

AMENDMENT C223 CORRECTIONS AMENDMENT CONSIDERATION OF SUBMISSIONS AND ADOPTION.

Report Author: Executive Officer – Strategic Planning
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 rezoned, partly rezoned, have redundant overlays and provisions updated or deleted to improve the overall operation of the Yarra Ranges Planning Scheme.

The amendment was placed on public exhibition from 7 November to 9 December 2024 and five submissions were received. Of those, two submissions provided support for the amendment and three submissions opposed an item in the amendment (Proserpina Bakehouse at 261 Mount Dandenong Tourist Road, Ferny Creek).

Following discussions with the opposing submitters, changes were made to the amendment documents relating to the Proserpina Bakehouse site that addressed the submitters concerns and were satisfactory to the bakery owners and are now resolved.

A further change is also proposed to the amendment to not delete references to Environmentally Sustainable Design in several Design and Development Overlay schedules in the Planning Scheme, as a result of the introduction of the Town House and Low Rise Code through the State Amendment VC267 on 6 March 2025.

This report discusses the submissions received to the amendment and recommends that Council consider adoption of Amendment C223 including recent changes, and following adoption submit the amendment to the Minister for Planning for approval.

RECOMMENDATION

That Council

1. ***Consider the submissions received to Amendment C223 to the Yarra Ranges Planning Scheme.***
2. ***Adopt Amendment C223 to the Yarra Ranges Planning Scheme, with changes, generally in accordance with Attachments 2-13.***
3. ***Submit the adopted Amendment C223 to the Minister for Planning requesting approval.***
4. ***Write to all submitters to advised them of Council's decision.***

RELATED COUNCIL DECISIONS

At the Ordinary Council Meeting of 11 June 2024 Council resolved to:

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.

DISCUSSION

Purpose

Planning Scheme Amendment C223 was exhibited from 7 November to 9 December 2024. The purpose of this report is to discuss the submissions received and the recommended officer response to submissions. The report recommends that Amendment C223 be approved with changes.

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 Explanatory Report at Attachment 2.

Five items included in Amendment C223 were 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.

The attached explanatory report at Attachment 2 provides further details about the other items included in the amendment. The majority of the changes were not disputed by community, this report goes into detail regarding the concerns regarding specific parts of the amendment.

Key Issues

Submissions

A total of five submissions were received in response to the amendment. A summary of submissions is at Attachment 1 and further discussed below.

Submission 1: 150 Cambridge Road, Kilsyth

The Kilsyth Cricket Club expressed their support for the proposed rezoning of the site (that Council purchased in 2022) from Neighbourhood Residential Zone Schedule 1 to Public Park and Recreation Zone and to remove Development Plan Overlay 10 – Former Yarra Hills Secondary College from the site that facilitated housing on the land.

The submitter also discussed that use of the site should be prioritised for community sport and that modest residential development of the land could strengthen the vibrancy of the area and promote greater engagement in community activities.

Response to submission: Support for Amendment C223 is noted.

Recommendation: No change required.

Submission 2: 25 Madeley Drive, Wesburn

The Department of Energy, Environment and Climate Change (DEECA) - acting on behalf of the Minister for Environment, own the site at 25 Madeley Drive, Wesburn. The site comprises three Crown land parcels (comprising 19.447ha of land) managed by DEECA and Parks Victoria.

The site currently has a Specific Controls Overlay applied to it. This control can be applied to sites to achieve a particular use and development outcome and which generally allows sites to be developed for a specific purpose by exempting them from the need to comply with other provisions in the planning scheme. It has applied to the Madeley Drive site for a number of years to ensure that any application for subdivision meets the following conditions:

- Each lot must be at least 18 hectares and a maximum of 44 hectares and an average of 25 hectares.
- The minimum size of each lot must be at least 18 hectares for subdivision.

Amendment C223 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 that Incorporated Document have now been developed in accordance with the site-specific requirements listed in the document or the requirements have long expired.

Through review of that document, it was identified that three sites will need to retain their site-specific exemption and have their expiry dates extended – including the Madeley Drive site.

Amendment C223 proposes to retain the SCO Schedule 3 to the site and include the site in a stand-alone new Incorporated Document '*25 Madeley Drive (CA 236 Parish of Warburton), Wesburn, Incorporated Document (Yarra Ranges Council, May 2024)*'.

DEECA advised it has no opposition to the amendment and noted that the current zoning of the site in the Public Conservation and Resource Zone (PCRZ) appropriately protects the land and aligns with its public ownership, raising questions about the necessity of a site-specific provision in a new Incorporated Document.

Response to submission: Support for Amendment C223 is noted. Retention of the site-specific control will ensure that these lots cannot be subdivided to protect green wedge land from inappropriate development.

