

PLANNING PANELS VICTORIA
AMENDMENT C154^{macr}
TO THE MACEDON RANGES PLANNING SCHEME
AND PLANNING PERMIT APPLICATION PLN/2022/198

IN RESPECT OF SUBMISSION No. 5 TO THE PLANNING AUTHORITY

**SUBMISSION ON BEHALF OF
DEBORAH BARTON AND STEVE WALDRON**

INTRODUCTION

1. As indicated in their Submission No. 5, dated 24 May 2024, Deborah Barton and Steve Waldron are the occupiers of the subject site: 1 Wills Street, Malmsbury (**the Land**). Steve Waldron is also the registered proprietor of the Land. Together, they are the proponents in respect of the Amendment and the applicants in respect of the Application. They are referred to as the **Proponents** hereafter.
2. The Proponents strongly support Amendment C154^{macr} (**the Amendment**) and planning permit application PLN/2022/198 (**the Application**).
3. The Proponents commend Macedon Ranges Shire Council (**Council**) on its decision to prepare the Amendment, and to do so in conjunction with Council's support of the Application.¹
4. The Proponents reject the thrust of the various submissions made in opposition to the Amendment and Application, which have been referred to the Panel. The bulk of this submission seeks to address the matters raised in those opposing submissions.
5. Consistent with Submission No. 5, the position of the Proponents differs from that of Council relates to condition 1(b) of the draft planning permit.

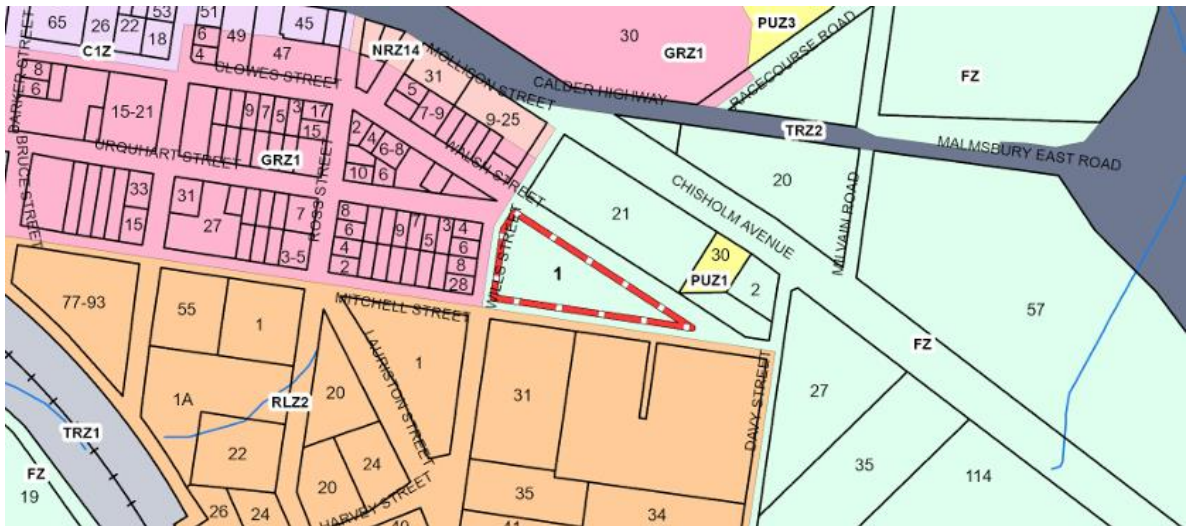
¹ Pursuant to Part 4 Division 5 of the *Planning and Environment Act 1987* (**the Act**).

That confined matter will be addressed under the final sub-heading of this submission.

6. In addition, the Proponents note that clause 44.06-5 of the Macedon Ranges Planning Scheme (**the Scheme**) – within the Bushfire Management Overlay – mandates a certain form of condition to be included on the permit, if it is to issue. The Proponents consent to the inclusion of such a condition.

