

Planning and Environment Act 1987

Panel Report

Macedon Ranges Planning Scheme
Amendment C92
Changes to Restructure Overlays

28 January 2014



Planning and Environment Act 1987

Panel Report pursuant to Section 25 of the Act

Amendment C92 to the Macedon Ranges Planning Scheme

Changes to Restructure Overlays

A handwritten signature in black ink that reads "Jennifer A Moles." The signature is written in a cursive style with a large initial 'J' and a distinct 'A'.

Jennifer A Moles, Chair

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Amendment Summary

The Amendment	Amendment C92 to the Macedon Ranges Planning Scheme.
Subject Site	Land in Macedon township and surrounds within Restructure Overlays 4, 5 and 10.
Purpose of Amendment	To remove or alter the current restrictions on development imposed by the Restructure Overlays on 13 properties. The removal of the restrictions would allow up to 17 additional dwellings to be developed on the 13 properties, and would clarify the current overlay restrictions affecting two properties.
The Proponent	Macedon Ranges Shire Council.
Planning Authority	Macedon Ranges Shire Council.
Exhibition	30 May to 12 July 2013.

Panel Process

The Panel	Jenny Moles.
Directions Hearing	11 November 2013.
Panel Hearing	3 and 4 December 2013.
Post-Hearing Correspondence	The Panel invited correspondence in relation to the properties at 29 Hunter Street and 27 and 31 Centenary Avenue, Macedon. The last correspondence was received on 31 December 2013.
Site Inspections	The Panel undertook an unaccompanied site inspection on 11 November 2013, an accompanied inspection of some submitter properties on 4 December 2013, and a further unaccompanied inspection of candidate and submitter properties on 21 January 2014.

Appearances	<ul style="list-style-type: none"> • David Nevin, Coordinator Policy Development, assisted by Jillian McQuade, Senior Strategic Policy Planner, represented the Planning Authority • Andrew Ganey, Land Use Planning Coordinator, represented the Country Fire Authority • Julie Lancashire, Urban Design and Management Pty Ltd, for Geoff and Frances Climas • Julie Lancashire, Urban Design and Management Pty Ltd, for Michael and Margaret Garvey • Coral Young, Planner, for Craig and Jo Byrne • Helen Relph • Trevor Ludeman, Project Planning and Development Pty Ltd Pty Ltd, for Alan and Margaret Young • Eddie and Leonie Tworkowski • Jeffrey and Yvonne David and Jannine Vains represented by Jeffrey David • Matt and Brooke Pascoe • Rebecca Morgan • Christine Pruneau, assisted by Brian Whitefield, for the Macedon Ranges Residents' Association Inc.
Submissions	A total of 46 submissions were received including 16 opposing submissions
Date of this Report	28 January 2014
Recommendation	The Amendment should be abandoned

1 Background

Amendment C92 (the Amendment) to the Macedon Ranges Planning Scheme (the Planning Scheme) applies to land in Macedon township. It affects a small number of vacant or partly vacant landholdings currently subject to the Restructure Overlay (RO) provisions of the Planning Scheme. It is proposed to remove or reduce the restrictions on development applying to those holdings. This is supported by the landowners in question but opposed by others. Other submitters who own lots subject to development restrictions under the RO have sought to have their properties included in the Amendment and the development restrictions similarly relaxed. Other submitters have opposed the Amendment on a variety of grounds including concerns about bushfire hazards.

1.1 Origins of current restructure provisions

The relevant RO provisions of the Planning Scheme, requiring the consolidation of lots before development, or precluding development, have been in place since 1977 (including under the former Gisborne Planning Scheme at Clause 56). Restructure provisions were introduced as a planning implementation response to the approval by the Governor in Council on 30 September 1975 of *Statement of Planning Policy No 8 (Macedon Ranges and Surrounds)* (SPP8). That policy, now included as Clause 22.01 of the Planning Scheme, stated as its purpose:

The Statement is directed primarily to the planning and management necessary for the conservation and utilization of the Policy Area both as a water catchment for urban and local supply and as a location of State, metropolitan and local importance for leisure activities and nature conservation.

SPP8 identified a number of major influencing factors giving rise to the policy. They include:

3.9 The extensive and indiscriminate past subdivision of the Policy Area.

1.2 Current restructure provisions

The RO at Clause 45.05 of the Planning Scheme sets out its purposes as:

To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

To identify old and inappropriate subdivisions which are to be restructured.

To preserve and enhance the amenity of the area and reduce the environmental impacts of dwellings and other development.

The overlay imposes requirements for permission for subdivision of land and the construction or extension of dwellings and other buildings.

Relevantly, it provides in relation to subdivision¹:

A subdivision must be in accordance with a restructure plan for the land listed in the schedule to this overlay. This does not apply if the subdivision is for one of the following purposes and no additional lots or subdivision potential is created:

- *To realign boundaries between lots that have been consolidated in accordance with the restructure plan.*
- *To consolidate a restructure lot with a section of closed road or other land not included in a proposed restructure lot.*

Each lot must be provided with reticulated sewerage if available. If reticulated sewerage is not available, the application must be accompanied by:

- *A land assessment report which demonstrates that each lot is capable of treating and retaining all waste water in accordance with the State Environment Protection Policy (Waters of Victoria) under the Environment Protection Act 1970.*
- *A plan which indicates the building envelope and effluent disposal area for each lot.*

Before deciding on an application to subdivide land into residential lots, the responsible authority must consider Clause 56.

In relation to dwellings and other buildings, the clause provides²:

A permit must be in accordance with a restructure plan for the land listed in a schedule to this overlay. This does not apply if:

- *No restructure plan is listed in the schedule and the permit is required to extend an existing dwelling or other building.*
- *The land is a lot for which a permit has been granted under Clause 45.05-1.*

Applications under the overlay are exempt from public notice and third party review rights³.

The schedule to the RO includes reference to 13 restructure plans. Three restructure plans are of relevance to the Amendment:

- RO4 - Land bounded by Bent Street, McBean Avenue and Bruce Street, Macedon - Bent Street Restructure Plan
- RO5 - Land generally bounded by McBean Avenue, Smith Street and Margaret Street, Macedon - Macedon South West Restructure Plan
- RO10 - Land to the east of the Calder Highway covering generally the Mt. Macedon and Macedon areas - Mt. Macedon Restructure Area.

¹ At Clause 45.05-1.

² Clause 45.05-2.

³ Clause 54.05-3.

The schedule contains a note indicating:

Restructure plans of RO1 to RO12 Areas are contained within the document "Macedon Ranges Shire Restructure Area Plans" (Macedon Ranges Shire Council, 1999).

That document is in turn listed in the schedule to the Incorporated Documents clause⁴ of the Planning Scheme.

