

AMENDMENT C223 - ANOMALIES IN THE YARRA RANGES PLANNING SCHEME - AUTHORISATION TO COMMENCE EXHIBITION

Report Author: Strategic Planner
Responsible Officer: Director Planning & Sustainable Futures
Ward(s) affected: (All Wards);

The author(s) of this report and the Responsible Officer consider that the report complies with the overarching governance principles and supporting principles set out in the Local Government Act 2020.

CONFIDENTIALITY

This item is to be considered at a Council meeting that is open to the public.

SUMMARY

Amendment C223 proposes to correct minor inaccuracies and anomalies for sites across the municipality that will be either be rezoned, partly rezoned, have redundant overlays and provisions updated or deleted to improve the overall operation of the Yarra Ranges Planning Scheme.

Regular review and updating of the planning scheme are requirements of the *Planning and Environment Act 1987*.

In order to commence the amendment process, Council must seek authorisation from the Minister for Planning to prepare and exhibit the amendment.

RECOMMENDATION

That Council

- 1. Request authorisation from the Minister of Planning to prepare and exhibit Amendment C223 to the Yarra Ranges Planning Scheme, generally in accordance with the attachments to this report and the requirements of the Planning and Environment Act 1987.***
- 2. Subject to the Ministers authorisation, exhibit Amendment C223 to the Yarra Ranges Planning Scheme.***
- 3. Receive a further report considering submissions following exhibition of the amendment.***

RELATED COUNCIL DECISIONS

There are no previous related Council decisions relevant to this item.

DISCUSSION

Purpose

The purpose of this report is to provide an overview of the corrections and anomalies items proposed to be included in Amendment C223 and recommend that Council seek authorisation from the Minister for Planning to commence the amendment.

Background

As required by the *Planning and Environment Act 1987* Council is required, under section 12(1)(c), to regularly review the provisions of the planning scheme for which it is a planning authority.

As part of this regular review, a number of anomalies, errors and updates to the Yarra Ranges Planning Scheme have been identified since the last anomalies and corrections amendment C197part 1A, B and part 2 that was approved in 2022.

Amendment C223 applies directly to various properties across the municipality that will either be rezoned or partly rezoned, or have an overlay deleted or amended as detailed in the attached draft Explanatory Report at Attachment 1.

Six items to be included in Amendment C223 have been requested by an external party:

- 261 Mount Dandenong Tourist Road, Ferny Creek. The occupier of the site – the Proserpina Bakehouse has requested that the Incorporated document *Development and Use of Land for a Food and Drink Premise and a Caretaker's House, November 2013* that applies to the site be amended to include new hours of operation consistent with the bakery use of the site.
- 72A Milners Road, Yarra Junction. The landowner Melbourne Water has requested that the site-specific control that applies to the site, and which has now expired, be extended for another 10 years to enable its consolidation.
- 435-437 Maroondah Highway, Lilydale. The landowner requested as part of their submission to the draft Lilydale Structure Plan that part of the site which is zoned Residential Growth Zone (RGZ1) be rezoned to include all land within the Commercial 2 Zone (C2Z).
- 441A Maroondah Highway, Lilydale. The landowner has requested that part of the site that is currently zoned RGZ1 be included in the C2Z as this portion is in the process of being acquired by 439 Maroondah Highway, Lilydale for further business expansion. A planning permit for a boundary re-alignment has been granted (YR-2022/346).

- 1 St Benedict's Drive, Gladysdale. A prospective purchaser notified Council that the site is included in the Public Conservation and Resource Zone, despite it being in private ownership with a dwelling, and suggested the site should be rezoned to Rural Conservation Zone 3 to reflect its use and the surrounding zoning.

Key Issues

The nature of a corrections and anomalies amendment is that the contents are of a minor nature and will improve the operation of the Yarra Ranges Planning Scheme by:

- Rectifying anomalies to ensure properties are covered by the zone control that best suits their function.
- Ensuring properties are not covered by more than one zoning when multiple zoning is not justified.
- Removing redundant overlay controls and provisions.
- Improving the clarity of existing provisions.

The following provides further details about the proposed changes:

Items 1 and 2: Mapping Corrections

Rezoning to the correct zone. A number of properties are proposed to be rezoned or partially rezoned to the correct zoning to be consistent with existing and future land use. Some properties are in zones that do not reflect current ownership or use. A number of properties are covered by two zones where the zone boundaries do not match the property boundaries. A detailed list can be found in Table 1 and 2 in Attachment 1 to this report and a copy of the maps at Attachment 2.

One of the properties included in the mapping corrections is 150 Cambridge Road, Kilsyth (former Yarra Hills Secondary College) that Council purchased in 2022 for open space purposes. The amendment proposes to rezone the land from Neighbourhood Residential Zone Schedule 1 to Public Park and Recreation Zone and remove Development Plan Overlay 10 – Former Yarra Hills Secondary College from the site that facilitated housing on the land.

