



**Macedon
Ranges**
Shire Council

Macedon Ranges Planning Scheme Amendment
C154macr and Planning Permit Application
PLN/2022/198 – 1 Wills Street Malmsbury

Planning Panels Submission PART B

8 August 2024

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A. INTRODUCTION

1. This submission is made on behalf of Macedon Ranges Shire Council (Council) in relation to Combined Planning Scheme Amendment C154macr (the Amendment) and Planning Permit PLN/2022/198 (the Permit).
2. On 29 July 2024, Council circulated its Part A Submission to the Amendment in accordance with *Panel Direction 6*.

Council's Part A submission contained:

- 2.1. a background to the Amendment and Permit
 - 2.2. a chronology of events
 - 2.3. a response to Panel Directions
 - 2.4. strategic context and assessment and
 - 2.5. a summary of issues raised in submissions.
3. Council's Part B submission will:
 - 3.1. note any necessary corrections
 - 3.2. provide a brief background to the Amendment and Permit
 - 3.3. provide Council's response and position to key issues raised in submissions
 - 3.4. provide a response to expert evidence
 - 3.5. provide an overall position on the Amendment and necessary changes.

B. CORRECTIONS AND UPDATES

4. Additional permit conditions – Goulburn Murray Water
 - 4.1. As outlined in Council's Part A Submission, Council was made aware that permit conditions provided by Goulburn Murray Water (GMW) on 23 August 2023 were not included in the exhibited permit documentation.
 - 4.2. GMW's conditions were included the supporting documentation for Council's Part A Submission that was circulated to all parties on Monday 29 July 2024.
 - 4.3. The submission of support for the Amendment by Goulburn Murray Water is dependent on the inclusion of additional permit conditions for planning application PLN/2022/198. Council accepts the conditions and has included a track-changes version for Panels consideration. *See Attachment 1*
 - 4.4. The inclusion of the conditions does not change Council's position on the Amendment.
5. Additional supporting documentation – Submitter 4

- 5.1. Submitter 4 provided addition images to Council prior to a scheduled site visit. The images were not previously circulated with Panel or other parties. See *Attachment 2* for the updated redacted submission document.

6. Errors and clarifications – Council Part A

- 6.1. The response Council provided to Clause 12.01-2S (Native Vegetation Management) at section 14.12 incorrectly stated that “ The Amendment does contribute to a net loss to biodiversity as...” p14
- 6.2. The wording for this should read “ The Amendment does not contribute to a net loss to biodiversity as...”

C. BACKGROUND

7. The proposed combined Planning Scheme Amendment C154 and Permit application PLN/2022/198 has been made at the request of the landowners Deborah Barton and Steven Waldron and represented by planning consultancy Town Planning People.

8. Land affected by the Amendment and Permit

- 8.1. Amendment – The Amendment applies to land located at 1 Wills Street, Malmsbury described as Crown Allotment 1 Section 24A Township of Malmsbury Parish of Lauriston, and parts of the road reserves of Wills Street, Walsh Street and Mitchell Street in Malmsbury.
- 8.2. Permit – The Permit applies to land located at 1 Wills Street Malmsbury - Crown Allotment 1 Section 24A Township of Malmsbury Parish of Lauriston.

9. The Amendment proposes to:

- 9.1. Rezone the site as identified above from Farming Zone (FZ) to the Neighbourhood Residential Zone – Schedule 13 (NRZ13) as shown on Planning Scheme Map No. 5
- 9.2. Insert a new Schedule 13 to Clause 32.09 (NRZ13 – Malmsbury Township East) into the Macedon Ranges Planning Scheme that introduces new neighbourhood character objectives, a minimum subdivision area of 2,000 square metres, and variations to the requirements of Clause 54 and Clause 55 and relevant standards.
- 9.3. Delete Heritage Overlay HO148 (HO148) from land at 1 Wills Street, Malmsbury as shown on Planning Scheme Map No. 5HO.

10. Permit PLN/2022/198 seeks approval for:

- 10.1. The subdivision of land outlined above into nine lots in accordance with the requirements of NRZ13.

D. SUBMISSIONS

11. Submissions

- 11.1. A total of six submissions were received in response to the public exhibition of the Amendment and Permit.
- 11.2. Of the submissions received, one does not object (Submission 2) and five were opposed to the Amendment and Permit or parts thereof Submissions. 1,3,4,5,6).
- 11.3. Although Submission 6 does not explicitly object to the Amendment, Council has included it as an objection until the issues contained in the submission could be fully investigated.

12. Council provided a summary of the key issues contained in submissions as a part of Council's Part A Submission, circulated on 29 July 2024.

13. The key issues raised in submissions opposed to the Amendment relate to:

- 13.1. Strategic justification
- 13.2. The rezoning (loss) of agricultural land.
- 13.3. Land supply.
- 13.4. Small second dwelling.
- 13.5. The removal of Heritage Overlay 148.
- 13.6. Planning permit conditions – 1b.
- 13.7. Storm water management and broader flooding issues.
- 13.8. Infrastructure strain and service issues.
- 13.9. Traffic numbers and traffic safety concerns.

- 13.10. Broader planning control issues relating to:

- 13.10.1. Amendment C150macr.
- 13.10.2. Building height limitations.
- 13.10.3. Infrastructure strain.

E. RESPONSE TO KEY ISSUES

14. Strategic justification

14.1. Summary

Submitter 3 is concerned that there is insufficient strategic justification for the Amendment to proceed – and is concerned the Amendment has proceeded on a proponent request rather than any policy or strategic basis. This includes the removal of HO148 and the rezoning of land.

14.2. Response

Council considers that the Amendment does have a clear strategic basis and is justified in accordance with various policy objectives and strategies contained under the Planning and Environment Act 1987 and Macedon Ranges Planning Scheme. A response to the removal of the Heritage Overlay HO148 is outlined at section 15.

14.3. Council's position is that the Amendment is in accordance with the provisions of the *Planning and Environment Act 1987* (the Act). The Amendment seeks to facilitate development in accordance with the objectives of the Act. It will seek to ensure the fair, orderly, economic and sustainable use and development of the subject land. It meets the objectives of the Act as it will provide for development which is located within the Malmsbury township boundary and provide services in a coordinated manner and is a logical extension of development from the west of Wills Street.

14.4. There are currently negligible agricultural prospects for the site and the land is unlikely to be consolidated for agriculture use due to the existing dwelling located on site and proximity to residential dwellings. The land is relatively unconstrained for development and is of a modest overall size. There would be no adverse impact on any area of aesthetic, architectural or historical interest in Malmsbury as identified with the Malmsbury Urban Design Framework.

14.5. Land supply consideration has been addressed in a section 15 which identifies why the Amendment is appropriate.

14.6. The Macedon Ranges Planning Scheme gives the strategic basis for the Amendment to proceed. Clause 2.03-1 (Settlement) outlines a hierarchy of settlements which seek to accommodate forecast growth in the shire. Malmsbury is identified as a small town within this hierarchy. It acknowledges growth will be directed to larger towns and land within existing town boundary or protected settlement boundaries. High bushfire risk and other environmental

constraints affect the potential growth in some settlements. Key strategic directions include:

- Ensure development is consistent with the capacity of settlements, and plan for growth on the basis of environmental constraints, infrastructure and service provision.
- Support limited infill development in smaller settlements, but retain their existing role, size, services and character.
- Ensure urban development is located within township boundaries and protected settlement boundaries.

