

## MACEDON RANGES PLANNING SCHEME

### AMENDMENT C157macr

#### EXPLANATORY REPORT

#### Overview

This amendment seeks to rezone 12 parcels of land located within the township of Malmesbury. The parcels are situated at 9-25 (part of), 31, 33, and 35 Mollison Street as well as part of road reserves for Ross Street and Johnson Street and an unmade road reserve to the east of the site. The amendment seeks to rezone the parcels and partial road reserves from Commercial 2 Zone (CZ2) to the Neighbourhood Residential Zone, Schedule 14 (NRZ14).

The amendment seeks to insert Schedule 14 (Mollison Street Malmesbury) to Clause 32.09 (NRZ14) within the Macedon Ranges Planning Scheme that provides new neighbourhood character objectives, a minimum subdivision area of 1,000 square metres and variations to the requirements of Clause 54 and Clause 55.

The amendment seeks to implement the recommendations from the *Macedon Ranges Small Towns Study* (Conceptz, Des Gunn Landscape Design and Arup, July 2006) to rezone commercial land (historically zoned Highway Business Zone and then Business 4 Zone) for residential uses.



Figure 1: Land affected by the Amendment - part of 9 to 25, 31, 33 and 35 Mollison Road, Malmesbury.

## **Where you may inspect this amendment**

The amendment can be inspected free of charge via the Macedon Ranges Shire Council website at <https://www.mrsc.vic.gov.au/About-Council/News/Have-Your-Say>, and during office hours at the following places:

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

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

## **Submissions**

Any person may make a submission to the planning authority about the amendment. Submissions to the amendment must be received by 5pm Wednesday 13 December 2023.

- You can lodge your submission to Council via email - [mrsc@mrsc.vic.gov.au](mailto:mrsc@mrsc.vic.gov.au)
- Post addressed to: *Strategic Planning*, Macedon Ranges Shire Council, PO Box 151, Kyneton VIC 3444, or
- In-person - at a Council customer service centre in Gisborne, Kyneton, Romsey or Woodend.

## **Panel hearing dates**

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

- Directions hearing: to commence the week of 5 February 2024.
- Panel hearing: to commence the week of 4 March 2024.

## **Details of the amendment**

### **Who is the planning authority?**

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

The amendment has been made at the request of Mr Rob Hamilton and Mr Mark Flinn.

### **Land affected by the amendment**

The amendment affects 12,959 square metres of land located within the Malmsbury township boundary and has frontages to Mollison Street, Johnson Street and a road reserve (unmade). The land is covered by the Environmental Significance Overlay 4 (ESO4 - Proclaimed Eppalock Catchment), Heritage Overlay 148 (HO148 - Malmsbury Precinct), and an Erosion Management Overlay, Schedule 1 (EMO1 - Malmsbury Township).

The amendment applies to 12 parcels of land and road reserves located at:

- Part of 9-25 Mollison Street, Malmsbury known as Crown Allotments 11, 12, 13, 14, 15 and 16, Section 22, Township of Malmsbury, Parish of Edgecombe;
- 31 Mollison Street, Malmsbury known as Crown Allotments 17, 18, 19 and 20, Section 22, Township of Malmsbury, Parish of Edgecombe;
- 33 Mollison Street, Malmsbury known as Crown Allotment 2, Section 21, Township of Malmsbury, Parish of Edgecombe; and
- 35 Mollison Street, Malmsbury known as Crown Allotment 1, Section 21, Township of Malmsbury, Parish of Edgecombe;

- Part of road reserves for Ross Street and Johnson Street and the unmade road reserve abutting the eastern boundary of 9-25 Mollison Street as shown in Figure 1.

### **What the amendment does**

The amendment proposes to:

- Rezone 12,959 square metres of land known as part of 9-25, 31, 33 and 33 Mollison Street, Malmsbury and part of the road reserves of Ross Street, Johnson Street and an unmade road from the Commercial 2 Zone (CZ2) to the Neighbourhood Residential Zone (NRZ14) as shown on Planning Scheme Map No. 5.
- Insert a new Schedule 14 (Mollison Street Malmsbury) to Clause 32.09 (NRZ14) within the Macedon Ranges Planning Scheme that introduces new neighbourhood character objectives, a minimum subdivision area of 1,000 square metres and variations to the requirements of Clause 54 and Clause 55.

