

AMENDMENT C197 - CORRECTIONS AND ANOMALIES

Report Author: Strategic Planner
Responsible Officer: Director Planning, Design and Development
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 on 13 September 2022 that is open to the public.

SUMMARY

Amendment C197 proposes to correct a number of minor zoning inaccuracies and anomalies, remove redundant overlay controls and improve the operation of several overlay schedules in the Yarra Ranges Planning Scheme.

The amendment was placed on public exhibition from 16 June 2022 to 18 July 2022 and five submissions were received. Of those, three submissions noted no objection or highlighted minor errors which could be accommodated, one submission was withdrawn and one submission sought changes that will require further consideration. A phone enquiry also highlighted a minor error.

The submission requiring further consideration was in response to a proposed revision of the mapped area of Heritage Overlay 353 (HO353) that applies to the Cement Creek Plantation in Warburton. The submitter has requested further review of the extent of the mapped overlay area and that the statement of significance for the site be updated.

As further work is required to address this submission, it is proposed to split Amendment C197 into two parts.

Part 1 will include all properties that did not have any submissions or where the submission has been resolved. This report recommends that Council adopt Amendment C197 Part 1, with changes, and following adoption by Council submit the amendment to the Minister for Planning for approval.

Part 2 of the amendment will include the Cement Creek Plantation heritage overlay revision that will be further reviewed by a heritage consultant and discussed with the submitter. A report on this item will be brought back to Council in the future once resolved.

RECOMMENDATION

That Council

1. *Split Amendment C197 into two parts.*
2. *Adopt Amendment C197 Part 1 to the Yarra Ranges Planning Scheme, with changes, generally in accordance with Attachments 3, 4 and 5 to this report.*
3. *Submits Amendment C197 Part 1 to the Minister for Planning for approval.*
4. *Writes to all submitters to advise them of Council's decision split the Amendment into two parts and to adopt Amendment C197 Part 1.*
5. *Note that a future report will be presented to Council on Amendment C197 Part 2.*

RELATED COUNCIL DECISIONS

At the Ordinary Council Meeting of 26 April 2022, Council resolved to prepare and exhibit Planning Scheme Amendment C197 – Corrections and Anomalies.

DISCUSSION

Purpose

Planning Scheme Amendment C197 was exhibited from 16 June 2022 to 18 July 2022. The purpose of this report is to discuss the submissions received and the recommended officer response to submissions.

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, Amendment C197 proposes to correct a number of anomalies, errors and updates identified since the last anomalies and corrections amendment (Amendment C166) was approved in August 2019.

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
- Improving the operation of the schedules.

The exhibited amendment proposed to:

Items 1 and 2: Mapping Corrections

- Rezoning to the correct zone. A number of properties were 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, for example land in private ownership that is included in a public use zone; and
- Corrections to zone boundaries. 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 Attachment 1 to this report and a copy of the maps at Attachment 4.

Item 3: Heritage Overlay

- A number of minor corrections and alterations were proposed to be made to the place entries in the schedule to the Heritage Overlay. Currently the entries show the street or road of the heritage place address, but not the street number. To aid in proper identification of these places, street numbers are being added to the address details in the schedule (Attachment 5);
- Several heritage places have place names that are not consistent with the place names in the source heritage studies and/or Statements of Significance. A number of places have more than one commonly used place name. The amendment proposes to amend the schedule to include the name of the heritage place as recorded in the source study and include any additional or alternative names that the place is identified by;
- The Yarra Glen War Memorial cenotaph (HO368) has recently been relocated and is now at a new location of 45-49 Bell Street, Yarra Glen. The schedule to the HO is proposed to be updated to add the new address for HO368;
- The current mapping of HO368 on the planning scheme maps erroneously did not cover the cenotaph in its original location. The current mapping of HO368 covers the adjacent memorial hall, which is not of identified heritage significance. The amendment will amend the mapping of HO368 to cover the cenotaph in its new location, and delete it from the adjacent memorial hall;
- HO353 covers the Cement Creek Plantation in the Redwood Forest in Warburton, an area of various species of conifer trees which were planted in the 1920s and 1960s as part of an MMBW experiment in forest regeneration. The current mapped overlay is irregular and misaligned. It does not cover the

entire area of significant plantations as identified through documentary records and ground observation. The amendment proposed to extend the existing mapping to cover all of the plantation area; and

- The amendment proposed to delete HO365 that applies to the Woori Yallock Bridge, that carried Healesville-Koo Wee Rup Road over the Yarra River. The original bridge was bypassed approximately 20 years ago, and all parts of the original bridge have now been removed from the site.

