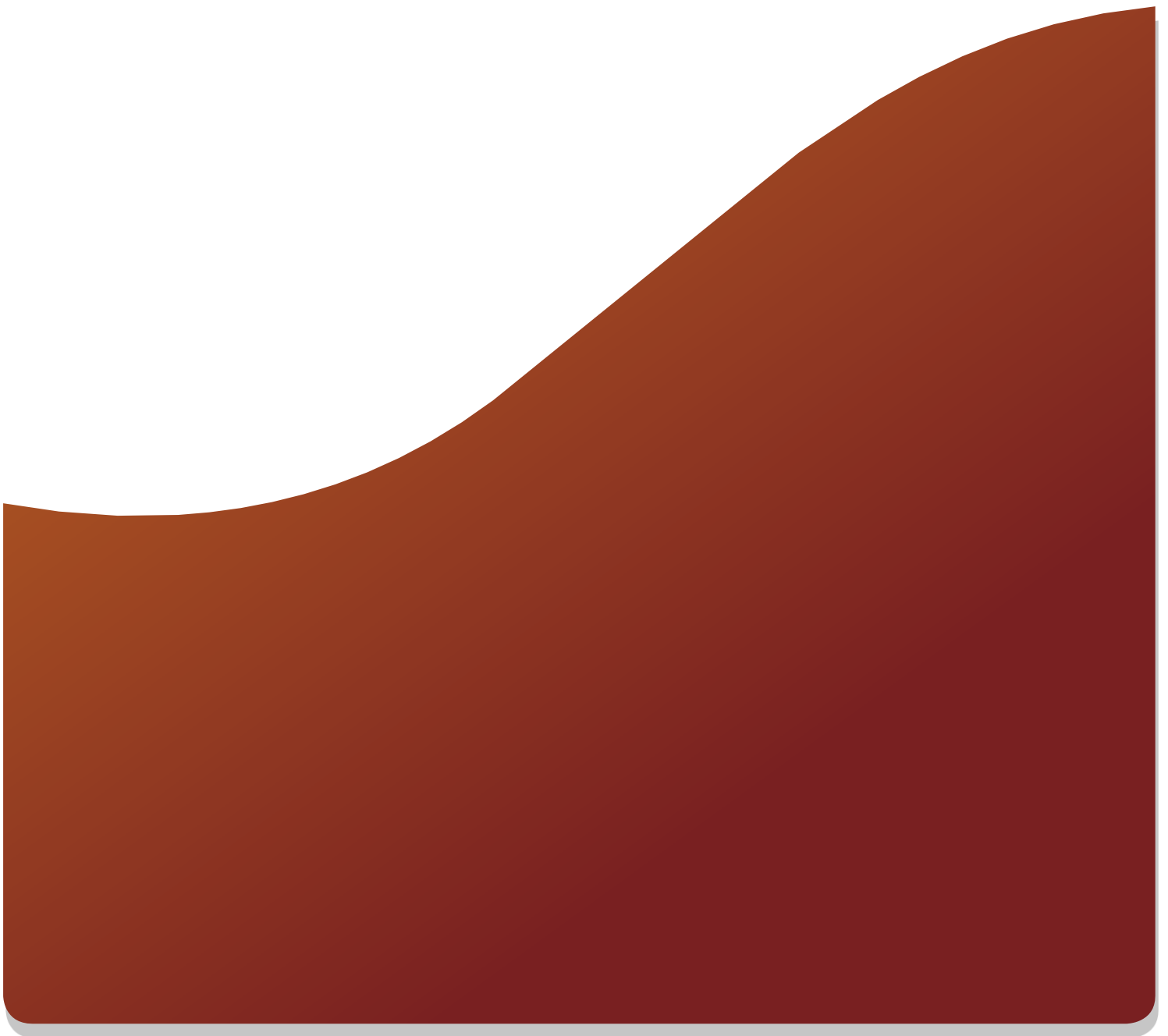


Planning Delegated Committee Meeting Agenda

**Planning Delegated Committee Meeting
Wednesday 12 June 2024 at 7:00PM
Held online and livestreamed at mrsc.vic.gov.au**



**Notice is hereby given that a Planning Delegated Committee Meeting will be held in the Held online and livestreamed at mrsc.vic.gov.au on:
Wednesday 12 June 2024 at 7:00 PM**