### **Why is the amendment required?**

The amendment is required to rezone the remaining area of Commercial 2 Zone land within the township boundary. The proposed amendment implements recommendations from the *Macedon Ranges Small Towns Study* (Conceptz, Des Gunn Landscape Design and Arup, July 2006). Specifically, this study recommends that the strip of land zoned Highway Business Zone [rezoned to Business 4 Zone and more recently to Commercial 2 Zone] on the south side of the Kyneton entrance to the town be rezoned to the Residential 1 Zone (now General Residential Zone, Schedule 1 – GRZ1). The study also seeks to contain development within the township boundary and support low density living on the east side of Malmsbury.

The current C2Z promotes the use and development of land for offices, appropriate manufacturing and industries, bulky goods retailing, other retail uses, and associated business and commercial services. The study concludes that commercial development of this area is not likely to be required and is contrary to a rural village setting.

The study also noted that the existing HO148 will not itself secure the preferred character for Malmsbury and that new development needed to address issues associated with heritage streetscapes, built form (scale, bulk, and height), materials and colours, the rhythm of dwelling spacing, garden settings and fencing details. The proposed amendment addresses many of these issues by rezoning the land to NRZ and inserting a new Schedule 14 to the NRZ. The NRZ is suitable to apply to an area where there is no anticipated change to the predominantly single and double storey character.

The proposed amendment will not change the designation of Malmsbury as a small town as outlined in Clause 02.03-1 (Settlement) of the Macedon Ranges Planning Scheme. Further, the *Macedon Ranges Shire Settlement Strategy* (July 2011) estimated that there were theoretically 230 vacant lots in Malmsbury and may have the potential to accommodate as many as 1,200 people within the township boundary and surrounding area, but a more recent land supply figure is unknown. It is estimated that Malmsbury has a population of 905 residents within 416 dwellings (Area Code SAL21585, ABS 2021 Census). It is considered that the addition of 12 residential lots is not excessive and provides a modest increase in the amount of available residential land in Malmsbury.

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

The proposed amendment implements the following objectives of planning in Victoria under sections 4(1) and 12(1)(a) 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 proposed amendment provides for the fair, orderly and sustainable use, and development of land by rezoning a small area of land for residential purposes consistent with the *Macedon Ranges Small Towns Study* (2006) and within the township boundary and applying the NRZ14 consistent with Clause 02.03-1 Settlement.

- (b) *to provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity;*
  - The proposed amendment rezones land to NRZ14 and the new schedule supports larger residential lots and generous setbacks that, together with the garden area requirements of the NRZ and associated canopy tree planting, will assist in improving biodiversity and environmental outcomes in the area.
- (c) *to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria;*
  - The amendment rezones land to NRZ14, which will support residential development with larger lots along the main street of Malmsbury at the edge of the town. The larger lots will support increased landscaping and generous setbacks in keeping with the existing and preferred character of the area, which will secure a pleasant, efficient, and safe working, living and recreational environment for future residents and visitors to the town.
- (f) *to facilitate development in accordance with the objectives set out in paragraphs (a), (b), (c), (d) and (e);*
  - The proposed amendment facilitates residential development on 12 existing lots with the Malmsbury township boundary by rezoning the land to NRZ14.

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

#### Environmental effects

The amendment is likely to have a positive environmental, social, and economic effect and net benefit to the community. The amendment inserts a new NRZ14 with requirements that appropriately mitigate any potential negative effects associated with allowing new residential development. It is anticipated that future development in the NRZ14, together with the EMO and ESO4, will encourage improved environmental and biodiversity outcomes and enable future residential development to be sited in appropriate locations within a water catchment area. The NRZ14 also contains increased permeability controls and minimum garden area requirements that will ensure that new residential development provides a sufficient area to capture and retain water, reducing excess stormwater, and reducing the risk of potential flooding.

The proposed amendment rezones land that can be connected to reticulated sewage infrastructure, eliminating the need for septic wastewater systems and in doing so removing the possibility for effluent runoff into the water catchment. In addition, NRZ14 requires increased vegetation and site permeability that will help to reduce possible contaminants passing through the system.

The proposed amendment inserts generous street setbacks that will ensure that future residential development can accommodate additional canopy trees that assist in improving air quality and biodiversity outcomes.