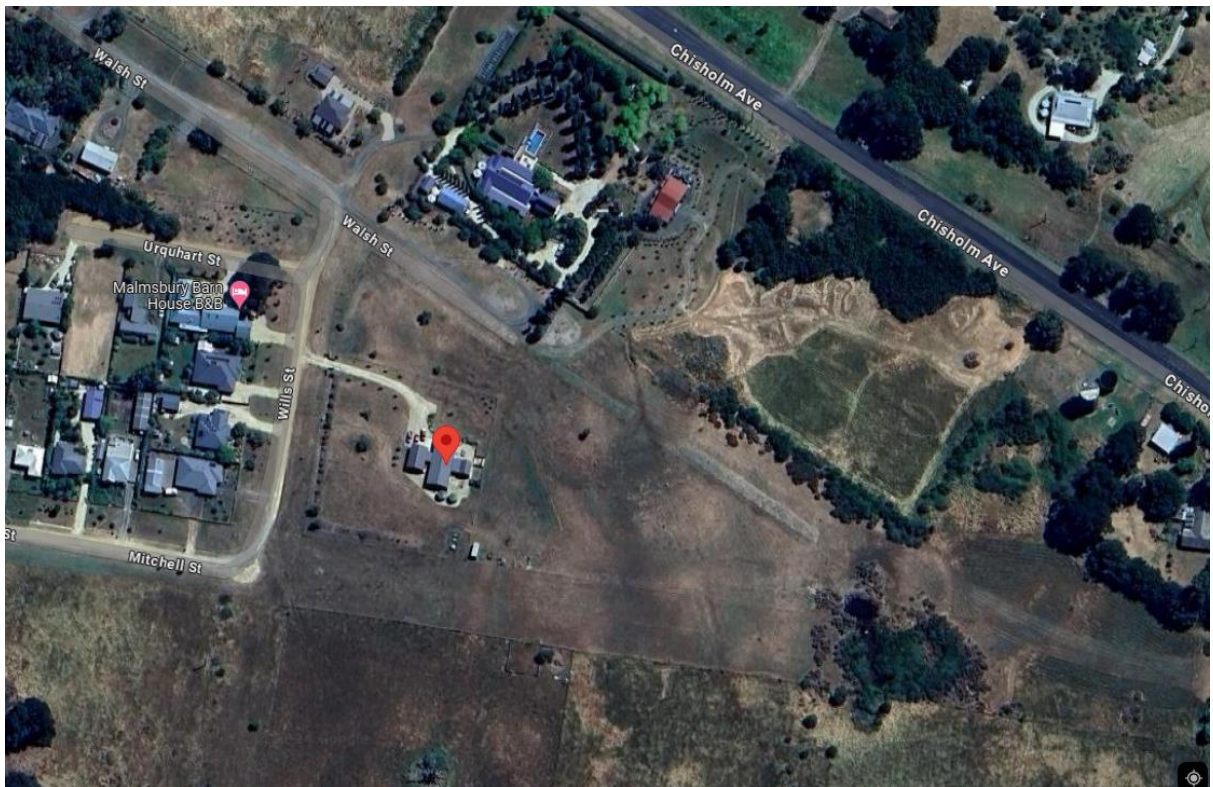
SITE AND SURROUNDS

7. The Land has an area of approximately 1.84 hectares, and is located to the eastern side of the existing township of Malmsbury.



8. The Land is almost triangular in shape, with road frontages on all sides (Walsh Street to the north, Wills Street to the West and Mitchell Street to the south).
9. The Land is currently in the Farming Zone pursuant to the Scheme. Land to the south is in the Rural Living Zone (Schedule 2), land to the west is located in the General Residential Zone (Schedule 1), and land to the north and east is located in the Farming Zone.
10. The commercial centre of Malmsbury is a short distance to the north-west.

11. The town is served by both a railway line (and station), and also the Calder Freeway / Highway (both visible on the map above).
12. Wills Street, to the west, is constructed as a gravel road. The western part of Walsh Street, to the north of the land, is constructed as a gravel road, but the eastern part of Walsh Street is an unconstructed road reserve. Mitchell Street, to the south of the Land, is an unconstructed road reserve.



13. The Land is relatively flat. It is improved by an existing dwelling, serviced by a driveway to Wills Street. An underground septic system is present. The Land also features a small dam towards the eastern corner.

NATURE OF THE AMENDMENT

14. The Amendment proposes to:
 - rezone the Land from Farming Zone to Neighbourhood Residential Zone (NRZ);

- apply a new Schedule 13 to the NRZ within the Scheme, and applies it to the area of the Land (that schedule featuring a minimum lot area of 2,000 square metres and variations to certain ResCode standards);
 - remove the Heritage Overlay from the Land.
15. As noted in the Agenda for the Council meeting of 12 June 2024, the Amendment was a proponent-led amendment. Plainly, the Proponents seek the rezoning of the Land to NRZ, as well as seeking a permit for subdivision (and they have been actively involved in pursuing that objective since 2019).
16. However the removal of the Heritage Overlay was included in the Amendment at the initiative of Council. The Proponents agreed to add that element to the Amendment, but it was not their initiative. The Proponents' position is that the removal of the Heritage Overlay is appropriate in all of the circumstances (particularly in the event of the Amendment being supported more generally).

NATURE OF THE APPLICATION

17. The Application seeks permission for the subdivision of the Land into 9 lots, with areas of between 2,000 square metres and 2,182 square metres.
18. Plans submitted as part of the Application show building envelopes for each lot, as seen below.



19. Road works are proposed to extend both Walsh Street and Mitchell Street, as shown on the plan above, so as to provide each lot with access to a constructed road (an arrangement supported in the report of O'Brien Traffic dated 5 January 2022).
20. Plainly the subdivision proposed by the Application is prohibited under the Farming Zone which currently applies to the Land. The Application is therefore predicated on the approval of the Amendment, and is being pursued in conjunction with the Amendment pursuant to Part 4 Division 5 of the Act.
21. For completeness, it is noted that, in the event that the Amendment is approved, and the Land is subdivided as sought by the Application, the development of a single dwelling on each of the nine proposed lots would

not need a permit pursuant to the NRZ, nor would the development of dwellings require a permit pursuant to the ESO,² nor the BMO.³

DOCUMENTS RELIED ON

22. The Amendment and the Application together rely on various documents commissioned and provided by the Proponents, including:

- Planning report of Macaulay Town Planning, dated November 2019;
- Land supply assessment of Ethos Urban, dated 13 June 2019;
- Letter of Coliban Water, dated 14 March 2019;
- Report of O'Brien Traffic, dated 10 June 2019;
- Landscape Assessment Plan of Phoenix Wildfire Management (undated, but based on a site assessment in May 2021);
- Bushfire Management Report of Phoenix Wildfire Management, dated 11 June 2021 (later updated to February 2022);
- Response to request for further information of Town Planning People, dated 7 August 2021;
- Letter of O'Brien Traffic, dated 10 June 2021;
- Ecological report of Bill Richdale, Consulting Ecologist of July 2021 (later updated to February 2022);
- Native vegetation removal report of DELWP, dated 13 July 2021;

² On the basis that any such dwelling would be connected to reticulated sewerage, and would be located more than 30 metres from a waterway: see clause 3.0 of Schedule 4 to the ESO.