Item 3: Removal or updating of the Specific Controls Overlay from several sites, changes to the associated Incorporated Documents and updates to the Schedule to Clause 45.12 Specific Controls Overlay (SCO)

The amendment proposes to delete the incorporated document *'Document Incorporated under the Schedule to Clause 52.03 (Specific Sites and Exclusions) of the Yarra Ranges Planning Scheme, March 2017'* that applies to a number of sites in the municipality.

A majority of the sites included in the Incorporated Document have now been developed in accordance with the site-specific requirements listed in the document

or the requirements have long expired. These provisions generally allowed sites to be developed for a specific purpose by exempting them from the need to comply with other provisions in the planning scheme. Further information on each site specific provision is included in Table 3 of Attachment 1.

The associated Specific Controls Overlay (SCO) mapping will also be removed from these sites and the schedule to the SCO amended.

Through review of the document, it has been identified that three sites will need to retain their site-specific exemption and have their expiry dates extended. A new Incorporated Document specific to each site is proposed to be included in the planning scheme. Further information on these sites is included in Table 3 of Attachment 1.

The schedule to the SCO at Clause 45.12 of the planning scheme will be updated to reflect the above changes.

Item 4 – Cambridge Road, Kilsyth

It is proposed to remove Development Plan Overlay Schedule 10 (Former Yarra Hills Secondary College – 150 Cambridge Road, Kilsyth) that facilitated housing on the site given the land is now in Council ownership and will be developed for open space purposes.

Item 5 – Update Schedule 2 to Clause 37.01 Special Use Zone (SUZ2)

The amendment proposes to amend Schedule 2 to the Special Use Zone – Major Tourist Facility (SUZ2) at Clause 37.01 to include accurate property addresses for all SUZ2 listed sites. Currently the schedule includes confusing property addresses that don't align with the actual addresses of each site or do not include the full street address. Further information on these sites is included in Table 4 of Attachment 1.

Item 6 – Delete outdated references to Environmentally Sustainable Design from Design and Development Overlay (DDO) schedules to 4, 9 11, 12, 13, 14, 15, 16 and 17

The amendment proposes to remove outdated references to Environmentally Sustainable Design (ESD) in several DDO's in the planning scheme that are inconsistent with and now addressed in the Environmentally Sustainable Development local policy at Clause 15.01-2L of the planning scheme that was included in the planning scheme as part of Amendment C148.

Item 7 – Minor correction to the Schedule to Clause 44.01 Erosion Management Overlay

The amendment proposes to correct a minor grammatical error in the schedule to the Erosion Management Overlay that occurred during the recent approval of Amendment C217. The correction will improve the operation of the schedule provisions.

Options considered

Option 1

The Council notes the changes proposed to the Yarra Ranges Planning Scheme as part of the Amendment C223 and provide endorsement to seek authorisation from the Minister of Planning to prepare and exhibit Amendment C223 to the Yarra Ranges Planning Scheme.

Option 2

That Council require further review and information on the items that are proposed to be included as part of Amendment C223.

Recommended option and justification.

It is recommended Council proceed with Option 1. The changes proposed by Amendment C223 will provide an improved planning scheme that will deliver better outcomes for both Council planning decisions and landowners.

FINANCIAL ANALYSIS

The costs associated with the preparation of Amendment C223 are covered the recurring Planning Scheme Amendments operational budget for Strategic Planning.

APPLICABLE PLANS AND POLICIES

This report contributes to the following strategic objective(s) in the Council Plan 2021-2025:

- Quality Infrastructure and Liveable Places
- Protected and Enhanced Natural Environment
- Yarra Ranges Planning Scheme – Clause 1.0 Purpose of the Yarra Ranges Planning Scheme – to provide a clear and consistent framework within which decisions about the use and development of land can be made.

RELEVANT LAW

In carrying out its planning functions under the *Planning and Environment Act 1987*, Council has a responsibility as the Planning Authority to set the strategic policy framework for the municipality and to initiate changes to the planning scheme.

SUSTAINABILITY IMPLICATIONS

Economic Implications

Overall economic impacts will be minor, but there will be some benefit through removing redundant provisions and clarifying the ability to develop and use land.

Social Implications

There will be no significant social impacts. The proposed changes will make it clear to community, developers, and planners what the intended land outcomes are for the impacted properties.

Environmental Implications

There will be no significant environmental impacts.

COMMUNITY ENGAGEMENT

In preparing the amendment Council officers have undertaken the following discussions with affected landowners and occupiers.

Proserpina Bakehouse at (261 Mount Dandenong Tourist Road, Ferny Creek)

Council officers met with the owners of the Bakehouse on 13th February 2024 in relation to their request for changes to the hours of operation within the incorporated document that applies to the site, to better align with their business.

An amended draft incorporated document with the new hours requested was sent to both the business owners and landowners on 16th February 2024 for their comment within 14 days.

The business owner responded via email on 9th of April 2024 and advised they had reviewed the draft documents and are happy with the proposed changes.

The Incorporated Document has also been updated to use terminology that better reflects the current land use on the site. The existing document currently refers to a restaurant. The current business operates as a bakery/ café therefore the land use term 'food and drink premise' is more appropriate for the current operation.