Research into the historical use of the land, specifically historical mining operations concluded that the land is suitable for residential use and is not considered contaminated or potentially contaminated in accordance with *Clause 13.04-1S (Contaminated and potentially contaminated land)* and Planning Practice Note 30 (PPN30) *Potentially Contaminated Land (July 2021)*.

#### Social and Economic effects

The proposed amendment will have positive social and economic effects by providing a modest increase in residential land supply, which will potentially provide limited population growth and additional housing opportunities within the Malmsbury Township.

The proposed amendment facilitates the rezoning of land that is not required or appropriate for commercial purposes to facilitate residential development that contributes to meeting the town's future housing needs.

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

Through the application of NRZ14 the proposed amendment ensures that any future development is respectful of the preferred neighbourhood character of the area, reflecting the location of the affected

land at the eastern entrance to Malmsbury.

### **Does the amendment address relevant bushfire risk?**

Advice on addressing any relevant bushfire risk was sought from Phoenix Wildfire Management. The proposed amendment complies with the objectives and strategies of Clause 13.02-1S (Bushfire planning). The land is not within the Bushfire Management Overlay but is subject to a designated bushfire prone area. Land in a designated prone bushfire area may be subject to bushfires.

The bushfire landscape in proximity to the affected land is at a lower landscape risk where the landscape risk is from grasslands (Landscape type 1) as described in *Planning Permit Applications Bushfire Management Overlay Technical Guide* (DELWP, 2017). The landscape contains little vegetation beyond 150 metres of the site (except managed grasslands and low-threat vegetation) and the extent and type of vegetation is unlikely to result in neighbourhood-scale destruction.

The affected land is surrounded by urban development to the north, south and west. Spot fires and grassfires emanating from the wider landscape may potentially impact the land. However, grassfire would be fragmented by the urban landscape by roads and the rail line to the southwest. The major roads form a barrier to fire-spread across the northern area of Malmsbury. Potential spot fires and ember attack from large fires from Fryers Ranges may occur on high-risk days.

The proposed amendment prioritises the protection of human life over all other policy considerations by directing future development to a low-risk location on the eastern side of Malmsbury. Victoria's dominant bushfire weather usually occurs from the north-west and the south-west. Directing growth to the east of a settlement avoids the highest risk aspect.

The land has good availability of, and safe access to the centre of the town. The land abuts the main street of Malmsbury and is within 700 metres of an area assessed as having a BAL-LOW rating that could better protect human life from the effects of a potential bushfire on the edge of the settlement. No alternative locations for settlement growth have been considered as part of this amendment.

The draft NRZ14 requires a minimum subdivision area of 1,000 square metres, which is in the optimal range of between 800-1,200 square metres for larger lots at the edge of settlements as outlined in the *Design guidelines for the settlement planning at the bushfire interface* (DELWP, 2020).

A key matter for planning is ensuring adequate separation distances between dwellings and any potential bushfire hazard to prevent a bushfire front from continuing into the settlement. Advice from Phoenix Wildfire Management is that the land is surrounded by vegetation classified as managed grasslands and low-threat vegetation, the slope of the land is upslope/flat, no separation distances are required and any future development on the land will not be exposed to radiant heat above 12.5 kilowatts per square.

On balance, the proposed amendment strengthens resilience of Malmsbury to bushfire and prioritises the protection of human life.

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

The proposed amendment complies with the requirements of the *Ministerial Direction – The Form and Content of Planning Schemes* under section 7(5) of the Act by using the correct template for the proposed new Schedule 14 to Clause 32.09.

The proposed amendment also complies with *Minister's Direction No. 11 Strategic Assessment of Amendments* under section 12(2)(a) of the P&E Act as the amendment addresses several relevant strategic considerations as outlined in this explanatory report.

No other ministerial direction applies to the amendment, except for *Ministerial Direction No. 15 – The Planning Scheme Amendment Process*. The proposed panel hearing dates have been included above.

