changes result in the HO boundaries straying from lot rear boundaries. This is anomalous to current practice and the HO curtilage is to be revised to align with property boundaries. Change 26 will delete small areas of HO89 coverage from parcels that do not abut High Street. This precinct relates to the street frontages and the 'mis-alignments' are at the rear. Aligning the precinct boundary to property boundaries will not adversely impact upon the significance, character or appearance of HO89.
27	Apply the HO89 to land known as part of Lot 6 on LP14390, 1 Ferguson Street; part of Lot 1 on TP122498, 12-30 Market Street; part of Lot 1 on TP22292; part of Lot 1 on PS524344, 39 High Street; part of Lot 1 on TP959344, 41 High Street; part of Lot 1 on TP220391 and part of Lot 1 on TP220391, 47-49 High Street; part of Lot 1 on TP326174 and part of Lot 1 on TP422298, 51-53 High Street and part of Lot 1 on TP807219 and part of Lot 1 on TP807219, 59 High Street, Kyneton as shown on Planning Scheme Map No. 13HO1.	Prior to the new format planning scheme, the boundary of the HO89 aligned with property boundaries. When this mapping was translated to the new format planning scheme, this HO boundary changed to how it is currently shown. The changes result in the HO boundaries straying from lot rear boundaries. This is anomalous to current practice and the HO curtilage is to be revised to align with property boundaries. Change 27 will increase areas of HO89 coverage to the whole parcel. This precinct relates to the street frontages and the 'mis-alignments' are at the rear. Aligning the precinct boundary to property boundaries will not adversely impact upon the significance, character or appearance of HO89.
28	Apply the Heritage Overlay (HO162 – Mollison Street Precinct, Kyneton) to land known as part of Lot 2 on LP212562, 120-124 Mollison Street; part of Lot 1 on LP56859, 130- 132 Mollison Street; part of Lot 3 on LP56859, 134 Mollison Street; part of Lot 4 on LP56859, 136 Mollison Street and part of Lot 5 on LP56859, 138 Mollison Street; Lot 1 on TP617751, 174-176 Mollison Street, Kyneton and Lot 1 on TP396955, 178 Mollison Street, Kyneton as shown on Planning Scheme Map No. 13HO1.	The current curtilage of HO162 bisects the properties which results in anomalous application of the overlay. HO162 should apply to the whole of these properties to match the respective lot boundaries. HO162 is also to apply to the whole of 174-176 Mollison Street, Kyneton and 178 Mollison Street, Kyneton. The Mollison Street Conservation Area applied to these sites prior to the new format planning scheme in 2000. After 2000, these sites were omitted from the HO on Map No. 13HO1. The findings of the Shire of Kyneton Conservation (Heritage) Study 1990 identifies 178 Mollison Street suitable for local protection. The change will apply the HO162 to these two properties up

		to Mair Street to ensure the identified heritage significance of 178 Mollison Street is protected.
29	Amend Schedule 24 to the Design and Development Overlay (DDO24 – Riddells Creek Town Centre) to delete land known as part of Plan CP166908, 1 Bolithos Road, Riddells Creek; part of Lot CM1 on PS733771 and Unit 4/27 Mahoneys Road, Riddells Creek; part of Lot 3 on PS733782, Unit 3/29 Mahoneys Road, Riddells Creek and part of Lot 2 on LP27936, 31 Mahoneys Road, Riddells Creek from DDO24 as shown on Planning Scheme Map No. 39DDO.	The DDO24 is applied to partial areas of these sites. The DDO24 sets design objectives for the Riddells Creek Town Centre but follows the extent of the C1Z as it currently applies. This leads to application of the DDO24 indiscriminately bisecting the subject land without following the title boundary. Anomalous application of the DDO24 should be corrected by removing it from the properties identified under change 1.
30	Apply DDO24 to land known as part of Lot 1 on LP27936, 82 Main Road and part of Lot 1 on TP707988, 84 Main Road, Riddells Creek as shown on Planning Scheme Map No. 39DDO.	Similar to change 29, DDO24 is applied to partial areas of these sites. The DDO24 sets design objectives for the Riddells Creek Town Centre but follows the extent of the C1Z as it currently applies. This leads to application of the DDO24 indiscriminately bisecting the subject land without following the title boundary. Anomalous application of the DDO24 should be corrected to apply it to the properties identified under change 5.
Ordinance Changes		
31	<p>Amend Clause 21.13-5 of the Municipal Strategic Statement to update the Riddells Creek Strategic Framework Map - Inset to amend the designation of land south of the railway line from 'Priority Residential Development Precinct' to 'Future Investigation Area' consistent with the designation on the Riddells Creek Strategic Framework Map. The maps also require correction of the zoning designation to reflect the changes under change 1 and 5.</p> <p>Three changes are to occur as follows:</p> <p style="margin-left: 40px;">a) Zone change:</p> <p style="margin-left: 80px;">i) The Riddells Creek Strategic</p>	Under Amendment C100 that implemented elements of the Riddells Creek Structure Plan, 2013, land south of the railway line was exhibited with the Priority Residential Development Precinct designation. Upon approval from the Minister for Planning, this designation was amended to 'Future Investigation Area'. The Strategic Framework Plan Map included at p. 47 of Clause 21.13-5 was updated and gazetted to reflect the amended designation. However, the enlarged inset map at p. 48 of Clause 21.13-5 was not updated and still shows this land with its prior designation as Priority Residential Development Precinct. The conflict is an error and the enlarged inset map needs amending to accord with the Strategic Framework Plan Map.

