



Macedon Ranges Planning Scheme Amendment C145macr: Environmental Significance Overlay Schedule 4

Planning Panels Submission PART B

Prepared on behalf of Macedon Ranges Shire Council

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1. Introduction

This submission is made on behalf of Macedon Ranges Shire Council in relation planning scheme amendment C145macr to the Macedon Ranges Planning Scheme.

The proposed amendment applies to all land currently affected by Schedule 4 to the Environmental Significance Overlay (ESO4). The ESO4 applies to the Eppalock Special Water Supply Catchment and there are no proposed changes to the area affected by the ESO4.

This amendment has been prepared by the Macedon Ranges Shire Council (Council), which is the planning authority for this amendment.

The amendment has been prepared at the request of Coliban Water Corporation.

The amendment proposes to:

- Replace the ESO4 with a new ESO4 to modify the number of matters that require planning permission. The changes proposed by the amendment seek to ensure that the need for a planning permit is required where there is greater potential to impact the health of the catchment. The net result of this change is that there will be less circumstances where a planning permit is needed.
- Modify referral requirements to require all planning permit applications made pursuant to ESO4 are referred to the relevant water authority. Currently, applications are only referred to the relevant water authority (as a Determining Authority) in specific circumstances.
- Include the *Upper Coliban Integrated Catchment Management Plan, North Central Catchment Management Authority and Coliban Region Water Corporation, 2019* as a background document in the Planning Scheme, to support the revised ESO4.

Public consultation on the proposed amendment commenced on 13 October 2022 and concluded on 24 November 2022. A total of 16 submissions were received.

2. Overview of the proposed amendment

This section provides an overview of the changes to the planning scheme that are proposed by Amendment C145.

2.1 The Purpose of the Environmental Significance Overlay

The primary changes proposed by the amendment revolve around the application of the Environmental Significance Overlay. Given this, it is reasonable to consider the purpose of the overlay, which is:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To identify areas where the development of land may be affected by environmental constraints.*
- *To ensure that development is compatible with identified environmental values.*

2.2 Proposed changes to Schedule 4 to the Environmental Significance Overlay

The following provides a summary of the changes proposed by the new Schedule 4 to the Environmental Significance Overlay.

Statement of Environmental Significance

The current Statement of Environmental Significance is:

Lake Eppalock is a major water storage and recreational facility located within the Campaspe River catchment. It is a major source of water for irrigation, stock and domestic and urban water supplies for towns within the municipality.

The proposed Statement of Environmental Significance, now reads:

The cumulative impacts of development in declared special water supply catchments has the potential to gradually diminish the quality and quantity of water in the catchments. Diminished water quality also increases the risk to human health and the health of all communities that rely on water from the catchment.

The protection, restoration and enhancement of all waterways (as defined by section 3 of the Water Act 1989) within the catchment is an essential component in ensuring the continued availability of water quantity and quality, while also protecting and restoring the health of the natural resources and environmental systems within the catchment.

The management of land in the catchment must:

- *Focus on the long-term protection of the natural resources and environmental systems.*
- *Encourage the implementation of measures to minimise detrimental impacts on the quality and quantity of water within a declared special water supply catchment.*

This new Statement of Environmental Significance provides a clearer understanding as to the rationale for the overlay, than the existing statement.

Environmental objective to be achieved

The current environmental objective to be achieved is:

To ensure the protection and maintenance of water quality and water yield within the Eppalock Water Supply Catchment Area as listed under Section 5 of the Catchment and Land Protection Act 1994.

The proposed Environmental objective to be achieved, now reads:

To ensure development protects, restores and enhances natural resources and environmental systems and minimises detrimental impacts on the quality and quantity of water in the catchment.

The new environmental objective to be achieved provides a clear objective, rather than reciting an obligation.

Reasons that a planning permit is needed

Permit triggers now focus on the need to obtain a planning permit for works that are either substantial or within proximity of a waterway. With respect to the removal, destruction or of lopping vegetation, this is now (under this planning provision) only relevant to native vegetation within 30m of a waterway.

Application Requirements

Changes have been made to the application requires section of the ESO4. The new application requirements now include matters that were previously identified as decision guidelines, now listed as information that should be provided as part of the application to Council.

The rationale for this change is to more clearly identify the information that is needed for Council and referral authorities to undertake and complete and proper assessment of the application.

2.3 Proposed changes to the referral of applications

The role of Water Authorities

Under the proposed amendment, water authorities will see all applications made pursuant to the ESO4 and will be a Determining Referral Authority for these applications.

This is considered to be appropriate given the obligations that the relevant water authorities have to maintain the health of the waterway and to supply drinking water to residents.

3. SUBMISSIONS

Council received sixteen (16) submissions in response to the public exhibition process. Submissions were received from a range of parties including:

- State Agencies
- Landowners
- Community Groups
- Residents
- Goulburn Murray Water
- Victorian Farmers Federation (VFF)

Four submissions (including DELWP, DoT, Goulburn Murray Water and one resident) are in support of the amendment. It is noted that following further consultation with Coliban Water, Goulburn Murray Water formally revised their original submission, which objected to the proposed amendment, in favour of supporting the amendment.