Order Of Business

1	Acknowledgement of Country.....	5
2	Recording and livestreaming of this Committee Meeting.....	5
3	Present	5
4	Apologies	5
5	Conflicts of interest.....	5
6	Purpose of Planning Delegated Committee	5
7	Adoption of minutes.....	5
8	Reports.....	6
8.1	CONSIDERATION OF A PLANNING PANEL - AMENDMENT C154MACR AND PLN/2022/198 - 1 WILLS STREET MALMSBURY.....	6

1 ACKNOWLEDGEMENT OF COUNTRY

Macedon Ranges Shire Council acknowledges the Dja Dja Wurrung, Taungurung and Wurundjeri Woi Wurrung Peoples as the Traditional Owners and Custodians of this land and waterways. Council recognises their living cultures and ongoing connection to Country and pays respect to their Elders past, and present.

Council also acknowledges local Aboriginal and/or Torres Strait Islander residents of Macedon Ranges for their ongoing contribution to the diverse culture of our community.

2 RECORDING AND LIVESTREAMING OF THIS COMMITTEE MEETING

This meeting is being recorded and streamed live on the internet, in accordance with Council's 'Live Streaming and Publishing Recordings of Meetings' policy, which can be viewed on Council's website.

3 PRESENT

4 APOLOGIES

5 CONFLICTS OF INTEREST

6 PURPOSE OF PLANNING DELEGATED COMMITTEE

Council established the Planning Delegated Committee to provide a regular forum for hearing from people who have made a submission to Council or who are an applicant or objector in relation to a planning permit application.

The Committee is authorised to determine statutory planning applications and Planning Scheme amendments only in relation to the Planning and Environment Act 1987. Its purpose is to hear from applicants/land owners and objectors/submitters on statutory and strategic planning matters, planning applications and to determine other planning matters.

7 ADOPTION OF MINUTES

Recommendation

That the Committee confirm the minutes of the Planning Delegated Committee of Macedon Ranges Shire Council held on 8 May 2024, as circulated.

8 REPORTS

8.1	CONSIDERATION OF A PLANNING PANEL - AMENDMENT C154MACR AND PLN/2022/198 - 1 WILLS STREET MALMSBURY
Officer:	Daniel Hall, Strategic Planner
Council Plan relationship:	1. Connecting communities
Attachments:	Summary of Submissions and Officer response ↓

Summary

Planning Scheme Amendment C154macr (Amendment C154macr) is a proponent-led combined planning scheme amendment and permit application. Amendment C154macr is being progressed at the request of the owners of the land.

Amendment C154macr proposes to rezone land located at 1 Wills Street Malmsbury from Farming Zone (FZ) to the Neighbourhood Residential Zone – Schedule 13 (NRZ13) and remove the Heritage Overlay (HO148) from the site.

Alongside the rezoning application, a planning permit application PLN/2022/198 seeks approval for a 9-lot subdivision, with lots ranging in size from 2000 to 2182 square metres.

Amendment C154macr was formally exhibited from 26 February to 1 April 2024 and received four submissions.

The purpose of this report is to consider all submissions made to the exhibition of Amendment C154macr. A number of matters raised by submissions remain unresolved and it is recommended that the amendment and submissions be referred to an independent Planning Panel for consideration.

Recommendation

That the Committee:

- 1. Requests the Minister for Planning to appoint an independent Planning Panel under Part 8 of the Planning and Environment Act 1987 to consider the submissions to Amendment C154macr to the Macedon Ranges Planning Scheme.**
- 2. Refers all submissions to Amendment C154macr to the Panel, in accordance with Section 23 of the Planning and Environment Act 1987.**
- 3. Notifies all submitters to Amendment C154macr and PLN/2022/198 of Council's decision.**

Background

An application under Section 96A of the *Planning and Environment Act 1987* was received on 22 November 2019 for the land at 1 Wills Street, Malmsbury. This section of the *Planning and Environment Act 1987* allows a combined planning scheme amendment and planning permit to be considered concurrently. The application has been made at the request of the owners of the land.

At the 12 October 2022 Planning Delegated Committee it was resolved to seek authorisation from the Minister for Planning to prepare Amendment C154macr.