	<p>Framework Map and Inset Map require revision in order to accord with the zone boundary changes proposed for multiple properties along Mahoneys Road, 82 and 84 Main Road and 1 Bolithos Road, Riddells Creek (see changes 1 and 5).</p>	
32	<p>Amend Schedule 24 to the DDO to delete land at 1 Bolithos Road and part of the road reserve of Bolithos Road and part of 27, 29 and 31 Mahoneys Road, Riddells Creek from the DDO boundary as shown on the Riddells Creek Town Centre Map.</p>	<p>Amend Schedule 24 to the DDO to delete land at 1 Bolithos Road and part of the road reserve of Bolithos Road and part of 27, 29 and 31 Mahoneys Road, Riddells Creek from the DDO boundary as shown on the Riddells Creek Town Centre Map to reflect the changes 29 and 30.</p>
33	<p>Amend the Schedule to Clause 72.03 to delete the references to Map No. 30ESO and 40ESO, which will no longer form part of the planning scheme.</p>	<p>The deletion to the reference of Map No. 30ESO and 40ESO from the Schedule to Clause 72.03 is required as the Environmental Significance Overlay will not apply to these areas due to change 24.</p>
34	<p>Delete Schedule 2 to Clause 42.01.</p>	<p>ESO2 is for the purpose of protecting the former Monegeetta piggery from any development which may jeopardise its operation. The piggery ceased operation in 2009 which means that the ESO2 requires consideration of factors which are now irrelevant to the land within the ESO2. A VCAT order made 21 September 2017 (Reference No. P1452/2017) finds that "ESO2 is for all intent meaningless". The ESO2 is now redundant and unfairly imposes irrelevant regulation. For this reason, it is appropriate to remove ESO2.</p>

35. Council notes that Panel has requested clarification on the background, timelines and process for implementing the Riddells Creek Structure Plan and Amendment C100macr.
36. The Riddells Creek Structure Plan (Attachment F) was adopted at the Ordinary Council Meeting on 18 December 2013.
37. Council resolved at the Ordinary Council Meeting on 18 December 2013 to include Areas Area 4 and 5 of the Riddells Creek Structure Plan to be designated priority development areas.
38. Amendment C100macr sought to implement the Riddells Creek Structure Plan which included Areas 4 and 5 as 'priority development areas'.
39. A Panel Hearing (Attachment H) was held between 17 and 24 March 2016 and reconvened on 27 and 28 April 2016. A Panel report was provided on 21 June 2016 in which Panel did not raise concern with the inclusion of Areas 4 and 5 as 'priority development areas'.
40. Council adopted Amendment C100macr on 24 August 2016 which included Areas 4 and 5 as 'priority development areas' and to be zoned Urban Growth Zone.
41. The Minister for Planning approved C100macr subject to changes on 30 May 2017. The changes included altering the Riddells Creek Structure Map within Clause 21.13-5 so that the Area 5; south of the Riddells Creek rail line, was a "Future Investigations Area' and not rezoned it into the Urban Growth Zone.
42. The Minister approved Amendment did not update the Riddells Creek Structure Map insert which remained the original amendment that has both Area 4 and 5 designated as 'priority development areas'.
43. C100macr was gazetted on 15 June 2017.

Other Amendments in relation to C126macr

44. There are no amendments that would directly impact on changes proposed within the Amendment C126macr.
45. Amendment C134macr was prepared consecutively with Amendment C126macr to capture errors, anomalies and minor changes that could be requested under section 20A of the *Planning and Environment Act 1987*.
46. Clause 21.13-8 did update under C134macr but this does not impact on the changes under Clause 21.13-5 proposed under C126macr.
47. The Amendment C134macr was gazetted on 1 October 2020.

Current permit applications that may impact on the Amendment

48. A current planning permit that does have relevance to the amendment is planning permit PLN/2016/241.
49. Planning permit PLN/2016/241 applies to 45 – 51 Aitken Street, Gisborne and permits the development of a supermarket, development and use of a public car park, display of advertising signage, use of land for a licenced premises and alteration of access to Road Zone Category 1.
50. This permit is a key reason for the proposed change 4 of amendment C126macr which is to rezone 51 Aitken Street, Gisborne from PUZ6 to C1Z.
51. The permit allows for the development of a public car park on the land of 51 Aitken Street, Gisborne which is open to the use of the general public.
52. The land at 51 Aitken Street, Gisborne has since been consolidated into 45 Aitken Street, Gisborne and forms part of the land shown on Plan of Consolidation 375471D T/Gisborne, P/Gisborne.
53. Development has been commenced on the site for the development of the supermarket and public car park.
54. The justification of the proposed change 4 of amendment C126macr will be discussed further into this submission.
55. There are no other planning permit applications of relevance to amendment C126macr.