14.7. Malmsbury is described as:

a local service centre for township residents and community in the surrounding agricultural area with a rural village character. Given the level of existing services and infrastructure, as well as the low historical demand, Malmsbury is expected to retain its role as a small town. There is sufficient land available in Malmsbury to accommodate limited growth within the township boundary and surrounding area.

14.8. The only strategic direction for Malmsbury is to:

- Provide for the orderly development of Malmsbury having regard to the constraints of the area.

14.9. The proposed Amendment is in accordance with this policy direction, as the development will occur within the township boundary, and is consistent with the capacity of the settlement to service the development and existing infrastructure.

14.10. The objectives of Clause 11.01-1S (Settlement) and Clause 11.01-1R (Settlement – Loddon Mallee South) provide for a wider framework for development within Victoria and the Loddon Mallee South Region. It is acknowledged that Malmsbury does not feature as any nominated growth area but is located within the orbit of other areas. This includes being located within proximity to the Bendigo hinterland area and within 100km of Melbourne. The township is also near Kyneton which is a designated employment and service hub. Malmsbury provides a tourism function and local services which until recently included the Malmsbury Youth Justice Centre, which has recently ceased operation. The Melbourne-Bendigo railway and Calder Freeway are accessible for the township.

- 14.11. Malmsbury has appropriate services to accommodate growth as detailed under Clause 11.01-1L (Settlement – Malmsbury) but is not expected to grow as much as the main towns of Kyneton, Gisborne, Riddells Creek or Romsey. Policy supports development on land within the town boundary but also the Low Density and Rural Living Areas adjacent to the township boundary. Policy supports development on the periphery of the town within the township boundary. The policy supports development to feature larger lots, significant landscaping and generous setbacks.
- 14.12. It is considered the development is appropriate in consideration of the matters outlined in Clause 11.03-3S (Peri-urban areas). The Amendment contains development within an existing township boundary and does not seek to extend urban development outside of the township area. The location of the site is away from areas of significant character or landscape features, main transport corridors. It will ensure the protection of Malmsbury's identified values by using the schedule controls of NRZ13 and Section 173 agreement conditions under the permit.
- 14.13. The objectives of Clause 11.03-5S (Distinctive Areas and Landscapes) are being met given the development is away from any identified distinctive areas and landscapes such as the Macedon Ranges or transport corridors such as the railway line or Calder Freeway. The Amendment would therefore not adversely impact the valued landscape features of the Macedon Ranges Shire as it is set back from main roads and landforms.
- 14.14. The proposal will not result in any net loss of biodiversity as outlined in Clause 12.01-2S (Native Vegetation Management) as there is no proposed removal, destruction or lopping of native vegetation. Further, it is well set back from any river, riparian corridor, waterways or lakes.
- 14.15. The land is not itself contained within an environmentally sensitive area outlined in Clause 12.05-1S (Environmentally sensitive areas) being the Macedon Ranges. Malmsbury is located approximately 25 kilometres from the Macedon Ranges and the proposal would not impact on any notable approach or sequence of views to the ranges.
- 14.16. Clause 12.05-2S (Landscapes) seeks the protection of significant landscapes and open spaces that contribute to an area's character, identity and sustainable environments. Clause 12.05-2L (Landscapes – Macedon Ranges) outlines wider strategies for the Macedon Ranges but does not specify Malmsbury. The Malmsbury Urban Design Framework has undertaken analysis of the landscape features of Malmsbury and surrounds. It outlines features such as the valley

setting, deciduous trees within street reserves, valley and village views, wide streets with unimpeded views, unmade gravel roads in a rural setting, the Arboretum and Ellis Falls.

- 14.17. The Malmsbury Urban Design Framework does not identify nearby features applicable to Malmsbury except a windrow avenue feature on Lauriston Road to the south. The land is set back from this road and would not impact on the windrow. The Amendment also seeks outcomes where the planting of street trees and provision of trees on private property is supported to build on the established character. The significant viewcones identified in Malmsbury are located primarily along the Coliban River and Calder Highway. Council considers that the Amendment would not impact on these areas due to setback distance and location.
- 14.18. Clause 15.01-5S (Neighbourhood Character) and Clause 15.01-5L (Neighbourhood Character – Macedon Ranges township) outline a range of objectives and strategies previously discussed. The proposal is in accordance with these such as the provision of canopy trees in landscaping, protecting landscape and built form characteristics, providing a semi-rural theme of larger lots, significant landscaping and generous setbacks. The Amendment is building on the character of Malmsbury with a NRZ which will provide for the desired outcomes of larger lots which allow for significant landscaping and generous setbacks.
- 14.19. In summary, the Amendment is not an ad-hoc rezoning as submitted but rather a logical amendment in accordance with the Act and the Macedon Ranges Planning Scheme. The Amendment provides for appropriate supply within the existing township boundary and which is anticipated by planning policy. It is not an exercise in absorbing farmland outside of a settlement boundary for growth unanticipated within local policy. The proposal seeks to provide a modest land supply of serviced housing which will fit within the rural village character of Malmsbury. As described below additional land supply is suitable in this instance for Malmsbury.

14.20. **Position**

Council considers there is sufficient strategic justification to support the Amendment and Permit and is being undertaken in accordance the *Planning and Environment Act 1987*.

15. The rezoning of agricultural land.

15.1. Summary

Submissions have been made regarding the concern for the loss of agricultural land that this amendment represents and how it would adversely impact on the agricultural character and surrounds of Malmsbury. Submissions were also made that the Amendment is not consistent with protecting agricultural land within 100km of Melbourne's CBD.

15.2. Response

A review of Clause 14.01-1S (Agriculture) and Clause 14.01-1L (Protection of agricultural land – Macedon Ranges) has been undertaken in Part A of Council's submission. It is considered the Amendment is in accordance with the objectives and strategies contained within these clauses. Council seeks to protect its agricultural land from inappropriate development. This includes avoiding residential development pressures on agricultural land by containing residential development within town boundaries.

The subject site is already within the existing Malmsbury town boundary and has been since the inception of the New Format Planning Scheme (NFPS) in June 2000 under Amendment NPS1. The site is currently developed with a single dwelling and the land has a rural residential function. The limitations or requirements on servicing are not applicable given Coliban Water having no objection to the proposal subject to suitable conditions. This demonstrates greater serviceability of this land within Malmsbury and allows the review of the subject land to consider its rezoning to allow for housing supply. The site is within the settlement boundary and has been for some time.

- 15.3. A review of the adjoining land outlines that currently the land use to the north (zoned FZ) and west (zoned General Residential Zone (GRZ)) are both used for the purposes of residential use. The land to the west in the GRZ comprises parcels of around approximately 1000m².
- 15.4. The land to the south comprises land zoned Rural Living Zone Schedule 2 (RLZ2) and parcels of land range between 8400m² – 2.4ha. Each one of these parcels has potential to be developed with a single dwelling as the minimum area for a dwelling to not require a planning permit under the zone is 4000m². This land has potential, subject to servicing and meeting the provisions of the various overlays to provide an additional 5 dwellings in proximity to the subject site. The site therefore sits in a transitional area of lots larger than 4000m² down to 1000m² lots to the west.
- 15.5. The capacity for any land consolidation for agricultural purposes is therefore highly unlikely given the going cost for rural residential land within close

proximity to a train station and services and shopping provided in Malmsbury or Kyneton. The subject site is also encumbered by a single dwelling which in most cases means the land is unlikely to be consolidated for agricultural uses due to the capital improvement value of the land. While land prices are not generally within the purview of town planning, the values of land do impact on farm planning and consolidation. The planning scheme seeks the protection of agricultural land from speculation and inflating the value of farmland. In this instance, it is different due to the land being within the township boundary and developed already with a dwelling.