In the Incorporated Document, ROs 4 and 5 are each a single sheet containing a map with a legend. The maps show the current and restructured configuration of lots. RO4 also shows houses.

RO10 in the Incorporated Document is combined with RO11 (relating to Gisborne). It contains no maps. Instead there are 22 numbered pages and a further 21 un-numbered pages.

The first of the numbered pages (12 of 34) contains information about the effect of the restructure plans (10 and 11). It indicates that RO10 (and RO11) only relate to the properties listed on the tables which follow (from page 13 of 34). It includes:

No site within these Restructure Plans shall be developed for a house and its ancillary works unless the consent of the Responsible Authority is obtained.

The responsible authority must consider, as appropriate:

- *The restructure plan and allotments that form part of the site*
- *The conservation and enhancement of the landscape values of the area.*
- *The impact of the proposed buildings and works on the landscape due to height, bulk, colour, general appearance or the need to remove vegetation.*
- *The extent to which the buildings and works are designed to enhance or promote the landscape character objectives of the area.*
- *The impact of buildings and works on significant views.*

A notation for the tables is also included at page 12 of 34 as follows (so far as is relevant):

Only one house per restructured allotment is permitted, except where identified by schedule A⁵. In the case of land listed in the table to schedule... A ... the following controls apply:

- a) *Where "H" appears in Column 2 opposite the description of such land then one house may be permitted.*
- b) *Where "HSC" appears in Column 2 opposite the description of the land then one house only may be permitted subject to the consolidation of the lots listed in Column 1.*
- c) *Where "H(2)", "H(3)" or "H(4)", appears in Column 2 opposite the description of the land then 2, 3 or 4 houses respectively may be permitted*

⁴ Schedule to Clause 81.01

⁵ Schedule A relates to RO10. Schedule B (not relevant here) relates to Gisborne.

subject to the consolidation or re-subdivision of the lots listed in Column 1 into 2, 3 or 4 new lots respectively.

- d) *Where “ND” appears in Column 2 opposite the description of such land, it shall not be used or developed for the purposes of a house.*
- e) *Where the notation “NFH” appears in Column 2 opposite the description of the land, it shall not be used for the purposes of further houses (than existed on 13 August 1980)...*

Where land is not included in the table to schedule... A ... the number of lots created by any proposed subdivision, shall not be more than the number of parcels of land existing prior to the subdivision.

The numbered pages (13 of 34 to 33 of 34) contain a table which in Column 1 has a list of lot numbers arranged by streets and their title information; and in Column 2 the ‘H’, ‘NFH’, ‘HSC’, ‘ND’ and ‘H(3)’ etc information for each lot.

The 21 un-numbered pages which follow contain many but not all of the same addresses. They are again set out in a table. The first column is headed ‘New’, the second ‘Old’ and the third ‘Legal description’. The second column appears to contain the property number in the relevant street, and the third column, the legal description of the land. The first column contains asterisks against a small percentage of the properties and some hand written dashes. The first of the un-numbered pages contains a hand written ‘heading’ possibly reading ‘Final Addressing’. There are no explanatory notes nor is there a legend.

It is proposed to amend the provisions relating to the subject properties in the initial list only.

1.3 Review of restructure area

In 2012 the Council engaged a consultant⁶ to review potential lot development in part of Macedon township affected by current ROs - being most of that part of the township included in a recently introduced reticulated sewerage scheme (2006)⁷. The investigation area was some 310 hectares in area and included 570 dwellings.

The Review of that part of the township identified an initial 27 ‘candidate’ lots where it was considered that restructuring restrictions might be removed or lessened to allow application to be made for a single dwelling. The Review indicates that the sites were identified having regard to factors such as:

- *allotment size and dimensions,*
- *vegetation cover,*
- *pattern of development within the immediate surrounds,*

⁶ Planning Australia Consultants: Macedon Restructure Overlay Review, final report, June 2012.

⁷ The Review applied to the area bounded by Black Forest Drive to the west; Mount Macedon Road to the east; Nursery Road, Smith Street, Windsor Street, Rowan Drive, Waterfalls Road, Childers Road and Turritable Road to the north, and McBean and Marshall Avenues to the south. The Panel was told that the area affected by proposed RO14 in the Amendment lies outside the sewerage area and that one or more areas in the northern or north-eastern part of the township are within the sewerage scheme but were not included in the review area.

- *capability to meet fire hazard management requirements,*
- *road network and suitability of access and*
- *current zoning.*

The review also identified 20 existing vacant lots available for dwelling development under the current provisions⁸.

The review involved seeking community views on possible changes to the development controls. It employed various techniques for obtaining input from the local community. One method was to distribute a questionnaire to the 713 properties in the investigation area. A total of 266 responses were received. One question directly sought views on the whether simplification of planning controls should occur 'to make it easier to obtain a build (*sic* building permit) or extend a house or other building'. Some 64 per cent of persons answering that question did not agree that 'simplification' was required.⁹

A draft version of the review report was put out for public comment. The report identified three options for responding to the review. Option 1 was to make no change to the Macedon Restructure Overlay. Option 2 was to remove the overlay entirely and Option 3 was modification of the restructure plan to reduce the RO restrictions on the candidate lots¹⁰. All other provisions would continue to apply such as bushfire and significant landscape controls.

Forty or 41 responses were received to this public exhibition. The Panel was told by the Council representative at the Hearing, Mr David Nevin that 20 of the submissions received supported Option 1 or no change, and only 4 and 5 submissions supported Options 2 and 3 respectively¹¹. Nevertheless the final version of the Review report concludes that there is continued support for the retention of the RO and that Option 3 should be pursued '*having regard to the responses*', earlier consultations and the replies received in relation to the earlier questionnaire.

The number of candidate sites was increased to 29 following implementation of the review and consideration of community responses to the draft.

All but one¹² of the properties were in the Low Density Residential Zone (LDRZ).

1.4 Proposed Planning Scheme changes

The Council then commenced preparation of the Amendment. The Panel was told that the number of lots proposed in the Amendment for relaxation of the RO provisions was reduced to 13¹³ based on:

⁸ The Panel notes that the number of lots currently available for development in the RO area is said to be 32 in the exhibited Explanatory Report for the Amendment (see 'Candidate Sites' map).

⁹ The remainder supported the change except for 1.5 per cent of respondents who were uncertain.

¹⁰ The Review report suggests 27 lots but Mr Nevin's submission at the Panel Hearing referred to its identifying 19 properties (and 29 houses).

¹¹ 12 raised site specific matters.

¹² One property was zoned Business 1. It was later removed from consideration.

¹³ The Council submission also indicated that only 19 properties (and 29 dwellings) were identified in the Review report rather than the 29 sites shown in the final version of that report at page 22.