A summary of the conditions of authorisation and how each condition has been met

56. Authorisation was issued by the Minister for Planning on 5 December 2019 (Attachment 1) subject to the following conditions:
 - a) *That the land at 24 and 26 Urquhart Street, Woodend be rezoned to PUZ7 rather than PUZ1.*
 - b) *That the amendment deletes all mapping of the ES02, deletes Schedule 2 to Clause 42.01 (ESO) and deletes Map Nos. 30ESO and 40ESO from the Schedule to Clause 72.03.*
 - c) *That the planning authority consider whether Minister's Direction NO.1 Potentially Contaminated Land is applicable to the amendment (i.e. 67 Baynton Street, Kyneton and 40 Smith Street, Macedon) and if so, amend the explanatory report accordingly.*
 - d) *That the planning authority clarify whether land at 178 Mollison Street, Kyneton should be included in the Piper Street Precinct (H0196) or the Mollison Street Precinct (H0162).*
 - e) *That the explanatory report be amended to:*

- i. *Include a more specific list of land either under Land affected by the amendment or as an attachment in the mapping reference table as per the department's template.*
- ii. *Reflect that the ESO2 applies to more land than land at 1976 Melbourne-Lancefield Road, Monegeetta;*
- iii. *Include a specific description of what the amendment does;*
- iv. *Delete the table under What the amendment does, relocate the information into the relevant sections and the complete table with the maps as an attachment;*
- v. *Provide a summarised version of the reason for each change under Why the amendment is required., including why 51 Aitken Street, Gisborne should be rezoned from PUZ6 to C1 Z rather than GRZ1 like the land to the south of the site;*
- vi. *Clarify how the amendment complies with the relevant Minister's directions.*
- vii. *Clarify whether the amendment meets the objective of and gives effect to the strategies to address bushfire risk; specifically, whether the amendment will result in the introduction or intensification of development in an area that has, or will on completion have, more than a BAL-12.5 rating under AS3959-2009 Construction of Buildings in Bushfire-prone Areas (Standards Australia, 2009).*
- viii. *Explain how the amendment supports or implements the PPF and LPPF.*
- ix. *Explain whether the amendment is consistent with any relevant planning practice notes and the Practitioner's Guide to Victorian Planning Scheme, Version 1.2, August 2019 under Does the amendment make proper use of the VPPs, specifically section 5.1.1 Public land.*
- x. *That notice of the amendment be given to the Dja Dja Wurrung Aboriginal Corporation (sic), Regional Roads Victoria, Coliban Water, Department of Education and Training, Country Fire Authority, State Emergency Service and the Department of Environment, Land, Water and Planning (Forest, Fire and Regions Group).*

57. These conditions were fulfilled by:

- a. The land at 24 and 26 Urquhart Street, Woodend were appointed to be rezoned to PUZ7 rather than PUZ1.
- b. The explanatory report was updated to delete all mapping of the ESO2, deletes Schedule 2 of Clause 42.01 (ESO2) and deletes Maps No 30ESO and 40ESO from clause 72.03.
- c. The Ministerial Directions Number 1 was reviewed in preparing the amendment. It was found that 40 Smith Street, Macedon and 12 Stawell Street, Romsey needed to be removed from the amendment to further consider potential contamination risk after review with the Environment Protection Agency Victoria (EPA) (see Attachment G for EPA's response

under Ministerial Direction Number 19). 67 Baynton Street, Kyneton was found not to have any history of potential site contamination and is currently used for residential purposes. An adjoining site at 67 Simpson Street, Kyneton was found to be covered by an Environmental Audit Overlay but it is not impacted by this amendment. Therefore Council was satisfied the rezoning of this site met the Minister's Direction No. 1.

- d. The two bushland reserves at 531 Hobbs Road, Bullengarook and 281 Pipers Creek Road, Kyneton were deemed in compliance with Minister's Direction No. 1 as each site was covered by an existing Environmental Audit Overlay (EAO). This was seen in compliance with point 5(2) of the Minister's Direction No. 1. which states:
 - i. 5(2) A planning authority must include in the amendment a requirement to the effect that before a sensitive use commences or before the construction or carrying out of buildings or works in association with a sensitive use commences:
 - a) A certificate of environmental audit must be issued for the land in accordance with Part IXD of the Environment Protection Act 1970, or
 - b) An environmental auditor appointed under the Environment Protection Act 1970 must make a statement in accordance with Part IXD of that Act that the environmental conditions of that land are suitable for the sensitive use.

The reserves rezoning are not permitting anything further than what is currently permissible under the Public Park and Recreation Zone or Public Use Zone regarding sensitive uses, agriculture or public open space. Council was satisfied the reserves are suitable for their current uses. It is further commented the rezoning is seeking to reflect the nature of these reserves better than what currently applies to the sites.

- e. 178 Mollison Street, Kyneton was decided to be included in the Mollison Street Precinct (HO162) and justified within the explanatory report.
- f. The explanatory report was updated to include the following:
 - i. A specific land list was included within the explanatory report as required under the title "*Land affected by the amendment*".
 - ii. The explanatory report was updated to include reference that the ESO2 applies to more than just the land at 1976 Melbourne-Lancefield Road, Monegeetta being described as "Land generally within 2220 metres of the former Monegeetta piggery site at 43 Chintin Road, Monegeetta".
 - iii. A specific list of what the amendment does was included under the heading "*What this amendment does*".