- 15.6. The type of agriculture typical of the surrounds of Malmsbury is generally dryland cropping, animal husbandry, horse husbandry or hobby farm purposes. A site of 1.845ha is relatively small for these types of agricultural pursuits and capital improvement costs for a higher intensity agricultural outcome is likely to be cost prohibitive unless it is a type of passion or hobby farm capacity. It is not to say there is no agricultural value to the site – but rather any meaningful pursuit is likely to be a minor hobby farm function as seen in other rural living areas around Malmsbury. It is also unlikely to be acquired for the purposes of farm expansion due to the surrounding land uses and zoning.
- 15.7. The rural character of the area is considered to be maintained via the maintenance of the FZ off Chisholm Avenue and the RLZ off Lauriston Street. The subject land is setback away from main transport links and requires suitable landscaping and setbacks to be consistent with adjoining residential development. Views north of Lauriston Street coming in from Daylesford would appear to be a consistent character off Mitchell Street and suitably landscaped. This area is likely to develop further once dwellings are developed in the RLZ land and therefore emerge in a more built-up form typical rural living area. The NRZ13 requirement of post and wire fencing will help with keep open visual character of this area
- 15.8. In summary, the agricultural value of the site is minor and operates as a rural living type use. Agricultural development is unlikely to be established in consolidation with adjoining sites uses due to zoning and size of adjoining parcels. The area will likely develop further with standard dwellings or rural living type development. This is supported by existing policy discussed above. The proposed design controls proposed under the NRZ13 will be in keeping with a rural village character of Malmsbury. The site being within the existing township boundary further lends itself to the transition of this land to residential use and will not result in a loss of productive farmland.

15.9. Position

Council maintains the Amendment would not result in any adverse loss of agricultural production and does not seek any changes.

16. Land Supply.

16.1. Summary

A submission was made concerned that the proposal represents an additional supply of residential land which the Settlement Strategy (2011) outlined would not be required as sufficient supply existed up until 2036.

16.2. Response

The review and supply of adequate land is an ongoing task within the purposes of the Victorian Planning System. It is not a set and forget task and the Settlement Strategy dates from around 13 years ago. Malmsbury has grown since that time within its identified role as a small town.

16.3. The Macedon Ranges Settlement Strategy (2011) also outlines that the existing land supply in Malmsbury may have the potential to accommodate as many as 1,200 people within the township boundary and surrounding area. The Macedon Ranges Shire Settlement Strategy also estimated that there were only 90 lots would be required to accommodate growth until 2036. It also identified a theoretical supply at the lower end (85% uptake) of residential land at 230 vacant lots in Malmsbury. It should be noted that the Settlement Strategy did not include RLZ or rural land in its assessment including the subject site.

16.4. While this strategy did not anticipate further rezoning until 2036, it is considered that the addition of nine residential lots is not excessive and provides a limited increase in the amount of available residential land in Malmsbury overall. Further, it provides for lots which will have road access, connection to services and infrastructure. The limited increase in residential lots will not change the designation of Malmsbury as a small town as outlined in Clause 02.03-1 (Strategic directions – Settlement) of the Municipal Planning Strategy.

16.5. The application for the Amendment was supported by a Residential Land Supply Assessment (June 2019) (Attachment 3) by Ethos Urban. It found the following:

- The population has increased from around 5 people per annum between 2006 and 2016 to 30 people per annum from 2016 to 2018.

- A range of growth scenarios were figured including a low rate of 1.7%, 4% as a high scenario rate and 2.5% as a mid-point. The midpoint accounted for a forecasted need of around 11 dwellings per annum.
- The report also identified a theoretical supply of approximately 300 lots in both urban and rural zones are available in Malmsbury and outside the township boundary.
- The residential land within the township has around 113 lots of residentially zoned (GRZ) land which amounts to around 10.3 years of residential land supply.
- Notes difficulties in some available lots feasibly coming available in the RLZ or GRZ where road connections, services and infrastructure are not currently available.
- Services and retail in Malmsbury would benefit from additional population growth in Malmsbury.

- 16.6. Council maintains that the addition of nine residential lots is not excessive to the vision and objectives of Malmsbury and provides a limited increase in the amount of available residential land supply in Malmsbury within the town boundary. Further, this limited increase in residential lots will not change the designation or function of Malmsbury as a small town as outlined in Clause 02.03-1 (Strategic directions – Settlement) of the Municipal Planning Strategy.
- 16.7. PPF policy addresses the supply of urban land under Clause 11.02-1S (Supply of urban land) and support the Amendment. A minimum of 15 years supply across the municipality is required under Clause 11.02-1S. It is acknowledged that other towns within the Macedon Ranges Shire include residential housing supply that does not preclude in ensuring Malmsbury also has an appropriate supply itself in line with demand.
- 16.8. The proposal seeks to provide a modest amount of additional residential land supply to Malmsbury and would not change the ultimate projections of Malmsbury as a small town within the Macedon Ranges Settlement hierarchy. The benefits of the land becoming available for additional development would allow for available serviced lots in a consolidated manner. It is agreed that Malmsbury's existing residential land supply is under a theoretical 15-year supply timeframe and therefore suitable to allow additional growth within its existing township boundary.
- 16.9. In summary, the proposal provides for a modest increase to the overall land supply within Malmsbury which supports the overall objectives of the Macedon Ranges Planning Scheme to provide sufficient residential land for forecasted

growth. Previous forecasts contained within the Settlement Strategy 2011 are considered inadequate to current demand without additional residential supply, Malmsbury will not have sufficient residential zoned land by 2036. The Amendment provides a small increase to the land supply and therefore not at odds with existing policy.

16.10. **Position**

Council maintains the Amendment would assist in providing suitable residential land supply in Malmsbury.

17. Small second dwelling.

17.1. **Summary**

Submitter 3 is concerned that the Amendment does not address new planning controls regarding small second dwellings and risks residential intensification.

17.2. **Response**

In May 2024, Amendment VC253 introduced changes into the Victorian Planning Provision (VPP) and all planning schemes in order to implement Victoria's Housing Statement: The Decade Ahead 2024-2034. These changes are part of various reforms to Victoria's planning system aimed at boosting housing supply across the state and making it easier to build a small second dwelling.

17.3. Currently, in all residential zones, a 'small second dwelling' is specified as a Section 1 use and does not require a planning permit if specified conditions are met. If residential-zoned land is deemed appropriate for development, Council cannot prohibit a small second dwelling. Council does not consider it appropriate to restrict residential zoning on the basis that a small second dwelling may result. It is the clear intention of state planning policy to allow this housing option when suitable.

17.4. In the case where a planning permit is not required, it is important to note that character controls contained in NRZ13 through variations to Clauses 54 and 55 must still be considered when assessing building permit applications for a small second dwelling. As such, Council retains the right to refuse a building permit application that seeks to deviate from the specifications contained in the Building Regulations 2018 if it conflicts with the specifications in NRZ13. This ensures that the key components that help to define character through NRZ13 for this site can still be enforced.

17.5. **Position**

Council does not propose any changes to the Amendment in response to issues concerning Small Second Dwellings.

18. The removal of Heritage Overlay HO148.

18.1. Summary

Submitter 3 is concerned that the proposed removal of the HO148 will detrimentally impact the heritage value of Malmsbury more broadly and set an “ugly” precedent that will encourage unchecked development. The submitter suggests that the removal of HO148 is “ad hoc” and requires greater strategic justification for its removal.

18.2. Response

HO148 (Malmsbury Precinct) covers a large area of the township which includes an area of Malmsbury beyond its historic town core – see figure1.

