

*Planning and Environment Act 1987*

**Panel Report**

**Macedon Ranges Planning Scheme Amendment C126macr  
Errors, Anomalies and Minor Changes**

**10 December 2020**

---

### How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment. [section 27(1) of the *Planning and Environment Act 1987* (the Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the Act]

### *Planning and Environment Act 1987*

Panel Report pursuant to section 25 of the Act

Macedon Ranges Planning Scheme Amendment C126

Errors, Anomalies and Minor Changes

10 December 2020



Lisa Kendal Chair

## Contents

	<b>Page</b>
<b>1 Introduction.....</b>	<b>1</b>
1.1 The Amendment.....	1
1.2 Background and context .....	1
1.3 Summary of issues raised in submissions .....	1
1.4 Authorisation.....	2
1.5 The Panel’s approach .....	3
1.6 Limitations .....	3
<b>2 Planning context .....</b>	<b>4</b>
2.1 Planning policy.....	4
2.2 Ministerial Directions and Practice Notes.....	7
2.3 Discussion and conclusion .....	9
<b>3 Site specific issues.....</b>	<b>10</b>
3.1 51 Aitken Street, Gisborne .....	10
3.2 Rezoning of Hobbs Road Bushland Reserve and Bald Hill Reserve.....	14
3.3 39 High Street, Kyneton – Heritage Overlay 89 .....	20
3.4 Riddells Creek Structure Plan and Amendment C100.....	24
3.5 Malmsbury Common proposed laneway closure .....	25
<b>Appendix A Land affected by the Amendment</b>	
<b>Appendix B Submitters to the Amendment</b>	
<b>Appendix C Proposed changes and justification</b>	
<b>Appendix D Plan of Consolidation – 45 – 51 Aitken Street, Gisborne</b>	
<b>Appendix E Document list</b>	

## List of Figures

	<b>Page</b>
Figure 1 51 Aitken Street, Gisborne (Planning Scheme Map 36 (excerpt)) .....	10
Figure 2 531 Hobbs Road, Bullengarook – proposed rezoning from PUZ6 to PCRZ (Planning Scheme Map 33) .....	17
Figure 3 281 Pipers Creek Road, Kyneton (Bald Hill Reserve) – proposed rezoning from PPRZ to PCRZ (Planning Scheme Map 7 and 16) .....	18
Figure 4 39 High Street, Kyneton – proposed extension of Heritage Overlay (Planning Scheme Map 13).....	21

## Glossary and abbreviations

Act	<i>Planning and Environment Act 1987</i>
C1Z	Commercial 1 Zone
Council	Macedon Ranges Shire Council
DELWP	Department of Environment, Land, Water and Planning
EAO	Environmental Audit Overlay
GRZ	General Residential Zone
HO89	Heritage Overlay Schedule 89
MPS	Municipal Planning Strategy
MSS	Municipal Strategic Statement
NRZ	Neighbourhood Residential Zone
PCRZ	Public Conservation and Resource Zone
Planning Scheme	Macedon Ranges Planning Scheme
PPF	Planning Policy Framework
PPN	Planning Practice Note
PPRZ	Public Park and Recreation Zone
Practitioner's Guide	A Practitioner's Guide to Victorian Planning Schemes
PUZ	Public Use Zone
SPP	Macedon Ranges Statement of Planning Policy
VCAT	Victorian Civil and Administrative Tribunal
VPP	Victoria Planning Provisions

## Overview

Amendment summary	
<b>The Amendment</b>	Macedon Ranges Planning Scheme Amendment C126macr
<b>Common name</b>	Errors, Anomalies and Minor Changes
<b>Brief description</b>	<p>The Amendment proposes 34 changes to correct errors and anomalies and make minor changes to ensure that the Planning Scheme and controls are applied correctly and as intended.</p> <p>Specifically the Amendment proposes to make:</p> <ul style="list-style-type: none"> <li>- 23 zone mapping changes</li> <li>- 7 overlay mapping changes</li> <li>- 4 ordinance changes.</li> </ul>
<b>Subject land</b>	The Amendment applies to various parcels of land throughout the Shire in the following locations: Bullengarook, Fern Hill, Gisborne, Kyneton, Macedon, Malmsbury, Monegeetta, Mount Macedon, New Gisborne, Riddells Creek and Woodend. See Appendix A.
<b>Planning Authority</b>	Macedon Ranges Shire Council
<b>Authorisation</b>	5 December 2019
<b>Exhibition</b>	<p>First exhibition - 27 February to 30 March 2020</p> <p>Second exhibition - 25 June to 3 August 2020</p> <p>As a State of Emergency resulting from the COVID-19 pandemic was declared on 16 March during the first exhibition a second period of exhibition was undertaken to ensure compliance with requirements of the <i>Planning and Environment Act 1987</i>.</p>
<b>Submissions</b>	A total of twenty eight (28) submissions were received. See Appendix B.

## Panel process

<b>The Panel</b>	Lisa Kendal (Chair)
<b>Directions Hearing</b>	By videoconference, 29 October 2020
<b>Panel Hearing</b>	By videoconference, 24 and 25 November 2020
<b>Site inspections</b>	Unaccompanied, 19 November 2020
<b>Parties to the Hearing</b>	Mr Jack Wiltshire, Macedon Ranges Shire Council Ms Kaylee Thompson, Environment Protection Authority Mr Brian Wilson Ms Jayne Guilmartin Mr Randall Bick
<b>Citation</b>	Macedon Ranges PSA C126macr [2020] PPV
<b>Date of this Report</b>	10 December 2020

---

## Executive summary

Macedon Ranges Planning Scheme Amendment C126macr (the Amendment) seeks to correct errors and anomalies and make minor changes to the Macedon Ranges Planning Scheme (Planning Scheme).

Specifically the Amendment affects various properties across the municipality and proposes 34 changes including:

- 23 zone mapping changes
- 7 overlay mapping changes
- 4 ordinance changes.

A total of 28 submissions were received, of which 18 supported the Amendment and 10 either objected or requested changes. The Panel has reviewed all submissions in the preparation of this Report.

Key issues raised in submissions related to whether the proposal to:

- rezone 51 Aitken Street, Gisborne from Public Use Zone 6 – Local Government (PUZ6) to Commercial 1 Zone (C1Z) was appropriate
- rezone two bushland reserves to Public Conservation and Resource Zone (PCRZ) adequately addressed site contamination risk including:
  - closed landfill at 531 Hobbs Road, Bullengarook
  - shooting range at 281 Pipers Creek Road, Kyneton (Bald Hill Reserve)
- extend the curtilage of Heritage Overlay Schedule 89 (HO89) at 39 High Street, Kyneton was appropriate
- change the Riddells Creek Structure Plan inset map at Clause 21.13-5 (Riddells Creek) was appropriate
- rezone Malmsbury Common was associated with a road closure and whether the correct procedures have been followed.

The Amendment is part of Macedon Ranges Shire Council's ongoing program to maintain an accurate and consistent Planning Scheme. The work involved is detailed and the Panel acknowledges and commends Council on the significant work undertaken to prepare the Amendment which has been largely supported by submissions.

The Panel concludes:

- Rezoning of the land at 51 Aitken Street, Gisborne from Public Use Zone 6 (PUZ6) to Commercial 1 Zone (C1Z) represents a substantial change to the Planning Scheme that requires assessment and strategic justification.

Determination of a suitable land use zone should take into consideration the objectives of planning, principles of net community benefit and sustainable development, planning guidelines and an assessment of risk to future land use change that may not be consistent with Council's desired outcomes.

That the sequence of public land sale and consideration of rezoning is unconventional and does not represent planning best practice.

- There is potential site contamination risk from previous or current land uses at 531 Hobbs Road, Bullengarook and Bald Hill Reserve, Kyneton and that the proposed Amendment has not adequately considered environmental risk.

- It is premature to rezone the land at 531 Hobbs Road, Bullengarook and Bald Hill Reserve, Kyneton to PCRZ, and further work should be undertaken by Council with advice from the EPA to ensure that any proposed changes to planning controls have adequately considered site contamination risk from previous or current land uses.
- Proposed extension of the curtilage of HO89 at 39 High Street has not been adequately justified on the basis of heritage values and significance. This finding may have implications for other proposed extensions of the Heritage Overlay which form part of this Amendment, and Council may wish to review prior to finalising the Amendment.
- It is appropriate to amend the Riddells Creek Structure Plan inset map in Clause 21.13-5 (Riddells Creek), consistent with the approved Amendment C100macr.
- There are no planning matters to be resolved associated with the proposed rezoning of Malmsbury Common and associated road closure as there is no proposed road closure.

### **Recommendations**

Based on the reasons set out in this Report, the Panel recommends that Macedon Ranges Planning Scheme Amendment C126macr be adopted as exhibited subject to the following:

- 1. Abandon the rezoning of land at 51 Aitken Street Gisborne pending further work to determine the most appropriate planning controls to achieve the desired land use outcome.**
- 2. Abandon rezoning of 531 Hobbs Road, Bullengarook and Bald Hill Reserve, Kyneton pending further work to consider site contamination risk from previous or current land uses with advice from the EPA.**
- 3. Abandon extension of the Heritage Overlay (HO89) at 39 High Street, Kyneton, pending further work to determine heritage significance and appropriate extent of the overlay.**

# 1 Introduction

## 1.1 The Amendment

### (i) Amendment description

The Amendment proposes to correct errors and anomalies and make minor changes to the Macedon Ranges Planning Scheme (Planning Scheme).

The Amendment applies to various parcels of land throughout the Shire in the following locations: Bullengarook, Fern Hill, Gisborne, Kyneton, Macedon, Malmsbury, Monegetta, Mount Macedon, New Gisborne, Riddells Creek and Woodend (see Appendix A).