- iv. The referenced table within the explanatory report was deleted and referenced under the heading '*What this amendment does*'. The maps were included as attachments to the amendment (attachment 3c).
- v. A summarised version for the reason of each change is included under the heading "*Why is this amendment required?*" (see para 34).
- vi. The explanatory report was updated to include an expanded response to the applicable Minister's directions including *Ministerial Direction Section 7(5)*, *Ministerial Direction No 1: Potentially Contaminated Land*, *Ministerial Direction No. 11: Strategic Assessment of Amendments and Ministerial Direction No 17: Localised Planning Statements*. *Ministerial Direction No 19* was met by referring the amendment to the EPA on 11 December 2019. The EPA responded on 7 February 2020 (see Attachment G) and subsequently 2 Stawell Street, Romsey and 40 Smith Street, Macedon were removed from the amendment pending further assessment on the advice of the EPA.

The removal of these two changes was not referenced in the explanatory report due to the nature of the explanatory report only applying to changes still proposed within the amendment. It was thought that the other sites specifically raised by the EPA during exhibition were in compliance with Ministerial Direction No 1 at the time of commencing exhibition. Ongoing discussion with the EPA was highlighted within the explanatory report under the heading "*How does the amendment address the views of any relevant agency*" which occurred during exhibition and subsequently a submission was received from the EPA.

- vii. Clarification on how the amendment meets the objectives of and gives effect to the strategies to address bushfire risk under the heading "*Does the amendment address relevant bushfire risk?*".
- viii. Clarification was included in the amendment addressing the PPF and LPPF within the explanatory report under the heading "*How does the amendment implement the objectives of the planning in Victoria*", "*How does the amendment support or implement the Planning Policy Framework and any adopted State policy?*" and "*How does the amendment support or implement the Local Planning Policy Framework, and specifically the Municipal Strategic Statement?*".
- ix. Clarification of the amendment's compliance with relevant planning practice notes was provided under the heading "*Does the amendment make proper use of the Victorian Planning Provisions?*".

- x. Notice of the amendment was also provided to the Dja Dja Wurrung Aboriginal Corporation, Regional Roads Victoria, Coliban Water, Department of Education and Training, Country Fire Authority, State Emergency Service and DELWP (Forest, Fire and Regions Group) (see Attachment I).

Summary of main issues raised by submissions

58. Twenty-eight (28) submissions were received during the exhibition period. These submissions, which refer to 7 of the 34 proposed changes, were from:

- 5 directly affected landowners (submissions 2, 7, 8, 11 and 21)
- 16 residents (submissions 3, 4, 5, 9, 12, 13, 14, 16, 17, 18, 20, 22, 23, 25, 26, 27)
- 3 community organisations:
 - Friends of Mount Gisborne Nature Reserve (submission 6).
 - Gisborne Landcare (submission 10).
 - Stanley Park Committee of Management (submission 15).
- 4 agencies:
 - Country Fire Authority (submission 28).
 - Department of Environment, Land, Water and Planning (excluding the planning group) (submission 24).
 - Environment Protection Agency Victoria (submission 1).
 - Victorian School Building Authority (submission 19).

59. The submissions can be broken down as follows:

- a. **8** submissions (submission no's 1, 2, 3, 11, 21, 25, 26 & 27) raise concern or request changes to the following 6 changes:
 - i. Rezoning of bushland reserves (change numbers: 13 & 15).
 - ii. Rezoning of 51 Aitken Street, Gisborne (change 4).
 - iii. Rezoning of the Malmsbury Common (change 16).
 - iv. Changes to the Heritage Overlay Schedule 89 (change numbers: 27)
 - v. Changes to ordinance (change numbers: 31)
- b. **14** submissions (submission no's. 4, 5, 6, 8, 9, 10, 12, 13, 14, 15, 16, 17, 22, 28) express support for the following 16 changes:

- i. Rezoning of bushland reserves (change numbers: 13, 14, 15, 16, 17, 18, 19, 20, 21).
 - ii. Removal of the Environmental Significance Overlay Schedule 2 (change number 24).
 - iii. 4 submission was neutral (submission 7, 19, 23, 24).
 - iv. 2 submissions offered both support and objections to parts of the amendment:
 - c. Submission 18 supported the rezoning of the bushland reserves (changes 13 – 21) to PCRZ but held issue with the rezoning of 51 Aitken Street, Gisborne (change 4).
 - d. Submission 20 supported the rezoning of 198 Mount Gisborne Road, Gisborne (change No. 14) and held issue with the rezoning of 51 Aitken Street, Gisborne (change 4).
60. All 10 submissions received that raised concern or issues with the amendment remain unresolved. Council referred these to Panel for review.
61. Part B of Council's submission will focus on the 6 changes referenced in the 10 submissions that raised concern with the amendment.
62. A summary of the issues raised in the about 10 referenced submissions are as follows:
- a. Submission 1:
 - i. Issue 1: Concern changes 13 and 15 do not address site contamination risk from previous or current land uses adequately.
 - ii. Issue 2: The existing Environmental Audit Overlay does not adequately address contamination risk by itself.
 - iii. Issue 3: Request additional controls to both sites to have an assessment of landfill gas (Hobbs Road) or contamination risks being undertaken prior to the use or development of any intrusive structures or public open space.
 - b. Submission 2:
 - i. Issue 1: Concern with proposed change 31 and the outcome of Amendment C100macr due to the removal of the former Riddells Creek southern 'priority development area' to a 'future investigations area'.
 - ii. Issue 2: Any changes to the Strategic Framework Map – Insert to change the designated land south of the railway line from priority

development area to 'future investigations area' implicates MRSC to this bushfire risk and negligence.