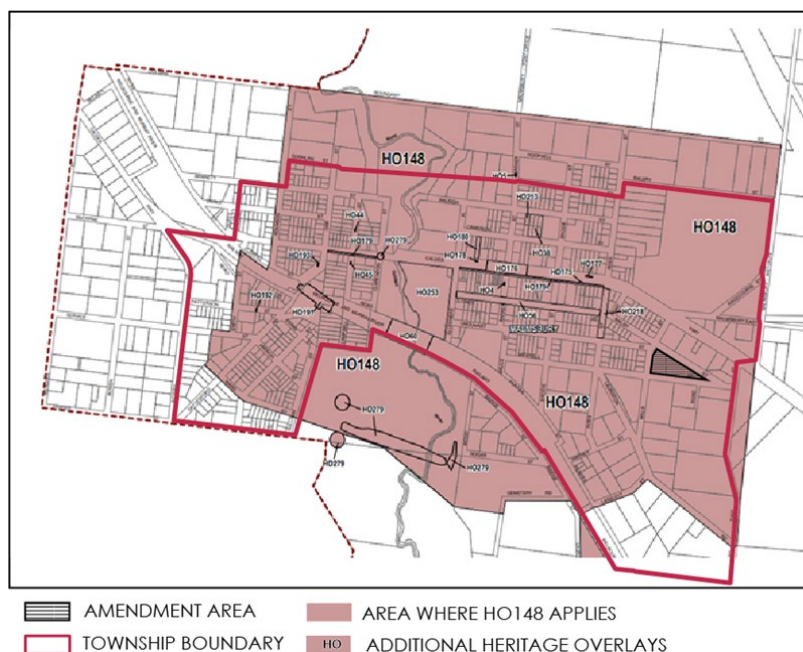


Figure 1 Heritage areas of Malmsbury

- 18.1. HO148 was introduced into the Macedon Ranges Planning Scheme with the introduction of the NFPS in 2000. Previously, the Shire of Kyneton Conservation (Heritage) Study (1990), which formed the basis for applying heritage protection, did not identify the subject site as having any heritage significance of its own.
- 18.2. While all areas have a history or a character, not all areas are historically significant and warrant heritage protection. Heritage significance is assessed based on specific criteria, as set out in Planning Practice Note 1 – Applying the Heritage Overlay (PPN01). In accordance with PPN1, Council’s heritage planner undertook a review of the site and the broader workings of HO148. The review, as outlined in Appendix A, concluded that the site does not contain heritage assets and further that there is little or no visible heritage in the

streetscape or immediate area of the site that would meet the current requirements necessary for heritage protection. The review further noted that the main heritage assets of the township are situated closer to the central core of Malmsbury and that in the initial formulation of HO148, areas were included in the final overlay that had no identified heritage value.

- 18.3. Due to the broad application of the HO148 which in some cases extends to areas with little or no identified heritage significance, such as vacant farmland on the periphery of Malmsbury, the overlay acts more as a character control rather than a tool for protecting identified heritage assets. Using a heritage overlay as a neighbourhood character control is not consistent with current planning practice in controlling character outcomes.
- 18.4. Heritage assets contained in HO148, such as street tree plantings, have contributed to defining the broader character of Malmsbury. The character controls and objectives contained in NRZ13 reflect this character element and provide a continuation of the character intent of HO148.
- 18.5. Council considers that any future development on the land in line with the requirements of NRZ and permit conditions would not impact the heritage significance of the township area covered by HO148 and considers that it is appropriate to remove HO148 from the site. The removal of HO148 will also act to streamline the planning process by avoiding any unnecessary regulatory burden associated with triggering a permit where it is not justified.
- 18.6. **Position**
Council considers the removal of HO148 as justified based on current heritage planning practices and is satisfied that its removal will not impact on the heritage significance of the broader area covered by HO148.

19. Planning permit conditions – 1b.

- 19.1. **Summary**
Submitter 5 requests that Council omit Condition 1(b), stating that the condition is undesirable and unnecessary and that the variations to Clauses 54 and 55 proposed in NRZ13 are sufficient to soften the appearance of uniformity and continuous building line along the front setback.

Further, Submitter 5 argues that the building envelopes submitted (and exhibited) comply with the proposed requirements of NRZ13, and that the inclusion of Condition 1b introduces inconsistency with NRZ13.

- 19.2. **Response**

Council considers that Condition 1(b) and NRZ13 work together to encourage development that best represents the preferred future character for this area. Council considers that relying on NRZ13 alone limits the potential to achieve this character. Condition 1(b) refers to the plan of subdivision that must be submitted and endorsed by Council and must contain:

- b) An amended building envelope plan for each lot. The building envelope plan must include:*
 - i. A minimum street setback of 12 metres from any street that a lot abuts to the front, side or rear.*
 - ii. A minimum side and rear setback of 5 metres to any adjoining lots.*
 - iii. Variable front setbacks of between 12 and 15 metres for each lot to avoid a continuous building line.*

Over the course of developing the appropriate character controls, Council reviewed the NRZ variations to Clause 54 and 55 and the draft permit conditions to strike a balance between the development potential and character controls for the site. The character controls that are included encourage a future character that is appropriate to the township fringe and an appropriate transition between surrounding GRZ1 and RLZ areas.

- 19.3. There was general agreement between the Department of Transport and Planning (DTP) and Council that due to the complexities of the triangular shaped site with lots abutting multiple streets, the NRZ13 alone would not be able to ensure the desired character outcomes for these lots, especially regarding setbacks.
- 19.4. It is important to note that the draft NRZ13 that was submitted to the Department in 2022 contained variations to Clauses 54 and 55 that sought more restrictive requirements for setbacks than what is currently proposed, specifically a minimum street setback of 15 metres and a minimum side and rear setback of 15 metres.
- 19.5. Changes to the NRZ13 were proposed to enhance its usability and better align it with the findings of a detailed character analysis of the area that considered PPN43 - Understanding Neighbourhood Character. Variability in street setback is a consistent feature in existing areas of Malmsbury. Council seeks to avoid a repetition of the uniform built-form outcomes to the east of Wills Street, as identified in *Figure 2*, and in greater detail within Appendix B.

Wills Street GRZ - Area A



10m

The darkened area indicates the street setback to the dwelling. The line below the figure indicates the setback profile. This provides an example of the uniformity in built-form Council is seeking to avoid through the inclusion of Condition 1(b)(iii)

Figure 2 Street setback from Wills Street

- 19.6. Additionally, the changes to the NRZ13 present a better balance of development potential and character controls. In considering alternate setback scenarios, Council determined that the greatest influence on character, is the interface between a lot and the surrounding road reserves. As such, Council determined that NRZ13 could accommodate a reduced side and rear setback of 5 metres, in addition to a reduced street setback of 12 metres, if considered in combination with permit conditions, specifically Condition 1(b)(iii).
- 19.7. Council considers that the inclusion of Condition 1(b) is necessary to limit building uniformity along the street edge and provide a more informal street character that respects the characteristics of the township fringe. It is important to note that the street setback provisions of NRZ13 only provide a minimum requirement: a lot with a street setback greater than the minimum is still consistent with the schedule.
- 19.8. **Position**
- 19.9. Council does not propose any changes to the Amendment in response to issues concerning permit Condition 1(b).

20. Storm water management and broader flooding issues.

20.1. Summary

Submitter 4 is concerned that the proposal does not provide enough detail on how stormwater runoff will be appropriately managed. Their concern more

specifically relates to the impact that runoff may have on any future road along Walsh Street.