Recommendation: No change required.

Submissions 3, 4, 5 (submissions resolved): Proserpina Bakery Site, 261 Mount Dandenong Tourist Road, Ferny Creek

The occupier of the site – the Proserpina Bakehouse requested that the Incorporated document that applies to the site “*Development and Use of Land for a Food and Drink Premise and a Caretaker’s House, November 2013*” be amended to include new hours of operation consistent with the bakery use of the site. The site was previously occupied by a restaurant.

The purpose of the site-specific control that was included in the planning scheme in 2013 was to facilitate the use and development of the land for a restaurant and a caretaker’s house without the need for a planning permit in accordance with the provisions of the document – ‘*261 Mount Dandenong Tourist Road, Ferny Creek Development and use of land for a Restaurant and Caretaker’s House November 2013*’.

The current occupier of the site – the Proserpina Bakehouse, has requested a change to the Incorporated Document to include revised operating hours and other minor edits to be consistent with the current use of the site as a bakery.

Amendment C223 proposes to amend the document to include updated operating hours and other minor edits.

Three submitters expressed their opposition to the proposed amended hours and expressed concerns relating to the impact the bakery has had on local amenity, car parking and traffic congestion on local streets and that the hours of use need to be shorter.

Response to submission: Officers contacted Submitters 3, 4 and 5 to further discuss their concerns and to seek clarity on what would be more acceptable hours of use.

It was proposed to the submitters, following discussion with the owners of the bakery, that the hours of use in the incorporated document, that currently allow the premise to be open to 10.00pm and on Tuesdays, be amended to align with the bakery’s opening and closing hours which are 7.00am-5.00pm, and closed on Tuesdays, and removing the following wording and allowance from the document “*to extend the time the premises may be open to patrons on no more than twelve (12) days per year, and only between the months of October and March (inclusive) and under no circumstances beyond 11.00pm.*”

All three submitters agreed with the proposed changes and advised in writing that their concerns were satisfied.

With respect to parking and traffic issues, whilst outside the scope of the amendment, Council's traffic and transport team has advised that new parking restrictions are currently being put in place along Hilton Road, to address resident's concerns. Local residents have been notified of this, including the three submitters.

A copy of the proposed changes to the Incorporated Document is at Attachment 12.

Recommendation: Make changes to the amendment as agreed.

Environmentally Sustainable Design

Amendment C223 proposed to amend Schedules 4, 9, 11, 12, 13, 14, 15, 16, and 17 to the Design and Development Overlay (DDO) in the planning scheme to delete wording related to Environmentally Sustainable Design that required the submittal of plans to address how Environmentally Sustainable Design techniques such as energy and water conservation, waste minimisation, vegetation retention and promotion of alternative transport options have been incorporated in a proposed development, as these requirements are now addressed in the Environmentally Sustainable Development local policy at Clause 15.01-2L that was included in the planning scheme as part of Amendment C148.

The above schedules to the DDO's apply specific design requirements to land in a number of townships across the municipality.

On 6 March 2025, the State Government introduced a new Townhouse and Low-Rise Code that replaces the current ResCode requirements in Clause 55 of all planning schemes through Amendment VC267.

Clause 55 of all planning schemes applies to the development of two or more dwellings on a lot and residential buildings up to and including three storeys when land is within the Residential Growth Zone, General Residential Zone, Neighbourhood Residential Zone, Mixed Use Zone or Township Zone.

The new Code introduces deemed to comply standards. The Code works in the following way:

- A development must meet all the applicable objectives contained in clause 55.
- If a development meets a standard:
 - The corresponding objective is deemed to be met;
 - The responsible authority is not required to consider the corresponding decision guidelines.
- If a development does not meet a standard, the responsible authority must consider the applicable decision guidelines in determining whether the corresponding objective is met.
- If an application meets certain requirements, the planning application cannot be refused on the basis of that requirement.

When a standard is met, the council is not required to consider any other policy or decision guideline in the planning scheme and specified matters under section 60 of the *Planning and Environment Act 1987*.

The Environmentally Sustainable Design policy in the Planning Scheme applies to the development of three or more dwellings on a lot and requires development to be designed to address matters related to energy performance, integrated water management, indoor environment quality, sustainable transport and emissions, waste management and biodiversity. Applications for development need to be accompanied by a Sustainable Design Assessment and Sustainability Management Plan.

Under the new Code requirements, Council cannot consider the ESD policy requirements for an application that is deemed to comply with the new standards.

Given this recent change, it is proposed that the ESD requirements in the DDO schedules should be maintained to ensure that a report is still provided with an application that details how Environmentally Sustainable Design techniques have been incorporated into a proposed development. Consideration of these requirements seeks to achieve best practice in environmentally sustainable development from the design stage through to construction and operation.