12 submissions were received objecting to the amendment.

Council sequentially numbered each submission, and this is provided at Appendix D to Part A of Council's submission. This numbering convention has been used throughout this submission.

4. Response to Key Issues

This section of the submission provides an outline of the key issues raised in the submissions, a response to these issues, and a final position from Council on each issue. The issues raised address:

- Fencing
- Vegetation Removal
- Coliban Water's role as a Determining Referral Authority
- The definition of a Waterway
- Errors in the exhibition documents

4.1 Fencing

Six of the submissions (3, 4, 6, 8, 11 & 16) objected to the inclusion of a permit trigger for permanent fencing within 10 metres of a waterway. It is noted that some submitters appeared to misinterpret the fencing permit trigger as a requirement to fence waterways, rather than a requirement to seek a planning permit if fencing was proposed within 10 meters of a waterway.

Conversely some submitters stated that the 10m fencing trigger was too close to waterways and did not offer adequate protection from stock.

Response

Coliban Water revised their position and support the removal of the fencing trigger altogether. It was noted that if included, the trigger could act to impede current riparian revegetation efforts.

It was considered that requiring a planning permit might discourage landowners from erecting fences to protect riparian areas due to the cost, time and uncertainty in obtaining planning approval. Council officers support Coliban Water's position to remove the permit trigger for fences from draft ESO4.

Council, in consultation with Coliban Water, resolved to remove the requirement to obtain a planning permit for fencing within 10m of a waterway.

On 9 March 2023, Council resolved to remove the permit trigger for fences from the proposed Schedule 4 of the Environmental Significance Overlay.

The updated version of the proposed new Schedule 4 to the Environmental Significance Overlay is provided at Attachment D of Council's Part A submission.

Position

That the post exhibition change to the proposed new Schedule 4 of the Environmental Significance Overlay, that remove the need for a planning permit for a fence is appropriate.

4.2 Vegetation Removal

Eight submissions (5, 6, 9, 10, 11, 14, 15 & 16) were concerned that the deletion of the permit trigger for vegetation removal for areas more than 30 metres from a waterway would lead to greater vegetation loss in areas not covered by Clause 52.17.

Response

Clause 52.17 'Native Vegetation' is a statewide planning provision tasked with the purpose of protecting native vegetation. Specifically, the clause seeks:

To ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation. This is achieved by applying the following three step approach in accordance with the Guidelines for the removal, destruction or lopping of native vegetation (Department of Environment, Land, Water and Planning, 2017) (the Guidelines):

1. *Avoid the removal, destruction or lopping of native vegetation.*
2. *Minimise impacts from the removal, destruction or lopping of native vegetation that cannot be avoided.*
3. *Provide an offset to compensate for the biodiversity impact if a permit is granted to remove, destroy or lop native vegetation.*

To manage the removal, destruction or lopping of native vegetation to minimise land and water degradation.

Clause 52.17 provides an appropriate balance between the protection of native vegetation and the need to support reasonable exemptions where specific circumstances allow for the removal of native vegetation without the need for a planning permit.

It is considered that Clause 52.17 is the appropriate provision to provide broad protection for native vegetation. The changes proposed to the ESO4 support additional consideration of vegetation removal in those areas where such removal is more likely to adversely impact the health of the catchment.

It is noted that the ESO4 has functionally acted as an incidental trigger for planning permits for the removal of vegetation in instances where a vegetation removal permit is exempt under Clause 52.17.

Furthermore, Council's Biodiversity Strategy (2018) suggested that ESO4 should only apply to vegetation removal that is likely to affect water quality and supply, and not in other instances (**Attachment A**, page 75).

Position

That the proposed changes to vegetation protection provided by the amended schedule 4 of the Environmental Significance Overlay are appropriate.

4.3 Coliban Water's role as a determining referral authority

Five submissions (2, 5, 10, 12 & 15) raised concerns that Coliban Water's role as a determining referral authority for ESO4 may lead to negative environmental outcomes and inappropriate development.

Response

Under Clause 66.02-5 of the planning scheme, and relevant legislation including the *Catchment and Land Protection Act 1994* and the *Water Act 1989*, the relevant water authority is always a determining referral authority for Special Water Supply Catchments.

Council officers believe this designation is appropriate and in accordance with the relevant legislation. Council's role as a responsible authority under the Planning and Environment Act 1987 affords council

the ability to refuse a permit even when that permit has sustained no objections from the determining referral authority.

Position

That the no change to the intent of the proposed amendment is necessary. However, it is noted that errors in the proposed wording to the Schedule to Clause 66.04 need to be corrected. This is discussed in more detail in section 3.5 of this submission.

4.4 The definition of a Waterway

Four submissions (3, 4, 8 & 9) requested Council provide a clear definition for 'waterway', with a lack of certainty on this point forming the basis for this objection.