³ On the basis of clause 44.06-2, and subject to the execution of the s 173 agreement of the kind required by clause 44.06-5 of the Scheme.

- Vegetation Link third party offset quotation dated 13 July 2021;
- Landscape Master Plan of Town Planning People, dated 6 August 2021;
- Strategic Assessment Guideline Response of Town Planning People, dated 7 August 2021 (later updated to February 2022);
- Planning report of Town Planning People of February 2022;
- Report of O’Brien Traffic of 5 January 2022;
- Letter of Phoenix Wildfire Management, undated, but from February 2023;
- Bushfire Development Report of Phoenix Wildfire Management of 16 October 2023;
- Letter of Jim Gardner, GJM Heritage, dated 17 July 2024;⁴
- Letter of O’Brien Traffic, dated 31 July 2024;⁵
- Expert witness statement of Chris McNeill, Ethos Urban, in relation to economics (residential land supply and demand), dated 26 July 2024; and
- Expert witness statement of Cliff Dillon, Cadeema, in relation to agriculture, dated July 2024.

OVERALL OBSERVATIONS IN RELATION TO THE AMENDMENT

23. In overall terms, the Amendment is consistent with orthodox principles of strategic planning.

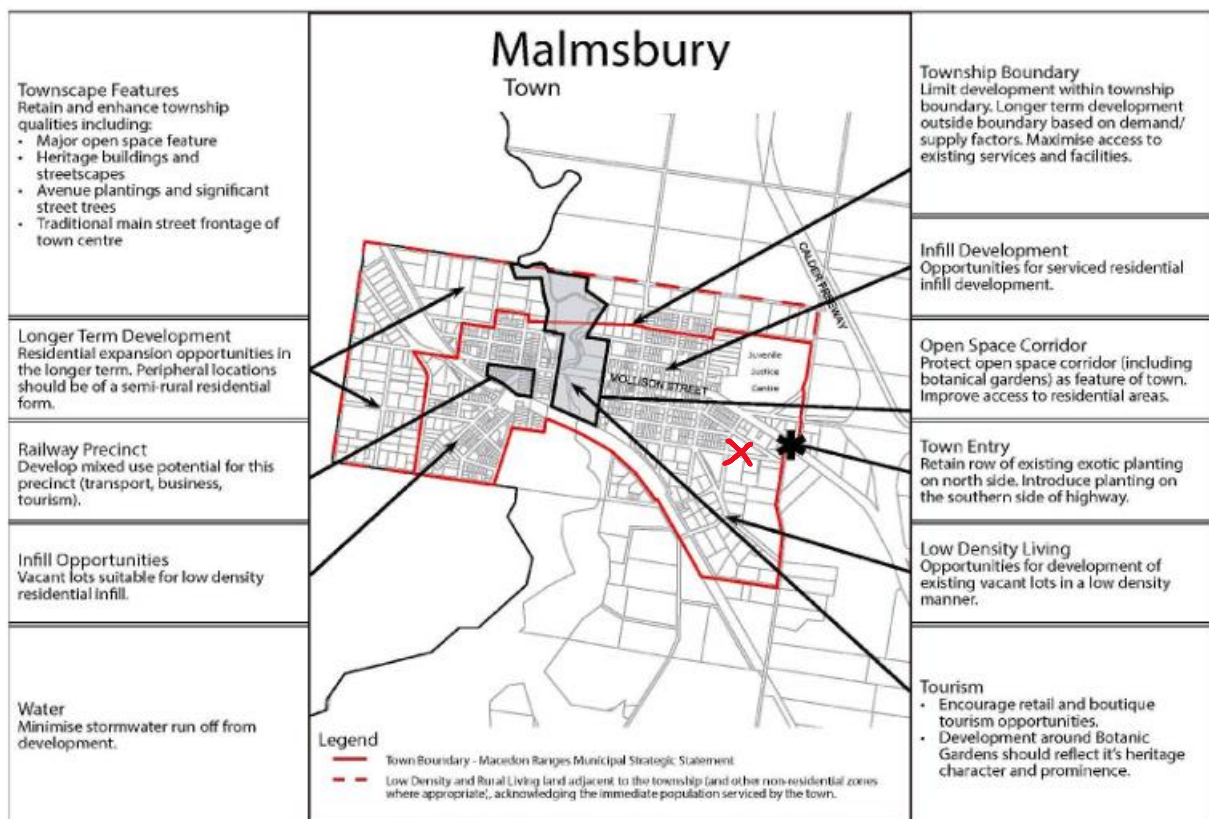
⁴ Not provided previously, now attached as Document 4.

⁵ Not provided previously, now attached as Document 5.