The Minister for Planning authorised Amendment C154macr on 16 June 2023 subject to five conditions.

Council satisfied the conditions of authorisation and exhibited Amendment C153macr for a period of five weeks from 26 February to 1 April 2024.

A total of five submissions; one in support and four objecting, were received in response to the public exhibition of Amendment C154macr. At the 8 May 2024 Planning Delegated Committee, submitters to Amendment C154macr were provided the opportunity to outline their views to the Committee.

Discussion

A review of the submissions received for Amendment C154macr has been completed and responses to specific items are outlined in **Attachment One**. A number of unresolved items remain and are recommended to be referred to an independent Planning Panel for consideration. The response to the main issues that remain unresolved are outlined below.

Lack of Strategic Justification for the Amendment

Clause at 11.01-1L Settlement – Malmsbury of the Macedon Ranges Planning Scheme provides local planning policy direction for the settlement of Malmsbury. The Amendment aligns with the strategies outlined in this clause, specifically:

- Restrict development to within the town boundary.
- Facilitate residential development on the periphery of the town within the township boundary, featuring larger lots, significant landscaping and generous setbacks.

The amendment sits within the township boundary and provides appropriate planning controls through the use of the Neighbourhood Residential Zone and permit conditions that requires a minimum lot size, significant landscaping and generous setbacks.

Further, the amendment will not change Malmsbury's settlement designation as a small town.

Rezoning of Agricultural land

The site has minimal agricultural value given the size of the site and its proximity to other dwellings either in the Farm Zone, Rural Living Zone or General Residential Zone. The site is located within the Malmsbury Township boundary under the Malmsbury Township Framework plan as per clause 11.01-1L of the Macedon Ranges Planning Scheme.

The State Government's Action Plan for Green Wedges and Melbourne's Agricultural Land outlines a future vision and is not currently within the planning scheme.

Land Supply

The applicant provided a land supply and demand assessment to support their application. It shows that Malmsbury has under ten years of land supply currently available. Officers have reviewed the land supply assessment and support its findings.

Removal of the Heritage Overlay

While all areas have history, not all areas are historically significant. Heritage significance is assessed based on specific criteria, as set out in Planning Practice Note 1 – Applying the Heritage Overlay (PPN01). There is little or no visible heritage in the streetscape or immediate area of the site that would warrant heritage protection; this view is supported by Council's Heritage Planner.

The subject land is also vacant with no heritage values to be protected. Because of this, future development on the land would not impact on the heritage significance of the broader area covered by HO148, and it is appropriate to remove the heritage overlay from the site.

Private Open Space not specified in the proposed NRZ13

The proposed lots are to be zoned NRZ13. Given the size of the lots and provisions existing within the Macedon Ranges Planning Scheme along with building envelopes proposed, this will ensure sufficient private open space is provided without the need for a separate provision included in the schedule to the zone.

It is noted the schedule requires lots to be at least 2000 square metres as well as maximum site coverage and minimum permeability controls which provides private open space opportunities.

Stormwater Management

Details provided in the conditions of permit sufficiently outline the requirements relating to stormwater management. Before the subdivision works start, engineering plans detailing the stormwater drainage must be prepared and submitted including a drainage system design to the satisfaction of the responsible authority. Further, as outlined in condition 16(h) the drainage system design must include:

“A drainage system that provides for runoff from the upstream catchments and includes any downstream works necessary to manage flows from the subdivision.”

The development cannot be completed unless the conditions of the permit have been met.

Planning Permit Conditions

One submission raises concerns relating to planning permit condition, specifically Condition 1b. Council is of the view the planning permit conditions are warranted to ensure the character outcomes are achieved.

Consultation and engagement

Amendment C154macr underwent public exhibition from 26 February to 1 April 2024. Council considered all submissions received on this amendment and submitters were afforded the opportunity to present their submission at the 8 May 2024 Planning Delegated Committee. All submitters will be notified of the resolutions of this meeting.

Collaboration

A range of external government and statutory bodies were notified of Amendment C154macr and PLN2/2022/198 including relevant Ministers, referral bodies and other stakeholders in accordance with the *Planning and Environment Act 1987*.

