

Macedon Ranges Planning Scheme

Amendment C154macr

Planning Permit Application PLN/2022/198

Explanatory Report

Overview

The amendment and permit application are a combined planning scheme amendment and planning permit application under section 96A of the *Planning and Environment Act 1987* (PE Act). Amendment C154macr and planning permit application PLN/2022/198 affect land at 1 Wills Street, Malmsbury and part of the abutting road reserves in Wills, Mitchell and Walsh Streets. The amendment rezones the affected land from the Farming Zone (FZ) to the Neighbourhood Residential Zone – Schedule 13 (NRZ13 – Malmsbury Township East), while the planning permit application seeks approval to subdivide the land into 9 residential lots ranging in size from 2,000 square metres to 2,182 square metres in accordance with NRZ13.



Figure 1: The location of land at 1 Willis Street, Malmsbury

Where you may inspect this amendment

The amendment can be inspected free of charge at the Macedon Ranges Shire Council website at <https://www.mrsc.vic.gov.au/Build-Plan/Planning-For-Our-Future/Planning-Scheme-and-Amendments>

The amendment is available for public inspection, free of charge, during office hours at the following places:

Macedon Ranges Shire Council Offices and Service Centres at:

- Gisborne Council Office, 40 Robertson Street, Gisborne
- Kyneton Council Office, 129 Mollison Street, Kyneton

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

Details of the amendment

Who is the planning authority?

This amendment has been prepared by the Macedon Ranges Shire Council, which is the planning authority for this amendment. The amendment has been made at the request of Deborah Barton and Steven Waldron.

Land affected by the amendment

The amendment applies to land at 1 Wills Street, Malmsbury and part of the abutting road reserves in Wills, Mitchell and Walsh Streets.

The planning permit application proposes to subdivide the land at 1 Wills Street, Malmsbury, which is triangular shaped, is approximately 1.9 hectares in size and bounded by Wills Street (west), Walsh Street (north) and Mitchell Street (south).

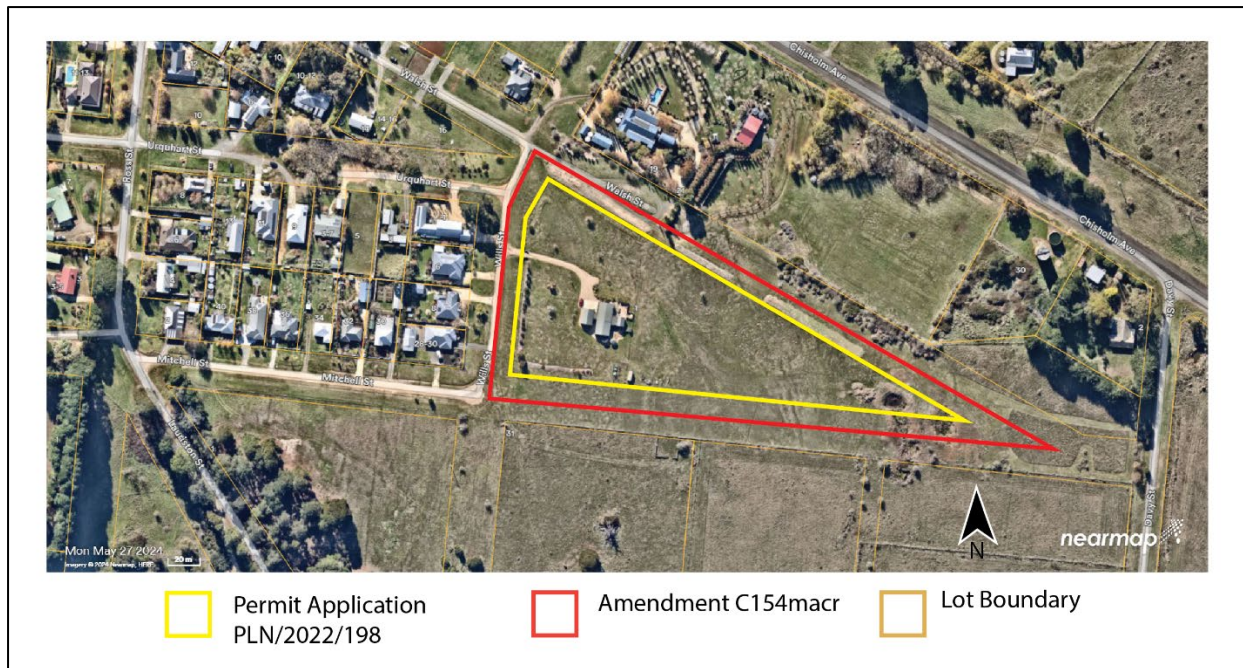


Figure 2 Land affected by Amendment C154macr and Planning Permit Application PLN/2022/198

What the amendment does

The amendment:

- Rezones approximately 1.9 hectares of land at 1 Wills Street, Malmsbury and parts of the abutting road reserves in Wills, Walsh and Mitchell Streets from the Farming Zone (FZ) to the Neighbourhood Residential Zone, Schedule 13 (NRZ13) as shown on Planning Scheme Map No. 5.
- Inserts 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.