Submitter 6 is concerned about the flooding that occurs along Johnson Street, Malmsbury, with heavy rainfall.

20.2. **Response**

On 14 May 2024 Council's engineers undertook a site visit with Submitter 4 to investigate the areas of concern raised in the submission. In reviewing the submission against the permit conditions, Council is satisfied that the conditions contained in the draft permit provide sufficient guidance and detail on how future development will appropriately manage stormwater runoff.

- 20.3. Condition 14 requires that prior to any subdivision works beginning, engineering plans must be submitted to Council for approval, and further, Condition 14(a) requires that the plans include:

“All of the necessary computations and supporting design documentation for... civil and drainage infrastructure”.

- 20.4. Further, Condition 16 outlines the specific drainage requirements to be included in the engineering plans to be submitted for review. Condition 16(h) addresses the specific concerns raised by the submitter regarding runoff from the site, stating that the design must include:

“A drainage system that provides for runoff from the upstream catchments and includes any downstream works necessary to manage flows from the subdivision.”

- 20.5. Should the applicant not be able to provide the services required by the permit conditions to the satisfaction of the responsible authority, the subdivision works cannot commence.

- 20.6. Council considers that the concerns raised by Submitter 6 regarding flooding along Johnson Street, while important, are unrelated to this amendment. This is due to the distance of Johnson Street from the Amendment site (a minimum of 250 metres) and the likely direction of stormwater runoff into the downstream catchment. The flooding concerns raised by Submitter 6 are currently being investigated by Council and the submitter will be informed of Council's findings.



Figure 3 Area identified as stormwater path

20.7. **Position**

Council does not recommend any changes to the Amendment as a result of the issues raised regarding storm water management and flooding.

21. Service Infrastructure issues.

21.1. **Summary**

Submitter 4 questions how the development will be able to provide the service infrastructure due to the challenging geology of the area.

Submitter 1 is concerned that the proposal is “unchecked development” that would lead to “congestion”, a reduction in public amenity and strains on existing infrastructure and therefore cause increased social inequalities and erode the quality of life for residents.

21.2. **Response**

In considering all internal and external referral advice regarding the Amendment, Council has determined that the required service infrastructure can be provided through the included permit conditions. Multiple steps remain that ensure that the required infrastructure is adequately planned for and delivered to Council's satisfaction as the responsible authority, and to the satisfaction of the relevant service and infrastructure authorities. Condition 14 outlines the various requirements to be included in engineering plans for further review and endorsement by Council. Condition 14(a) directly addresses the concerns raised by Submitter 4 by requiring:

“All necessary computations and supporting design documentation for any structure, civil and drainage infrastructure, and a geotechnical investigation report.”

- 21.3. The included conditions provide Council with sufficient opportunity to further review, at a technical level, how the development is proposing to deliver the required service infrastructure. Council has the power as the responsible authority to require the proponent to undertake further work should it be deemed necessary.
- 21.4. Regarding Submitter 1's submission, Council acknowledges that "unchecked" development can lead to a myriad of social, environmental, economic and infrastructure related issues. However, Councils does not consider the Amendment to be 'unchecked' for the reasons set out in section 13 in addition to Council's Part A submission. Further, the Amendment addresses the underlying concerns raised by the submitter regarding congestion, infrastructure strain and loss of amenity through the following points:

- Congestion: The supporting traffic assessment undertaken by O'Brien Traffic concluded that:

"Overall, it is anticipated that the traffic generated by the proposed development would have negligible impact on the safety and operation of the Ross Street/Mollison Street intersection, Mollison Street and the surrounding road network".

Council's traffic engineers support this view.

- Infrastructure strain: The relevant water and sewage infrastructure authorities have demonstrated their capacity to accommodate the Amendment through their support subject to the inclusion of conditions.
- Loss of amenity*: A 5 percent open space contribution is required as outlined in Condition 9. This enables Council to offset the increase in population with the provision of future open space and upkeep of shared public assets. Further, character controls contained in NRZ13 in addition to the included permit conditions ensure that any future development for the site respects the characteristics of the township fringe, which are semi-rural in nature.

* Amenity, as defined by the Victorian Planning Authority, is "[t]he pleasant or satisfactory aspects of a location which contribute to its overall character and the enjoyment of residents or visitors. May include access to services and well-designed public spaces".

21.5. **Position**

Council does not seek any changes to the Amendment based on the concerns raised regarding service infrastructure issues or that this would cause adverse amenity impacts.

22. Increased traffic and traffic safety concerns.

22.1. **Summary**

Submitter (6) is concerned with current traffic speed and existing vegetation that impedes sightlines at the junction of Johnson and Walsh Street in Malmsbury. The submitter proposes that Council investigate traffic safety at this intersection. The submitter suggests that Council also considers sealing “the road” to accommodate an “increase” in “larger vehicle” use.

22.2. **Response**

22.3. The need for additional safety measures at the intersection of Johnson and Walsh Street is currently being investigated. However, Council considers it to be a separate issue from this amendment and does not believe that the responsibility of providing any necessary improvements, should they be required, is the responsibility of the applicant in this case.

22.4. Council is satisfied with the traffic engineering advice provided by O'Brien Traffic and previously outlined at section 18.4, which outlines that the traffic generated by the proposed development would have negligible impact on the safety and operation of the Ross Street/Mollison Street intersection, Mollison Street and the surrounding road network”. Council’s Engineering Unit are satisfied that the traffic advice is correct and accurate and further note that there is nothing to suggest that the road network will see an increase in “larger vehicles” because of the Amendment.

22.5. Regarding the suggestion of sealing the road, this process would be undertaken via a Special Charge Scheme as outlined in Council’s Special Charge Scheme Infrastructure Works Policy 2024. It is not the role of the Amendment to seal the broader road network. The Malmsbury Urban Design Framework also identifies gravel roads as contributing to Malmsbury’s character.

23. Broader planning control issues relating to:

23.1. **Building height limitations**

Summary

Submitter 3 is concerned with the default maximum height provision of NRZ13 (2 storeys) and that there is nothing limiting height to a single storey.

23.2. **Response**

Council considers the NRZ as the most suitable zone to achieve residential housing outcomes that reflect the local character and policy vision for the area on the fringe of Malmsbury (Malmsbury Township East). The NRZ is the most restrictive residential zone regarding building height, as there is no residential zone that limits height to a single storey only. The land is well set back from any main road or freeway interface that would warrant the inclusion of greater design restrictions than what is currently proposed.

23.3. **Position**

Council seeks no changes to the Amendment as a result of the submission regarding building height.

23.4. **Amendment C150macr**

Summary

Submitter 3 is concerned with changes to the Macedon Ranges Planning Scheme associated with Amendment C150macr. The submitter is concerned that the changes were unannounced and questions the translation's neutrality. The submitter also states that several clauses cited in justifying the Amendment are no longer present in the current planning scheme and that errors exist in the Malmsbury Framework Plan.

23.5. **Response** - Amendment C150macr replaced the Municipal Strategic Statement (MSS) at Clause 21 and Local Planning Policies at Clause 22 with a Municipal Planning Strategy (MPS), local policies within the Planning Policy Framework (PPF) The changes were made by the Minister for Planning, under the ministerial powers of section 20(4) of the Planning and Environment Act 1987 (preparation and approval of an Amendment without public exhibition).

23.6. Local policy content was translated in a policy-neutral manner and remains consistent with local policy intent. In some instances, the wording of clauses was changed to reduce ambiguity, provide more specific language to aid decision-making, remove repetitive or redundant information or for other reasons relating to clarity and consistency. Although Amendment C154macr was prepared prior to the introduction of C150macr, it referenced the updated provisions and remains consistent with state and local policy, as outlined in Council's Part A submission and section 13 above.