- iii. Issue 3: The existing 'future investigations area' is at odds with the Panel recommendations under C100macr and rather does not allow for the development of a holistic precinct structure plan for both areas.
 - iv. Issue 4: If the southern area is not maintained in the MRSC framework as a 'priority development site' it will create extra costs associated with any planning scheme amendment to move the 'future investigations area' back into a 'priority development area'.
 - v. Issue 5: Any change in this designation in the area to the south of the railway line may result in the existing priority development area noting being able to comply with bushfire risk mitigation and development standards.
- c. Submission 3:
- i. Issue 1: Concern with change 4 which land was sold to a developer in an off-market deal and was widely objected to. The site is now under development and the rezoning is a foregone conclusion.
 - ii. Issue 2: Concern with increased traffic flow and noise that will accompany the development and prefer the land remains in the public domain.
 - iii. Issue 3: Concern about the exhibition process given the above two issues raised and 'perpetuates the myth that objectors can have any impact on the rezoning process'.
- d. Submission 11:
- i. Issue 1: Concern change 31 is not consistent with Riddells Creek Strategic Framework Map originally adopted by Council and received support by a Panel.
 - ii. Issue 2: Concern other parts of the Municipal Strategic Statement are inconsistent with the Riddells Creek southern 'future investigations area' which is within the Township Boundary but other investigation areas are outside of Township boundaries.
- e. Submission 18:
- i. Supports the rezoning of the bushland reserves (change 13-21).
 - ii. Issue 1: Raises concern with the rezoning of 51 Aitken Street due to the Officer's report from the "Ordinary Council Meeting – Wednesday 22 June 2016 page 93" and page 94.

- f. Submission 20:
- i. Supports the rezoning of the Mount Gisborne Bushland Reserve (change 14).
 - ii. Issue 1: Raises concern about the rezoning from 'Public Open Space' to Commercial 1 Zone has extensive ramifications for the future use and development of the site. The current zoning is appropriate (PUZ6) (change 4).
 - iii. Issue 2: 51 Aitken Street was not sold at market value but a negotiated price under the condition that the land be available for public use so therefore the land was not sold for its 'highest and best use'.
 - iv. Issue 3: The rezoning will benefit the developer from a rezoning and relinquish the condition of negotiation which was the land would remain for public use as a public car park.
- g. Submission 21:
- i. Issue 1: No pre-exhibition consultation was undertaken.
 - ii. Issue 2: No recent study or reasoning to justify the extension of HO89 over 39 High Street, Kyneton (change 27).
 - iii. Issue 3: No physical inspection was undertaken on the site.
 - iv. Issue 4: Mapping is inaccurate.
 - v. Issue 5: The proposed change would result in:
 - Reduced aggregated land value.
 - Restrictions on the proposed development which benefit the visitor economy.
 - Increased costs associated with consultant reports.
 - Additional applicant costs in relation to development.
 - Additional and onerous obligations in facilitating development applications.
 - Increased negative sentiment on the part of potential buyers given Council's reputation for being difficult and problematic in relation to development matters.
 - vi. Issue 5: The amendment conflicts with Planning Practice Note PPN-01.
- h. Submission 25:

- i. Issue 1: Raises issue with the rezoning of 51 Aitken Street, Gisborne (change 4) as the new owner could build some other use such as offices or retail rather than car parking.
 - ii. Issue 2: The existing zoning is not an anomaly and should remain for public use.
 - iii. Issue 3: The land fronts a creek and Council should be developing walking tracks along the creek from Mt Gisborne into the centre of the town. A strip of land alongside the creek would need to be reclaimed such as by an easement. Rezoning the land would make this impossible.
- i. Submission 26:
 - i. Issue 1: Raises concern regarding the road closure associated with the rezoning of the Malmsbury Common (change 16). This was not suitably communicated within the explanatory report.
 - ii. Issue 2: Raises concern regarding the loss of use of this road reserve as their bushfire survival plan depends on it.
- j. Submission 27:
 - i. Issue 1: Raises concern regarding the road closure associated with the rezoning of the Malmsbury Common (change 16). This was not suitably communicated within the explanatory report and has not followed the correct procedure for road closures.
 - ii. Issue 2: The closure of the road would result in their farming operation and access to their properties.

Changes proposed by Council in response to submissions

63. The Council does not propose any changes to the amendment in response to submissions at this stage.

Council's Preliminary Response to specific issues

Issues raised in Environment Protection Authority's submissions (25 March 2020 and 30 April 2020)

64. As noted above the Environment Protection Authority's submission relates to the following main issues:
- i. Issue 1: Concern changes 13 and 15 do not address site contamination risk from previous or current land uses adequately.
 - ii. Issue 2: The existing Environmental Audit Overlay does not adequately address contamination risk by itself.
 - iii. Issue 3: Request additional controls to both sites to have an assessment of landfill gas (Hobbs Road) or contamination risks being

undertaken prior to the use or development of any intrusive structures or public open space.