- *The further examination of the planning controls affecting vacant allotments including discussions with Statutory Planning Officers;*
- *The capability to meet with the requirements of the BMO; and*
- *Potential impact on the environmental and landscape values.*

The Amendment proposed to make the following changes to the Planning Scheme:

- *Add the Macedon Restructure Overlay Review, Final Report 2012 to Clause 21.10 – Reference Documents*
- *Amend the schedule to Clause 45.05 – Restructure Overlay to update:*
 - *RO4 – Bent Street Restructure Plan to Bent Street Restructure Plan – Revised 2013*
 - *RO5 – Macedon South West Restructure Plan to Macedon South West Restructure Plan – Revised 2013*
 - *RO10 – Mt Macedon Restructure Area to Mt Macedon Restructure Area – Revised 2013*
- *Insert RO14 – Hunter Street Restructure Plan – 2013 into the Planning Scheme*
- *Delete RO10 from 29 Hunter Street and 404 Black Forest Drive, Macedon and replace it with RO14*
- *Amend the Schedule to Clause 81.01 to update the list of Incorporated Documents by amending the Macedon Ranges Shire Restructure Area Plans, 1999 to the Macedon Ranges Shire Restructure Area Plans, 1999 (Revised 2013)*
- *Change the content of the Incorporated Document so far as fifteen properties are concerned.¹⁴ The Explanatory Report to the Amendment includes an attachment which sets out the proposed changes to the Incorporated Document (and the Restructure Plans) in detail. That attachment is included as Appendix A to the Panel report.*

1.5 Notice and submissions

The Amendment was unconditionally authorised by the Minister for Planning on 11 April 2013.

The Amendment was placed on public exhibition between 30 May and 12 July 2013. Sixteen opposing submissions were received during the advertising period. The issues raised in opposition to the Amendment were summarised by Council in its letter requesting the appointment of a Panel as follows:

- *Concern about fire hazard and additional residents who would potentially be living in the area*
- *That the candidate sites are unable to meet with Bushfire Management Overlay requirements and contradict the Victorian Bushfire Royal Commission directions*
- *That the process of engagement with relevant authorities resulted in the alteration of the fire hazard assessment of these sites*

¹⁴ The number of sites was reduced from 29 to 13 (plus two requiring clarification) following the review. Three of those removed were identified as particularly inappropriate from a fire risk perspective in a CFA letter to the Council of 2 November 2012. The Panel understands that some properties were deleted as the owners did not support them and others because of the extent of vegetation cover. The Panel remains unclear about the process by which these changes were made.

- *The proposed Amendment C92 is contrary to the Statement of Planning Policy No 8*
- *That the proposed Amendment C92 favours individual landowners*
- *There are errors in the Explanatory Report and Incorporated Document.*

There were also around 31 supporting submissions, submissions seeking clarification only or submissions raising matters not related to the Amendment. The main issues raised in supporting submissions were summarised as:

- *Adequate availability of infrastructure and services within Macedon*
- *There will be limited change to the existing population*
- *The character of the township of Macedon will not alter*
- *Potential new development will be consistent with existing adjacent development.*

At its meeting of 28 August 2013, Council resolved to refer the objecting submissions¹⁵ to a Panel. The Council also resolved that it would modify the Amendment in response to submissions by deleting two properties and adding another¹⁶. The net effect according to the Council submission at the Panel Hearing is that the Council now supports 12 properties having the RO restrictions relaxed enabling up to 16 dwellings to be constructed if the necessary further permissions under the Bushfire Management Overlay (BMO) which applies throughout the town, and in some cases other overlays, are obtained.

Table 1 drawn from the Council submission to the Panel sets out the properties affected by the Amendment.

	Property Address	Lot Size (hectares)	New Lots	Zone and Overlays
1	6 Keating Street Macedon (Lots 28 and 29 LP987)	0.17	1	LDRZ/ BMO/RO4
2	57 Victoria Street Macedon (fronting Keating St) (Lots 8 and 23 LP987)	0.24	1	LDRZ/ BMO/RO4
3	10 Bruce Street Macedon (Lots 8, 9, 10, 11 and 12 LP11219)	0.39	1	LDRZ/ BMO/RO5
4	35 McBean Avenue Macedon (PC360087)	1.54	2	LDRZ/ BMO/RO10
5	11 McBean Avenue Macedon (Lots 11, 12, 13 and 14 LP13894)	0.45	1	LDRZ/ BMO/RO10
6	84 Railway Place Macedon (Allotments 2, 4, 6, 8 and 10 Sec. 86 Township of Macedon)	0.47	1	LDRZ/ BMO/RO10/ESO5
7	37 Greene Street Macedon (Allotments 3, 5, 7 and 9 Sec. 86 Township of Macedon)	0.48	1	LDRZ/ BMO/RO10/ESO5
8	23 Greene Street Macedon (Allotments 1 and 3 Sec. 87 Township of	0.38	1	LDRZ/

¹⁵ 17 submissions were referred as an additional late submission was received.

¹⁶ The deleted properties were: rear of 38A Bruce Street and rear of 1A McBean Street. The added property was CA1 Section 83 Township of Macedon (a vacant site west of 86 Greene Street fronting Nursery Road).

	Macedon)			BMO/RO10/ESO5
9	6 Walton Street Macedon (PC370996)	0.8	1	LDRZ/ BMO/RO10
10	29 Hunter Street Macedon (Allotment 67 Parish of Macedon)	3	3	LDRZ/ BMO/RO10/ESO5
11	404 Black Forest Drive Macedon (Allotment 68 Parish of Macedon).	2.22	2	LDRZ/ BMO/RO10
12	West of 86 Greene Street, Macedon (Lot CA 1 Sec 83 Township of Macedon)	0.34	1	LDRZ/ BMO/RO10
-	96 Railway Place Macedon (PC367192)	0.25	0	LDRZ/BMO/RO10
-	10 Barkly Avenue (Lots 88, 89, 90 and 91 LP3273)	0.31	0	RCZ1/ BMO/VPO9
	Total		16	

Table 1 Properties affected by Amendment after post-exhibition changes.
(Source: Council submission to Panel Hearing page 1)

1.6 The Panel process

Ms Jenny Moles was appointed as a Panel to consider the Amendment under delegation from the Minister for Planning on 6 November 2013.

A Panel Directions Hearing was held in the offices of Macedon Ranges Shire Council in Gisborne on 11 November 2013. The Panel Hearing took place in the same venue on 3 and 4 December 2013. Those presenting at the Panel Hearing are listed earlier in the summary section of this report. No expert evidence was called by any party. Some questioning of the CFA representative was permitted.

The planning issues as summarised above were addressed in further detail at the Panel Hearing. A number of submitters sought to have their properties added to the Amendment in order that the RO controls affecting them might be relaxed. Others elaborated on their concerns that the Amendment should not proceed.