Maintaining these requirements in an overlay will enable ESD to still be considered for an application on land in one of the DDO affected areas, as requirements in an overlay must still be considered when assessing if a development is deemed to comply.

It is recommended that Amendment C223 is adopted with changes to not delete references to Environmentally Sustainable Design in Schedules 4, 9, 11, 12, 13, 14, 15, 16, and 17 of the Design and Development Overlay in the Planning Scheme.

Options considered

Option 1 – Adopt Amendment C223 with changes

Adopt Amendment C223 with the following changes:

Amend the Incorporated Document for the Proserpina Bakery Site, 261 Mount Dandenong Tourist, Ferny Creek as discussed above under Submissions. Adoption of the amendment with the changes requested by submitters and with agreement from the business owners, will enable the amendment to proceed to approval from the Minister for Planning, subject to the Council's endorsement, without the need for a Planning Panel to be appointed or for the item needing to be removed from the amendment. There is high community support for the Amendment with the updated changes, and the Amendment has been developed in respond to community requests.

Remove the proposal to delete references to Environmentally Sustainable Design in Schedules 4, 9, 11, 12, 13, 14, 15, 16, and 17 of the Design and Development Overlay.

This option is recommended.

Option 2 – Adopt Amendment C223 without changes

Adopt Amendment C223 without changes.

If the amendment is adopted without the changes requested by the submitters, a Planning Panel will be required to be appointed to further consider the submissions. As the matters raised by submitters have been resolved to their satisfaction, proceeding to a Panel would be an unnecessary cost for the bakery owners (who would need to bear the cost) and resources for the strategic planning team.

If the amendment is adopted without the removal of the proposal to delete references to ESD in the DDO schedules, Council will lose its ability to consider ESD requirements as it does currently for residential applications that are assessed as deemed to comply.

This option is not recommended.

Option 3 – Abandon Amendment C223

The exhibited documents and subsequent discussions with submitters have achieved community support for the Amendment. Abandoning the amendment would be a poor community and planning outcome. This option is not recommended.

Recommended option and justification

It is recommended that Option 1 be pursued to ensure the timely correction of anomalies and corrections in the planning scheme.

FINANCIAL ANALYSIS

The costs associated with Amendment C223 are covered by the recurring Planning Scheme Amendments operational budget allocation for Strategic Planning. The cost to submit the Amendment to the Minister for Planning for approval is \$530.70.

APPLICABLE PLANS AND POLICIES

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

- 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. Adjusting existing zones to achieve more consistent controls across land under the same ownership will support appropriate investment and development.

Social Implications

There will be no significant social impacts, although in the Proserpina component local residents will benefit from assurance of time of activities and contained impacts on residential amenity. 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. Retention of the Wesburn Special Controls Overlay will protect the environmental values of this area.

COMMUNITY ENGAGEMENT

Amendment C223 was publicly exhibited from 7 November to 9 December 2024, in accordance with the statutory notification requirements under the *Planning and Environment Act 1987*. Notice comprised:

- Letters sent by mail to all affected landowners and occupiers and properties adjacent to affected properties.
- Letters sent by email to prescribed and relevant government agencies and departments.
- Notice published in the 12 November 2024 editions of the Mountain Views Star Mail, Ranges Trader Star Mail, Lilydale Star Mail, Ferntree Gully Star Mail, Mount Evelyn Star Mail, and Upper Yarra Star Mail; and
- Notice published in the Government Gazette on 7 November 2024.

In addition, information was made available from Council's and the Department of Transport and Planning's websites.

As discussed above, a total of five written submissions were received.

Several phone calls and enquiries generally requesting further information or further assistance navigating the exhibition documentation were received during the exhibition period.

COLLABORATION, INNOVATION AND CONTINUOUS IMPROVEMENT

In preparing the amendment, officers 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. Summary of Submissions
2. Explanatory Report
3. Amendment Maps
4. Strategic Assessment Guidelines Checklist
5. Schedule 02 to Clause 37.01 Special Use Zone
6. Schedule to Design and Development Overlay
7. Schedule to Clause 72.03 What does the scheme consist of
8. Schedule to Clause 72.04 Incorporated Documents
9. Schedule Erosion Management Overlay
10. Schedule Specific Controls Overlay

11. 100 Mount Dandenong Tourist Road, Tremont Incorporated Document
12. 115 and 121 Old Emerald Road, Monbulk Incorporated Document
13. 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
14. Track changes 261 Mount Dandenong Tourist Road, Ferny Creek, Development and Use of land for a Food and Drink Premise and Caretakers House Incorporated Document