24. It is obvious that:

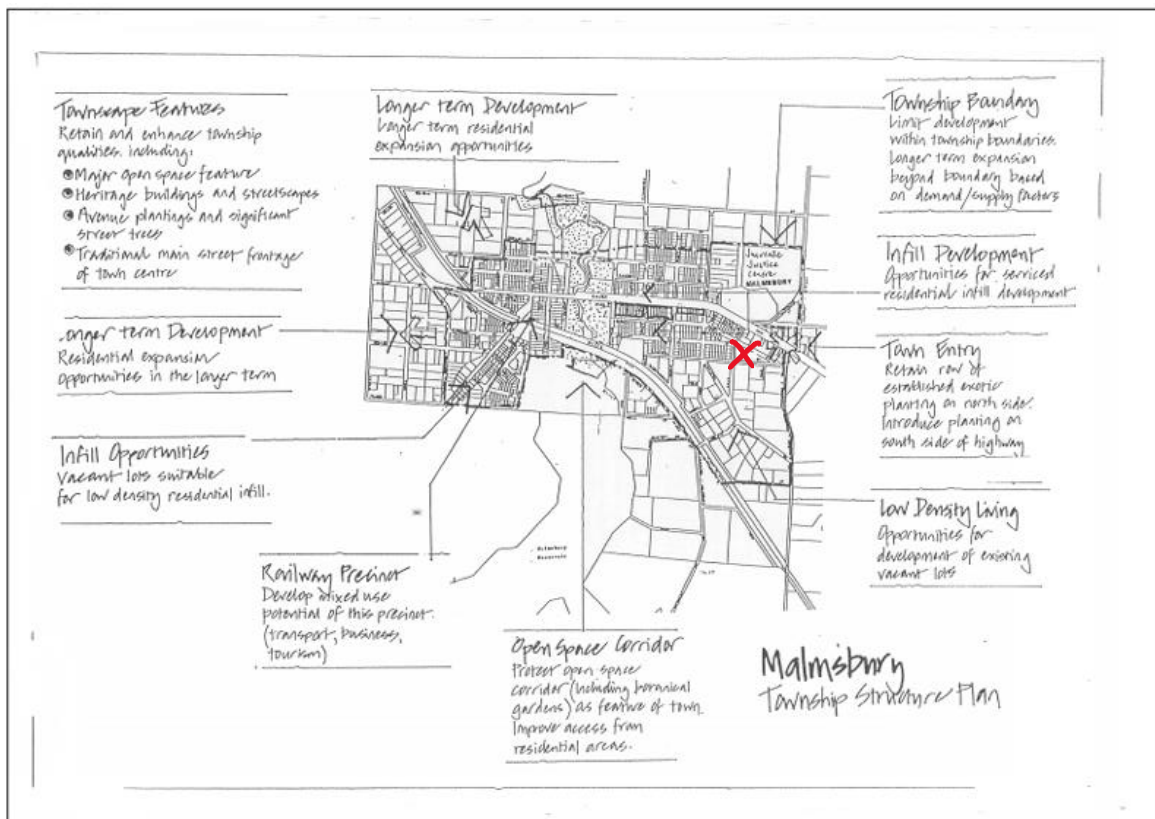
- The Land is included in the township boundary; and
- The Land is located immediately to the east of land zoned, and developed, for residential purposes.

25. The Land has been included within the township boundary of Malmsbury since the gazettal of Amendment C84 on 10 September 2015 (the amendment which added the Malmsbury Framework Plan into the Scheme).⁶ The Malmsbury Township Framework Plan, as included in the Scheme from that time, is extracted here (but with a red cross added to indicate the Land):



⁶ The Amendment C84 approved version of clause 21.13-9 is attached as Document 1.

26. For the purposes of the treatment of the Land, the strategic planning intent has remained the same, as is now reflected in clause 11.01-1L (despite various other intervening amendments to the Scheme).
27. That same policy – that the Land be included within the township boundary – was evident even before C84 / 2015, since as early as the exhibition of Amendment C84 from 17 November 2011.⁷ The Malmsbury Township Framework Plan, as exhibited from that time, is extracted here (again with a red cross added to indicate the Land):



28. That Amendment C84 was implemented following extensive public notice and ensuing panel hearing. As reflected in the Panel Report for Amendment C84,⁸ there was extensive strategic background to that amendment, including the *Malmsbury Urban Design Framework*, KLM

⁷ The Amendment C84 exhibited version of clause 21.13-8 is attached as Document 2.

⁸ The Panel Report for Amendment C84 is attached as Document 3.

Gerner 2003, *Small Towns Study* of 2006, and *Macedon Ranges Settlement Strategy* of 2011.

29. In this context, the current Farming Zone designation can be regarded as a 'holding zone' in a sense. Despite what some submitters suggest, it is clear that the future of the Land is not farming. Strategic planning tells us that, instead, the Land is part of the future urban area of Malmsbury. Its rezoning to achieve that is consistent with principles of proper and orderly planning. In planning terms, it is a matter of when, not if. The key considerations, in terms of timing, should be land supply and demand.
30. The Proponents have taken the initiative to bring the current Amendment to its current stage and, after a relatively long gestation period, they now enjoy Council's support. The Amendment has long been supported by land supply and demand evidence commissioned by the Proponents, and accepted by Council. The Land is a logical parcel for rezoning, to enable the growth of the township, in a planned and orderly way, and the timely provision of additional housing sites.
31. Aside from the benefits of making additional residential land available in the township, the important corollary is a commensurate *reduction* on pressure for approval of dwellings *outside* the township, on rural land that may be used for agriculture, or that may be subject to other sensitivities or risks, eg in terms of bushfire, environmental sensitivity, landscape / tourism sensitivity, or poor servicing. There is a plethora of policy support for consolidation of residential uses within both existing and planned urban areas, rather than succumbing to pressure for dwellings (and residential subdivisions) in rural areas.⁹