Item 4: Restructure Overlay

- The amendment proposed to delete 35 Fernbank Road, Healesville from RO109 (Attachments 4 and 5);
- This property was placed in the overlay with requirements for carriageway and/or drainage easements to be created prior to any development. It has now been confirmed that such easements are not required in order to allow the site to be developed; and
- This change will also require an update to the Incorporated Document *Restructure Plan for Old and Inappropriate Subdivisions in the Yarra Ranges Council, April 2021* to show the subject property deleted from the map of RO109.

Item 5: Development Plan Overlay Schedule 4: 1-5 Central Avenue, Mooroolbark and Schedule 6: 1 Neryl Court, Mooroolbark

- The amendment proposed to delete two redundant Development Plan Overlays from land that has been developed in accordance with the endorsed development plans;
- DPO4 applies to 1-5 Central Avenue, Mooroolbark. The purpose of the overlay was to provide for higher density development that achieves high levels of urban design and sustainable design principles to maximise the benefits of its central location. The DPO outcomes have been addressed through planning permit application YR-2012/855 and the land is fully developed; and
- DPO6 applies to 1 Neryl Court, Mooroolbark. The purpose of the overlay was to ensure future development of the site considers existing conditions of the site and the adjoining site to the east, being 524 Hull Road. The DPO outcomes have been addressed through planning permit application YR2013/411 and the land is fully developed.

Item 6: Design and Development Overlay 12 to 133 Maroondah Highway, Healesville

- The amendment proposed to rezone this site from Transport Zone 1 to Commercial 1 Zone as the site is now in private ownership rather than the Department of Transport ownership (Item 1). The rezoning will enable the site to be used for retail premises in the future in accordance with C1Z provisions. The amendment also proposed to apply DDO12 to the site to ensure future use

and development is in accordance with the DDO12 provisions that are also applied to surrounding C1Z land.

Item 7: Design and Development Overlay 8 and Significant Landscape Overlay 22 to 21 and 23 Hoddle Street, Yarra Junction

The amendment proposed to rezone 21 and 23 Hoddle Street, Yarra Junction from a Public Use Zone to a General Residential Zone (GRZ) (Item 1) to recognise the fact that these properties are now used for private residential purposes. The amendment also proposed to apply DDO8 and SLO22 to these properties to ensure future use and development is in accordance with the overlay provisions that are applied to surrounding GRZ land.

Key Issues

Submissions

A total of five submissions were received in response to the amendment. A summary of submissions is at Attachment 2 and further discussed below.

Submission 1: 1556 Mount Dandenong Tourist Road, Olinda (Submission withdrawn)

The site is a public open space currently under Council ownership. The site is used as a public park and recreation area and has been used as a public reserve for community markets and events. Rezoning this area to Public Park and Recreation will reflect the use and ownership of the site.

Submitter 1 raised concerns over the proposed rezoning resulting in markets and public gatherings occurring in the reserve as well as the rezoning allowing a toilet block to be constructed on the land.

Response to submission: The property is a public reserve and is already used for community markets and events. These uses are allowed under the current Green Wedge A zoning of the property. Additionally, the land is in public ownership and the current zoning does not prevent a toilet block from being constructed.

Rezoning the land to Public Park and Recreation will not change the permit requirements under the planning scheme for either of these uses. Any future proposal to erect a toilet block would be separate to the rezoning of the land.

Officers contacted submitter 1 to further discuss her concerns and explain that the rezoning would not change the ability to use the land for markets and events, or for a toilet block to be constructed as this is already allowed. On this basis the submitter withdrew her submission.

Recommendation: No change required – withdrawal of submission noted.

Submission 2: 133 Maroondah Highway, Healesville

The property includes a building used as a scout hall by Scouts Victoria and is in private ownership. The current zoning of the site as Transport Zone 1 recognises the former ownership of the land by the Department of Transport. The amendment will rezone the land to reflect surrounding land zoning.

Submitter 2 supports the Amendment proposal as exhibited.

Response to submission: Support for Amendment C197 is noted.

Recommendation: No change required.

Submission 3: Melbourne Water

The amendment was referred to Melbourne Water as a referral authority. It did not have any concerns with Amendment C197, noting an in-principle support for the amendment. The authority requested not to be party to any subsequent Panel hearings that may take place.