Response

Neither the *Planning and Environment Act 1987* nor the Macedon Ranges Planning Scheme provide a definition for a waterway. However, in the absence of a definition it is appropriate to consider the definition provided by Section 3 of the *Water Act 1989*.

Specifically, Section 3 of *The Water Act 1989*, defines a waterway as:

- a) a river, creek, stream or watercourse; or
- b) a natural channel in which water regularly flows, whether or not the flow is continuous; or
- c) a channel formed wholly or partly by the alteration or relocation of a waterway as described in paragraph (a) or (b); or
- d) a lake, lagoon, swamp or marsh, being—
 - (i) a natural collection of water (other than water collected and contained in a private dam or a natural depression on private land) into or through or out of which a current that forms the whole or part of the flow of a river, creek, stream or watercourse passes, whether or not the flow is continuous; or
 - (ii) a collection of water (other than water collected and contained in a private dam or a natural depression on private land) that the Governor in Council declares under section 4(1) to be a lake, lagoon, swamp or marsh; or
- e) land on which, as a result of works constructed on a waterway as described in paragraph (a), (b) or (c), water collects regularly, whether or not the collection is continuous; or
- f) land which is regularly covered by water from a waterway as described in paragraph (a), (b), (c), (d) or (e) but does not include any artificial channel or work which diverts water away from such a waterway; or
- g) if any land described in paragraph (f) forms part of a slope rising from the waterway to a definite lip, the land up to that lip;

In addition to this definition, the document 'Waterway Identification Guidelines 2022' (DELWP) provides further assistance to support decision-making with reference given the above definition. A copy of this document is provided at **Attachment B**.

Position

No change to the post exhibition version of the amendment is needed.

However, it is acknowledged that the delineation of waterways is significant to the implementation of the ESO4, with the need to (or not to) obtain a planning permit resting on this definition. Hence, should the Panel feel that further clarity on this matter is warranted, it is suggested that a note could be added to the ESO4 stating that 'A waterway has the same meaning as in Section 3 of the *Water Act 1989*.'

4.5 Errors in the Exhibited Documents

Three submissions (5, 10 & 15) raised issue with the exhibited documents containing errors relating to Coliban water's status as a determining referral authority and the removal of native vegetation. More specifically;

- The proposed schedule to Clause 66.04 Referral of permit applications under local provisions, incorrectly listed Coliban Water as the 'determining authority' and should have stated 'determining referral authority'.
- The document 'C145 – Amendment fact sheet' contained an error regarding vegetation removal, which exempted a permit to remove native vegetation within 30 metres of a waterway. It should have stated beyond 30 metres of a waterway.

Response

Council officers were made aware of the issue with the incorrect reference to the removal of vegetation early in the consultation period and took immediate steps to provide corrections.

With regard to Coliban Water being a 'determining authority' rather than a 'determining referral authority', Council officers were aware of this error prior to the post exhibition changes to the amendment, but this change was omitted due to an oversight.

Position

The amendment to Clause 66.04 to refer to the relevant water authorities as 'determining referral authority' is appropriate. However, it is acknowledged that there are errors in the wording of the schedule and the following changes to this area suggested.

	Exhibited Text	Proposed Text
Referral authority	Relevant water authority	Relevant water authorities
Referral authority type	Determining authority	Determining referral authority

5. Conclusion

5.1 Summary

Planning Scheme Amendment C145macr proposes to improve the current Schedule 4 to the Environmental Significance Overlay, by focusing on development and vegetation removal that are more likely to adversely impact the health of the catchment. The result of this will be that the Environmental Significance Overlay will:

- More effectively protect the health of the catchment.
- Provide clearer guidance regarding the information that should be provided with an application under this provision.
- Remove the need for planning permits for development and vegetation removal that present little to no issue to the health of the catchment.

In addition, changes to referral requirements will ensure that all planning permit applications under the ESO4 will be referred to the relevant water authorities as a determining referral authority.

5.2 Position

Having considered the submission made to the proposed planning scheme amendment C145macr, Council is of the position that there are minimal changes that need to be made to ensure that the form and function of the amendment is appropriate.

With respect to the issues raised in submissions the following table provides a summary of Council's position:

Issue	Position
Fencing	No change to the post exhibition version of the amendment to ESO4 is needed. The post exhibition version of ESO4 removed the need for a planning permit for a fence.
Vegetation Removal	No change to the amendment is needed.
Coliban Water's role as a Determining Referral Authority	The intent of the amendment remains. However, changes are needed to correct an anomaly in the schedule to clause 66.04. This change is detailed in section 3.5 of this submission.
The definition of a Waterway	No change to the amendment is needed. However, the inclusion of a note within the schedule is supported. This change is detailed in section 3.4 of this submission.
Errors in the Exhibited Documents	A change to the wording in the proposed schedule to clause 66.04 is suggested. This change is detailed in section 3.5 of this submission.