Specifically Amendment C126macr proposes 34 changes to the Planning Scheme, including:

- 23 zone mapping changes
- 7 overlay mapping changes
- 4 ordinance changes. Proposed ordinance changes include:
  - amend Clause 21.13-5 (Riddells Creek) of the Municipal Strategic Statement to update the Riddells Creek Strategic Framework Map inset
  - amend the Design and Development Overlay Schedule 24 (DDO24) to align with the Riddells Creek Town Centre Map
  - amend the Schedule to Clause 72.03 to delete the references to maps which no longer form part of the Planning Scheme
  - delete Environmental Significance Overlay Schedule 2 (ESO2 – Monegetta Piggery).

See Appendix C for details of the proposed changes and justification from Macedon Ranges Shire Council (Council).

## 1.2 Background and context

The Amendment forms part of Council's ongoing program to manage the Planning Scheme and ensure that it is current and applies planning controls correctly and in the manner intended.

Amendment C134macr (Errors and Anomalies) was prepared consecutively with the Amendment to capture errors, anomalies and minor changes that could be requested under section 20A of the *Planning and Environment Act 1987* (the Act). Amendment C134macr was gazetted on 1 October 2020.

The previous administrative amendment (C109) was completed by Council in December 2016.

## 1.3 Summary of issues raised in submissions

A total of 28 submissions were received to the exhibition of the Amendment including a number of agencies and community groups (see Appendix B).

The Department of Environment, Land, Water and Planning (DELWP) (excluding the Planning Group) and Parks Victoria provided a consolidated submission supporting the proposed Amendment. The Country Fire Authority (CFA) made a submission in support of the Amendment with a requirement for referral to the CFA for comment on future proposals as

appropriate. Issues raised by the Environment Protection Authority (EPA) are addressed in the body of this report.

There are ten unresolved submissions<sup>1</sup> that raise issues with five key matters:

- rezoning of 51 Aitken Street, Gisborne from Public Use Zone 6 (PUZ6) to Commercial 1 Zone (C1Z)
- rezoning of the Hobbs Road Bushland Reserve from Public Use Zone (PUZ6) to PCRZ and the rezoning of the Bald Hill Reserve from Public Park and Recreation Zone (PPRZ) to PCRZ and how to address the contamination risk of these sites
- extension of the curtilage of HO89 at 39 High Street Kyneton
- change to the Riddells Creek Strategic Framework Map inset within Clause 21.13-5 (Riddells Creek) of the Municipal Strategic Statement
- rezoning of the Malmsbury Common and any associated road closure.

Council clarified in respect of the issue raised by submitter 20 to urgently rezone Mount Gisborne Bushland Reserve to safeguard against an application for an inappropriate telecommunications tower, that would be a permitted use under the proposed zone, and that the planning permit process would provide a balanced decision with consideration of conservation values at the reserve.

A number of issues were raised relating to non-planning matters that are not addressed in this report.

Council did not propose to make any changes to the exhibited Amendment in response to submissions.

## 1.4 Authorisation

The Amendment was authorised on 5 December 2019 subject to conditions relating to:

- consideration of the choice of Public Use Zone on two properties
- removal of redundant maps and ordinance relating to the Environmental Significance Overlay Schedule 2 (ESO2)
- consideration of the relevance of Ministerial Direction 1: Potentially Contaminated Land in relation to two properties
- clarification of proposed application of the relevant heritage precinct and associated overlay
- changes to the Explanatory Report, including:
  - clarification of how the Amendment complies with relevant Minister's directions, how it supports policy and is consistent with planning practice notes and *A Practitioner's Guide to Victorian Planning Schemes* (Practitioner's Guide)
  - clarification of whether the amendment meets the objectives and gives effect to strategies relating to bushfire risk
  - providing 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 C1Z rather than GRZ1 like the land to the south of the site"*.

<sup>1</sup> Submissions 1(EPA), 2, 3, 11, 18, 20, 21, 25, 26, 27

Authorisation required that notice of the Amendment be given to the Dja Wurrung Aboriginal Corporation, Regional Roads Victoria, Coliban Water, Department of Education and Training, CFA, State Emergency Service and the DELWP (Forest, Fire and Regions Group).

Council made changes the Amendment in line with these conditions and requirements prior to exhibition.

## **1.5 The Panel's approach**

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from a site visit, submissions and other material presented to it during the Hearing. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Planning context
- Site specific issues:
  - 51 Aitken Street, Gisborne
  - Rezoning of Hobbs Road Bushland Reserve and Bald Hill Reserve
  - 39 High Street, Kyneton – Heritage Overlay 89
  - Riddells Creek Structure Plan and Amendment C100
  - Malmsbury Common proposed laneway closure.

## **1.6 Limitations**

In relation to the rezoning of 51 Aitken Street, Gisborne the Panel notes that Council has already sold and issued a permit for the land. The Panel will consider the strategic merit of the proposed Amendment regardless of the preceding circumstances.

## 2 Planning context

### 2.1 Planning policy

Council submitted that the Amendment is supported by planning policy, which the Panel has summarised below.

#### 2.1.1 Planning and Environment Act 1987

##### (i) Victorian planning objectives

The Amendment will assist in implementing the following objectives of planning as set out in section 4(1) of the *Planning and Environment Act 1987* (the Act):

- (a) To provide for the fair, orderly, economic and sustainable use, and development of land.
  - The Amendment corrects zoning and planning scheme provisions that impact on the fair and orderly use and development of the land. The Amendment changes the application of 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.
- (d) To conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value.
  - The Amendment ensures that the heritage overlays cover heritage places intended to be protected. These changes provide for the conservation of heritage places.

##### (ii) Distinctive areas and landscapes

The Macedon Ranges was declared a 'distinctive area and landscape' under Part 3AAB of the Act in 2018.<sup>2</sup> The objectives of this Part of the Act are to:

- recognise the importance of distinctive areas and landscapes to the people of Victoria and to protect and conserve the environmental, social and economic value of these areas
- enhance conservation of the environment including unique habitats, ecosystems and biodiversity
- promote cross-government coordination by enabling the integration of policy development, implementation and decision making
- recognise the connection and stewardship of Victoria's Traditional Owner communities.

The *Macedon Ranges Statement of Planning Policy* (SPP) was approved on 10 December 2019 and gazetted on 12 December 2019.

---

<sup>2</sup> The Macedon Ranges was declared a distinctive area and landscape under Part 3AAB – Distinctive areas and landscapes, Section 46AO of the *Planning and Environment Act 1987* by order of the Governor-in-Council published in the Government Gazette 16 August, 2018 and coming into effect 16 August, 2018. The Macedon Ranges Statement of Planning Policy has been endorsed by responsible public entities and approved under Section 46AY of the Planning and Environment Act 1987 by the Governor-in-Council on 10 December 2019.

Ministerial Direction No. 17 requires any planning scheme amendments in a declared 'distinctive area and landscape' have regard to the SPP and include in the Explanatory Report a discussion of how the amendment implements the statement.

The exhibited Explanatory Report explains how the proposed Amendment is considered consistent with the following objectives of the SPP:

- Objective 1 – To ensure the declared area's natural and cultural landscapes are conserved and enhanced.
- Objective 2 – To ensure that the significant biodiversity, ecological and environmental values of the declared are conserved and enhanced.
- 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.
- Objective 5 – To recognise, conserve and enhance the declared area's significant post contact cultural heritage values.

### **2.1.2 Planning Policy Framework**

The exhibited Explanatory Report detailed how the Amendment supported the Planning Policy Framework (PPF).

Clause 01 (Purposes of the planning scheme):

- providing a clear and consistent framework within which decisions about the use and development of land can be made.

Clause 12 (Environmental and Landscape Values):

- assisting the protection and conservation of nine bushland reserves with significant environmental values in various localities by applying the PCRZ and applying the Vegetation Protection Overlay Schedule 9 (VPO9) to land in Macedon (Clause 12.01-1S Protection of biodiversity).

Clause 13 (Environmental Risks and Amenity):

- not increasing the risk of bushfire to existing or future residents, property and community infrastructure (Clause 13.02-1S Bushfire planning).

Clause 15 (Built Environment and Heritage):

- ensuring that DDO24 is accurately mapped to achieve building design outcomes that contribute positively to the town centre of Riddells Creek (Clause 15.01-2S Building design)
- ensuring the conservation of places of heritage significance by correctly identifying and mapping heritage places within the planning scheme (Clause 15.03-1S Heritage conservation).

Clause 16 (Housing):

- applying the correct residential zone to land to provide a range of housing types to meet the community's needs (Clause 16.01-3S Housing diversity).

Clause 17 (Economic Development):

- applying the correct zone to land within the town centre of Riddells Creek to encourage commercial development that meets the needs of the community (Clause 17.02-1S Business).

**Clause 19 (Infrastructure):**

- supporting the location of emergency services by applying the most appropriate zone to land used for emergency services (Clause 19.02-5S Emergency services)
- supporting local recreational use of land to meet the needs of the community through the application of the PPRZ (Clause 19.02-6S Open space)
- supporting the sustainable management of water supply and water resources by applying the most appropriate zone to land forming part of the Malmsbury and Fernhill Reservoirs (Clause 19.03-3S Integrated water management)
- by applying the PUZ1 to support the ongoing investment in water infrastructure and management of water resources to enhance security and efficiency of water supply (Clause 19.03-3R Integrated water management – Loddon Mallee South).

**Clause 21 (Municipal Strategic Statement):**

- protecting and enhancing the natural environment by ensure the correct zoning and overlays apply where required (Clause 21.05 Environment and landscape)
- 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 (Clause 21.08-1 Heritage conservation)
- 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 (Clause 21.09-1 Housing)
- 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 (Clause 21.10-1 Commercial and industry)
- protecting infrastructure such as water supply. The amendment will ensure Coliban Water is able to continue its role on land owned by Coliban Water (Clause 21.12-3 Rural infrastructure).

**2.1.3 Planning Scheme Provisions**

The following section details the purposes of the zones and overlays that are the subject of outstanding issues discussed in this Report.

A common zone and overlay purpose is to implement the Municipal Planning Strategy and the PPF.