⁹ Clauses 11.03-3S (Peri-urban areas); 11.03-5S (Distinctive areas and landscapes); 14.01-1S (Protection of agricultural land); 14.01-1L (Protection of agricultural land – Macedon Ranges); 16.01-1S (Housing supply); 16.01-3S (Rural residential development); 16.01-3L (Rural residential development – Macedon Ranges)

32. The Proponents are conscious that the Land is within an area that is subject to a Distinctive Areas and Landscapes Declaration, pursuant to Part 3AAB of the Act, and that a Statement of Planning Policy is now in force.¹⁰ It follows that a planning authority is precluded from preparing a planning scheme amendment that is inconsistent with the approved Statement of Planning Policy,¹¹ and that the Minister is precluded from approving an scheme amendment that is inconsistent with that Statement of Planning Policy.¹² Representatives of the Proponents have reviewed the Statement of Planning Policy in light of the Amendment, and have not identified any inconsistency (and note that none has been identified in submissions).

OVERALL OBSERVATIONS IN RELATION TO THE APPLICATION

33. In the event that the Amendment is to be approved, the Application would appear relatively benign and uncontroversial.
34. The Application seeks permission for the subdivision of the Land into 9 lots, with areas of between 2,000 square metres and 2,182 square metres.
35. The configuration of the proposed lots is rational and unremarkable, including the provision of road access for each one. As well as access, this also assists with connection of each lot to reticulated services.
36. Building envelopes have been proposed, and would be enshrined by a s 173 agreement, as required by proposed condition 7 on the draft permit.
37. Conditions 3 to 6 of the draft permit establish a comprehensive suite of requirements in relation to the landscaping of the Land. Those conditions ensure that the Land, once development, will make an appropriate contribution to the area by way of landscaping, consistent with various provisions of the Scheme.

¹⁰ Having been approved on 10 December 2019.

¹¹ Pursuant to s 46AZC(2) of the Act.

¹² Section AZC(1) of the Act.

38. Condition 9 requires a 5% public open space contribution, a requirement effectively mandated by clause 53.01 of the Scheme.
39. Conditions 11 and 12 are mandated by clause 66.01-1 of the Scheme.
40. No objections were received from any public authorities.
41. The Environmental Significance Overlay (Schedule 4) relates to 'Eppalock Special Water Catchment', and applies to the Land, requiring a permit for subdivision.¹³ 'Relevant water authorities' are 'determining referral authorities' in respect of applications under that provision.¹⁴ The Application was referred to Coliban Region Water Corporation (the urban water authority responsible for water supply and sewerage) Goulburn Murray Water (the rural water authority) and North Central Catchment Management Authority (the water authority responsible for floodplain management). None of those bodies objected to the Application. Coliban Region Water Corporation requested certain conditions (included as conditions 26 to 31 of the draft permit). Goulburn Murray water also requested conditions (see letter of 7 August 2023) but they were not included in the draft permit for reasons not clear to the Proponents.¹⁵ The Proponents invite clarification from Council in relation to the status of each of those two authorities, in respect of the Land.
42. The Bushfire Management Overlay also applies to the Land, and requires a permit for subdivision.¹⁶ In respect of an application under that Overlay, the CFA is a recommending referral authority.¹⁷ The Application was referred to the CFA, and certain conditions were required (included as

¹³ Clause 42.01-2.

¹⁴ Schedule to Clause 66.04, clause 1.0.

¹⁵ Paragraph 10.18 of Council's Part A Submission refers to this. It is not clear to the Proponents that both Coliban Region Water Corporation, and Goulburn Murray Water are referral authorities in respect of the Application (in addition to the CMA). There would be an undesirable degree of duplication and inefficiency in the event that the conditions requested by *both* of those authorities were actually required.

¹⁶ Clause 44.06-2.

¹⁷ Clauses 44.04-6 and 66.03.

conditions 32 to 36 of the draft permit).¹⁸ Clause 44.06-5 mandates the inclusion of a certain condition on a permit of this type (in summary, a condition requiring a section 173 agreement to require implementation of bushfire protection measures on an ongoing basis). The Proponents note that such condition was not included in the draft permit, and invite the Panel (and Council) to consider including it, should the permit issue (either instead of, or combined with, condition 33 of the exhibited draft planning permit, which was requested by the CFA). As indicated earlier, the Proponents consent to such a condition.

43. Under clause 66.01, the Application requires referral to the relevant water, drainage and sewerage authority, the relevant electricity supply or distribution authority, and the relevant gas supply authority (the latter only in the event that gas supply is proposed – not the case here). Each of those authorities is a determining referral authority in respect of the Application. None objected. Powercor required certain conditions (included as conditions 37 to 40 on the draft permit). The conditions required by the water authorities are referred to above.
44. There is no other referral authority in respect of the Application.

RESPONSE TO SUBMISSION 1

45. Submission 1 contains four numbered paragraphs which will be discussed in turn.
46. Paragraph 1 cites the loss of agricultural land. In response, the Proponents submit that the Land is agricultural land ‘in name only’ (in the sense that the Farming Zone currently applies to it). The Land is not used for agriculture, has not been used for agriculture for many years, and it is most unlikely to be used for productive agriculture in future (regardless of the

¹⁸ See letter of CFA dated 8 December 2023.

fate of the Amendment). The Proponents rely on the evidence of Mr Cliff Dillon in support of that submission.