The Panel has inspected the subject area and surrounds on three occasions as set out in the summary above. The first inspection was to familiarise the Panel with the township and surrounding area. On the second occasion the Panel met with some submitters at their properties. This inspection was accompanied by Council and CFA officers. The third inspection was of individual properties not earlier inspected including the Amendment properties, additional submitter properties and those properties identified in the Review removed from the Amendment. The third inspection was unaccompanied.

In reaching its conclusions and recommendations, the Panel has read and considered the all material referred to it as informed by the inspections. This includes the written submissions received by the Council, material presented at the Hearing and invited submissions directed to the Panel post-Hearing. The last of those submissions was received on 31 December 2013.

The Panel has also considered the policy context for the Amendment which is set out in the following chapter of the report.

Procedural issues

At the Hearing the Panel requested to be supplied with copies of all supporting written submissions as well as the objecting written submissions which had been referred to it. This request was made as the Panel had agreed, with the consent of the Council, to two requests by 'supporting' submitters to present to the Panel about their concerns. The Panel believed it appropriate to understand the full range of views on this issue. This request for all written submissions was met during the Hearing.

A procedural problem which arose during the Panel process was that the owner of half of the land in proposed RO14 (a 'supporting' submitter being the owner of 404 Black Forest Drive) made submissions opposed to the particular content of RO14 but the owner of the remaining land in the proposed RO14 (at 29 Hunter Street) was not apprised of the opposition. RO14 contains a development plan which would require the cooperation of both owners. Also a neighbour to the rear of the second owner's land had raised concerns about the more intensive use of that land.

The Panel directed notice to the second owner who was permitted to make a written submission to the Panel by 16 December 2013 with the first owner (who had attended the Hearing) and the Council being permitted a reply by 20 December 2013. Final submissions on this matter were received on 20 December 2013.

The submissions at the Hearing on behalf of the submitters Mr Craig and Ms Jo Byrne alleged that the existing RO10 was incorrect in so far as joint ownership of their and neighbouring lots was incorrectly ascribed. Post hearing correspondence also was received concerning this matter from the Council as well as on behalf of the owners. The final response from the Byrnes' consultant was received on 31 December 2013.

It is also recorded here that, at the outset of the Panel Hearing, Mr David Nevin for the Council indicated that it received advice from the CFA late on Monday 2 December 2013 (the night before the Panel Hearing) that:

CFA's position is that we do not support the proposed changes to allow for 17 additional dwelling lots to be developed.

It was said that this advice was contrary to the advice received from the CFA over the previous 18 months including in a letter dated 2 November 2012 during the preparation and exhibition of Amendment C92.

Mr Andrew Ganey for the CFA replied that the CFA position had always been opposition to the Amendment on broad strategic fire risk grounds¹⁷, but, since the Council had determined to proceed with the Amendment notwithstanding this opposition, the CFA had worked with the Council to identify the lots most at risk and others where it was likely that the fire requirements of the Planning Scheme could be achieved. It was acknowledged that advice to the Council in the CFA letter of 2 November 2012 could have been clearer. That letter indicates that, accepting the Council had made a decision to proceed with Option 3 as

¹⁷ Including in the authority's response to the three options identified in the 2012 consultant review of the township lots within the sewerage area. The CFA indicated by letter dated 25 May 2012 that they supported no change to the RO.

identified by the consultant Review (limited change leading to Amendment C92), the CFA 'does not object' to the Amendment subject to some modifications prior to exhibition. The modifications were the removal of three properties where 'it has not been demonstrated that the risk to future development ... can be reduced to an acceptable level'. The three nominated properties were:

- 44 Marshall Avenue
- Lots 5 -15 Rowan Drive
- 70 -74 Smith Street.

Issues of unsafe access and inability to provide adequate defensible space were mentioned.

In light of the fact that there may have been confusion around the CFA approach to the Amendment and the short notice of the authority's clarified position, the Panel invited the parties to the Hearing to request to make further written submissions on this issue. No requests were forthcoming. Mr Nevin further addressed this matter in the Council reply at the close of the Hearing.

Report structure

This chapter of the Panel's report has set out the background to the Amendment, described the Amendment content and the Panel process. The following chapter sets out the key elements of the policy context. Chapter 3 discusses the issues raised in submissions and at the Hearing. The Panel's conclusions and recommendation are provided in Chapter 4.

2 Policy context

There are many policies at State and local level which provide the context for consideration of the issues around this Amendment. Many are set out in the Council submission to the Panel. The Panel has identified some additional matters. The following are some of the most pertinent elements of the legislative and policy context.

2.1 Planning and Environment Act

(i) Objectives of planning

The Act sets out the objectives for planning at section 4. Relevantly it provides:

- (1) *The objectives of planning in Victoria are—*
- (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;*
 - ...
 - (f) *to facilitate development in accordance with the objectives set out in paragraphs (a), (b), (c), (d) and (e);*
 - (g) *to balance the present and future interests of all Victorians.*
- (2) *The objectives of the planning framework established by this Act are:*
- (a) *to ensure sound, strategic planning and co-ordinated action at State, regional and municipal levels;*
 - ...
 - (d) *to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land...*
 - (e) *to facilitate development which achieves the objectives of planning in Victoria and planning objectives set up in planning schemes...*

(ii) Matters to be taken into account

Section 12(2) provides a list of the types of matters which must be considered when a planning scheme or amendment is being prepared:

In preparing a planning scheme or amendment, a planning authority:

- (a) *must have regard to the Minister's directions; and*
- (aa) *must have regard to the Victoria Planning Provisions; and*

- (ab) in the case of an amendment, must have regard to any municipal strategic statement, strategic plan, policy statement, code or guideline which forms part of the scheme; and*
- (b) must take into account any significant effects which it considers the scheme or amendment might have on the environment or which it considers the environment might have on any use or development envisaged in the scheme or amendment ; and*
- (c) must take into account its social effects and economic effects.*

2.2 State Planning Policy Framework

(i) Goal of planning

Section 10(2) provides in part as follows:

The State Planning Policy Framework seeks to ensure that the objectives of planning in Victoria (as set out in Section 4 of the Planning and Environment Act 1987) are fostered through appropriate land use and development planning policies and practices which integrate relevant environmental, social and economic factors in the interests of net community benefit and sustainable development.

(ii) Integrated decision making

Section 10(4) provides in part:

Planning authorities and responsible authorities should endeavour to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.

(iii) Settlement policies

Planning is to anticipate and respond to the needs of existing and future communities through provision of zoned and serviced land for housing, employment, recreation and open space, commercial and community facilities and infrastructure.