**(i) Zones****Public Use Zone**

The purposes of the Public Use Zone (PUZ) are:

- to recognise public land use for public utility and community services and facilities
- to provide for associated uses that are consistent with the intent of the public land reservation or purpose.

The purpose of the public land use of Public Use Zone 6 (PUZ6) is local government.

**Commercial 1 Zone**

The purposes of the Commercial 1 Zone (C1Z) are:

- to create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses
- to provide for residential uses at densities complementary to the role and scale of the commercial centre.

A schedule may apply under the C1Z to a planning scheme outside of metropolitan Melbourne, which may:

- specify the maximum leasable floor area for office
- specify the maximum leasable floor area for shop (other than restricted retail premises).

### **Public Conservation and Resource Zone**

The purposes of the PCRZ are:

- to protect and conserve the natural environment and natural processes for their historic, scientific, landscape, habitat or cultural values
- 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.

### **Public Park and Recreation Zone**

The purposes of the PPRZ are:

- to recognise areas for public recreation and open space
- to protect and conserve areas of significance where appropriate
- to provide for commercial uses where appropriate.

## **(ii) Overlays**

### **Environmental Audit Overlay**

The purpose of the Environmental Audit Overlay (EAO) is:

- to ensure that potentially contaminated land is suitable for a use which could be significantly adversely affected by any contamination.

### **Heritage Overlay**

The purposes of the Heritage Overlay (HO) are:

- to conserve and enhance heritage places of natural or cultural significance
- to conserve and enhance those elements which contribute to the significance of heritage places
- to ensure that development does not adversely affect the significance of heritage places
- to conserve specified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.

## **2.2 Ministerial Directions and Practice Notes**

The Explanatory Report and Council's submissions discuss how the Amendment meets the relevant requirements of:

- Ministerial Direction Section 7(5): The Form and Content of Planning Schemes
- Ministerial Direction No. 1: Potentially Contaminated Land
- Ministerial Direction No. 11: Strategic Assessment of Amendments
- Ministerial Direction No. 17: Localised Planning Statements
- Ministerial Direction No. 19: Preparation and content of Amendments that may significantly impact the Environment, Amenity and Human Health
- Planning Practice Note 1: Applying the Heritage Overlay.

The Environmental Protection Authority (EPA) identified the need for Council to consider General Practice Note 30: Potentially Contaminated Land (2005).

That discussion is not repeated here.

### 2.2.1 A Practitioner's Guide to Victorian Planning Schemes

The Explanatory Report provides a summary of how the proposed Amendment is consistent with the Practitioner's Guide to Victorian Planning Schemes, specifically section 5.1.1 Public Land.

#### (i) Application of a land use zone

In determining suitable application of a land use zone the Practitioner's Guide provides the following guidance:

Zones are the primary tool for guiding the fair and orderly use and development of land. A zone sets expectations about what land use and development activity is or may be acceptable. Each zone broadly deals with a particular predominant land use theme, such as residential, commercial, industrial or public land uses. (Chapter 3.2)

The zone is the primary tool for guiding the use and development of land. All land (except Commonwealth land) must be included in a zone. The application of a zone to land needs to carefully consider the outcomes sought for the land expressed in the Municipal Planning Strategy (MPS) and local planning policies.

Before deciding which zone should be applied to land, consider:

- the land, including any particular physical characteristics, previous uses and the use and development of adjoining land, its ownership and management and the requirements of any other legislation that may apply to the land
- the intended planning outcomes for the land set out in the MPS and the Planning Policy Framework (PPF), as a consequence of a previous or current land use, or a particular physical characteristic of the land
- the purposes and provisions of the zone and the extent of local variation available in a schedule to the zone. (Chapter 5.1)

#### Chapter 5.1.1 Public land states:

The Ministerial Direction *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.

Public land zones are not intended to identify the legal status of the land or indicate the existing land use. They are intended to set out appropriate statutory requirements that apply to the use and development of the land in addition to the relevant land management legislation.

Land that is not public land must not be included in a public land zone. ... Where the public land use is essentially of a commercial or business nature (such as an office or

the provision of services) or comprises a community facility, the surrounding zoning will usually be appropriate.

**(ii) Application of an overlay**

In relation to the application of overlays the Practitioner's Guide provides the following guidance:

An overlay is a complementary planning control to the zone. Unlike zones, that deal primarily with the broader aspects of the use and development of land, an overlay generally seeks to control a specific aspect of the development of land. (Chapter 3.3)

An overlay can be used to complement the zoning of land in managing development. Certain overlays also control the use of land in special circumstances. Applying an overlay to land requires careful consideration of the development outcomes sought for the land. These outcomes should be determined by the policies of the MPS and the PPF and any particular characteristic of the land.

In determining whether to apply an overlay, consider:

- the land, including, natural features, previous uses, future uses, adjoining uses, ownership, management and the requirements of any other legislation that may apply to the land
- the intended development outcomes set out in the MPS and the PPF, as a consequence of a previous or current land use, or a particular physical characteristic of the land
- the purposes and provisions of the overlay and the extent of local variation available in any schedule to the overlay. (Chapter 5.5)

**2.3 Discussion and conclusion**

For the reasons set out in the following chapters, the Panel concludes that the Amendment is supported by, and implements, the relevant sections of the PPF, and is consistent with the relevant Ministerial Directions and Practice Notes. The Amendment is well founded and strategically justified, and the Amendment should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

### 3 Site specific issues

#### 3.1 51 Aitken Street, Gisborne

##### (i) The issue

The issue is whether rezoning 51 Aitken Street Gisborne from Public Use Zone 6 – Local Government (PUZ6) to Commercial 1 Zone (C1Z) is strategically justified and appropriate.

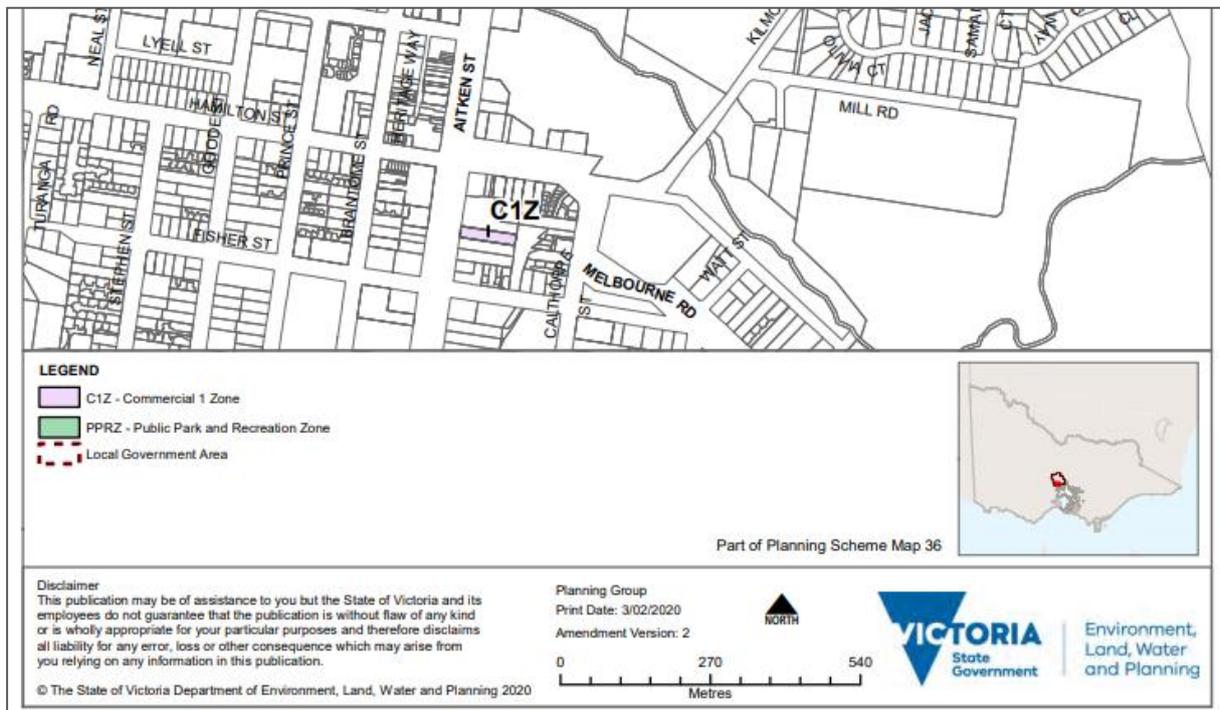
##### (ii) Submissions

Council submitted that it proposed to rezone land at 51 Aitken Street, Gisborne (Lot 4 on PS402075) from PUZ6 to C1Z as shown on Planning Scheme Map No. 36 (Figure 1).

The letter of authorisation of the Amendment from DELWP required Council to provide a summarised reason in the Explanatory Report for “*why 51 Aitken Street, Gisborne should be rezoned from PUZ6 to C1Z rather than GRZ1 like the land to the south of the site*”. The Explanatory Report included:

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.

**Figure 1 51 Aitken Street, Gisborne (Planning Scheme Map 36 (excerpt))**



Source: Planning Maps as exhibited

Council advised in its Part A submission that a planning permit was issued in May 2017 including development of a supermarket and development and use of a public car park, and

this was a key reason for the proposed rezoning.<sup>3</sup> Additionally the land had since been consolidated with 45 Aitken Street (see Appendix D)<sup>4</sup> and construction of the supermarket and public car park had commenced on the site.

By way of background Council submitted that:

- it received an expression of interest from ALDI to purchase the land in 2016
- based on a negotiated proposed sale with ALDI, Council resolved to give public notice of its proposal to sell the land at its Ordinary Meeting of 23 March 2016 on the basis that ALDI would:
  - 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
  - maintain the car park on the land at its cost
  - construct and operate a store and associated car park on the land at 45, 47 and 49 Aitken Street, Gisborne
- the car park construction, use and maintenance obligations have been secured by a Section 173 Agreement recorded on titles to the land at 45, 47, 49 and 51 Aitken Street, Gisborne
- following a period of public notice and receiving and hearing submissions, Council resolved to sell the land at its Ordinary Meeting of 22 June 2016 with public car park construction, use and maintenance obligations secured by a section 173 agreement, with a default condition that *“in the event of failure to construct the car park, at Council’s option, retransfer the Land to Council”* and a number of conditions relating to settlement of the sale.