47. While the Proponents acknowledge various planning policies and objectives in favour of protecting agricultural land for agricultural purposes, it would be simplistic and misguided to suggest that those policies militate against the Amendment, given the nature and location of the Land.
48. Paragraph 2 objects to the removal of the heritage overlay from the Land, as proposed by the Amendment, implying (albeit not stating) that the Land may contain a 'heritage site' or 'landmark' which might 'contribute to the town's character'. There is nothing, in the nature of a structure or otherwise, evident on the Land, which makes any contribution to the town's character or heritage. This is evident from an inspection of the Land. The Proponents rely on the letter of Mr Jim Gardner of GJM Heritage in support of this submission.
49. Paragraph 3 refers to 'environmental impact'. It contains a number of broad generalisations, with no attempt to apply those generalisations to the Land or the Amendment. There is no basis provided in support of the concerns raised. The Proponents reject those suggestions. In relation to potential ecological impacts of the proposal the Proponents rely on the report of Bill Richdale, Consulting Ecologist of July 2021.
50. Paragraph 4 refers to 'community cohesion and quality of life'. Again, it contains a number of broad generalisations, with no attempt to apply those generalisations to the Land or the Amendment. There is no basis provided in support of the concerns raised. The Proponents reject those suggestions.
51. The Proponents also adopt Council's responses to Submission 1, in the Agenda of 12 June 2024.

RESPONSE TO SUBMISSION 2

52. Submission 2 is submitted on behalf of the Head, Transport for Victoria. It cites s 52 of the Act, so it is assumed that Council gave notice of the Application under that section.¹⁹
53. Submission 2 does not object to the Amendment (or the Application). It does not request a change to an Amendment, so it did not need to be referred to the Panel.²⁰
54. The Proponents acknowledge that Submission 2 was referred to the Panel, acknowledge that Council had the power to do so,²¹ and rely on the fact that it makes no objection to either the Amendment or the Application.

RESPONSE TO SUBMISSION 3

55. Submission 3 is the most extensive of the submissions received and raises a variety of different arguments against the Amendment and the Application.
56. Having reviewed Submission 3, the Proponents regard Council's summary of its issues, in Council's Agenda of 12 June 2024, to be fair and comprehensive summary of it. This submission adopts that summary, for the purpose of responding to Submission 3.
57. The first issue relates to strategic justification for the Amendment. In response, the Proponents rely on the passage above, under the heading 'Overall observations in relation to the Amendment', and also adopt Council's response, in the Agenda of 12 June 2024.

¹⁹ The Head, Transport for Victoria does not appear to be a referral authority in respect of the Application, noting that clause 66.02-11 applies to subdivisions of 60 or more lots.

²⁰ Section 23(1) of the Act.

²¹ Section 23(2) of the Act.

58. The second issue relates to land supply and impacts to agriculture. The Proponents rely on the evidence of Mr McNeill and Mr Dillon. The Proponents also adopt Council's response, in the Agenda of 12 June 2024.
59. The third issue relates to the removal of the Heritage Overlay from the Land. The Proponents rely on the report of Mr Gard'ner in this respect. The Proponents also adopt Council's response, in the Agenda of 12 June 2024, as well as the rationale set out in the exhibited Explanatory Report for the Amendment.
60. The fourth issue is whether the Amendment is contrary to relevant policies, including the *Malmsbury Urban Design Framework 2003* and the *Macedon Ranges Small Towns Strategy* of 2006. In response, the Proponents deny that the Amendment is contrary to the provisions quoted from those policies. Importantly, as noted at paragraph 28 of this submission, those background documents were part of the strategic planning background which informed Amendment C84 to the Scheme – the very same Amendment which included the Land within the township boundary. To the extent that it may be possible to identify any actual inconsistency between those strategic planning documents and the current provisions of the Scheme, it is submitted that the current provisions of the Scheme must be preferred, in terms of relevance to current decision-making. Again, the Proponents also adopt Council's response, in the Agenda of 12 June 2024.
61. The fifth issue queries compatibility with State policy directives in relation to protecting agricultural land within 100km of Melbourne's CBD, and also in relation to Melbourne's Green Wedges. In terms of the Act and the Scheme, the Land does not form part of a Green Wedge,²² so green wedge policy simply does not apply. In relation to potential impacts to agricultural land and production, the Proponents again rely on the evidence of Mr

²² The short explanation is that the Scheme is not one of the 'metropolitan fringe planning schemes' for the purpose of Part 3AA of the Act – see s 46AA.

Dillon (as well as relevant observations from the Pheonix reports, as quoted in Council's response to this submission in the Agenda of 12 June 2024).

62. The sixth issue bemoans the lack of a 'single storey' height limit. In response, it is submitted that there is no strategic basis for such a height limit, and it would be anomalous in the context of planning in Victoria. Again, the Proponents adopt Council's response, in the Agenda of 12 June 2024.
63. The seventh issue cites the lack of specific requirements for private open space. Again, the Proponents adopt Council's response, in the Agenda of 12 June 2024.
64. The eighth issue raises the prospect of development of a 'small second dwelling' on each lot. Again, the Proponents adopt Council's response, in the Agenda of 12 June 2024.
65. The ninth issue raises changes to the Scheme introduced by Amendment C150macr. That is the amendment which 'translated' the former policies into the contemporary format for planning scheme policies.²³ In response the Proponents submit that this element of Submission 3 takes issue with an entirely separate planning scheme amendment, an amendment which has already been approved and so forms part of the Scheme. These issues are out of scope of the matters before the Panel.