65. As previously stated it is deemed the amendment does comply with the sensitive uses test within the Ministerial Direction No. 1 – Potentially Contaminated Land as both sites are covered by an Environmental Audit Overlay.
66. The Ministerial Directions No. 1 does not provide for how a planning authority must satisfy itself regarding agriculture or public open space with contamination risk.
67. The Environmental Audit Overlay applies to the sites under proposed change 13 and 15. However, this only triggers when a sensitive use is proposed. The Ministerial Direction No. 1 defines a sensitive use as “a residential use, a child care centre, a pre-school centre or a primary school”.
68. It is considered there is no existing control within the Planning Policy Framework to therefore directly address other types of use and developments in relation to public open space and contamination risk.
69. As this amendment is seeking to address errors, anomalies and minor changes such as looking to apply the most appropriate zoning under the Planning Policy Framework to reflect the bushland reserves.
70. If the changes proposed within this amendment do not go through, the sites would continue to operate as bushland reserves regardless and continue with the existing management of these sites.
71. Both sites are currently used for bushland reserves purposes. Environmental Management Plans (see Attachments J and K) have been prepared for these sites.
72. Council is seeking direction on an appropriate planning control given the level of perceived risk and the existing nature of these sites.
73. Council raises the possible rectification works or management may be better suited to occur outside of the planning scheme given the existing use and contamination levels at these sites.
74. Any additional planning controls being created for the two sites will likely move outside the scope of an errors, anomalies and minor changes amendment.

Response to the requirement to comply with Ministerial Direction No. 19 - specifically the section relating to requirements to be met - “For a planning scheme amendment, include in the explanatory report a statement of how the proposed amendment addresses the views of the EPA”.

75. Council referred amendment C126 to the Environment Protection Authority Victoria on 11 December 2019 prior to the first exhibition of the amendment. The EPA provided a response on 7 February 2020 (see attachment G).
76. Council officers subsequently removed the amendments related to 12 Stawell Street, Romsey and 40 Smith Street, Macedon from the amendment in acknowledgement of further work such as an Environmental Site Assessment to determine if an audit is warranted or not.
77. The EPA recommended that Council should be mindful of EPA publication 1518 in the rezoning of sites from Public Park and Recreation Zone to Public Conservation and Resource Zone. It is considered that the rezoning of existing sites was suitable as the purpose was to better reflect the bushland reserves purpose and the rezoning would not permit anything further than what could already be approved.
78. The removal of these two changes was not referenced in the explanatory report due to the nature of the explanatory report only applying to changes still proposed within the amendment. It was thought that the other sites specifically raised by the EPA during exhibition were in compliance with the requirements of the Ministerial Direction No 1 at the time of commencing exhibition. Ongoing discussion with the EPA was highlighted within the explanatory report under the heading “*How does the amendment address the views of any relevant agency*” which occurred during exhibition and subsequently a submission was received from the EPA.

Response to Planning for Biodiversity Guidance 2017 and other planning practice notes where relevant in justifying proposed changes to public land zones

79. The Planning for Biodiversity Guidance 2017 document outlines on pg. 19 that:

“The Public Conservation and Resource Zone (PCRZ) should be used for conservation reserves that local government manages. The zone only applies to land in public ownership, which includes land owned by the local government. A key purpose of the zone is to ‘protect and conserve the natural environment and natural processes for their historic, scientific, landscape, habitat or cultural values.’ Note that this zone also allows a range of recreational and land management activities to occur. It also has the following purposes:

- *to provide facilities which assist in public education and interpretation of the natural environment with minimal degradation of the natural environment or natural processes*
 - *to provide for appropriate resource based uses”.*
80. It is accepted that the bushland reserves proposed to be amended under C126macr is due to the reserves having a primary role to protect biodiversity and provide habitat for wildlife. It is deemed the PCRZ is the appropriate zoning for this purpose. The existing recreational opportunities at these sites are important but secondary to the conservation purposes.
81. A Practitioner’s Guide to Victorian Planning Scheme, 2020 outlines under section 5.1.1 that the Ministerial Direction 7(5): The Form and Content of Planning Schemes specifies that a planning scheme may only include land in a public land zone if the land is Crown land or is owned, vested in or controlled by a Minister, government department, public authority or a municipal council. The rezoning of private land from Public Use Zone to the underlying zone reflects this direction and correctly applies the VPP. This applies to proposed changes 2, 4, 6, 7, 8, 10 and 22.

[Justification of proposed alignment of Heritage Overlay – schedule HO89 with lot boundaries, with consideration of Planning Practice Note 1 – Applying the Heritage Overlay, Kyneton Conservation Heritage Study 1990 and any other relevant heritage studies.](#)

82. Since the introduction of the new format planning scheme it has been noted by Council that the HO89 overlay polygon strays from the rear boundary of a number of allotments.
83. Planning Practice Note No. 1 (August 2018) outlines from p.g 5 under the title “Curtilages and Heritage Overlay polygons” that *“The Heritage Overlay applies to both the listed heritage item and its associated land. It is usually important to include land surrounding a building, structure, tree or feature of importance to ensure that any development, including subdivision, does not adversely affect the setting, context or significance of the heritage item. The land surrounding the heritage item is known as a ‘curtilage’ and will be shown as a polygon on the Heritage Overlay map. In many cases, particularly in urban areas and townships, the extent of the curtilage will be the whole of the property (for example, a suburban dwelling and its allotment).”*
84. Council views it important to ensure holistic consideration of a site which abuts a heritage precinct and this includes the rear of these sites. To ignore the holistic setting and context could be detrimental to proper and orderly planning to the High Street Conservation Area (See Attachment L - Shire of Kyneton Conservation Heritage Study 1990).