Innovation and continuous improvement

N/A

Relevant law

The requirements for planning scheme amendments are set out in the *Planning and Environment Act 1987* and its regulations.

This report does not have any direct or indirect human rights implications under the Charter of Human Rights and Responsibilities Act 2006.

In accordance with the *Gender Equality Act 2020*, a Gender Impact Assessment was not required in relation to the subject matter of this report.

Relevant regional, state and national plans and policies

N/A

Relevant Council plans and policies

This report's recommendations are supported by the following Council Plans and Strategies:

Council Plan 2023/24 and 2024/25

Strategic Objective 1 – Connecting Communities.

Integrate land-use planning and revitalise and protect the identity and character of the shire.

Small Town Strategy 2006 - Malmesbury

Restrict development to within the town boundary.

Facilitate residential development on the periphery of the town within the township boundary, featuring larger lots, significant landscaping and generous setbacks.

Climate Impact Assessment

The Amendment and Permit is unlikely to have any significant effect on Council's energy usage and greenhouse emissions. Council already engages a contractor for the Wills Street Road Reserve as part of Council's Township Hazard Reduction program.

The Amendment and Permit will not pose any added risks to Council operations and services. More broadly, bushfire risk has been appropriately managed through the inclusion of defensible space and management requirements.

In response to a changing climate which includes decreased annual rainfall and hotter than average temperatures, the proposed zone includes variations to Rescode requirements to require landscaping, a canopy tree and the amount of built form on the site.

Financial viability

The *Planning and Environment Act 1987* Regulations set out fees to be paid at each step of the Amendment.

Council's fact sheet, 'Private Sponsored Planning Scheme Amendments' sets out Council's expectation that all costs associated with the amendment will be payable by the landowner.

Sustainability implications

N/A

Officer declaration of conflicts of interest

All officers involved in the preparation of this report have declared that they do not have a conflict of interest in relation to the subject matter.

**Attachment One
Amendment C154macr submission summaries and officer response**

Sub.	Summary of Submission	MRSC Response
1	<p>Concerned that rezoning agricultural land for residential purposes compromises agricultural viability and food security. Further that the rezoning threatens the rural landscape character and agricultural heritage of Malmsbury.</p> <p>Concerned that the removal of the Heritage Overlay will undermine the cultural heritage of Malmsbury and will encourage unchecked development.</p> <p>Concerned with the environmental affects and impacts on well-being due to the conversion of farmland to residential development and increased urbanisation.</p>	<p>The <i>Landscape Assessment Plan 2021</i> undertaken by Phoenix Wildfire Management concluded that: “limitations with soil cultivation, reliable catchment for water and the small size irregular shape of the lot make it unsuitable for farming”. Further, the report outlines that the “lack of native species and overall biodiversity would suggest the site is very suitable for residential development without impacting on local flora and fauna”.</p> <p>While all areas have a history or a heritage, not all areas are historically significant. Heritage significance is assessed based on specific criteria, as set out in Planning Practice Note 1 – Applying the Heritage Overlay (PPN01). Council’s Heritage Planner concluded (noting PPN1) that there is little or no visible heritage in the streetscape or immediate area of the site that would warrant heritage protection. Because of this, Council considered that future development on the land would not impact on the heritage significance of the broader area covered by HO148, and it is appropriate to remove the heritage overlay from the site.</p> <p>As outlined in point 1, the site displays “...a lack of native species and overall biodiversity...” As a part of the proposed development and rezoning the new schedule 13 to the Neighbourhood Residential Zone (NRZ13) requires that a development provide for at least two canopy trees within the front setback and at least one canopy tree in the secondary street setback for corner lots or lots abutting multiple streets. In addition, permit condition 3B requires that the development provide a minimum of one tree per lot or every 12 metres, whichever is the lesser in the road reserve. Currently there are no canopy trees on the site or within the road reserve.</p> <p>This site is located within the settlement boundary as outlined in the Malmsbury Township Framework Plan at clause 11.01-1L of the Macedon Ranges Planning Scheme, specifically:</p> <ul style="list-style-type: none"> ▪ Restrict development to within the town boundary. ▪ Facilitate residential development on the periphery of the town within the township boundary, featuring larger lots, significant landscaping and generous