RESPONSE TO SUBMISSION 4

66. Submission 4 is a much briefer submission.
67. It cites a lack of detail in relation to the Amendment and the Application. The Proponents reject this and submit that the volume of material

²³ In operation since its gazettal on 24 August 2023.

submitted, and advertised, in respect of both elements, was more than sufficient, and more than commensurate to the nature of the proposal.

68. Submission 4 also refers to the extension to Walsh Street. It is noted that no extension is required to the Walsh Street road reserve: the Land has a frontage to that road reserve. Rather, the submission is understood as referring to the anticipated construction of Walsh Street along the alignment of this existing reservation. The Proponents submit that there is no basis for doubt or concern in relation to that construction of Walsh Street, nor its ability to service the proposed lots. The Proponents rely on the relevant reports of O'Brien Traffic in this regard.
69. Submission 4 alludes to the possibility of a water course running across the road reserve (presumably the Walsh Street road reserve). In response, the Proponents also adopt Council's response, in the Agenda of 12 June 2024.
70. Submission 4 then queries how various reticulated services can be delivered due to the presence of a rock reef. In response, there is no basis to doubt the ability to connect the Land to all usual reticulated services in the usual ways. There is no basis to conclude otherwise.

RESPONSE TO SUBMISSION 6

71. On the face of it, Submission 6 does not oppose the Amendment nor the Application. In its own terms: *'We have no objection to the development but would like to raise a few issues...'*
72. The three numbered paragraphs refer to drainage along Johnson Street, desirability of sealing Johnson Street, and traffic safety at the corner of Johnson Street and Walsh Street.
73. In its own terms, this submission relates to *existing concerns*, not concerns that arise by virtue of the proposed development. In that context, it seems fair to interpret it as being general correspondence, raising issues for

Council's consideration in light of Council's various municipal functions, rather than being a submission pursuant to s 21 of the Act (in respect of the Amendment and / or Application).

74. The Proponents understand, from Council, that Submission 6 was submitted after the close of the exhibition period for the Amendment / Application. The Proponents understand that Council has discretion to consider late submissions.²⁴ However it is not clear whether Council exercised that discretion in respect of Submission 6, or formally considered Submission 6, noting that Submission 6 was not referred to in Council's Meeting Agenda or Minutes of 12 June 2024.
75. Further, it is not clear whether Council resolved to refer Submission 6 to the Panel, pursuant to s 23(1) or (2) of the Act, again noting that Submission 6 was not referred to in Council's Meeting Agenda or Minutes of 12 June 2024. If Submission 6 was not formally considered by Council or formally referred to the Panel, the Panel is not required to consider it.²⁵
76. If the Panel is nonetheless inclined to consider Submission 6, notwithstanding those issues, the Proponents again submit that Submission 6 does not oppose either the Amendment or the Application. The concerns raised in Submissions 6 are existing concerns that do not arise by virtue of the proposed development.
77. To the extent that Submission 6, at paragraph 1, complains about existing flooding issues *in Johnson Street*, not only is this an existing issue, it relates to a street some distance to the north-west of the Land. There is no basis to believe that the Amendment will change the drainage circumstances applying to Johnson St and, to be fair, Submission 6 does not even state (or arguably even suggest) that it would do so.

²⁴ Sections 22(2) and 96B(1)(a) of the Act.

²⁵ Section 24 of the Act.

78. Its paragraph 2 cites increased traffic, implicitly again in relation to Johnson Street, and states that *'it's time to look at sealing the road'*. Whether or not that is true is a matter for Council. Again there is no basis to believe that the Amendment will have any appreciable impact on the condition of Johnson Street and again, to be fair Submission 6 does not state otherwise. The Proponents rely on the letter of O'Brien Traffic of 31 July 2024, noting that it specifically considers the traffic comments in Submission 6. O'Brien Traffic indicate that the traffic generated by the proposed development would have negligible impact on the Johnson Street/Mollison Street intersection, and that it would be unreasonable to require the Proponents to seal Johnson Street.²⁶
79. Its paragraph 3 refers to an oak tree and other vegetation at the junction of Johnson Street and Walsh Street (again, some distance to the north-west of the Land). It discusses the need to manage that vegetation in the interests of traffic safety. Again, there is no suggestion that this issue in any way relates to the Amendment. Again, the Proponents also rely on the letter of O'Brien Traffic of 31 July 2024 in respect of this issue.²⁷ In short, that intersection is the responsibility of Council, but that in any event its current design is appropriate for both current and anticipated (post development) traffic volumes.
80. There is no proper basis to doubt the appropriateness of the Amendment or the Application, by reference to the issues raised by Submission 6.

SUBMISSIONS IN SUPPORT OF SUBMISSION 5

81. Submission 5 – made on behalf of the Proponents – only takes issue with one aspect of the exhibited documents.

²⁶ Document 5, see page 5.

²⁷ Document 5, pages 5-6.

82. Submission 5 was a late submission, but Council confirmed that it was accepted for consideration,²⁸ and it was referred to in Council's Meeting Agenda and Minutes of 12 June 2024. Since Council considered Submission 5, but did not agree to change the Amendment (more specifically the proposed permit) in the manner requested by Submission 5, it follows that Submission 5 has been properly referred to the Panel.²⁹
83. In particular, the Proponents requested that Council consider the deletion of condition 1(b) of the draft planning permit, as exhibited. The Proponents now make the same request of the Panel.
84. Proposed condition 1 requires amended plans to be submitted for approval. The Proponents take no issue with the first paragraph of condition 1, nor with parts (a) or (c) of condition 1.
85. Proposed condition 1(b) requires the following:
- 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.
86. The Proponents contend that condition 1(b) is undesirable and unnecessary, in planning terms, and that it should be omitted. Parts i and ii are redundant in any case, since the building envelope plan already shows those specified setbacks. It is part iii that is more strongly opposed, on the basis that it is unwarranted and unreasonable.