23.7. The example provided by submitter 3 which identified wording changes to Clause 21.13-9, specifically the removal of the words "...township sewage district", represents a clear example of removing ambiguity and repetition in line

with the objective of C150macr. The planning scheme at that time already managed provision of sewage treatment through Clause 19.03-3S or the application of Environmental Significance Overlay 4 (ESO4) which seeks to restrict residential development where sufficient sewage infrastructure cannot be provided. In addition, a sewage district was not defined in the scheme and as such created ambiguity as sewage infrastructure and capacity change over time.

23.8. Council was provided the opportunity to comment on the changes to the scheme through C150macr and is satisfied with the overall translation. Council is aware of minor errors in wording and mapping and the identified errors will be resolved via a future errors and anomalies amendment.

23.9. **Position**

Council considers that the issues relating to Amendment C150macr are not relevant to Amendment C154macr and no changes are required.

F. RESPONSE TO EXPERT EVIDENCE

Issue	Position
Land Supply Evidence	Council does not dispute the conclusions detailed in the expert evidence advice. Further, a review of recent building permit approvals by Council aligns with the indicated forecast demand contained in this advice.
Agriculture Evidence	Council agrees with conclusions that the site has low agricultural utility and is not suitable for viable agricultural production.

G. CONCLUSION

23.10. **Summary**

Overall Council is supportive of Amendment C154macr and Planning Permit Application PLN/2022/198. Council considers that the Amendment represents a logical planning outcome for the site given its low agricultural value, its location within the Malmsbury township boundary and alignment with state and local policy. The Amendment can deliver serviced residential lots within what is considered a constrained housing market that reflect the unique character of the township fringe.

The Amendment provides an opportunity to deliver residential development that provides a respectful transition between existing GRZ1 areas and RLZ areas.

H. COUNCIL POSITION

Council is supportive of the Amendment and does not seek changes in response to the submissions made to the Amendment.

Council seeks to include post exhibition changes to Permit Conditions for PLN/2022/198 as described in this submission at section 4 and contained in *Attachment 1*

I. LIST OF ATTACHMENTS

Attachment 1 – PLN/2022/198 Permit Conditions – Final

Attachment 2 – Redacted Submissions – updated

Attachment 3 – Residential Land Supply Assessment - Ethos Urban (June 2019).

J. APPENDICES

24. Appendix A – Heritage review

Pages 24 - 30

25. Appendix B – Extracts from character analysis

Pages 32 - 34

Appendix A – Heritage review

MEMO	Strategic heritage review of Malmsbury Precinct
ADDRESS	MALMSBURY PRECINCT, Mollison Street Malmsbury
FROM	Dannielle Orr, Heritage Planner
DATE	8 February 2023 & 28 November 2022, site visit 31 January 2023
HERITAGE OVERLAY Triggers	HO148 Malmsbury Precinct, Mollison Street, Malmsbury Trees controls - yes
HERITAGE STUDY	<i>Shire of Kyneton Conservation (Heritage) Study</i> 1990, David Bick, p. 8 (recomm) and pp.111-116 (precinct citation)

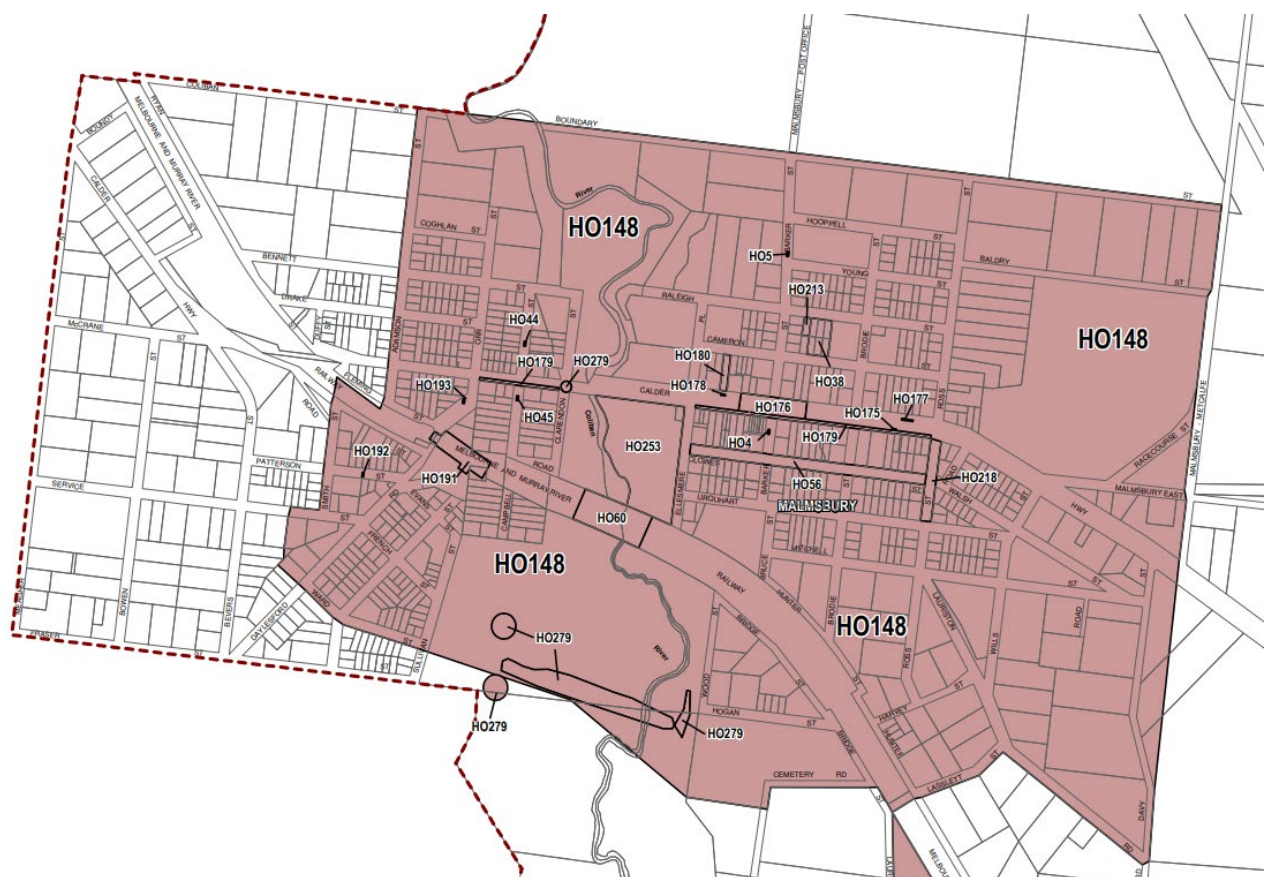
HERITAGE STUDY

Establish Conservation Areas in the Planning Scheme to protect and promote enhancement of their character

RECOMMENDATION

EXISTING CONDITIONS

The precinct for Malmsbury maps an area larger than the historic town core, to capture the nature heritage of the course of the river, but also an amount of open farmland at the edges of the township.