The planning permit application seeks approval for:

- The subdivision of the land at 1 Wills Street, Malmsbury into nine residential lots ranging in size from 2,000 square metres to 2,182 square metres in accordance with NRZ13.

The planning permit is attached as a separate document to this explanatory report.

Strategic assessment of the amendment

Why is the amendment required?

The combined amendment/permit facilitates a modest residential subdivision on the eastern edge of Malmsbury that seeks to rezone some of the last remaining land zoned FZ within the township boundary. The amendment will facilitate growth in line with Clause 11.01-1L (Settlement – Malmsbury) of the Macedon Ranges Planning Scheme, which seeks to contain development within the township boundary and facilitate development on the periphery of the town larger lots, significant

landscaping and generous setbacks.

The land is located near the town centre and has good access to a range community facilities and services. Malmsbury is estimated to have a population of 905 residents within 416 dwellings (Area Code SAL21585, ABS 2021 Census).

The *Macedon Ranges Shire Settlement Strategy* (July 2012) estimated that there were theoretically 230 vacant lots in Malmsbury, but a more recent land supply figure is unknown. While this strategy did not anticipate further rezoning until 2036, the addition of nine residential lots is not excessive and provides a limited increase in the amount of available residential land in Malmsbury, consistent with the designation of Malmsbury as a small town in Clause 02.03-1 (Strategic directions – Settlement) of the Municipal Planning Strategy (MPS).

The new Schedule 13 to Clause 32.09 (NRZ13) inserts new neighbourhood character objectives, a minimum subdivision area and variations to the provisions of Clause 54 relating to minimum street setback, site coverage, permeability, side and rear setbacks and walls on boundaries to reflect that the land is in a transition area between more traditional residential areas of Malmsbury and the rural living areas to the east and south.

The neighbourhood character objectives seek to provide a less dense built form with larger lots, significant landscaping (including the planting of canopy trees) and generous setbacks normally associated with residential development on the edge of a township. The NRZ13 seeks to insert the following variations to the provisions of Clause 54:

- A 12-metre minimum street setback (Standard A3) to provide a generous setback to recognise that the land is located on the fringe of the urban area of the township and provide a level of spaciousness and transition from residential areas to a rural living/rural setting.
- Twenty per cent site coverage (Standard A5) to ensure that buildings do not dominate the spacious landscape setting and that landscape elements (i.e., openness, trees and green space) are the dominant feature of any development.
- Fifty per cent permeability (Standard A6) to ensure development of the lots provide an open, green, transitional landscape that is appropriate for residential development at the edge of a small town.
- Side and rear setback requirements (Standard A10) and walls on boundaries requirements (Standard A11) to achieve the neighbourhood character objectives of the zone.

The amendment is consistent with Clause 02.03-1 (Settlement) of the MPS and supports the role of Malmsbury as a small town within the settlement hierarchy. The NRZ13 is preferred over the Low Density Residential Zone because the NRZ13 enables specific variations to the provisions of Clauses 54 and 55 (although the variations that had been proposed to the provisions of Clause 55 are no longer consistent with the *Ministerial Direction – The Form and Content of Planning Schemes* and are no longer included).

The combined amendment/permit allows for the subdivision of the land into nine large residential lots to facilitate a modest increase in housing that responds to the character of the area in accordance with the neighbourhood objectives contained in the NRZ13.

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

The amendment will implement the following objectives of planning in Victoria under section 4(1) of the PE Act:

(a) to provide for the fair, orderly, economic, and sustainable use, and development of land.

(b) to provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity.

(c) to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria.

(e) to protect public utilities and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community.

(f) to facilitate development in accordance with the objectives set out in paragraphs (a), (b), (c) and (e).

(g) to balance the present and future interests of all Victorians.

The amendment implements these objectives by providing for the orderly and balanced growth of Malmsbury within the existing township boundary.

The land consists of a relatively small lot previously zoned FZ, with no significant environmental values. Street tree planting, canopy trees and garden planting may assist with improving biodiversity values and increasing the presence of native fauna within the area.