²⁸ Having regard to ss 22(2) and 96B(1)(a) of the Act, by email of Council of 24 May 2024.

²⁹ As required by s 23(1) of the Act.

87. The Proponents do not oppose the concept of building envelopes for each lot (as proposed in the Application itself), and they do not oppose the 'entrenchment' of those building envelopes by way of a s 173 agreements (hence they have not opposed, and do not oppose, proposed condition 7 of the draft permit).
88. However they do oppose the need for any changes to the proposed building envelopes, as contemplated by proposed condition 1(b).
89. This submission should be understood in the context of the Amendment overall, including the exhibited form of the proposed Schedule 13 to Clause 32.09 (NRZ).
90. That Schedule would apply to the Land, should the Amendment be approved. That Schedule represents a relatively comprehensive and tailored planning instrument, to guide the form of development of the proposed lots. The Schedule makes appropriate use of the VPP provisions to provide a tailored suite of controls for the Land, post-subdivision. It is specific to the Land – it has no operation elsewhere.
91. Clause 3.0 of the Schedule features variations to the Requirements of Clause 54 and 55. Most relevant, for present purposes, is the variation to Standards A3 and B6 (Minimum street setback), with the requirement reading as follows:

Walls of buildings should be set back from streets 12 metres, including lots abutting multiple streets

92. Also relevant is the variation to Standards A10 and B17 (Side and rear setbacks), with the requirement reading as follows:

A new building not on or within 200mm of a boundary should be set back from side or rear boundaries at least 5 metres plus 0.3 metres for every metre

of height over 3.6 metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9 metres

For any lot abutting multiple streets, the minimum street setback provision applies

93. Referring again to the building envelopes proposed by the Proponents, as part of the Application, each of those building envelopes is set back 12 metres from each road reserve which abuts each lot. Each of those building envelopes features side and rear setbacks of 5 metres. Accordingly, the requirements of condition 1(b)i and ii are already met by the plan, so there is no need for them.
94. It also follows, from the above, that the building envelopes, as proposed, comply with the proposed variations to the ResCode standards referred to above. No amendment to those building envelopes is required, for the purpose of achieving compliance with the tailored Schedule 13 that forms part of the Amendment. By requiring changes to those building envelopes, condition 1(b) threatens to introduce inconsistency with Schedule 13. Such inconsistency is undesirable and there is no proper basis for it.
95. In fact, the building envelopes, as proposed by the Application, are considerably more restrictive, and more prescriptive, than those provisions of proposed Schedule 13. This is firstly because Standards A10 and B17 would allow building on (or near) boundaries, subject to compliance with the other applicable ResCode objectives,³⁰ whereas the building envelopes, as proposed, would preclude that possibility, necessitating 5m side and rear setbacks. Secondly, and more importantly, unlike the proposed building envelopes, the various setbacks provided in Schedule 13 to the NRZ are discretionary in nature, not mandatory. As with other ResCode provisions, it

³⁰ Noting that Schedule 13 would reduce Standards A11 and B18 to 0m of building on boundaries, but again noting this would not have mandatory effect, and that the possibility of building on a boundary could still be considered on its merits.

would be open to the responsible authority to consider and, if appropriate, approve (for example) lesser setbacks than those specified in Schedule 13, subject to the responsible authority being satisfied in relation to the relevant objective to which the relevant (varied) standard relates.

96. This leaves us to address condition 1(b)iii. This condition is expressed as seeking to achieve variation in the front setbacks, to avoid a continuous building line. It is submitted that this is a very unusual condition, and that it is not necessary, desirable or reasonable in the context of the Application. Assuming that Council seeks to avoid excessive uniformity in appearance, that concern is not well founded for a number of reasons.
97. Firstly, the Proponents' intention is that the proposed lots would be subdivided and then developed separately by purchasers, as would normally be expected in the context of a proposed subdivision of this nature (as opposed to an 'integrated' development permit). Different purchasers will inevitably have different preferences in terms of style of dwellings, and the needs and desires of purchasers. Those differences will necessarily have implications for the presentation of each dwelling to the street – there is no risk of excessive uniformity.
98. Secondly, the (large) envelopes should not be misunderstood as building footprints. Any anticipated dwelling would leave generous space *within* each envelope (rather than assuming that dwellings will 'fill' envelopes of this size).
99. Thirdly, having regard to the landscape requirements of condition 3 to 6 inclusive, and the contribution that the landscaping will make to avoid an appearance of uniformity of development, it is submitted that condition 1(c) is not necessary.

100. Fourthly, given the size of the proposed lots, there is no rational basis for concerns as to excessive uniformity of development, from a streetscape perspective.
101. The Proponents content that condition 1(b) is overly prescriptive, that it not required for planning purposes, and that it does not promote the economic use and development of land (the latter point being an important consideration under the relevant ResCode objectives – 54.03-1 and 55.03-1 – as well as being central to s 4 of the Act).
102. Condition 1, and the proposed permit overall, would operate better, in planning terms, if condition 1(b) was simply omitted. There is no need for any modification to the building envelopes as proposed.
103. The Proponents thank the Panel for the opportunity to be heard in respect of the Amendment and the Application.



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8 August 2024