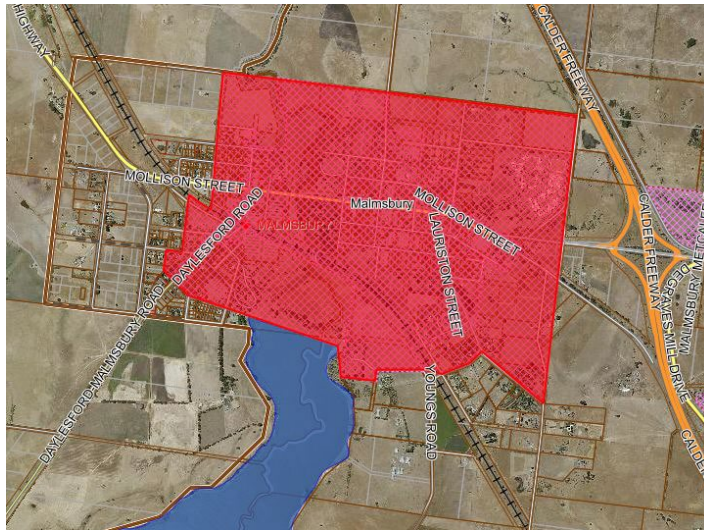


HO148 Malmsbury Precinct – Macedon Ranges 05ho map

BACKGROUND

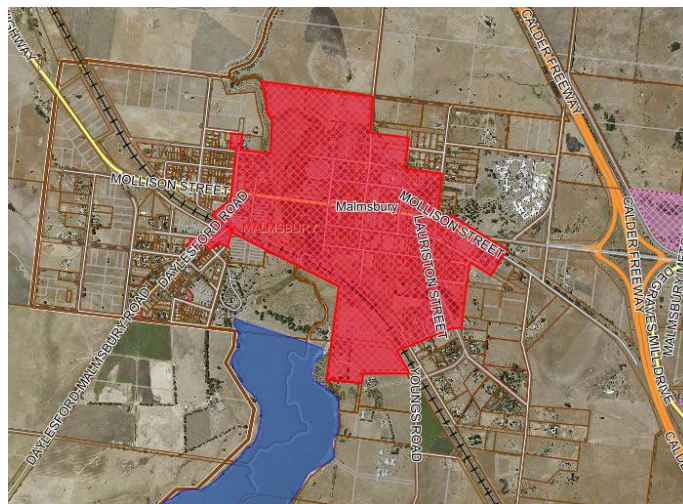
The first heritage study undertaken in this area was for the former Shire of Kyneton, the *Shire of Kyneton Conservation (Heritage) Study* 1990, by David Bick and others (hereafter SoKC(H)S). Although the recommendations may have been in force earlier under the predecessor to the planning scheme, they were formally implemented through the New Format Planning Scheme (NFPS) process in 1999 as a precinct Heritage Overlay HO148.

The extent that was eventually implemented is that originally proposed by the SoKC(H)S study for 'Malmsbury Conservation Area'.



'Malmsbury Conservation Area' (SoKC(H)S 1990, following p. 116)
(overlaid here on Malmsbury intramap aerials)

However, the working maps prepared for the NFPS in 1997 by planners show a map extent for the precinct that is considerably tighter, to the historic town core.



Map No. 5 (3 of 4) from the NFPS working documents
(overlaid here on Malmsbury intramap aerials)

The Report of the Advisory Committee and Panel on the New Format Planning Scheme for Macedon Ranges (March 1999) specifically noted the implementation of the heritage controls had a number of issues (p.6):

1. the incorrect locations of sites on the maps;
2. the size of sites in excess of the actual heritage area; and

3. owners of individual sites had not been notified and a publicity campaign informing of the proposed inclusion of heritage sites had not been conducted.

Panel recommended Council consult owners and also thoroughly check the heritage overlay mapping.

Between both legacy studies, the *Shire of Kyneton Conservation (Heritage) Study* done in 1990 and the *Macedon Ranges Cultural Heritage and Landscape Study* done in 1994, over 2,000 heritage precincts and places were recommended.

In the NFPS process only 674 heritage precincts and sites were proposed. Of these, less than half, some 300 plus places, were progressed to gazettal into the first Macedon Ranges Planning Scheme.

Of the current 300+ Heritage Overlay controls, many are still incorrectly mapped or have an error in some form.

Whilst Macedon Ranges has been steadily reviewing and correcting these legacy studies since around 2007-08, the NFPS and two legacy heritage studies have left a complex situation with hundreds of sites that have never been studied further, hundreds of sites yet to be implemented and hundreds of sites that have controls that need to be corrected.

ISSUES with the HO148 Malmsbury precinct

HO148 as a 'character' control

The HO148 control includes an area of Malmsbury larger than its historic town core. According to the SoKC(H)S such a broad coverage is to also capture the natural heritage of the course of the river.

It should be noted that in the decades since the 1990s, planning theory and practice about what constitutes a 'precinct', or 'conservation area' as termed in the SoKC(H)S, has substantially changed. The Planning Practice Note 01 'Applying the Heritage Overlay' (August 2018) (hereafter PPN01) does not define a precinct but it does outline the distinction of group, thematic or serial listings, and thus by implication, precincts. Precincts can therefore be understood to be a place that shares a common history or significance, with places that adjoin each other and forms a geographical grouping (p.2). Practically, the 'conservation area' that was implemented as HO148, captures historic places that share a common heritage and adjoin each other within the geographical setting of Malmsbury. But the HO148 also more broadly captures non-heritage, modern and recent places as well as an amount of open farmland at the boundary that is steadily being subdivided and developed.

At the interface of the heritage overlay control and the developing vacant farmland, the HO148 does not manage 'something', or anything, heritage, as recommended by the PPN01, but controls former pasture and acts as a character control (p.2). As the only control that regulates values in Malmsbury, the HO148 operates to control design and development of new builds, in sections of the town where there is little or no visible heritage in the streetscape or the immediate area. As noted in Planning Practice Note 43 'Understanding Neighbourhood Character' (January 2018), heritage and neighbourhood character are different, and whilst all areas have a history, not all areas meet the threshold for heritage significance (p.2). The Heritage Overlay is not the appropriate tool for managing a character outcome on vacant farmland, nor where there is no 'something to manage', nor is it an efficient use of time and resources in statutory planning for permits, or the Heritage Advisory role.

More importantly, it is no longer a recommended approach in current heritage industry practice and planning to draw such a large curtilage around a heritage town, to include vacant surrounding land with little or no heritage significance. The PPN01 specifically recommends that the curtilage of the Heritage Overlay polygon be reduced in instances like this, where the land is of no significance and where a reduced curtilage will be reduce the permit load (p.5). The example provided in PPN01 is of a historic structure surrounded by large tracts of farming or pastoral land, where the inclusion of the land in the control has no heritage outcome or benefit.

HO148 as a 'heritage' control

Because the heritage overlay control was recommended and implemented more than 2 decades ago, it is no longer up to date with contemporary heritage industry practice or planning in other respects. For instance, the 'Malmsbury Conservation Area' citation makes recommendations for what are now termed 'mock' heritage outcomes, and these sorts of recommendations are no longer viewed as good heritage practice. There is also no incorporated 'Statement of Significance' document for the Malmsbury precinct in the planning scheme, as is now required following the VC148 changes adopted in 2018. Lastly, there is no heritage design guidance to assist with both managing sensitive changes to identified heritage places, or for managing sympathetic infilling of the historic town core. The out of date, or non-existent, documentation for HO148 means there are no tools that are fit for the purpose of getting good heritage outcomes in Malmsbury, nor does this support statutory planning for permits, or the Heritage Advisor.

RECOMMENDATIONS

In order to know where the HO148 heritage control should be, and where it can be appropriately retracted, we need to know exactly what the heritage control for Malmsbury precinct should be protecting, and strengthening the documentation that will assist residents and planners in dealing with Malmsbury's heritage.