The land has limited agricultural potential due to its location close to existing residential development and its shape and size, which limit the range of agricultural activities or primary production that could occur on the land.

The amendment facilitates a small residential subdivision with canopy tree planting and future gardens, which will provide a pleasant working, living and recreational environment for residents and visitors.

The proposed residential subdivision will be connected to all relevant services, including reticulated sewerage, protecting water quality within the Eppalock Declared Special Water Supply Catchment.

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

The amendment will have positive environmental, social, and economic effects and result in net community benefit.

Environmental effects

The amendment is not expected to result in any significant environmental effects. An ecological report undertaken for the amendment identifies little of ecological

importance on the land, and no threatened or endangered species of flora or fauna have been recorded or are likely to be present.

Previous history of the land indicates that the site was used for grazing, with no intensive agricultural use.

The amendment provides an opportunity to increase street tree planting and landscaping associated with future residential development to assist in improving biodiversity values within the area. The variations to setback provisions under Clause 54 within the NRZ13 will encourage tree planting in the private realm.

The affected land is located within the Eppalock Declared Special Water Supply Catchment. The combined amendment/permit ensures that all lots to be created, including the lot to accommodate the existing dwelling, are connected to reticulated sewerage to ensure that effluent will not adversely affect waterways or the wider catchment. Additionally, street trees and gardens associated with future residential development may assist in capturing and retaining natural water to reduce runoff traversing properties.

Coliban Water raised no concerns about impacts to the catchment and supported the combined amendment/permit subject to the inclusion of permit conditions relating to infrastructure upgrades. This will ensure that all lots will be sewered with no use of septic tank systems or similar for wastewater disposal.

Social and economic effects

The amendment is expected to have positive social and economic effects by facilitating a modest increase in residential land supply, which will provide for population growth and housing opportunities within this small town.

The amendment will ensure that any future development is respectful of the preferred neighbourhood character of this location on the edge of Malmsbury.

The amendment also supports existing businesses and community services and facilities within the town better utilises of the existing transport system, including the road network and railway line, as well as existing service infrastructure.

Does the amendment address relevant bushfire risk?

The amendment is consistent with state planning policy at Clause 13.02-1S (Bushfire), as residential development is directed to an area of relatively low bushfire risk where adequate separation from bushfire hazard can be achieved.

The Country Fire Authority (CFA) supports the proposal subject to the inclusion of five conditions in Planning Permit PLN2022/198.

The assessment context

The land is within a designated Bushfire Prone Area (BPA) but is not subject to a Bushfire Management Overlay.

The bushfire landscape in proximity to the affected land is at a medium landscape risk, where the landscape risk is from grasslands (broader landscape type 2) as described in *Planning Permit Applications Bushfire Management Overlay Technical Guide* (DELWP, 2017). The vegetation more than 150 metres from the site is predominantly unmanaged or grazed grasslands and shrubland, primarily gorse and mixed woody weeds including Hawthorn (except at Fryers Ranges, 4 kilometres due

west from the site). Extreme bushfire behaviour is possible to the south, although the landscape is fragmented by the railway line.

The amendment prioritises the protection of human life over all other policy considerations by directing development to a low-risk location on the eastern edge of Malmsbury. Victoria's dominant bushfire weather usually occurs from the north-west and the south-west. Directing growth to the east of a settlement avoids the highest risk aspect. The rezoning of this site is preferred to rezoning zoned land for rural living to the north-west and south-west of Malmsbury.

The permit facilitates a modest residential subdivision with a minimum subdivision area of 2,000 square metres. While 800-1,200 square metres is the optimal range as outlined in the *Design guidelines for the settlement planning at the bushfire interface* (DELWP, 2020) larger lots are appropriate for this area, where there will be a transition from the township to rural living/rural areas. The permit includes conditions to upgrade the road network, which will provide safer access to and from the land in the event of a potential fire affecting the settlement edge. The Malmsbury Botanic Gardens will provide a safer place approximately 1 kilometre to the west.

A key matter for planning is ensuring an adequate separation distance between dwellings and bushfire hazard and to prevent a bushfire front from continuing into the settlement.

A condition has been included on the planning permit requiring entry into an agreement under section 173 agreement of the *Planning and Environment Act* 1987 and building envelopes to ensure that each lot maintains a 19-metre defendable space separation distance to unmanaged or grazed grasslands to ensure that the development achieves a radiant heat flux of less than 12.5 kilowatts per square metre under the AS3959-2018 *Construction of Buildings in Bushfire-prone Areas* (Standards Australia, 2018). Planning permit conditions also require the provision of fire hydrants to the satisfaction of the Country Fire Authority and street trees that are consistent with the surrounding character and predominantly deciduous.