Planning is to recognise the need for, and as far as practicable contribute towards:

- *Health and safety ...*
- *Protection of environmentally sensitive areas and natural resources ...*

Planning is to facilitate sustainable development that takes full advantage of existing settlement patterns, and investment in transport and communication, water and sewerage and social facilities.

(iv) Urban growth

Clause 11.02-1 provides in part:

Planning for urban growth should consider:

- *Opportunities for the consolidation, redevelopment and intensification of existing urban areas.*
- *Neighbourhood character and landscape considerations.*
- *The limits of land capability and natural hazards and environmental quality.*
- *Service limitations and the costs of providing infrastructure.*

(v) Melbourne's hinterland

State policies relating to Melbourne's hinterland are included at Clause 11.05-2.

They include:

Objective

To manage growth in Melbourne's hinterland, the area immediately beyond Metropolitan Melbourne and within 100 kilometres of the Melbourne's Central Activities District.

Strategies

Provide for development in selected discrete settlements within the hinterland of Metropolitan Melbourne having regard to complex ecosystems, landscapes, agricultural and recreational activities in the area.

Maintain the attractiveness and amenity of hinterland towns.

Prevent dispersed settlement.

Site and design new development to minimise risk to life, property, the natural environment and community infrastructure from natural hazards such as bushfire and flooding.

Manage the growth of settlements to ensure development is linked to the timely and viable provision of physical and social infrastructure and employment.

Strengthen and enhance the character and identities of towns.

Improve connections to regional and metropolitan transport services.

(vi) Regional strategies

Clause 11.05-4 encourages the development of regional strategies which amongst other things should have regard to the following:

Climate change, natural hazards and community safety

Respond to the impacts of climate change and natural hazards and promote community safety by:

- *Siting and designing new dwellings, subdivisions and other development to minimise risk to life, property, the natural environment and community infrastructure from natural hazards, such as bushfire and flooding.*
- *Developing adaptation response strategies for existing settlements in hazardous and high risk areas to accommodate change over time.*

(vii) Environmentally sensitive areas

Clause 12.01 contains the following policy relating to environmentally sensitive areas:

Objective

To protect and conserve environmentally sensitive areas.

Strategies

Protect environmentally sensitive areas with significant recreational value such as the Dandenong and Macedon Ranges, the Upper Yarra Valley, Western Port and Port Phillip Bays and their foreshores, the Mornington Peninsula, the Yarra and Maribyrnong Rivers and the Merri Creek, the Grampians, the Gippsland Lakes and its foreshore, the coastal areas and their foreshores and the Alpine areas as well as nominated urban conservation areas, historic buildings and precincts from development which would diminish their environmental conservation or recreation values.

(viii) Environmental risks

Clause 13 contains the following relevant State policies:

Planning should adopt a best practice environmental management and risk management approach which aims to avoid or minimise environmental degradation and hazards.

Planning should identify and manage the potential for the environment, and environmental changes, to impact upon the economic, environmental or social well-being of society.

(ix) Bushfires

The following policies are found at Clause 13.05:

Bushfire

13.05-1 Bushfire planning strategies and principles

Objective

To assist to strengthen community resilience to bushfire.

Strategies

Overarching strategies

Prioritise the protection of human life over other policy considerations in planning and decision-making in areas at risk from bushfire.

Where appropriate, apply the precautionary principle to planning and decision-making when assessing the risk to life, property and community infrastructure from bushfire.

Bushfire hazard identification and risk assessment strategies

Apply the best available science to identify vegetation, topographic and climatic conditions that create a bushfire hazard.

Assess the risk to life, property and community infrastructure from bushfire at a regional, municipal and local scale.

Identify in planning schemes areas where the bushfire hazard requires that:

- *Consideration needs to be given to the location, design and construction of new development and the implementation of bushfire protection measures.*
- *Development should not proceed unless the risk to life and property from bushfire can be reduced to an acceptable level.*

Strategic and settlement planning strategies

Ensure that strategic and settlement planning assists with strengthening community resilience to bushfire.

Consult with the relevant fire authority early in the strategic and settlement plan making process and implement appropriate bushfire protection measures.

Ensure that planning to create or expand a settlement in an area at risk from bushfire:

- *Addresses the risk at both the local and broader context.*
- *Reduces the risk to future residents, property and community infrastructure from bushfire to an acceptable level.*
- *Ensures any biodiversity and environmental objectives specified in the planning scheme are compatible with planned bushfire protection measures.*
- *Ensures the risk to existing residents, property and community infrastructure from bushfire will not increase as a result of future land use and development.*
- *Ensures future residents can readily implement and manage bushfire protection measures within their own properties.*

Planning scheme implementation strategies

Specify in planning schemes the requirements and standards for assessing whether the risk to a proposed development from bushfire is acceptable and the conditions under which new development may be permitted.

Ensure that planning schemes, in particular the Municipal Strategic Statement, Local Planning Policies and zones applying to land, provide for use and development of land in a manner compatible with the risk from bushfire.

Ensure that planning schemes support bushfire management and prevention and emergency services actions and activities.

Ensure that planning schemes do not prevent the creation of required defensible space around existing development through the removal and management of vegetation.

Development control strategies

In areas identified in the planning scheme as being affected by the bushfire hazard, require a site-based assessment to be undertaken to identify appropriate bushfire protection measures for development that has the potential to put people, property or community infrastructure at risk from bushfire.

Only permit new development where:

- *The risk to human life, property and community infrastructure from bushfire can be reduced to an acceptable level.*
- *Bushfire protection measures, including the siting, design and construction of buildings, vegetation management, water supply and access and egress can be readily implemented and managed within the property.*
- *The risk to existing residents, property and community infrastructure from bushfire is not increased.*

When assessing a planning permit application for a single dwelling in an established urban or township residential area, consider the need for a localised response to the bushfire risk and consider any relevant existing or planned State or local bushfire management and prevention actions that may affect the level of on-site response needed.

(x) Water

Clause 14.02-1 relates to catchment planning and management. It contains the following strategy:

Protect water catchments and water supply facilities to ensure the continued availability of clean, high-quality drinking water.

Clause 14.03 seeks to protect water quality. A key strategy is:

Protect reservoirs, water mains and local storage facilities from potential contamination.

(xi) Built environment and heritage

This State policy at Clause 15 has the following objective:

Planning should ensure all new land use and development appropriately responds to its landscape, valued built form and cultural context, and protect places and sites with significant heritage, architectural, aesthetic, scientific and cultural value.

(xii) Cultural identity and neighbourhood character

These policies at Clause 15.01-5 have the following objective:

To recognise and protect cultural identity, neighbourhood character and sense of place.

The strategies include:

Ensure development recognises distinctive urban forms and layout and their relationship to landscape and vegetation.