Sub.	Summary of Submission	MRSC Response
	<p>Community Cohesion and Quality of Life: Concerned that the residential subdivisions will alter the social fabric of our community, introducing transient populations and diminishing the sense of belonging and cohesion that characterize rural life.</p> <p>Concerned that unchecked development strains existing infrastructure, leading to congestion, reduced public amenities, and increased social inequalities, thereby eroding the quality of life for residents.</p>	<p>setbacks. The application of the NRZ13 ensures that any residential development on the site responds to the specific environmental or landscape character values of the surrounding area.</p> <p>It is not suitable for any discussion on social cohesion as its arbitrary comment with no basis. The planning scheme is not a tool to gatekeep perceived types of people from moving into allowed residential areas. There is no evidence that 9 large housing lots would create or foster a transient population. Furthermore, there is no evidence to suggest that these new residents would not integrate and join into the Malmsbury community.</p> <p>Coliban Water supports the proposal subject the inclusion of service infrastructure conditions. See conditions 26 to 31. The proposed 9 large lots are not seen putting any great demand or pressure on existing service infrastructure. Further, the developer is required to provide for an upgrade to relevant infrastructure to the satisfaction of Council and various infrastructure authorities as per the permit conditions. Council's Engineering Unit have not raised any objection regarding traffic or drainage subject to conditions.</p> <p>Position: Changes not recommended in response to this submission. Refer submission for consideration by the independent Planning Panel.</p>
2	Agency submission in support	Noted
3	<p>The association requests that the amendment be set aside and not progressed further.</p> <p>Concerned that the amendment lacks strategic justification and does not meet the requirements of the Planning and Environment Act in regards to 'proper or orderly' planning.</p>	<p>Noted. Council believes the Amendment has strategic merit.</p> <p>Clause at 11.01-1L Settlement – Malmsbury of the Macedon Ranges Planning Scheme provides local planning policy direction for the settlement of Malmsbury. The Amendment aligns with the strategies outlined in this clause, specifically:</p> <ul style="list-style-type: none"> ▪ Restrict development to within the town boundary. ▪ Facilitate residential development on the periphery of the town within the township boundary, featuring larger lots, significant landscaping and generous setbacks. <p>The amendment sits within the township boundary and provides appropriate</p>

Sub.	Summary of Submission	MRSC Response
	<p>Concerned with the rezoning of land zoned for farming, stating that based on Council Strategies (settlement strategy) there is sufficient housing supply to meet the current and future housing needs up to 2036.</p> <p>Concerned that there is insufficient strategic basis for the removal of Heritage Overlay HO148, and that this removal will set an 'ugly' precedent.</p> <p>Concerned that the amendment explanatory ignores council policy – specifically elements from the Malmsbury Urban Design Framework 2003 and the Macedon Ranges Small Town Strategy 2006.</p> <p>Concerned that the amendment does not outline how the rezoning is consistent or compatible with State policy requirements for protecting agricultural land within 100km of Melbourne's CBD.</p>	<p>planning controls through the use NRZ13 and permit conditions that requires any development on the site to feature featuring larger lots, significant landscaping and generous setbacks. Further, the amendment will not change Malmsbury's settlement designation as a small town.</p> <p>The applicant provided a land supply and demand assessment to support their application. It shows that Malmsbury has under ten years of land supply currently available. Officers have reviewed the land supply assessment and support its findings.</p> <p>While all areas have a history or a heritage, not all areas are historically significant. Heritage significance is assessed based on specific criteria, as set out in Planning Practice Note 1 – Applying the Heritage Overlay (PPN01). Council's Heritage Planner concluded (noting PPN1) that there is little or no visible heritage in the streetscape or immediate area of the site that would warrant heritage protection. Because of this, Council considered that future development on the land would not impact on the heritage significance of the broader area covered by HO148, and it is appropriate to remove the heritage overlay from the site.</p> <p>It is Council position that residential development at the site will not negatively impact surrounding scenic and rural landscapes or key transport corridors – specifically the Calder freeway and Malmsbury rail corridors as described in the Macedon Ranges Statement of Planning policy. Further, provisions contained in NRZ13 and the permit conditions ensures that housing is appropriately setback from the road and provides for the continuation of prominent canopy tree plantings reflective of the broader rural character of Malmsbury.</p> <p>The Landscape Assessment Plan 2021 undertaken by Phoenix Wildfire Management concluded that: "limitations with soil cultivation, reliable catchment for water and the small size irregular shape of the lot make it unsuitable for farming". The site has minimal agricultural value given the size of the site and its proximity to other dwellings either in the Farm Zone, Rural Living Zone or General Residential Zone. The site is located within the Malmsbury Township boundary under the</p>