Four submissions<sup>5</sup> objected to the proposed rezoning and raised the following issues:

- method and process of the land sale, specifically the rezoning occurring after the sale of the land
- the land valuation based on the land being zoned for a public use and the associated public benefit which would continue after sale
- potential for the landowner to undertake other commercial developments on this site once the rezoning occurs
- Commercial 1 Zone being considered inappropriate compared to the PUZ
- the proposed change to the zone is not a planning scheme anomaly but a significant change to planning controls
- the exhibition process undertaken by Council perpetuates the myth that objectors cannot have any impact on the rezoning process and the outcome is a foregone conclusion
- concern with increased traffic flow and noise that would accompany the development with a preference for the land to remain in the public domain
- loss of public open space and rezoning of the land would make it impossible to create walking tracks along the Bunjil Creek.

<sup>3</sup> 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

<sup>4</sup> The land at 51 Aitken Street, Gisborne has been consolidated into 45 Aitken Street, Gisborne and forms part of the land shown on Plan of Consolidation 375471D T/Gisborne, P/Gisborne

<sup>5</sup> Submissions 3, 18 20, and 25

Ms Guilmartin submitted that she was concerned about rezoning from public open space to a commercial zone and that it was contradictory to Council's decision at its ordinary meeting in June 2016 which intended to retain public benefit of the land into the future. She also stated that *"it is unreasonable that now, having obtained the land below market price, the landowners should benefit from a rezoning"*.

Ms Guilmartin explained at the Hearing that a change in land use zone from public use to commercial had significant ramifications. She stated that it was Council owned land and was noted as having opportunities to be developed as public open space within the *Macedon Ranges Open Space Strategy 1999*. Ms Guilmartin was also concerned that the site was vulnerable to future development as a result of any changes to the section 173 agreement, and that this should not be the only protection in place to maintain the intended public use of the site, stating that the proposal *"has failed to recognise the potential undesirable and inappropriate outcome of opening up the opportunity for the current or future owners to exploit the possibilities that a Commercial Zoning affords"*. Ms Guilmartin suggested an alternative PUZ.

Ms Guilmartin referred the Panel to the Ordinary Council Meeting Agenda of 22 June 2016 which stated that the *"land has not been determined surplus to Council's requirements, because it is intended that the land will be used for public car parking"*.

In response to submissions, Council submitted that:

- it does not consider the proposed rezoning an anomaly but a minor change to the Planning Scheme to reflect new land ownership and to keep a consistent single zoning on the site
- the land sale process had been finalised, a permit had been issued and construction on the site had commenced
- as part of the sale agreement Council committed to taking *"reasonable steps to rezone the land to reflect the change in land ownership"* and the *"rezoning is seeking to reflect that Council does now not own the land and that the land has since been consolidated into 45 Aitken Street, Gisborne"*
- as land title had been consolidated with adjacent land which is already zoned for commercial use, according to the Practitioner's Guide a *"zone boundary should align with title boundaries or other clearly defined feature such as a road centreline or watercourse unless there is a deliberate reason not to"*
- that public access to the site was secured through a section 173 and any change would require Council consent and be subject to a public notice process
- there was no Victorian and Civil Administrative Tribunal appeal to the issue of permit by Council
- there is no requirement for a public car park to be zoned PUZ6
- Commercial 1 Zone would not stop Council from being able to use the land as a public car park if it were to transfer back to Council
- the proposed rezoning would not affect public access to the walking track along Bunjil Creek
- the Panel had little ability to address the historic process of land sale and issue of permit but could review the Amendment and make recommendations about whether the proposed changes are in line with best planning practice.

In response to a question from the Panel, Council advised that it had not considered additional planning measures such as use of the schedules to the zone to manage potential future land use change such as use for other commercial purposes.

### (iii) Discussion

In contemplating whether the proposed rezoning is appropriate the Panel has taken into consideration the requirements of the Practitioner's Guidelines which guide application of zones (see Chapter 2.2).

The Panel agrees with Council that the proposed rezoning does not represent correction of an anomaly, but unlike Council the Panel does not consider it a minor change. The Panel agrees with Ms Guilmartin that the proposed rezoning is a substantial change to the Planning Scheme, and consequently should be assessed accordingly.

The Ordinary Council Meeting Agenda of 22 June 2016 states that:

... the land is not zoned for a commercial use. It is zoned for a public use. Furthermore, Council does not intend to sell the Land for its highest and best use. Council wants to ensure the land is available for public use. To ensure that the Land does not lose any of the public benefit that is derived from being owned by Council, Council is willing to sell it for use as a public car park.

... because the land is proposed for sale for some purpose other than the highest and best use, the Valuer assessed the Land at \$600,000 on the basis that it is zoned for a public use, and is being sold for the purpose of a public use, which will continue into the future.

The Meeting Agenda advises of compliance with the *Local Government Act 1989* and discusses how the property valuation was undertaken in accordance with the *Local Government Best Practice Guideline for the sale, exchange and transfer of land* (Best Practice Guideline). In response to public submissions to the proposed land sale questioning Council's lack of compliance with the Best Practice Guidelines that requires land zoned for public purposes to be appropriately rezoned prior to public sale, Council officers responded that:

This document is a guide only and its application must be assessed having regard to the particular circumstances of each case.

In the circumstances of this case, the Land is proposed to be sold on the basis that it must be used for a public purpose, namely as a public car park, as secured by the obligations in a proposed section 173 agreement.

The proposed sale is conditional, amongst other things, upon the purchaser obtaining a planning permit to construct a public carpark on the Land. If such a permit is not obtained, then Council will not wish to proceed further with the sale.

... it is considered premature to rezone the Land at this stage, pending Council's decision whether or not to sell the Land, the outcome of a planning permit application and the completion of the sale. If the proposed sale is completed and the Land sold to the purchaser, then Council will seek to pursue the proposed rezoning, subject to the normal processes and assessments. In the meantime, the use of the Land for a public carpark is arguably consistent with the purpose of the existing Public Use Zone No. 6 (Local Government).

The Panel notes that Council did not make any submission or provide evidence that:

- the public land was surplus to need
- there was additional demand and justification for land zoned for commercial purposes in Gisborne.

The Panel considers that Council has not adequately assessed the proposal against guidelines and requirements to determine the suitable land use zone of the site. An assessment is required to ensure appropriate application and selection of effective planning tool to achieve the desired outcomes of Council, in this case to retain the land for public purposes, and to meet the objectives of planning and principles of net community benefit and sustainable development, as required by Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

Following assessment of the most suitable planning controls, if C1Z is the preferred zone Council may consider introducing additional safeguards to secure the desired public access outcomes, for example through requirements in the schedule to the zone.

The Panel does not comment on Council's process of sale, however observes that the sequence of sale and consideration of rezoning is unconventional and does not represent planning best practice. This has created concern amongst submitters that a transparent process has not been undertaken by Council.

In reviewing the documents submitted, including the *Open Space Strategy 1999*, the Panel understands that the land is not a designated reserve and agrees with Council that there are no open space planning implications of the decision and that access for the community to the Bunjil Creek and walking track is still available from the land to the rear with access from Fisher Street.

#### **(iv) Conclusions and recommendation**

The Panel concludes:

Rezoning of land from Public Use Zone 6 (PUZ6) to Commercial 1 Zone (C1Z) is not a minor change as suggested by Council but represents a substantial change to the Planning Scheme that requires assessment and strategic justification.

Determination of a suitable land use zone should take into consideration the requirements of the Practitioner's Guidelines, the objectives of planning, principles of net community benefit and sustainable development, as required by Clause 71.02-3 (Integrated decision making) and an assessment of risk to future land use change that may not be consistent with Council's desired outcomes.

That the sequence of public land sale and consideration of rezoning is unconventional and does not represent planning best practice.

The Panel recommends:

- 1. Abandon the rezoning of land at 51 Aitken Street Gisborne pending further work to determine the most appropriate planning controls to achieve the desired land use outcome.**

### **3.2 Rezoning of Hobbs Road Bushland Reserve and Bald Hill Reserve**

#### **(i) The issue**

The issue is whether the proposed rezoning adequately addresses site contamination risk from previous or current land uses, specifically in relation to the:

- closed landfill at 531 Hobbs Road, Bullengarook (PUZ6 to PCRZ)

- shooting range at 281 Pipers Creek Road, Kyneton (Bald Hill Reserve) (PPRZ to PCRZ).

## (ii) Submissions

Council submitted that the Amendment proposed to rezone nine of its Council owned and managed bushland reserves from various zones to PCRZ. The primary intention was to apply the most appropriate zone to land established and managed for conservation in line with DELWP's Planning for Biodiversity Guidance (December 2017).

Fourteen submissions<sup>6</sup> supported the proposed rezoning of Council's bushland reserves to PCRZ primarily on the basis that it was consistent with DELWP's Planning for Biodiversity Guidance.

As required by Ministerial Direction No. 19 Council undertook early engagement with the Environment Protection Authority (EPA) in relation to two properties that were subsequently removed from the Amendment prior to exhibition. In its early written advice on the Amendment the EPA recommended that Council consider:

- separation distances and potential contamination for all other sites within the Amendment, particularly the rezoning of sites from PPRZ to PCRZ, as this would allow for uses including informal outdoor recreation sites which may be considered sensitive in the context of human health and wellbeing, local amenity and aesthetic enjoyment (in accordance with *EPA Publication 1518, Recommended separation distances for industrial residual air emissions, 2013*)
- potential contamination for the remainder of sites as land used for open space still may require an environmental site assessment if the historical land use is identified as having a high potential for contamination (in accordance with *General Practice Note 30: Potentially Contaminated Land (PPN30)*).