The road reserves will be appropriately managed under the council's Township Hazard Reduction Program. As a part of this program, grass within the road reserve is managed to a height of 75 millimetres over the entire area prior to the fire danger period.

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

The amendment complies with the requirements of the *Ministerial Direction – The Form and Content of Planning Schemes* under Section 7(5) of the Act. Schedule 13 to Clause 32.09 is consistent with the template in the ministerial direction.

Ministerial Direction 1

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

Further, the amendment was referred to the Environmental Protection Authority Victoria, which concluded that due to Ministerial Direction 19 not being triggered, further action on the matter was not required.

The amendment is also consistent with the *Ministerial Direction No. 11 - Strategic Assessment of Amendments*. The explanatory report has discussed and evaluated how the amendment addresses the relevant strategic considerations outlined in the ministerial direction.

No other ministerial directions apply to the amendment, except *Ministerial Direction No 15 – The Planning Scheme Amendment Process*.

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

The amendment supports and implements the Planning Policy Framework as follows:

- *Clause 11.01-1S (Settlement) and Clause 11.01-1R (Settlement - Loddon Mallee South)* by facilitating a small-scale residential subdivision and limited population growth within the Malmsbury township boundary consistent with Malmsbury's role in the settlement hierarchy as a small town.
- *Clause 11.01-1L (Malmsbury)* by rezoning land that facilitates residential development within the township boundary that feature larger lots and generous setbacks.
- *Clause 11.02-1S (Supply of urban land)* by providing a modest increase in supply of land within Malmsbury for residential uses and to support existing infrastructure.
- *Clause 11.03-3S (Peri-urban areas)* by managing growth within the township boundary of Malmsbury and protecting and enhancing Malmsbury's identified values attributes via the NRZ13.
- *Clause 11.03-5S (Distinctive Areas and Landscapes)* by recognising the importance of the Macedon Ranges distinctive area and landscape and protecting valued attributes via the NRZ13.

The amendment affects land within the Macedon Ranges declared distinctive area and landscape. The overarching settlement objective of the Macedon Ranges Statement of Planning Policy (VC185, April 2021) is "*to plan and manage growth of settlements consistent with protection of the area's significant landscapes, protection of catchments, biodiversity, ecological or environmental values consistent with the role and function of each settlement*".

Strategies to implement the objective include:

- Direct urban development to a hierarchy of settlements identified for growth... Malmsbury is identified as a small town with minimal change and limited growth within the township boundaries.
- Encourage infill development that respects the townships' character. The affected land is within the town boundaries. The NRZ13 provides guidance for new development that respects the preferred character for this land on the periphery of Malmsbury.

- Limit expansion of settlements in high-risk locations etc. The affected land is not located in a high bushfire risk location and bushfire risk is managed via the subdivision design. The amendment will not affect any waterway or catchment.
- Encourage a range of housing types within settlement boundaries... The combined amendment/permit facilitates a small, fully serviced residential subdivision that will provide additional housing choice in Malmsbury.
- *Clause 12.01-2S (Native Vegetation Management)* by avoiding the removal of any native vegetation.
- *Clause 12.03-1S (River and riparian corridors, waterways, lakes, wetlands and billabongs)* by protecting and restoring the designated water supply catchment via conditions on the permit to connect to reticulated services and encouraging landscaping of future residential lots.
- *Clause 12.05-1S (Environmentally sensitive areas)* by protecting the water supply catchment by requiring connection to reticulated services.
- *Clause 13.02-1S (Bushfire planning)* by strengthening the resilience of Malmsbury and its community to bushfire through risk-based planning that prioritises the protection of human life as discussed above.
- *Clause 13.04-1S (Contaminated and potentially contaminated land)* by considering previous land uses on the site, which has included limited grazing and rural living. Further research was undertaken in line with Planning Practice Note 30 Potentially Contaminated Land (July 2021) and it was considered no further action on this matter is required.
- *Clause 14.01-1S (Agriculture)* by rezoning land within the township boundary that has limited capability for farmland due to its location, size and shape.
- *Clause 15.01-3S (Subdivision design)* by ensuring the design of the subdivision achieves an attractive, safe and accessible neighbourhood. The subdivision design results in lot dimensions and sizes that allow for generous building envelopes that provide spaciousness between dwellings and landscaping opportunities. The design allows for an attractive future neighbourhood, that provides visual continuation of established residential areas to the west.
- *Clause 16.01-1S (Housing supply)* by facilitating a residential rezoning and subdivision, which is well-located and provides a diversity of housing opportunities in Malmsbury.
- *Clause 18.02-4S (Roads)* by facilitating a subdivision that supports an efficient and safe road network. A traffic and transport assessment report prepared for the combined amendment/permit found that the subdivision will not adversely affect the existing road network, which can accommodate a minor increase in vehicular traffic, whilst the extensions to Walsh and Mitchell Streets will be designed and constructed in accordance with permit conditions.
- *Clause 19.03-2S (Infrastructure design and provision)* by providing development infrastructure and services to the new subdivision via permit conditions.