The land use terms 'restaurant' and 'take away food premises' nest under the term 'food and drink premises' in the planning scheme and more suitably describe the current use of the site and is in keeping with the original intent of the Incorporated Document.

435-437 Maroondah Highway, Lilydale

Council officers have liaised with the owners of this site via an email sent on 27th February 2024, as a follow up to their submission to the Draft Lilydale Structure Plan of 8 March 2022 that highlighted that the site is partially zoned RGZ and C2Z.

Officers have provided advice to the landowner of the intention to correct the mapping for this site by including all land at 435-437 Maroondah Highway, Lilydale within the Commercial 2 Zone (C2Z). The C2Z is consistent with the site's location on Maroondah Highway and the surrounding zoning. To date the owners have not responded to the email sent on 27 February 2024.

441A Maroondah Highway, Lilydale

Council officers have liaised with the owners of 441A Maroondah Highway and 439 Maroondah Highway, Lilydale via email. The owners of 439 Maroondah Highway advised on 1 March 2024 that they are in the process of acquiring a portion of 441A Maroondah Highway to expand their business and a planning permit has been granted for a boundary re-alignment. The owners will need to complete the land transfer on title prior to the amendment being finalised. The landowners have confirmed that they agree to arrange for the land transfer to be finalised before the amendment is considered for final approval.

Melbourne Water

UFZ

Council officer have liaised with Melbourne Water about the part rezoning of land at 6, 10 and 20 Wilson Street, Healesville and 271-273 Maroondah Highway, Healesville to the Urban Floodway Zone. Due to the drifting of waterways over time there is now an inconsistency between the zone and property boundaries. Melbourne Water advised on 21 February it agreed to the proposed changes.

72A Milners Road, Yarra Junction

Council officers have also sought advice from Melbourne Water on the ongoing need for the site-specific exemption for 72A Milners Road, Yarra Junction.

The site-specific provision currently in the planning scheme identifies the sites as surplus Melbourne Water land and that a permit may only be granted for their use or development when the responsible authority is satisfied that each parcel has been consolidated with adjoining land.

Melbourne Water advised on 12 March 2024 and further on 1 May 2024 that the site is utilised by Melbourne Water as a Pipe Track containing the Yarra Valley Conduit. The land contains two water mains (M161 and M231), both of which have air valves installed. These assemblies are located at tops of high points along the water main to allow air to be released or enter the mains depending on operation of the mains.

At this stage, and given the current use of the land, Melbourne Water has not yet disposed of the sites and would support the extension of the exemption for a further 10 years and the creation of a separate Incorporated Document for the land parcels.

A Draft Incorporated Document was sent to Melbourne Water 25 March 2024 for their review, and they have advised of their support.

Public Exhibition

If Council supports the amendment and resolves to seek authorisation from the Minister for Planning to prepare and exhibit an amendment, and the Minister grants authorisation, the amendment would be subject to standard notification requirements for planning scheme amendments as required under the *Planning and Environment Act 1987*, including:

- Notification in a local newspaper.
- Letters to affected property owners.
- Information available on Council's website and Council offices.
- Direct notification to relevant government agencies and departments.

COLLABORATION, INNOVATION AND CONTINUOUS IMPROVEMENT

In preparing the draft amendment, officers have discussed the proposed changes with other departments including the Planning and Building and Recreation and Leisure teams and external parties as discussed under Notification and Engagement above.

As required by the *Planning and Environment Act 1987* Council is required, under section 12(1)(c), to regularly review the provisions of the planning scheme for which it is a planning authority.

RISK ASSESSMENT

There are no significant risks associated with the amendment. The amendments proposed will improve the function and operation of the planning scheme.

CONFLICTS OF INTEREST

No officers and/or delegates acting on behalf of the Council through the Instrument of Delegation and involved in the preparation and/or authorisation of this report have any general or material conflict of interest as defined within the *Local Government Act 2020*.

ATTACHMENTS TO THE REPORT

1. Explanatory Report
2. Amendment Maps
3. Strategic Assessment Guidelines Checklist
4. Schedule 02 to Clause 37.01 Special Use Zone
5. Schedules 4,9,11,12,13,14,15,16 and17 to Clause 43.02 Design and Development Overlay
6. Schedule to Clause 44.01 Erosion Management Overlay
7. Schedule to Clause 45.12 Specifics Controls Overlay
8. Schedule to Clause 72.04 Incorporated Documents
9. 100 Mount Dandenong Tourist Road, Tremont Incorporated Document
10. 115 and 121 Old Emerald Road, Monbulk Incorporated Document
11. 72A Milners Road, Yarra Junction, Pt Lot 25 PS 5142 Little Yarra Road, Yarra Junction, Pt Lot 26 PS 5142 Little Yarra Road, Yarra Junction, Pt CA W and Pt CA 53Z1 Milners Road, Yarra Junction, Incorporated Document
12. 261 Mount Dandenong Tourist Road, Ferny Creek, Development and Use of land for a Food and Drink Premise and Caretakers House Incorporated Document