The EPA submitted that:

The Planning & Environment Act 1987 specifies that the requirement to consider the effects of the environment, including contamination, rests with the planning authority through:

- Section 12(2)(b) whereby a planning authority must consider effects the environment might have on any use or development envisaged in the scheme or amendment, and;
- Ministerial Direction No. 1 whereby a planning authority must satisfy themselves that the environmental conditions of the land are, or will be, suitable to accommodate any use allowed under the proposed zoning.

Further, in accordance with Ministerial Direction No. 19 the EPA's role was to "*ensure that the form of environmental assessment is proportionate to the level of risk*" and that advice from the EPA "*... is intended to assist the planning authority to arrive at that position, not dictate it*".

In relation to the Amendment as exhibited, the EPA submitted that in its "*opinion that the potential human health risks from potential contamination and landfill gas as a result of the Amendment have been overlooked*" and expressed concern with the rezoning of two sites including the:

<sup>6</sup> Submissions 4, 5, 6, 9, 10, 12, 13, 14, 15, 16, 17, 18, 20 and 22 expressed support for rezoning of bushland reserves .

- closed landfill at 531 Hobbs Road, Bullengarook (see Figure 2 below), proposed for rezoning from PUZ6 to PCRZ
- shooting range at Bald Hill Reserve, Kyneton (Figure 3 below), proposed for rezoning from PPRZ to PCRZ.

Issues included:

- the proposed rezoning has not adequately addressed site contamination risk from previous or current land uses
- the existing EAO does not adequately address the contamination risk by itself
- additional controls are requested to both sites to have an assessment of landfill gas (Hobbs Road) or contamination risks undertaken prior to the use or development of any intrusive structures or public open space.

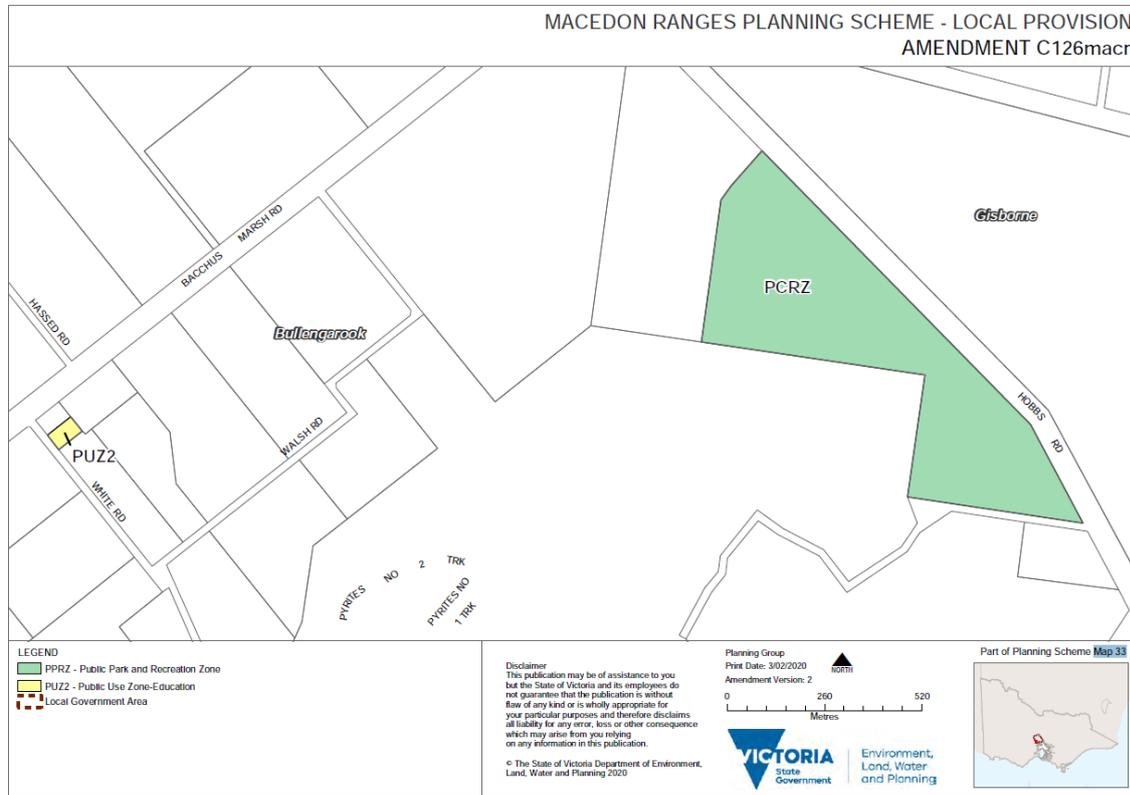
Whilst not objecting to the rezoning, EPA submitted that the risks posed by the former operation of a landfill at 531 Hobbs Road, Bullengarook and the potential risk of harm to the environment and human health have not been considered and identified the following specific issues:

- use or development near landfills require specific consideration due to the potential for landfill gas risk as well as contamination of land and groundwater which can be present for many years after their closure
- regarding development on closed landfills, EPA Publication 1642, *Assessing planning proposals within the buffer of a landfill*, 2017 states that there are multiple potential impacts to assess and to contact EPA for site specific advice
- EPA is aware that the closed landfill is currently experiencing exceedances of landfill gas which may require additional measures to maintain emissions within appropriate levels
- it is noted that under the proposed zone there is potential for uses and structures to be established which are sensitive to landfill gas and contamination without proper assessment of the risk to human health, for example informal outdoor recreation, caravan park, caretakers house and open sports ground which do not require a planning permit under the PCRZ provided these uses are conducted by the public land manager
- in preparing an amendment for potentially contaminated land proposed to be used for public open space, Ministerial Direction No. 1 requires that Council has satisfied itself that the environmental conditions are or will be suitable for that use
- landfills have a high potential for contamination according to PPN30 and under the proposed zone would require a site assessment to determine if an audit is warranted
- while there is an Environmental Audit Overlay (EAO) on the site this only triggers an audit for sensitive uses as defined in the Overlay<sup>7</sup> which does not include all structures or public open space uses which are sensitive to the risks associated with closed landfill, and hence there is a gap in what use and development will trigger this audit
- due to the complexities and risks posed by developing on top of a landfill site relating to contamination and landfill gas, EPA recommends that the appropriate

<sup>7</sup> Namely, residential use, child care centre, pre-school centre or primary school

level of assessment for public open space or any structure is an environmental audit, in accordance with the *Environment Protection Act 1970*, to determine the suitability of the land for these uses.

**Figure 2** 531 Hobbs Road, Bullengarook – proposed rezoning from PUZ6 to PCRZ (Planning Scheme Map 33)

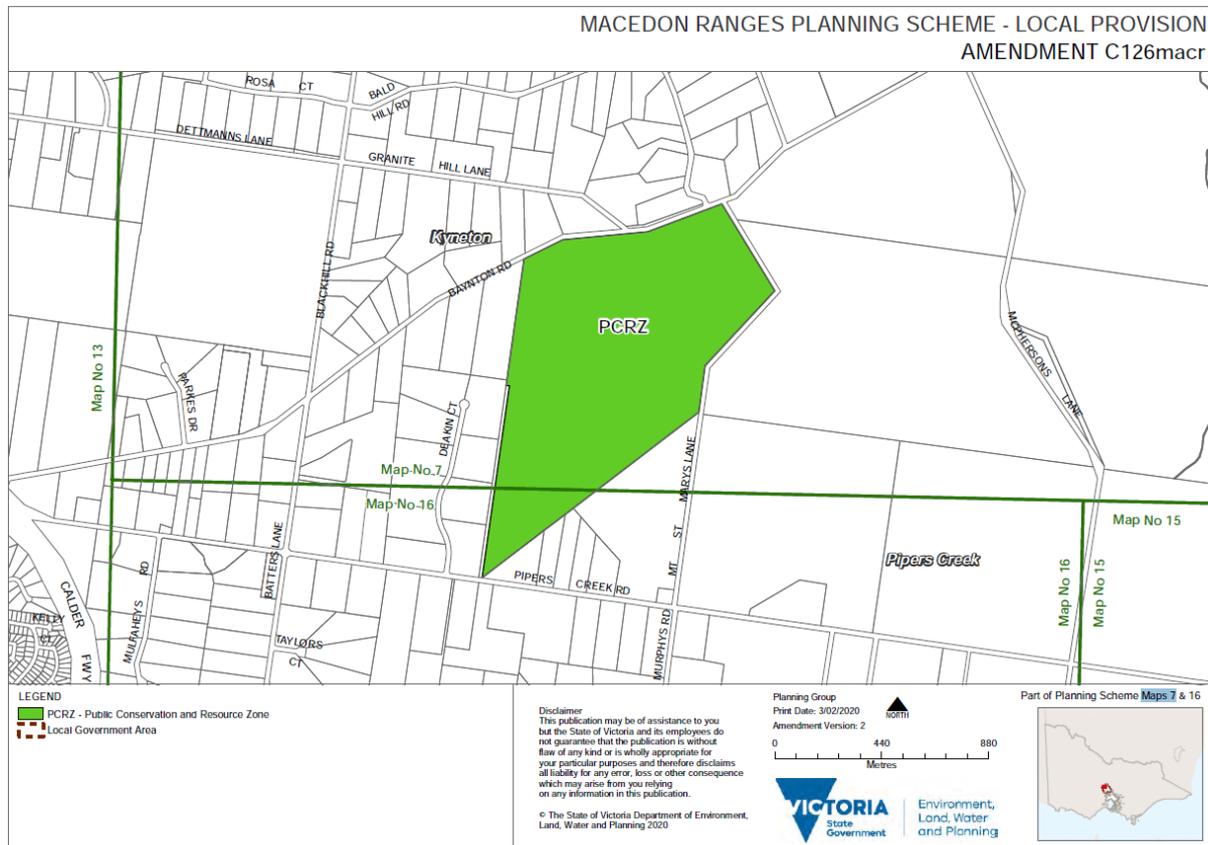


Source: Planning Maps as exhibited

In relation to shooting range at Bald Hill Reserve, Kyneton the EPA identified similar risks *“in that there is potential for public open space uses to be established which are sensitive to contamination of the site without proper assessment of the risk to human health”*. The site has high potential for contamination according to PPN30, and an environmental site assessment would be required to determine if an audit is warranted.