Response to submission: Melbourne Water's position is noted.

Recommendation: No change required.

Submission 4: South East Water

The amendment was referred to South East Water as a referral authority. It had no objection to Amendment C197.

Response to submission: South East Water's position is noted.

Recommendation: No change required.

Submission 5: Parks Victoria - Cement Creek Plantation, Warburton

As discussed under Item 3 above, HO353 covers the Cement Creek Plantation in the Redwood Forest in Warburton. The current mapped overlay is irregular and misaligned. It does not cover the entire area of significant plantations as identified through documentary records and ground observation. The amendment proposed to extend the existing overlay mapping to cover all of the plantation area.

Parks Victoria supports the update to the mapping, however they have asked that the mapping should be based on further ground-truthing.

Parks Victoria has also requested that an accurate description be included within the Heritage Places column of the schedule to the Heritage Overlay to provide clear and unambiguous reflection of the extent of the Heritage Overlay and elements of significance, and that the citation and Statement of Significance should be updated to accompany the revised mapping.

Response to submission: Parks Victoria's issues are noted. To address the requests it is proposed to engage a heritage consultant to further review the site mapping and

prepare an updated statement of significance for discussion with the submitter. A report on this item will be brought back to Council in the future once resolved. The Heritage Overlay HO353 (Cement Creek Plantation) item within Amendment C197 will be subject to further review by Council prior to being recommended for adoption.

Officers contacted Parks Victoria who confirmed their support for Councils' approach and noted their readiness to work with officers on further ground-truthing the mapping of HO353.

Recommendation: As further work is required to address the submitters concerns, it is proposed to split Amendment C197 into two parts as further discussed below. The proposed changes to Heritage Overlay HO353 will become an item in Amendment C197 Part 2.

Other requests

A phone enquiry was received from the Department of Education regarding the partial rezoning of 15-21 David Hill Road, Monbulk from Low Density Residential Zone (LDRZ) to align with the remainder of the parcel which is included in Public Use Zone 2 (PUZ2). The land contains the Monbulk Primary School.

Rezoning this portion of the site to PUZ2 reflects the current use and ownership of the site.

The Department noted an error in the exhibited zone map (Map 68) which incorrectly showed the land to be partially rezoned to Public Park and Recreation Zone. The explanatory report for the amendment correctly explained the land was to be rezoned to PUZ2.

Recommendation: Amend zoning Map 68 to correctly show the partial rezoning of 15- 21 David Hill Road, Monbulk from LDRZ to PUZ2. The revised zone map can be found in Attachment 4.

Splitting the Amendment

In order to accommodate the further review of one item, while allowing the remainder of Amendment C197 to progress to adoption and approval, it is proposed that the amendment be split into two parts as enabled under section 29 (2) of the *Planning and Environment Act 1987*.

Amendment C197 Part 1

Part 1 of the amendment will include all Amendment C197 items with the exception of the Cement Creek Plantation heritage proposal that formed part of Item 3. Further details on the items to be included in Amendment C197 Part 1 is included in the Explanatory Report at Attachment 3.

Amendment C197 Part 2

Part 2 of the amendment will include Heritage Overlay HO353 Cement Creek Plantation, Warburton.

Heritage Overlay HO353 covers the Cement Creek Plantation in the Redwood Forest in Warburton, an area of various species of conifer trees which were planted in the 1920s and 1960s as part of a Melbourne and Metropolitan Board of Works experiment in forest regeneration. The current heritage overlay mapping in the planning scheme does not cover the entire plantation area as identified through documentary records and ground observation. The exhibited amendment proposed to extend the existing map using the existing documentary records to cover the full extent of the plantation area.

Further review of this item is recommended to address matters raised within Submission 5 from Parks Victoria. The review will include the engagement of a qualified heritage consultant to:

- Ground truth the proposed mapped area of the Heritage Overlay HO353;
- Make recommendations for updated wording to the schedule to the Heritage Overlay to include more detailed description against HO353; and
- Update the Statement of Significance for HO353. Once this work is completed and further discussed with Parks Victoria, it is proposed to provide a future report to Council advising of the outcome of the heritage work and any proposed changes.