Ensure development responds to its context and reinforces special characteristics of local environment and place by emphasising:

- *The underlying natural landscape character.*
- *The heritage values and built form that reflect community identity.*
- *The values, needs and aspirations of the community.*

(xiii) Location of residential development

Clause 16.01-2 relates to planning for housing. It includes:

Ensure an adequate supply of redevelopment opportunities within the established urban area to reduce the pressure for fringe development.

Identify opportunities for increased residential densities to help consolidate urban areas.

2.3 Local Planning Policy Framework

(i) Municipal snap shot

Clause 21.02 of the Municipal Strategic Statement (MSS) identifies Macedon as a small settlement with limited services and a railway station. It notes also that *Macedon Ranges Shire is the centre of a regionally significant tourism industry.*

(ii) Key issues and trends

Clause 21.03 includes:

There are limits to growth in a number of communities such as Gisborne, Woodend, Macedon and Mount Macedon. Growth needs to be limited to protect environmental, landscape and lifestyle qualities and the role of large areas providing water catchments for urban centres outside the Shire. The importance of the natural environment in this role is recognised.

Much of the Shire is at risk from wildfire and has a history of severe bushfires. Wildfires in forest and bushland areas around Mount Macedon have caused considerable damage to property and loss of life or injury. Land use and development planning in the Shire must recognise and minimise the level of fire risk.

(iii) State and regional planning context

Clause 21.04 refers to the State policy context for the MSS. One of two State policies referred to is Statement of Planning Policy No 8. The clause provides:

This policy recognises the National and State significance of the Macedon Ranges, in particular the environmental and landscape significance of the Macedon Ranges and its surrounds, and sets out a planning policy context to ensure the values of the area are protected and enhanced.

The Statement of Planning Policy was adopted as State Planning Policy by the then State Government on 30 September 1975. The legislative basis was provided by the provisions for statements of planning policy introduced in 1968 to the Town and Country Planning Act 1961.

One of the purposes of statements of planning policy was to safeguard the interests of the state as a whole in the conservation and development of localised resources.

Accompanying documents were the Explanatory Statement and the Report of Studies for the Preparation of Statement of Planning Policy No. 8 (published February, 1975). The Proceedings of a seminar held 1 May 1976 to examine the Statement of Planning Policy No. 8 provide discussion of the main themes of the Policy.

The Policy has provided has provided the basis of strategic planning in the Macedon Ranges area since 1975. Now that the Policy area is contained in a single municipality, it is essential that the Statement of Planning Policy No. 8 be retained as a Local Policy in the Macedon Ranges Planning Scheme. The Policy has formed part of the Macedon Ranges Planning Scheme since approval of the amalgamated Planning Scheme and previously formed part of the respective Councils' Planning Schemes. The provisions of Statement Planning Policy No. 8 are essential and relevant to the planning of the Macedon Ranges area today as they were when the Policy was introduced in 1975.

The Policy specifically recognises the need for planning to comprehensively address these main themes: flora and fauna values, landscape protection, nature conservation, vegetation, recreation values, fire hazard, agriculture, population growth and water resource management. The Policy sets out a strategic planning context to manage use and development to ensure the area's significance is protected and enhanced.

The Council is proposing to include the Statement of Planning Policy No. 8 in the overall review of the non urban areas of the municipality, proposed for 2000. This will provide an opportunity for the Council, community and relevant State Government agencies to review the document and its ongoing importance to the Macedon Ranges municipality from a local, regional and State perspective.

(iv) Municipal vision and strategic framework

Clause 21.06 relates to these matters. It includes:

The vision for the Shire is to foster economic and cultural diversity, protect natural and cultural heritage assets and creatively enhance attractive and efficient living environments.

Clause 21.07-1 relates to the management of urban growth and development. It notes that:

Environmental and lifestyle qualities throughout the Shire will be compromised if population and urban growth is not managed and monitored. This is particularly the case in Gisborne and New Gisborne, Woodend, Romsey, Mount Macedon and Macedon.

As noted earlier Clause 22.01 is the present day expression within the Planning Scheme of Statement of Planning Policy No 8. Relevantly the Clause provides:

It is policy that:

- *Protection and utilisation of the resources of the policy area for water supply, tourism and recreation, and nature conservation must be the primary concern ...*
- *All development in proclaimed water catchment areas and in elevated areas must be strictly limited and regulated to protect water quality, and maintain or enhance natural systems and landscape character ...*
- *There must be no further subdivision for outward urban extension of the Mt. Macedon settlement or for extension generally northerly of the Macedon township ...*
- *Development to be permitted in urban and rural areas must be planned to achieve harmony with the natural environment and to maintain both the generally rural character and high landscape values of the policy area ...*
- *Planning and management of the resources of the policy area must take into account not only the interests of the Victorian community but also the needs and views of the local community.*

As well as the natural attributes of the area, the presence of water catchments and recreation demand, specified major influencing factors on the policy include:

- *The fire hazard resulting from the combination of flammable fuels, buildings and general human activities in forest environments.*
- *The potential conflict between the provision of access for effective fire protection and the restriction of public access in the interests of the conservation of flora, fauna and water.*
- *The important role of existing settlements in relation to the character, functioning and future of the policy area.*

Various implementation measures are identified for the policy which include attention to coordinated planning of public and private land, comprehensive planning for conservation and recreation, planning for habitat and water catchment protection, protection of landscape quality and:

Fire hazard and access

- *Regulation of the use and development of land and where necessary its reservation to minimise fire hazard.*
- *The design construction and maintenance of an integrated network of access routes so as to provide for:*
 - *Minimum interference with the environment of the policy area;*
 - *Routes of different standards appropriate to the particular functions for which they are planned;*
 - *The utilisation, management and fire protection of the area; and*
 - *The regulation of usage of routes where necessary for the protection of resource values.*

Subdivision

- *Control of subdivisions to ensure that the pattern and size is consistent with the policy and to safeguard against subdivision in advance of selection and approval of appropriate future use.*
- *Review and evaluation of existing subdivisions and their capacity for development without detriment to the area, and formulation of equitable policies and protective measures to avoid such detriment.*
- *Formulation of restraints and proposals designed to reduce potential intensity of use and development, particularly in areas of strategic importance.*

(v) Township policies

Clause 22.02 contains policies relating to particular townships. The overall policies include an objective:

To recognise that areas of Gisborne, Woodend, Riddells Creek, Macedon and Mount Macedon have limits to growth due to landscape, environmental, flooding and/or drainage constraints and that areas of Romsey may have salinity constraints.

Policies for Macedon are found at Clause 22.09. The township is recognised as a rural village offering a high quality residential environment. The planning objectives for the village are:

To protect residential lifestyle by the protection of important landscape and environmental values.

To ensure that fire prevention is a priority consideration for development.

To protect heritage features.

To ensure environmentally sustainable levels of development.