The EPA did not object to rezoning the site but expressed concern that Council had not adequately considered the risks by the former and existing use of the site. It noted that the Environmental Management Plan for Bald Hill Reserve also appears to have overlooked the potential for human health risks. As with the site at 531 Hobbs Road, EPA recommended that to determine the suitability of the land for public open space an environmental audit would be needed.

**Figure 3** 281 Pipers Creek Road, Kyneton (Bald Hill Reserve) – proposed rezoning from PPRZ to PCRZ (Planning Scheme Map 7 and 16)



Source: Planning Maps as exhibited

The EPA clarified that it was not seeking to change the use of the land but provided recommendations to ensure that suitable planning controls are in place to require “an assessment of landfill gas (Bullengarook only) and contamination risk, ... prior to the use or development of any intrusive structures or public open space”. EPA agreed with Council that there was no existing control to directly address the types of use and development in relation to open space and contamination risk, and supported Council in considering an alternative controls to ensure that the requirement for an audit and any associated conditions is captured for public open space uses.

EPA recommended that the Amendment should be revised or “it may be appropriate to remove these sites ... and address these matters as part of a separate amendment”.

In response to the issues raised by the EPA Council submitted that:

- the Amendment complied with the sensitive uses test required by the Ministerial Direction No. 1 – Potentially Contaminated Land as both sites were covered by an Environmental Audit Overlay
- it considered there was no existing control within the PPF to directly address other types of use and developments in relation to public open space and contamination risk
- if the rezoning did not proceed the sites would continue to operate as bushland reserves regardless and continue to be managed in line with the Environmental Management Plans for each site

- Council is seeking direction on an appropriate planning control
- any additional controls for the two sites would be beyond the scope of Amendment C126macr.

Council considered that rezoning the sites to PCRZ was suitable as the purpose would “*better reflect the bushland reserves purpose and the rezoning would not permit anything further than what could already be approved*” and considered there would be no change to the risk from land contamination as a result of the proposed rezoning.

Council acknowledged EPA’s concern that the EOA would not adequately assess risk to public open space uses as it would only address contamination for defined sensitive uses. Council also recognised the EPA’s “*expertise on these matters and accepts that the management of risks associated with new uses and contaminated land as a high priority*”.

### **(iii) Discussion**

The Panel notes the significant community support for rezoning Council’s bushland reserves to PCRZ and that the EPA did not object to the rezoning.

The Panel considers that a key question is not whether the proposed rezoning is appropriate but whether adequate investigation has been undertaken to ensure that the proposed rezoning adequately addresses site contamination risk at Hobbs Road Bushland Reserve and Bald Hill Reserve.

Council has submitted that the purpose of the rezoning is to apply the most appropriate zone to its bushland reserves, and that the proposed change would not permit anything further than what could already be approved. The EPA identified a gap in the planning controls which may result in use or development of the site being undertaken without completion of an environmental site assessment or audit, and consequently the proposed planning controls may not be proportionate to the potential risk.

The Panel considers that there is potential contamination risk at the two sites of concern and that the proposed Amendment has not adequately considered environmental risk. The Panel does not agree with Council that any risk from land contamination would not alter as a result of the proposed rezoning. It considers that the PCRZ introduces the potential for new uses and that any rezoning of the site should consider this.

While the proposed rezoning may be appropriate, the bottom line is that Council has not undertaken adequate background work to understand the risk of the proposed change to the zone.

On this basis the Panel considers the proposed rezoning to be premature and that further work is required to determine potential for risk associated with rezoning, and to guide selection of land use planning tools and management options, which as identified by Council may sit outside of the planning system.

In response to Council’s submission that it is “*seeking direction on an appropriate planning control*” the Panel advises that its role is to consider whether the proposed Amendment is appropriate but not to suggest an alternative planning controls for the site. This work sits firmly with Council, with guidance from the EPA, to investigate options and determine the most appropriate controls that meets planning objectives, policy and guidelines.

A number of potential planning tools were discussed at the Hearing, however the preferred approach will need to be determined following further work by Council and the Panel chooses not to comment on these.

**(iv) Conclusions and recommendation**

The Panel concludes:

There is potential site contamination risk from previous or current land uses at 531 Hobbs Road, Bullengarook and Bald Hill Reserve, Kyneton and that the proposed Amendment has not adequately considered environmental risk.

It is premature to rezone the land at 531 Hobbs Road, Bullengarook and Bald Hill Reserve, Kyneton to PCRZ, and further work should be undertaken by Council with advice from the EPA to ensure that any proposed changes to planning controls have adequately considered site contamination risk from previous or current land uses.

The Panel recommends:

- 2. Abandon rezoning of 531 Hobbs Road, Bullengarook and Bald Hill Reserve, Kyneton pending further work to consider site contamination risk from previous or current land uses with advice from the EPA.**

### **3.3 39 High Street, Kyneton – Heritage Overlay 89**

**(i) The issue**

The issue is whether extension of the curtilage of HO89 is appropriate at 39 High Street, Kyneton.

**(ii) Submissions**

Council submitted that it intended to extend application of HO89 to the whole parcel of land at 39 High Street, Kyneton to align the overlay curtilage with title boundaries (Figure 4). Council stated that the heritage 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.

In justifying this proposal, Council submitted that:

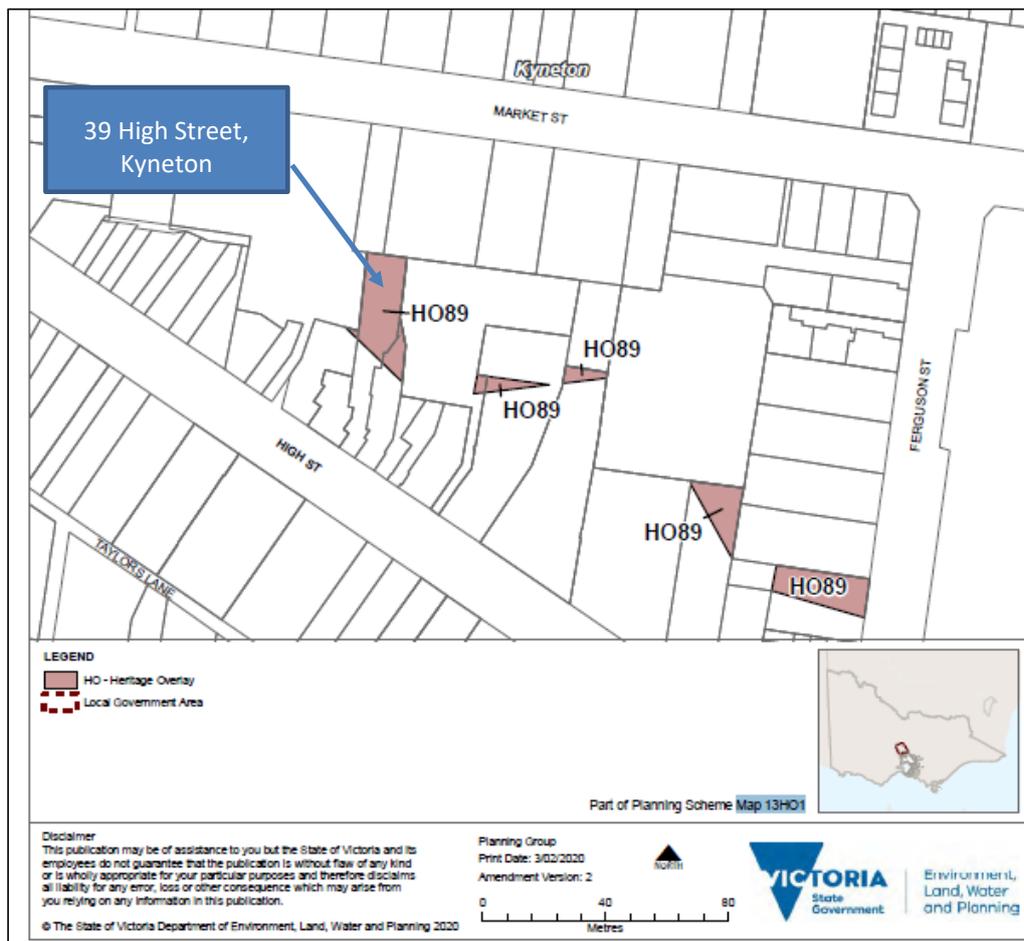
- when mapping was translated to the new format planning scheme, the Heritage Overlay polygon strayed from the rear boundary of a number of allotments, including 39 High Street, Kyneton
- Planning Practice Note 1: Applying the Heritage Overlay (PPN01) provided guidance on application of overlay boundaries and the need to include a curtilage (land surrounding a heritage item), stating that "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)"<sup>8</sup>

---

<sup>8</sup> Planning Practice Note 1: Applying the Heritage Overlay, page 5

- extension of the HO89 at 39 High Street, Kyneton was intended to ‘ensure holistic consideration’ of the site which abuts a heritage precinct, and ensure proper and orderly planning to the High Street Conservation Area as described in the *Kyneton Conservation Heritage Study 1990*
- it was not arguing that heritage significance of the place has changed, but that the proposed amendment would result in proper application of the Heritage Overlay.

**Figure 4** 39 High Street, Kyneton – proposed extension of Heritage Overlay (Planning Scheme Map 13)



Source: Planning Maps as exhibited

Mr Wilson (submission 21) submitted that extension of the overlay was unsubstantiated, provided “*no beneficial outcome whatsoever to any heritage, restoration or related objective*” and was not supported by the existing Kyneton Heritage Conservation Study 1990 which referred to the High Street façade streetscape.