87. Council is not making an argument that the significance of the site has altered meaningfully to warrant changes to the existing mapping but rather the proper application of the HO as a tool to help conserve and enhance the elements which contribute to the significance of the High Street Heritage Precinct. HO89 already applies to these sites along High Street and would likely come into the consideration of any development application along High Street regardless.

As relevant to the proposed Amendment:

Background, requirements and process undertaken by Council in relation to the proposed closure of an unnamed laneway to the north of 13 Malmsbury Post Office Road and west of Malmsbury Post Office Road.

88. There is no background or process regarding the closure of an unnamed laneway to the north of 13 Malmsbury Post Office Road and west of Malmsbury Post Office Road. This is because there is no proposed closure of this road reserve.
89. Council is intending to fence off the Malmsbury Common land north of the Coliban River at 96 Mollison Street, Malmsbury from traffic to protect the site.
90. Council Officers have been in contact with the submitters regarding this matter advising there is no proposed road closure as part of this amendment and access to private land will still be possible.

Background, requirements and process undertaken by Council in relation to the rezoning and sale of 51 Aitken Street, including details of the Council resolution at its meeting in June 2016

91. In 2015, ALDI advised Council that it wished to purchase the privately owned land at 45, 47 and 49 Aitken Street, Gisborne for the purpose of developing a store and associated car park.
92. In 2016, Council received an expression of interest from ALDI to purchase the Council owned land at 51 Aitken Street, Gisborne for the purpose constructing and maintaining a car park, at its costs, for free but time limited public parking.
93. Council's Valuer provided a market value for the Land and Council representatives met with representatives of ALDI and negotiated a proposed sale price of \$600,000 plus GST – if Council determined to sell the Land.
94. Council considered the intention to give public notice of its proposal to sell the Land to ALDI at the Ordinary 23 March 2016 Council Meeting on the basis that ALDI will –

- a) Construct a car park on the Land at its cost and make the car park available for free but time limited parking by the general public.
 - b) Maintain the car park on the Land at its cost.
 - c) Construct and operate a store and associated car park on the land at 45, 47 and 49 Aitken Street, Gisborne.
95. The construction, use and maintenance obligations would be secured by a “Section 173 Agreement”, which will be recorded on the titles to the Land and to the land at 45, 47 and 49 Aitken Street, Gisborne.
96. At the Council Meeting on 13 April 2016, Council resolved to give public notice of and invite submissions in respect to the intention to sell land at 51 Aitken Street, Gisborne to ALDI Foods Pty Ltd [ALDI] for the purpose of a public car park.
97. At the Council Meeting on 1 June 2016, Council received 16 submissions and also heard three Submitters who made a verbal presentation in support of their submission and resolved to –
1. Note the submissions and verbal presentations.
 2. Refer the submissions to this meeting.
 3. Consider the officers response and recommendations at this meeting.
98. At the Ordinary Council Meeting on 22 June 2016, that, having given public notice of its intention to sell 51 Aitken Street, Gisborne to ALDI and having received and considered all submissions, Council resolves to sell the Land to ALDI for the sale price of \$600,000 plus GST on the basis that ALDI will –
- a) *Construct a car park on the Land at its costs and make the car park available for free but time limited parking by the general public.*
 - b) *In the event of failure to construct the car park, at Council’s option, retransfer the Land to Council.*
 - c) *Maintain the car park on the Land at its cost.*
 - d) *Construct a store and associated car park on the land at 45, 47 and 49 Aitken Street, Gisborne.*
99. *That the construction, use and maintenance obligations (referred to in item 2 above) will be secured by a section 173 agreement, which will be recorded on the titles to the Land and to 45, 47 and 49 Aitken Street.*
100. *That settlement of the sale will be conditional upon the following:*
- *ALDI undertaking due diligence of the Land to the satisfaction of ALDI;*
 - *The purchase and settlement by ALDI of 45, 47 and 49 Aitken Street;*
 - *ALDI obtaining a planning permit for the development of a store and associated car parking on 45, 47 and 49 Aitken Street and for a car park on the Land; and*
 - *ALDI obtaining Foreign Investment Review Board approval for the purchase of the Land.*

101. *That Council authorise the Chief Executive Officer to sign all relevant documentation and negotiate and finalise the:*
- *Relevant terms and conditions of sale;*
 - *Section 173 agreement;*
 - *A car park enforcement agreement; and*
 - *All transfer documentation.*
102. *That the net proceeds from the sale of the Land will be transferred to the asset conversion financial reserve and will be applied to other public car parking projects in the Gisborne area in the future.*
103. See Attachment M for Ordinary Council Meeting Minutes for 22 June 2016.
104. The land at 51 Aitken Street, Gisborne was subsequently sold under the above conditions.
105. A planning application was applied for the site and adjoining land under planning permit PLN/2016/241. The permit was ultimately issued on 30 May 2017 (Attachment N) as a result of its approval at the Ordinary Council Meeting held on 26 April 2017 (see Attachment O for Council Meeting Minutes).
106. The land was consolidated with 45 Aitken Street, Gisborne on 19 December 2019 under Plan of Consolidation 375471D (See figure 2)