To prevent the loss of vegetation and soil disturbance.

To protect significant view lines to Mount Macedon and surrounding areas.

The structure plan forming part of this clause indicates amongst other things that opportunities exist for restructuring of lots to achieve better access and which reflect local conditions.

(vi) Vegetation policies

Clause 22.06 contains policies which seek to retain vegetation which is environmentally important and contributes to the character and amenity of the Shire.

(vii) Wildfire risk

Clause 22.10 relates to wildfire risk. It contains the following objective:

To ensure that residential and other forms of development catering for people in rural areas and on the fringes of urban areas are sited and designed so as to minimise risk from wildfire.

The policies are:

- *Residential development in areas without reticulated water supply must be provided with a storage that is permanently maintained with a minimum of 20,000 litres of static water supply in tanks, dams or swimming pools for fire fighting purposes. These supplies must be fitted with suitable fittings and couplings to enable Country Fire Authority connection and use.*
- *Development be sited so as to avoid slopes and areas identified as at high risk from fire hazard.*
- *Access to properties in areas considered to be at risk from wildfire must be sited and designed to provide for safe egress and ingress of residents and emergency vehicles.*
- *In considering any application for residential development or other forms of development designed to provide temporary accommodation or facilities for people the responsible authority may take into account the needs and requirements of the Municipal Fire Prevention Plan and the Country Fire Authority and the accumulated impact of any residential development in any area.*

2.4 Proposed policies

(i) Proposed Amendment C84

A review of the MSS and Clause 22 local policies has been undertaken by the Council in recent times and the associated Amendment C84 is currently proceeding through a Panel process. The proposed revised MSS implements some of the outcomes of the Small Towns Study 2006 and the recommendations of the Macedon Ranges Settlement Strategy 2011. Essentially the review and Amendment propose to delete most Clause 22 policies (with exceptions including Clause 22.01) and to incorporate content in Clause 21 about particular townships.

Notably the Explanatory Report for Amendment C84 includes:

The new MSS reflects the Settlement Strategy 2011. In doing so it defines the role of different settlements into the future including the identification of recommended population levels for each town up to the year 2036. Specifically:

- *The amendment directs development and population growth to those settlements which can best accommodate it ...*
- *The amendment restricts development in areas with significant environmental constraints or values, including the restriction of growth in the Macedon and Mt Macedon townships due to their high wildfire risks and in Lauriston and Carlsruhe due to their location within a declared water catchment. Growth is also limited in the non-urban areas of the Shire to prevent impacts on the environment and the economic viability of agricultural areas.*

Proposed Municipal Strategic Statement

Proposed Clause 21.13 of the Municipal Strategic Statement (MSS) relates to particular localities. Clause 21.13-6 relates to Macedon-Mount Macedon.

It includes the following provisions relating to Macedon:

Macedon (Population 1,439 in 2006), located at the foot of Mount Macedon on the Melbourne/Bendigo railway line, will be a viable and sustainable township which builds upon its village character and significant natural and planted landscapes will be protected ...

While Macedon is now fully serviced, it is clear many other constraints still limit the development of the town, including wildfire risk, the location within a water supply catchment, storm water management, the character of the town and the protection of native vegetation.

The elements that define the character of Macedon are:

- *The low-density residential bush setting partly consisting of historic and inappropriate subdivisions.*
- *Presence of heritage buildings, features and landmarks.*
- *Mix of exotic plantings with native bushland areas.*
- *Significant views to Mount Macedon.*
- *The railway line and Calder Freeway alignment.*
- *Modest commercial development in a gently sloping heavily treed terrain.*

The key issues affecting Macedon and Mount Macedon are:

- *Protection of the separation between the two townships.*
- *Protection of the key characteristics and individual identities of the townships.*
- *Managing the significant environmental constraints including high wildfire risk.*
- *Protection and enhancement of the area's vegetation.*
- *The need to contain development to existing areas.*

A number of objectives and implementing strategies are then set out.

Objective 1 is:

To maintain the landscape character of the settlements and the physical separation between Macedon and Mount Macedon.

Implementation strategies include:

- *Protect significant view lines to Mount Macedon and surrounding areas.*
- *Maintain a landscaped break between Macedon and Mount Macedon to clearly distinguish the two settlements.*
- *Ensure new development provides better linkages and improved walkability to community facilities and the railway station.*
- *Retain the heavily treed nature of Macedon and Mount Macedon.*
- *Protect residential lifestyle by the protection of important landscape, heritage and environmental values.*

Objective 2 is:

To provide for orderly infill development and redevelopment that respects the development constraints.

Related strategies include:

- *Ensure the location, form and design of new development is consistent with the town structure plan and applicable restructure plans.*
- *Encourage the location of development (residential and commercial) within the identified township boundary of Macedon with a focus on existing residential areas and the commercial centre.*
- *Encourage the protection and retention of vegetation within developments.*
- *Protect the area's heritage features within development proposals.*
- *Discourage development on un-sewered land parcels.*
- *Consider the impact of development on water supply levels.*

Objective 3 provides:

To restrict further development within Macedon and Mt Macedon due to its high fire risk.

The related strategies are:

- *Ensure new development does not exacerbate or increase exposure to the high fire risk in the area.*
- *Allow infill development that is sustainable where it can meet requirements for fire protection.*
- *Retain the population of Macedon/Mount Macedon at approximately 2,500¹⁸ people to minimise exposure to fire risk.*

Other objectives and strategies support the expansion of the commercial development in Victoria Street in a westerly direction; seek to support improved waste water management and include:

¹⁸ The combined population of Macedon- Mount Macedon in 2006 is said to be 2529.

- *Conduct a review of the alignment of zoning and overlays with infrastructure and constraints; address community expectations; manage wildfire risk; protect important vegetation; respect town character.*

This clause contains a mapped Structure Plan for the townships of Macedon-Mount Macedon. Three general (not site specific) notations appear on the Plan:

Restructure of lots – opportunities for restructure to create lots with better access and lot sizes that reflect local conditions.

Fire Hazard – prevent risk of wildfire with the use of local policy and overlay in the planning scheme.

Vegetation – retain vegetation cover to protect landscape and native conservation values.

The Settlement Strategy of 2011 and the Small Towns Study of 2006 are shown as Reference Documents.

Small Towns Study 2006

The final version of Small Towns Study was exhibited as part of Amendment C84. The purpose of the study was to prepare Local Policies and Structure Plans for ten small towns in the Shire including Macedon. The Study summary includes:

Macedon and Malmsbury

These two towns are connected to water and sewer, pre-conditions for urban development. The key issue for these two towns is the application of a planning framework that ensures future development does not adversely impact on environmental or cultural heritage assets of the settlements. Both towns have the opportunity to further enhance their streetscapes, neighbourhood character and community facilities. Particular attention is needed to Macedon where there are growth pressures.