He submitted that:

- Council had not undertaken any contemporary heritage study and there was no evidence to justify the proposal
- the rear of the property was not visible from surrounding streets and contained no contributory items or aspects
- the curtilage, as drawn, failed to properly identify property boundaries
- Council’s process was unsatisfactory in that it had not involved site inspection or survey validation or consultation with the affected landholder

- the proposal was inconsistent with the objectives and principles of planning, did not satisfy any of the criteria used to assess the heritage value of a place and was not consistent with the purpose of the Amendment which was intended to correct errors and anomalies.

Mr Wilson referenced Planning Practice Note 1 and commented that Council had disregarded sections including:

... there will be occasions where the curtilage and the Heritage Overlay polygon should be reduced in size where the land is of no significance. Reducing the curtilage and the polygon will have the potential benefit of lessening the number of planning permits that are required with advantages to both the landowner and the responsible authority.

Mr Wilson drew the Panels attention to the findings of the 2017 report from the Victorian Auditor-General's Office, *Managing Victoria's Planning System for Land Use and Development* which concluded that improvements to the planning system could be achieved through a move away from a 'controls-based approach' towards an "outcomes-based consideration of all relevant, potentially conflicting, risk factors and impacts".

Disbenefits of the proposal as submitted Mr Wilson included potential reduced aggregated land value, restrictions on proposed development which would benefit the visitor economy, additional and onerous obligations on development applicants including increased costs associated with consultant reports and development and "increased negative sentiment on the part of potential buyers given Council's reputation for being difficult and problematic in relation to development matters".

In response to submissions, Council maintained that the proposed Amendment aligns with Planning Practice Note 1 and falls within the scope of an errors, anomalies and minor changes amendment. It submitted that while "no new heritage study to support or justify the extension of HO89" had been prepared that the change represented an administrative improvement that would not result in onerous application requirements.

### (iii) Discussion

The Panel notes Council's submission that the local planning policy includes an objective to protect and enhance important heritage features and values for residents, visitors and future generations, and that the proposal intends to "ensure the correct application of the HO applies to properties within Kyneton (Clause 21.08-1 Heritage conservation)". Clause 21.08-1 also includes specific implementation to "apply the Heritage Overlay to sites and places of heritage significance".

The Panel has considered guidance in the Practitioner's Guide which states that "zone boundary should align with title boundaries"<sup>9</sup> and notes that it does not provide similar guidance for overlays. In relation to application of a heritage overlay, it states that a heritage place should be included in an overlay if "identified in a local heritage study, provided the significance of the place can be shown to justify the application of the overlay"<sup>10</sup>.

<sup>9</sup> A Practitioner's Guide to Victorian Planning Schemes, page 14

<sup>10</sup> A Practitioner's Guide to Victorian Planning Schemes, page 28

Review of the *Kyneton Conservation Heritage Study 1990* has shown that the study does not attribute any specific heritage values to the property but identifies that it is within the High Street Conservation Area.

The Panel observes that the proposed overlay curtilage is not a minor extension to the overlay as it currently applied to the property, as it is an unusually deep block and extension of the overlay to the rear boundary would extend well beyond the identified heritage precinct within the Kyneton Conservation Heritage Study.

The Panel considers that what Council has proposed and justified as an administrative correction is in fact a significant change that is not underpinned by evidence. The Panel also gives weight to the Planning Practice Note 1 guidance that *“that the Heritage Overlay polygon should be reduced in size where the land is of no significance”* as the proposed change would place additional obligations and cost on development applications with no obvious benefit relating to protection of heritage values of the precinct.

**(iv) Conclusions and recommendation**

The Panel concludes:

Proposed extension of the curtilage of HO89 at 39 High Street has not been adequately justified on the basis of heritage values and significance.

The findings of this Panel may have implications for other proposed extensions of the Heritage Overlay which form part of this Amendment and Council may wish to review prior to finalising the Amendment.

The Panel recommends:

- 3. Abandon extension of the Heritage Overlay (HO89) at 39 High Street, Kyneton, pending further work to determine heritage significance and appropriate extent of the overlay.**

### **3.4 Riddells Creek Structure Plan and Amendment C100**

#### **(i) The issues**

The issue is whether it is appropriate to change the Riddells Creek Structure Plan inset map at Clause 21.13-5 (Riddells Creek), consistent with the approved Amendment C100macr.

#### **(ii) Submissions**

Council submitted that the Amendment proposed to correct the Riddells Creek Strategic Framework Plan in line with the approved Amendment C100.

Council provided the Panel with a copy of the letter from the Minister for Planning which adopted Amendment C100 with changes, including removal of the Urban Growth Zone south of the railway line and associated changes to the Municipal Strategic Statement. The Riddells Creek Strategic Framework Plan at Clause 21.13-5 (Riddells Creek) was changed by the Minister, however the enlarged inset map was not changed and still referenced the area as 'Priority Residential Development Precinct' rather than 'Future Investigation Area'.

Mr Bick (submission 2) submitted that the Minister's decision was not consistent with Council's adopted plan and the Panel report for Amendment C100. He considered that it was not appropriate to remove the priority status of the land south of the railway line as this was needed to comply with the State government's requirement to plan for 15 years residential land supply. He submitted that regardless of the need for further investigation that this priority status should be maintained.

Mr Bick raised issues relating to the need for integrated development across the township to ensure cost efficient and coordinated planning and provision of infrastructure and adequate consideration of bushfire risk. He argued the southern area should be part of any consideration and planning for town growth.

Mr Bick disagreed with Council that urban growth in Riddells Creek would be within the settlement boundary on the basis that there are already future plans for development that would see the boundary expanded.

Submitter 11 argued that the proposed change is inconsistent with how land is designated across other parts of the Municipal Strategic Statement and that as the area south of the railway line is inside the town boundary it should be a Priority Residential Area not a Future Investigation Area (which sits outside of growth boundaries).

#### **(iii) Discussion and conclusion**

The Minister approved Amendment C100 with changes, including designation of the land south of the railway land as 'Future Investigation Area'. This change is reflected in the Strategic Framework Map at Clause 21.13-5 but was not made to the associated inset map.

The matter of designation of the area south of the railway line as an immediate priority development area for Riddells Creek was explored through Amendment C100, and the Panel does not consider that the Amendment is an appropriate vehicle to reinterrogate the issue.

Other submitter issues may be better addressed through Council's further work program, which the Panel notes includes amongst other things (Clause 21.13-5 Riddells Creek):

Investigate preparation of a development contributions plan and application of the Development Contributions Plan Overlay to the township, as appropriate.

Investigate the suitability of the land located south of the railway as a potential southern priority development area. Consideration should be given to the location and relationship with the train station and existing town centre.

Investigate planning scheme measures to mitigate bushfire risk in Riddells Creek, especially in the Low Density Residential Zone to the north, north-west and west of the township.

The Panel notes submissions that are concerned that the approved Structure Plan at Clause 21.13-5 differs from the Riddells Creek Structure Plan (2013) adopted by Council and included as a Reference Document in the Planning Scheme. While it is not essential that background or reference documents are updated as they do not hold any weight in decision making, updating these documents to be consistent with the Planning Scheme or adding a notation can help to clarify any differences for users of the Planning Scheme.

The Panel concludes:

It is appropriate to amend the Riddells Creek Structure Plan inset map in Clause 21.13-5 (Riddells Creek), consistent with the approved Amendment C100macr.

### **3.5 Malmsbury Common proposed laneway closure**

#### **(i) The issue**

The issue is whether the rezoning of Malmsbury Common has an associated road closure and if so whether the correct procedures have been followed.

#### **(ii) Submissions**

Council submitted that:

- there is no proposed closure of this road reserve
- it is unable to restrict public access to road reserves without going through a road discontinuance process as outlined in Council's Road Discontinuance Policy
- ongoing management of the road is a separate matter and process from the Amendment.

While Council advised that it was intending to fence off the Malmsbury Common land north of the Coliban River at 96 Mollison Street, Malmsbury from traffic to protect the site, there is no proposed road closure as part of this Amendment and access to private land will still be possible. Submitters have been informed of this.

Two submissions<sup>11</sup> were received regarding the proposed road closure associated with the rezoning of the Malmsbury Common which raised issues relating to:

- adverse impact of proposed road closure on adjoining property owner access and bushfire survival plans
- lack of due process by Council for proposed road closure.

---

<sup>11</sup> Submissions 26 and 27

Council confirmed in its Part B submission that there was no proposed road closure and there would be no changes to access private property along the unmade road reserve as a result of Amendment C126macr.

**(iii) Discussion and conclusion**

The Panel acknowledges that Council has continued discussions with submitters following exhibition to confirm that access to private land would not be impacted, and notes that no submissions were made at the Hearing.

The Panel is comfortable that any proposed road closures or changes to roads are not related to or influenced by proposed rezoning of the Malmsbury Common.

The Panel concludes:

There are no planning matters to be resolved associated with the proposed rezoning of Malmsbury Common and associated road closure as there is no proposed road closure.