PLAN OF CONSOLIDATION		EDITION	PC 375471D	
<p>Location of Land</p> <p>Parish: GISBORNE</p> <p>Township: GISBORNE</p> <p>Section: 6</p> <p>Crown Allotment: 17, 18, 19 (PT) & 20 (PT)</p> <p>Crown Portion:</p> <p>Title Reference: Volume 8787 Folio 481 Volume 8787 Folio 482, Volume 11362 Folio 318 Volume 11362 Folio 319</p> <p>Last Plan Reference: Lots 2 & 3 LP 84787, Lots 4 & 5 PS 402075C</p> <p>Postal Address: 45-51 AITKEN STREET (at time of subdivision) GISBORNE, 3137</p> <p>MGA04 Co-ordinates E 287100 ZONE 55 (of approx. centre of land in plan) N 5848160</p>		<p>Council Name: Macedon Ranges Shire Council</p> <p>Council Reference Number: CRT2019888</p> <p>Planning Permit Reference: PLAN20190316</p> <p>SPEAR Reference Number: S128953J</p> <p>Certification</p> <p>This plan is certified under section 11 (7) of the Subdivision Act 1988</p> <p>Date of original certification under section 6: 01/11/2019</p> <p>Statement of Compliance</p> <p>This is a statement of compliance issued under section 21 of the Subdivision Act 1988</p> <p>Public Open Space</p> <p>A requirement for public open space under section 18 of the Subdivision Act 1988 has not been made</p> <p>Digitally signed by: Marko Nunez for Macedon Ranges Shire Council on 29/11/2019</p>		
Easement Information			Notations	
<p>Legend: A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)</p>			<p>Depth Limitation - NIL</p> <p>Other Purpose of Plan</p> <p>TO REMOVE THAT PORTION OF EASEMENT E-1 FOR SEWERAGE PURPOSES ON PS402075C SHOWN HEREON (POS-H) (VIC) MCC MACEDON RANGES SHIRE COUNCIL PLANNING PERMIT No. PLAN/2019/306</p> <p>Survey</p> <p>This plan is not based on survey</p>	
Easement Reference	Purpose	Width (Metres)	Origin	Land benefited/in Favour of
E-1	SEWERAGE	143	LP 84787	LOTS ON LP 84787
E-2	SEWERAGE	SEE PLAN	PS 402075C	WESTERN WATER
E-3	SEWERAGE	SEE PLAN	THIS PLAN	WESTERN WATER

<p>HAMILTON STREET</p>			
<p>SCALE 1:500</p> <p>0 10 20 30 40 METRES</p>	<p>File ref./Version: PC 375471D v01.0</p> <p>Digitally signed by: Malcolm McCoy, Licensed Surveyor, Surveyor's Plan Version (B), 29/11/2019, SPEAR Ref: S128953J</p>	<p>Total sheet size A3</p>	<p>Sheet 1 of 1</p>

Figure 2: Plan of Consolidation 375471W

107. It should be noted the updated description of the land needs to be updated in the amendment documents to reflect this recent change.

Conclusion

108. This concludes Council's Part A submission. Council will further detail its response to unresolved submissions within its Part B submission.

Attachments

- A. C126macr - Officer Summary of Submissions attachment to Scheduled Council Meeting held on 16 September 2020.
- B. C126macr - Explanatory report attachment to Scheduled Council Meeting held on 16 September 2020.
- C. C126macr - Notice Document attachment to Scheduled Council Meeting held on 16 September 2020.
- D. C126macr - Consolidated submission document attachment to Scheduled Council Meeting held on 16 September 2020.
- E. Macedon Ranges Shire Council - Biodiversity Strategy 2018
- F. Adopted Riddells Creek Structure Plan, 2013.
- G. C126macr – Environment Protection Agency Victoria response under Ministerial Direction 19 – dated 7 February 2020.
- H. Macedon Ranges Planning Scheme Amendment C100macr – Panel Report
- I. Notice of Amendment given to Dja Dja Wurrung Aboriginal Corporation, Regional Roads Victoria, Coliban Water, Department of Education and Training, Country Fire Authority, State Emergency Service and DELWP (Forest, Fire and Regions Group
- J. Environmental Management Plan, Hobbs Road Bushland Reserve, Bullengarook, June 2013
- K. Environmental Management Plan, Bald Hill Reserve, Kyneton, July 2012
- L. Kyneton Conservation Heritage Study 1990
- M. Ordinary Council Meeting Minutes – 22 June 2016.
- N. Planning Permit PLN/2016/241 including latest endorsed plans.
- O. Ordinary Council Meeting Minutes – 26 April 2017.

Furthermore, additional documents attached which have been referred to by Panel or submitters:

- Environmental Management Plan, Mt Gisborne Reserve, Gisborne, May 2013
- Open Space Strategy 1999