- *Clause 19.03-3S (Integrated water management)* by managing wastewater and stormwater drainage so that the catchment is protected by providing large lots with limited site coverage and greater permeability via the NRZ13 and fully serviced lots in accordance with the requirements of relevant authorities via permit conditions.
- *Clause 19.03-4S (Telecommunications)* by facilitating the provision of telecommunications via permit conditions.

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

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

- *Clause 02.02 (Vision)* and *Clause 02.03-1 (Strategic directions – Settlement)* by rezoning land that provides for the orderly development of Malmsbury consistent with its designation as a small town within the settlement hierarchy.
- *Clause 02.03-2 (Environmental and landscape values - Significant environments and landscapes)* By encouraging development that responds to Malmsbury's environmental and landscape values by providing canopy tree plantings of native vegetation and exotic species.
- *Clause 02.03-4 (Natural resource management - Catchment management and water quality)* by rezoning land that locates new development within the town boundary and the township sewerage district.
- *Clause 02.03-5 (Built environment and heritage – Urban design, built form and neighbourhood character)* by applying the NRZ13 schedule to ensure the rural character of Malmsbury is maintained and that there is an orderly transition of development to the Rural Living Zone 2 to the south.

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

The amendment makes proper use of the Victoria Planning Provisions by applying the NRZ13 to ensure that development of the land is consistent with the neighbourhood character of Malmsbury, which contains predominantly single and double storey dwellings with a 'small country town' atmosphere, historic bluestone buildings and streetscapes and sweeping views of the surrounding landscape.

The application of the NRZ13 is also consistent with *Planning Practice Note -91 – Using the Residential Zones* (PPN91). PPN91 says that the NRZ should be applied to areas where there is no anticipated change to the predominantly single and double storey character and the NRZ can be applied to areas that have been identified as having specific neighbourhood, heritage, environmental or landscape character values that distinguish the land from other parts of the municipality or surrounding area. The use of NRZ13 is also more consistent with the settlement objective of the Macedon Ranges Statement of Planning Policy given the NRZ13 supports low scale development on larger lots with generous setbacks and landscaping consistent with Malmsbury's character.

While a minimum subdivision area of 2,000 square metres is proposed, the application of the NRZ is more appropriate than the Low-Density Residential Zone

because the NRZ provides the ability to vary standards relating to site coverage, permeability and setbacks. The variations to these standards will ensure future development is consistent with character of Malmsbury and provides a transition between the urban area and the surrounding rural living areas. The Low-Density Residential Zone does not provide the ability to vary any standards and ensure that any future development responses to the existing and preferred neighbourhood character for the area.

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

Prior to exhibition, the relevant referral authorities under Clauses 66.01, 66.03 and 66.02-5 of the Macedon Ranges Planning Scheme were notified of and responded to the combined amendment and planning permit. Coliban Water provided recommended water and sewerage conditions, which have been included in the planning permit.

The views of other agencies and referral authorities were sought prior to, and during the public exhibition period. All advice received from referral authorities was actioned and permit conditions supplied were included in the planning permit.

The planning permit is attached as a separate document to this explanatory report.

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

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

- The amendment does not impact existing public transport networks.
- The amendment will enable limited additional residential land supply that is supported by the existing road infrastructure and network.

Resource and administrative costs

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

The amendment has a low future administrative cost and burden on the responsible authority given that a combined amendment/permit process is being used to streamline planning approvals. The land is affected by the existing Environmental Significance Overlay, Schedule 4 and Heritage Overlay HO148 that already trigger the need for permits for a dwelling on the land.

Any additional planning permit applications resulting from this amendment can be accommodated by the existing available resources of the responsible authority, and no specific miscellaneous costs would be incurred. The relevant planning permit application fees will assist and support the responsible authority in decision making.

As the proposed residential development is modest in nature, it is not expected to put any significant burden on the services of the responsible authority.