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

The proposed amendment supports and implements state, regional and local planning policies of the Planning Policy Framework as follows:

- *Clause 11.01-1S (Settlement)* by rezoning a small area of land for residential purposes to support limited population growth and housing choice and affordability within the Malmsbury township boundary consistent with Malmsbury's role in the settlement hierarchy as a small town.
- *Clause 11.01-1R (Settlement – Loddon Mallee South)* by rezoning land that maintains the settlement hierarchy and its role of Malmsbury as a small town/rural centre as identified in the *Loddon Mallee South Regional Growth Plan* (May 2014).
- *Clause 11.01-1L (Malmsbury)* – by rezoning land that facilitates residential development within the township boundary that feature larger lots and generous setbacks.
- *Clause 11.02-1S (Supply of urban land)* by rezoning underutilised commercially zoned land and providing a sufficient supply of residential land within the Malmsbury town boundary to support existing infrastructure.
- *Clause 11.02-2S (Structure planning)* by facilitating a modest increase in the supply of residential land within the township boundary as identified on the Malmsbury Town Structure Plan.
- *Clause 11.03-3S (Peri-urban areas)* by managing growth within the township boundary of Malmsbury and protecting and enhancing Malmsbury's identified valued attributes, including landscaping and the existing subdivision pattern, via a new Schedule 14 to the NRZ.
- *Clause 11.03- 5S (Distinctive Areas and Landscapes)* by recognising the importance of the Macedon Ranges distinctive areas and landscapes and protecting valued attributes in Malmsbury via the new schedule to the NRZ.
- *Clause 11.03-6S (Regional places and areas)* by consolidating residential development along an existing development corridor and in doing so safeguard an environmentally, economically, and culturally significant area and preserving the unique landscape of the region.
- *Clause 12.01-1S (Protection of biodiversity)* by supporting residential development on land with limited biodiversity values.
- *Clause 12.01-2S (Native vegetation management)* by rezoning land that avoids the removal of any native vegetation and supporting development outcomes that encourage tree planting and the formation of gardens in keeping with the existing character of Malmsbury.
- *Clause 12.05-1S (Environmentally sensitive areas)* by protecting a sensitive area with Macedon Ranges from development that would diminish the identified valued attributes of Malmsbury via the use of a new schedule to the NRZ.
- *Clause 12.05-2S (Landscapes)* by rezoning land that does not propose to remove any native vegetation and providing future development outcomes via the new Schedule 14 to the NRZ that do not attract from the natural qualities of the landscape within Malmsbury but add to it by encouraging tree planting and the formation of gardens in keeping with the existing treed and landscape character.
- *Clause 13.02-1S (Bushfire planning)* by strengthening the resilience of Malmsbury and its community to bushfire through risk-based planning that prioritises the protection of human life over all other policy considerations as demonstrated in the bushfire management report prepared for land. Please refer to the discussion above.
- *Clause 14.04-1S (Catchment planning and management) and Clause 14.02-1L (Catchment planning and management – Macedon Ranges)* by rezoning land that can connect future residential development to reticulated sewerage and ensure the protection of water quality within the declared Eppalock Water Supply Catchment. In addition, the new Schedule 14 to the NRZ proposes a maximum 30 per cent site coverage, which will ensure adequate surface area to capture and retain water and reduce the occurrences of excess stormwater runoff. The proposed amendment supports improved water quality outcomes by utilising soil as a natural filtering agent, thereby minimising the impact of pollutants on the environment.
- *Clause 15.01-1S (Urban design)* by requiring future dwellings and residential buildings to respond to its context in terms of character, natural features, and surrounding landscape, support

the public realm amenity and provide landscaping via the application of the NRZ14. The new schedule supports larger lots, generous setbacks, additional landscaping and other variations to respond to the 'small country town' atmosphere, valued features and surrounding landscape.

- *Clause 16.01-1S (Housing supply)* by rezoning residential land and providing additional housing opportunities in Malmsbury.
- *Clause 18 (Transport)* and *Clause 19 (Infrastructure)* by rezoning land to support subdivision and land uses that are well located, well serviced, and support an efficient and safe road network. The proposed amendment provides for residential development abutting the Principal Transport Network (Mollison Street) which provides good transport access. The proposed amendment will enable additional serviced residential lots and associated infrastructure and road network upgrades.