## Appendix A Land affected by the Amendment

### Bullengarook

- Part of Lot 1 on TP339680, 705 Bacchus Marsh Road, Bullengarook
- Lot 1 on TP228666, 531 Hobbs Road, Bullengarook

### Fern Hill

- Part of Lot 1 on TP567294, Rippers Lane, Fern Hill
- Part of Lot 1 on TP405790, Rippers Lane, Fern Hill
- Part of Lot 1 on TP58189, Rippers Lane, Fern Hill

### Gisborne

- Lot 4 on PS402075, 51 Aitken Street, Gisborne
- Lot RES on LP111376, 198 Mount Gisborne Road, Gisborne

### Kyneton

- Lot 1 on TP216489, 67 Baynton Street, Kyneton.
- Land along High Street generally between Ferguson Street and Mollison Street, Kyneton.
- Lot 6 on LP14390, 1 Ferguson Street, Kyneton
- Part of Lot 2 on LP212562, 120-124 Mollison Street, Kyneton
- Part of Lot 1 on LP56859, 130-132 Mollison Street, Kyneton
- Part of Lot 3 on LP56859, 134 Mollison Street, Kyneton
- Part of Lot 4 on LP56859, 136 Mollison Street, Kyneton
- Part of Lot 5 on LP56859, 138 Mollison Street, Kyneton
- Lot 1 on TP396955, 178 Mollison Street, Kyneton
- Lot 1 on TP617751, 174 - 176 Mollison Street, Kyneton
- Lot 1 on TP224233 and Lot 3 on TP745680, 281 Pipers Creek Road, Kyneton
- Lot RES1 on PS645159, Youngs Road, Kyneton

### Macedon

- Plan CP160289, 37 Margaret Street, Macedon

### Malmsbury

- Part of the road reserve, Chisholm Avenue, Malmsbury
- Plan CP107942, 92 Mollison Street, Malmsbury
- Allot. 7, Sec. B & CA 1, Sec. C, Township of Malmsbury, 96 Mollison Street, Malmsbury

### Monegetta

- Land generally within 2220 metres of the former Monegetta piggery site at 43 Chintin Road, Monegetta

### Mount Macedon

- Part of Lot 1 on TP919785, 6-8 Clarke Street, Mount Macedon
- Part of Plan PC372104, 10 Clarke Street, Mount Macedon
- Lot 1 on TP442741, 15 Salisbury Road, Mount Macedon

### **New Gisborne**

- Lot 1 on TP169619, 18 Shannons Road, New Gisborne
- Lot 1 on PS348543, Allot. 62, Sec. 34, Parish of Gisborne, Lot 1 TP123699 and Lot 1 on TP124615, Station Road, New Gisborne

### **Riddells Creek**

- Plan CP166908, 1 Bolithos Road and part of the road reserve of Bolithos Road, Riddells Creek
- Part of Lot CM1 on PS733771
- Part of Lot 4 on PS733771, Unit 4/27 Mahoneys Road, Riddells Creek
- Part of Lot 3 on PS733782, Unit 3/29 Mahoneys Road, Riddells Creek
- Part of Lot 2 on LP27936, 31 Mahoneys Road, Riddells Creek
- Sandy Creek Bushland Reserve and part of the road reserve, Sandy Creek Road, Riddells Creek
- Part of Lot 1 on LP27936, 82 Main Road, Riddells Creek
- Part of Lot 1 on TP707988, 84 Main Road, Riddells Creek

### **Woodend**

- Unmade road reserve between Bowen Street and Ladye Place, Woodend
- Part of Allot. 15, Sec. 23, Township of Woodend, 142 High Street, Woodend
- Part of Allotment 2005, Township of Woodend, 14 Nicholson Street, Woodend
- Allot. 20, Sec. 42, Township of Woodend, 24 Urquhart Street, Woodend
- Allot. 19, Sec. 42, Township of Woodend, 26 Urquhart Street, Woodend

## Appendix B Submitters to the Amendment

No.	Submitter
1	Environment Protection Authority
2	Randall Bick
3	David Beanham and P Kaye
4	Helen Evans
5	Ann O'Neill
6	Friends of Mount Gisborne Nature Reserve
7	Paula Wood and Nicholas Hughes
8	John Langdon
9	Jenny Strang
10	Jackson O'Neill - President of Gisborne Landcare
11	Eris O'Donnell
12	Helen Kalajdzic
13	Belynda Simpson
14	John Phair
15	Stanley Park Committee of Management
16	Sally Joyce
17	Rose Harney
18	Amanda Gauci
19	Victorian School Building Authority
20	Jayne Guilmartin
21	Brian Wilson
22	Lachlan Milne
23	Hendrik Hagreis
24	DELWP - (Excluding Planning Group)
25	Phillipa Butler
26	Marcus Bruni and Sharon Velo
27	Robert Hooppell
28	Country Fire Authority - North West Region

## Appendix C Proposed changes and justification

Proposed change number	Proposed change and property	Council justification
<b>Zone Changes</b>		
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,	Coliban Water has requested that this land be rezoned from RCZ1 to PUZ1. The

	Rippers Lane, Fern Hill from Rural Conservation Zone, Schedule 1 (RCZ1) to PUZ1 as shown on Planning Scheme Map Nos. 14 and 21.	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 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.	The land is used for a Country Fire Authority (CFA) fire station and by the State Emergency 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 Zone 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	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

	Neighbourhood Residential Zone, Schedule 4 (NRZ4) to PPRZ as shown on Planning Scheme Map No. 24.	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 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.
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.	
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 Chisolm 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.
<b>Overlay Changes</b>		
24	Delete Schedule 2 to the Environmental Significance Overlay (ESO2 – Monegeetta Piggery) from land at Lot 4 on LP98345, 43 Chintin Road, Monegeetta 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 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.
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	Prior to the new format planning scheme, the boundary of HO89 aligned with property boundaries. When this mapping was translated to the new

	<p>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.</p>	<p>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.</p>
27	<p>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.</p>	<p>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.</p>
28	<p>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.</p>	<p>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</p>

		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.
<b>Ordinance Changes</b>		
31	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.  Three changes are to occur as follows:  Zone change:  The Riddells Creek Strategic Framework Map and Inset Map require revision in order to accord with the zone boundary changes proposed for multiple properties	Under Amendment C100macr 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

	along Mahoneys Road, 82 and 84 Main Road and 1 Bolithos Road, Riddells Creek (see changes 1 and 5).	Framework Plan Map.
32	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.	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.
33	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.	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.
34	Delete Schedule 2 to Clause 42.01.	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.

# Appendix D Plan of Consolidation – 45 – 51 Aitken Street, Gisborne

PLAN OF CONSOLIDATION		EDITION 1		PC 375471D	
<b>Location of Land</b> Parish: GISBORNE Township: GISBORNE Section: 6 Crown Allotment: 17, 18, 19 (PT) & 20 (PT) Crown Portion: Title Reference: Volume 8787 Folio 491 Volume 8787 Folio 492, Volume 11362 Folio 318 Volume 11362 Folio 319 Last Plan Reference: Lots 2 & 3 LP 84787, Lots 4 & 5 PS 402075C Postal Address: 45-51 AITKEN STREET (at time of subdivision) GISBORNE, 3437 MGA94 Co-ordinates E 287100 (of approx. centre of land N 5848180 ZONE 55 in plan)			Council Name: Macedon Ranges Shire Council Council Reference Number: CRT/2019/88 Planning Permit Reference: PLN/2019/316 SPEAR Reference Number: S128953J <b>Certification</b> This plan is certified under section 11 (7) of the Subdivision Act 1988 Date of original certification under section 6: 01/11/2019 <b>Statement of Compliance</b> This is a statement of compliance issued under section 21 of the Subdivision Act 1988 Public Open Space A requirement for public open space under section 18 of the Subdivision Act 1988 has not been made Digitally signed by: Maria Nunez for Macedon Ranges Shire Council on 29/11/2019		
<b>Easement Information</b>				<b>Notations</b>	
<b>Legend:</b> A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)				<b>Depth Limitation - NIL</b> <b>Other Purpose of Plan</b> TO REMOVE PORTION OF EASEMENT E-1 FOR SEWERAGE PURPOSES ON PS442075C VIDE MACEDON RANGES SHIRE COUNCIL PLANNING PERMIT No. PLN/2019/316	
Easement Reference	Purpose	Width (Metres)	Origin	Land benefited/in Favour Of	
E-1	DRAINAGE & SEWERAGE	1.83	LP 84787	LOTS ON LP 84787	
E-1	DRAINAGE & SEWERAGE	1.83	THIS PLAN	WESTERN REGION WATER CORPORATION	
E-2	SEWERAGE	SEE PLAN	PS 402075C	WESTERN WATER	
E-3	SEWERAGE	SEE PLAN	THIS PLAN	WESTERN REGION WATER CORPORATION	
				<b>Survey</b> This plan is not based on survey	
<p>The diagram shows a plot of 6674m² bounded by Hamilton Street to the north and Aitken Street to the west. The plot is divided into several sections with various easements (E-1, E-2, E-3) and dimensions. A scale bar indicates 1:600.</p>					
<b>SCALE</b> 1:600 0 8 16 32 40 METRES		<b>File ref/Version:</b> PC 375471D VER 8 - LV Regs		<b>Original sheet size A3</b>	
<b>L1, 4 AMSTERDAM STREET</b> RICHMOND VIC 3121 TEL: (03) 9572 8750 EMAIL: info@samgroup.com		Digitally signed by: Malcolm McCoy, Licensed Surveyor, Surveyor's Plan Version (B), 29/11/2019, SPEAR Ref: S128953J		<b>Sheet 1 of 1</b> <b>PLAN REGISTERED</b> TIME: 10:47 am DATE: 19/12/2019 Y. Cheung Assistant Registrar of Titles	

Amended by: Malcolm McCoy, Licensed Surveyor 18/12/2019.

## Appendix E Document list

No.	Date	Description	Provided by
1	16/11/2020	Council Part A submission	Council
2	20/11/2020	Council Part B submission	Council
3	20/11/2020	Environment Protection Authority submission	EPA
4	25/11/2020	Response to Council comments in Part B	Mr Bick
5	25/11/2020	Presentation and visuals	Mr Wilson
6	25/11/2020	Amendment C100 letter of approval (30/5/2017)	Council
7	25/11/2020	Plan of Consolidation – 51 Aitken Street	Council
8	25/11/2020	Title Plan – 39 High Street, Kyneton	Council
9	25/11/2020	Ordinary Council Meeting Agenda, Macedon Ranges Shire (23/3/2016)	Council
10	25/11/2020	Ordinary Council Meeting Agenda, Macedon Ranges Shire (22/6/2016)	Council
11	25/11/2020	Presentation notes	Ms Guilmartin