Sub.	Summary of Submission	MRSC Response
	<p>More broadly is concerned with the lack of limitations on building height – specifically the inability to limit building heights to a single storey.</p> <p>Concerned with lack of specific requirements for private open space.</p> <p>Is concerned that the amendment does not address the planning controls regarding small second dwelling on a lot.</p> <p>Concerned with the planning scheme changes associated with Amendment C150macr.</p>	<p>Malmsbury Township Framework plan as per clause 11.01-1L of the Macedon Ranges Planning Scheme. The State Government’s Action Plan for Green Wedges and Melbourne’s Agricultural Land outlines a future vision and is not currently within the planning scheme</p> <p>The available zones within the planning scheme for residential zoning sets out the height limits of buildings. The Neighbourhood Residential Zone is the most restrictive regarding building height. It is noted that there is no limitation to single storey dwellings in Malmsbury. The land is well setback from any main road or freeway interface that would cause for greater design restrictions outside of what is currently proposed.</p> <p>The proposed lots are to be zoned NRZ13. Given the size of the lots and provisions existing within the Macedon Ranges Planning Scheme along with building envelopes proposed will ensure sufficient private open space within the requirement for a separate provision under the schedule to the zone. It is noted the schedule requires lots to be at least 2000 square metres as well as maximum site coverage and minimum permeability controls which provides private open space to a property.</p> <p>The inclusion of Small Second Dwellings within the planning scheme are designed so that local planning controls can not be developed to exclude them and this is an intentional feature of the planning scheme. If land is deemed appropriate for residential development, the opportunity for a small secondary dwelling must be considered as of right. This is not a reason for Council to restrict residential zoning when a clear intention of State Planning Policy is to allow these types of housing to be established. There is no ability for Council to restrict small secondary dwellings in a residential zone.</p> <p>Noted - The changes were made by the Minister for Planning, under the ministerial powers of 20(4) of the Planning and Environment Act 1987 (preparation and approval of an amendment without public exhibition) In some instances, wording of particular policies was changed in order to reduce ambiguity and provide more specific language to aid decision-making, or to remove out of date information.</p>

Sub.	Summary of Submission	MRSC Response
		<p>A number of minor errors to wording and mapping have been noted by officers and others. These errors will be resolved via a future amendment to the scheme.</p> <p>Position: Changes not recommended in response to this submission. Refer submission for consideration by the independent Planning Panel.</p>
4	<p>Concerned that the proposal does not provide enough detail on how water (runoff) will be managed a part of this proposal.</p> <p>Questions the how the development will be able to provide the service infrastructure due to the challenging geology of the area.</p>	<p>Details provided in the conditions of permit sufficiently outline the requirements relating to stormwater management. Before the subdivision works start, engineering plans detailing the stormwater drainage must be prepared and submitted including a drainage system design to the satisfaction of the responsible authority. Further, as outlined in condition 16(h) the drainage system design must include: <i>“A drainage system that provides for runoff from the upstream catchments and includes any downstream works necessary to manage flows from the subdivision.”</i></p> <p>Noted – Council officers undertook a site visit with submitter 4 to further investigate the concerns raised in the submission. Should the applicant not be able to provide the services in-line with permit conditions to the satisfaction of the responsible authority, a certificate of compliance cannot be provided by Council and the development cannot proceed.</p> <p>Officer position: Changes not recommended in response to this submission. Refer submission for consideration by the independent Planning Panel.</p>
5	<p>The submitter questions the need of Condition 1b on the draft planning permit and seeks to have it removed as it is undesirable and unnecessary.</p>	<p>Officers have prepared a draft planning permit with condition that are it sees as necessary to ensure landscape and character elements are delivered as part of the submission.</p> <p>Officer position: Changes not recommended in response to this submission. Refer submission for consideration by the independent Planning Panel.</p>