Amendment C197 Part 1 adoption with changes

It is recommended that Amendment C197 Part 1 be adopted, with changes, to address the matter raised by the Department of Education to correctly show on the planning scheme maps the partial rezoning of 15-21 David Hill Road, Monbulk to PUZ2 rather than Public Park and Recreation Zone.

Options considered

Option 1

Split Amendment C197 into two parts. Separating the amendment into parts will allow all, but one item, to be included in Part 1 and enable the amendment to be adopted by Council and submitted to the Minister for Planning for approval. This will ensure the correction of errors and anomalies identified in the Planning Scheme are not delayed.

Two items included in the amendment have been requested by external parties:

- 6 Bayview Road, Belgrave: rezoning from Public Use Zone 1 to Low Density Residential Zone to reflect changed ownership; and
- 530A Hull Road, Mooroolbark: rezoning to Neighbourhood Residential Zone to enable the land to be consolidated with the existing abutting properties at 29 and 31 Nathan Court and 11, 12, 13 and 14 Wherside Court, Mooroolbark.

Expeditious approval of the amendment will also enable these landowners to progress plans with their properties in a timely manner.

The inclusion of the Cement Creek Plantation Heritage Overlay item in Part 2 will enable further work to be undertaken to address the matters raised by Parks Victoria in their submission. Following the completion of further work to the satisfaction of all parties, Part 2 of the amendment can then be adopted by Council.

Option 2

Remove the Cement Creek Plantation item from the amendment and wait to include in a future Planning Scheme Amendment. There are currently projects proposed at this site and the current inaccurate mapping of the overlay has created confusion in the design process and ambiguity. Commencing a new Amendment that includes this item will delay correcting the controls and is not recommended.

Option 3

Wait until the ground truthing for Cement Creek Road is complete and submit the entire amendment to the Minister for Planning for approval. This option could take some time and would delay other parts of the amendment which are required. Given the majority of the Amendment is ready for submission it would be an unnecessary delay to these items. This option is not recommended.

Recommended option and justification

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

Whilst further work is required to address the matters raised in relation to the Cement Creek Plantation, it is considered that this work can be expeditiously undertaken in consultation with the landowner. Accurate heritage overlay protection of the plantation will ensure the heritage significance of the place is enhanced and protected.

If the conclusion of the work results in significant changes being required to the mapped extent of the Heritage Overlay, an option exists to not pursue Amendment C197 Part 2 through abandoning this part of the amendment, and instead include the proposal within a future corrections and anomalies amendment that would be publicly exhibited.

FINANCIAL ANALYSIS

The costs associated with the preparation of Amendment C197 are covered by the recurring Planning Scheme Amendments operational budget for Strategic Planning.

The costs associated with engaging a consultant to review Heritage Overlay HO353 Cement Creek Plantation can be accommodate within the operational budget for Strategic Planning.

APPLICABLE PLANS AND POLICIES

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

- Council Plan 2021-25: Quality Infrastructure and Liveable Places and Protected and Enhanced Natural Environment; and
- 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

The planning scheme amendment has been prepared in accordance with the legislative requirements of the *Planning and Environment Act 1987*.

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

Amendment C197 was publicly exhibited from 16 June 2022 to 18 July 2022, in accordance with the statutory notification requirements under the *Planning and Environment Act 1987*. Notice comprised:

- Letters sent by mail to all affected land owners and occupiers and properties adjacent to affected properties, totalling 557 letters;
- Letters sent by email to prescribed and relevant government agencies and departments;
- Notice published in the 14 June 2022 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 16 June 2022.

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

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

More than 70 phone calls were received regarding Amendment C197 and eleven enquiries were made via the online portal and direct email.

Phone calls and enquiries generally requested further information or further assistance navigating the exhibition documentation. A number of enquiries were unrelated to the proposed changes to the Planning Scheme and were beyond the scope of the amendment. These enquiries have been addressed separately.

COLLABORATION, INNOVATION AND CONTINUOUS IMPROVEMENT

The amendment will contribute towards continuous improvement of the Yarra Ranges Planning Scheme by:

- Making the Yarra Ranges Planning Scheme more efficient for internal and external users; and
- Accurately reflecting land tenure and land use planning objectives in order to appropriately guide land use and development.

RISK ASSESSMENT

There are no significant risks associated with this amendment

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. Amendment C197 Explanatory Report
2. Summary of Submissions
3. Amendment C197 Part 1 Explanatory Report
4. Amendment C197 Part 1 Maps
5. Amendment C197 Part 1 Provisions