These issues therefore require further strategic work in order to be able to make changes to the planning scheme in a justified manner.

This is the strategic work that will be undertaken over the next few years to justify and strengthen the HO148 'heritage' control:

- an inaugural Thematic Environmental History for Macedon Ranges, to outline what themes are significant in the land use history of the shire – in progress currently (background document);
- the revision of the inaugural Heritage Strategy 2014-2018, to update priorities and actions for Macedon Ranges heritage work – to be commenced in 2023 (background document);
- a revised citation for Malmsbury precinct (background document)
- a revised Statement of Significance (SoS, incorporated document)
- creation of heritage design guidelines for infill development in the Malmsbury precinct (HDG, heritage policy), and
- a revised curtilage boundary to be mapped for the HO148 heritage overlay control (maps).

SITE SPECIFIC PLACES

The following is an analysis of the site and immediate area for the heritage values, as recommended by PPN01. The PPN01 recommends that a curtilage should be established by:

- 1) reviewing the heritage documentation;
- 2) capturing the elements that are significant;
- 3) using easily recognised boundaries;
- 4) using aerial photos;
- 5) 'ground truthing';
- 6) explaining the basis for the reduced curtilage; and
- 7) if necessary, specifying the reduced curtilage in the Schedule to the HO.

The entire Wills Street streetscape is modern properties, constructed in the last 2 decades. There are no bluestone kerbs and channels, or mature street tree avenue. On all other sides, 1 Wills Street is surrounded by undeveloped or vacant land, that was once paddocks and farm land. None of these properties or any heritage features in the Wills Street streetscape are noted in the SoKC(H)S, though the streetscape was included more broadly as part of the 'conservation area' mapping.

It is acceptable to retract the Heritage Overlay from this specific property in this case.

<i>1 Wills Street, Malmsbury</i> (north elevation)	(2017 Property and Rates dataset; site visit 31.01.2023) 
<i>Wills Street streetscape, Malmsbury</i>	<i>28 Mitchell Street, Malmsbury</i> (2017 Property and Rates dataset; site visit 31.01.2023) 
	<i>8 Wills Street, Malmsbury</i> (2012 Property and Rates dataset; site visit 31.01.2023)

	
	<i>4 Wills Street, Malmsbury</i> and mature cypress (at right) (2018 Property and Rates dataset; site visit 31.01.2023)  - the mature cypress is not noted in the significant tree list in the SoKC(H)S, but has been retained & sympathetically dealt with by the 4 Wills Street development.
	<i>21 Walsh Street & vacant land, Malmsbury</i> (2001 Property and Rates dataset; site visit 31.01.2023) 
	<i>31 Mitchell Street, Malmsbury</i> DELWP land (site visit 31.01.2023)



Appendix B – Extracts from character analysis

Wills Street GRZ - Area A



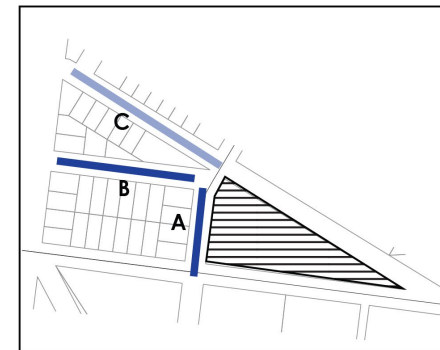
URQUHART STREET GRZ - Area B



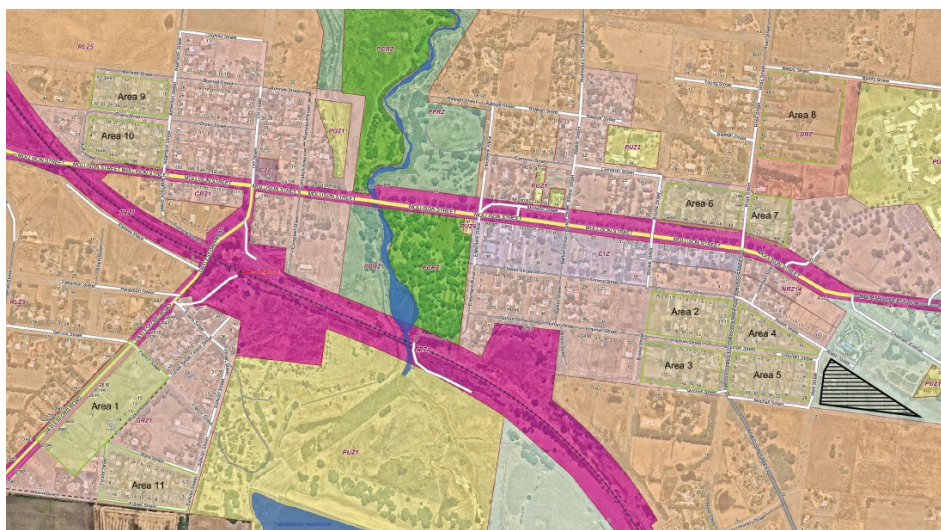
Walsh Street GRZ - Area C



Setback profile 
Amendment site 



MALMSBURY SETBACK INVESTIGATION AREAS



Areas investigated				 Amendment Area																	
Area 1 GRZ		Area 2 GR1		Area 3 GR1		Area 4 GR1		Area 5 GRZ1		Area 6 GR1		Area 7 GR1		Area 8 LDRZ		Area 9 GRZ		Area10		Area 11	
lot	FSB	lot	FSB	lot	FSB	lot	FSB	lot	FSB	lot	FSB	lot	FSB	lot	FSB	lot	FSB	lot	FSB	lot	FSB
2494	10	13	6	31	34	2	4	2	17	19b	8	28	6	50	17	43	10	2	9	2	7.5
2600	12	9	10	27	60	4	4	10	19a	11	24	3	48	36	39-41	9	4	9	4	14	
2602	11	7	9	25		6	10	6	10	44	14	22	2	46	28	37		6	8	6	16
1	4	5	9	23	10	8		8	4	46	10	42	19	44	46	22	44	8	6	8	13.6
2614	11	3	20	21	5	10	26	13	28	48	13	38a	21	42	31	20		29	9	10	13
2614a	11	17	3	19	16	12		11	11	50		38	20	40	20	21	7	27	6	12	13
2616	13	15	3	7	18	14	25	9		52						19	12	25	6	14	13
2	11	11 to 13	7	3 to 5	10	16	4	7	17	54	15					18	9	21	8	16	13
15	5	12	6	50	11	12- Ross	2	5		56						24	3	19	20	5 to 7	12.5
13	7	14	8	52	8			3	10	58	11					26	5	15	10	1 to 3	13
11	4	16	16	54	10			4w	5	60						28	4	11	4	6	10
		18	11					6w	5							30	4	9	6	8	10
7b	4	20	9					8w	6							32	6	154	21	10	9
2/7	4	11						28w	6									156	28	12	10
7a		15 to 21						30	8									162	26	14	9
		10						32	10									164	6	16	7
								34	7											18	8
								36	6											4	7
								38	5												
								40	7												
Largest	13		20		60		26		28		15		21		46		44		28		16
Smallest	4		3		5		2		4		8		2		17		3		4		7
Difference	9		17		55		24		24		6		19		29		41		24		9
Average	8.2		9		18.2		12.0		10		12		12		30		10		12		11

Appendix B Figure 1 The Malmsbury Street setback investigation areas

The data above is an extract from background work undertaken to determine the appropriate Clause 54 and 55 variations for NRZ 13. The areas were chosen to review for various reasons which include: the Zone, the age of development in that block, location in relation to RLZ areas.