The adopted State policy for Macedon Ranges Shire Council municipality, the *Macedon Ranges Statement of Planning Policy (MRSP)*, was gazetted on 12 December 2019. Section 46AZC states that a planning authority must not prepare an amendment that is inconsistent with the declared area's Statement of Planning Policy. The proposed amendment is consistent with the MRSP objective and strategies, in the policy domain 'Settlements'. Responsible public entities must consider these when performing a function, duty or exercising a power in Macedon Ranges, in particular:

*Objective 8 - To plan and manage growth of settlements in the declared area consistent with protection of the area's significant landscapes, protection of catchments, biodiversity, ecological and environmental values, and consistent with the unique character, role and function of each settlement.*

The amendment responds to objective 8 of the MRSP by encouraging residential development that is appropriate to Malmsbury's designation and role as a small settlement within the Macedon Ranges Shire Council settlement hierarchy. A combination of appropriate permeability controls outlined in NRZ14 as well as the availability of reticulated sewage treatment will ensure development of the site does not negatively impact the water catchment area. Further, generous lot sizes, street setbacks and walls on boundary provisions ensure vegetation plantings, particularly canopy trees, can be accommodated onsite that contribute character of Malmsbury and encourage greater biodiversity of the localised area.

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

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

- *Clause 02.02 (Vision)* and *Clause 02.03-1 (Strategic directions – Settlement)* by rezoning land that provides for the orderly development of Malmsbury and does not influence the designated settlement hierarchy of Malmsbury as a small town.
- *Clause 02.03-4 (Natural resource management - Catchment management and water quality)* by rezoning land that locates new development within the town boundary and the township sewerage district.
- *Clause 02.03-5 (Built environment and heritage – Urban design, built form and neighbourhood character)* by rezoning land and applying the NRZ schedule to ensures development protects and enhances the rural character of Malmsbury and as well as the township's eastern entrance from inappropriate development.

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

The proposed amendment makes proper use of the Victoria Planning Provisions by rezoning the affected land to the most appropriate residential zone. The proposed amendment:

- Rezones the land to the NRZ rather than the adjacent existing GRZ1 because no anticipated change to the predominantly single and double storey character is expected and the NRZ provides the ability to specify a minimum subdivision area.

The department's Planning Practice Note 91 (PPN91) *Using the Residential Zones* (July 2021) says that the NRZ should be applied to areas where there is no anticipated change to the predominantly single and double storey character and where areas have been identified as having specific neighbourhood, heritage, environmental or landscape character values that distinguish the land from

other parts of the municipality or surrounding area. Malmsbury has a 'small country town' atmosphere, historic bluestone buildings and streetscapes and sweeping views of the surrounding landscape, which are unique to other parts of the municipality. The use of proposed NRZ14 is also more consistent with the settlement objective of the MRSPP and allows bushfire risk to be addressed through the proposed minimum lot size of 1,000 square metres.

- Inserts a new Schedule 14 to the NRZ to respond specifically to the existing character of the Malmsbury township.

The proposed schedule to the NRZ supports residential development with larger lots, significant landscaping, generous setbacks and a minimum subdivision area of 1,000 square metres. The proposed variations to Clauses 54 and 55 relating to street setbacks, site coverage, permeability, landscaping, side and rear setbacks and walls on boundaries are a result of extensive analysis into the existing residential areas of Malmsbury and comparison against examples of poor and good residential character outcomes within the shire. The proposed provisions will ensure that future dwellings and residential buildings on the land are consistent with the current and preferred future character of the Malmsbury township.

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

The planning authority sought advice from the Environment Protection Authority regarding the risks of potentially contaminated land and whether a preliminary risk screen assessment (PRSA) is required. The EPA advised Council that further investigation should be undertaken to determine if historical mining uses occurred onsite. The planning authority, in line with PPN30, has determined that no historic mining operations have occurred and the site is not considered to be potentially contaminated.

The views of further agencies and affected parties will be sought during the public exhibition of this amendment. Comments from agencies may result in changes to the exhibited planning scheme amendment.

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

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

- The amendment does not affect existing public transport networks.
- The amendment will enable limited additional residential land use consistent with the surrounding land use supported by the existing road infrastructure and network.

Although the amendment will provide for additional residential development adjacent to the Transport Zone 2 (TRZ2) in Mollison Street, the minimum lot size in the NRZ14 will ensure that the number of lots is not increased above the 12 existing lots.

### **Resource and administrative costs**

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

It is considered that the proposed amendment will have a low future administrative cost and burden on the responsible authority, as it is envisaged that the proposed amendment will result in a limited number of additional planning permit applications for the development of dwellings due to the existing HO148, ESO4 and EMO1. The proposed amendment provides clear guidance for future development, which will assist the responsible authority in exercising its discretion.