The Study also includes a review of building approvals. It concludes that Macedon had been growing fairly steadily in the four year period leading up to the Study.

Macedon is discussed in more detail from Section 4.10. The 2001 census population of 1413 is noted. In discussing the then implementation of the sewerage scheme, the Study comments:

The declared Macedon Sewage District does not, however, conform with the current zone boundaries for township and residential development. A major review of the anomalies between existing residential zone boundaries and the sewerage infrastructure is required. The review should also examine a rationalisation of existing zones, given the existence of different zones covering areas of similar development density

In relation to residential development, the following appears:

Residential development should be confined to existing zoned and serviceable land pending the findings of the review of anomalies and rationalisation. The review should be based on the following principles:

- *retention of a compact township development pattern*
- *some restructure of lot sizes adjacent to the existing township area to allow efficient access to sewer and retention of compact town form*
- *infill development subject to strict controls over building envelopes, form, materials, colours, and subject to serviceability*
- *revision of zones to place areas of similar existing lot densities in the same zone to simplify application and enforcement of planning controls restructuring of lot sizes between the railway easement and the Calder Highway (between McBean and Nursery Roads), and between the Calder Highway and the Calder Freeway, subject to approved Outline Development Plans based on protection of native vegetation, access to sewer, permeable grid pattern of subdivision.*

The Study contains an outline of planning controls affecting the township (which is somewhat out of date). It goes on to recommend in relation to residential development:

Maintain existing character, including the rural village atmosphere and natural landscape character, by strictly enforcing existing controls over residential development.

Retain a compact township development pattern and confine residential development to existing zoned and serviceable land.

Conduct a review of the anomalies between existing residential zone boundaries and sewerage infrastructure and the existence of different zones covering areas of similar development density. This review should address the restructure of lot sizes, the control of infill development, a reduction in the number of zones, the need for the preparation of Outline Development Plans and fire management requirements.

Protect the rural village and landscape character of the Macedon township by the conduct of an overall neighbourhood and natural landscape character study which draws on the key elements of local character including setbacks, lot sizes, remnant roadside verge vegetation, soft engineering drainage solutions and the key vistas.

Provide guidelines to protect that character and control the interface between private allotments and native forests.

Settlement Strategy

The exhibited final version of the Settlement Strategy indicates in Table 1 that Macedon (and Mount Macedon) are not recommended for any growth to 2036; and later reference is made to ‘restricted development in recognition of the high wildfire risk and environmental constraints’ for these towns.

This report also refers to Statement of Planning Policy No 8:

Planning policy for the Macedon Ranges reflects longstanding policy to protect the environmental, scenic and recreation values of the area, as illustrated by State Planning Policy No 8. This policy applies to the entire current Shire other than the area around Kyneton, Malmsbury and Tylden. State policy continues to evolve, but this fundamental policy direction is expected to endure into the future.

In Section 4 dealing with Strategic Direction, the Settlement Strategy report identifies the potential for growth in the larger of the small towns (which include Macedon) but comments:

Mount Macedon and Macedon are larger settlements where the environmental constraints and hazards are such that no growth should be facilitated.

Details for Macedon include:

Opportunities for development

- *There are no opportunities for development identified.*
- *However a key opportunity for residents and visitors alike is the conservation of environmental landscapes, biodiversity and values of importance to the Shire.*
- *Limited opportunities to improve tourism support services for surrounding locality.*
- *A no growth recommendation would protect the existing character of Macedon as a highly treed town with both indigenous trees and exotic trees providing a high scenic quality.*

Constraints on development

- *The principal constraint to developing Macedon is the high fire risk. While there is some pressure from local land owners to allow development, the fire risk and environmental constraints in Macedon means that capacity for any additional development in Macedon is restricted.*
- *An additional constraint to development is the Restructure Overlay which extends across parts of the township area. Originally established before the town was seweraged, this Overlay may remain appropriate but could be reviewed.*
- *Despite the town now being seweraged, it is clear many other constraints still limit the development of Macedon, including wildfire risk, the location within a water supply catchment, storm water management, the character of the town and the protection of native vegetation (Figures 11 and 12).*
- *Submissions received concerning Macedon generally related to a desire to allow for moderate infill development. Specific evaluation of State Policy and particular areas would be required.*

Recommended Outcome

- *Given the level of environmental constraints and hazards identified, it is recommended Macedon could accommodate a population of approximately 1,400 in 2036 which represents a no-growth scenario.*

Justification of the recommended outcome

- *The recommendation does not promote considerable growth in a fire risk area. As identified in Recommendation 39 of the 2009 Victoria Bushfire Royal Commission's report, there is a necessity for State to 'adopt a clear objective of substantially restricting development in the areas of highest bushfire risk...'*
- *As well as applying the precautionary principle to growth in a high fire risk area, the recommendation also enables protection of key environmental landscapes within the Shire.*

In evaluating the different State government and other population growth scenarios for Macedon, the Report includes:

There is some argument that Macedon should be permitted to grow to support the viability of the commercial centre, yet while this rationale has merit, such growth should be limited. In the case of Macedon, historic growth does not provide an indicator to demand since the restructure overlay has essentially prevented development since 1980. Hence, it is difficult to determine underlying demand. If fire constraints do not prohibit development in Macedon, it is expected Council should plan to accommodate moderate development rather than the VIF applied growth to 1,700 people, given the range of constraints that exist.

(ii) Interim Report by Panel on Amendment C84

The Interim Report by the Panel considering Amendment C84 was released in September 2012. The Panel said in relation to Macedon-Mount Macedon:

- *In view of the environmental and landscape constraints, and the limited established infrastructure, the Panel supports the Settlement Strategy's intent not to provide for growth in Macedon and Mt Macedon (page 65).*
- That the messages in the exhibited Clause 21 were mixed concerning no growth and restricted growth and required review.

The Amendment C84 Panel recommended:

- *Revise the wording in Clauses 21.04 and 21.13-6 to more accurately reflect the Settlement Strategy intent of no growth in Mt Macedon and Macedon.*
- *Develop separate Town Structure Plans for Mt Macedon and Macedon that are consistent with the above recommendation and consider splitting Clause 21.13-6 into two sub-Clauses.*

2.5 Other policies

The Council Plan 2009-2013 (Year 3) includes a specific action to prepare a Planning Overlay Review for Macedon. The Macedon/Mount Macedon Community Plan of 2012 has as a priority/project the removal of redundant overlays.

2.6 Panel comment on policy context

In the Panel's view the policies relating to Macedon at the local level clearly identify it as a small township for which no growth is planned. While there are broad State policies which support urban consolidation and planning for urban growth, as quoted, these objectives are proposed to be met in other urban settlements in the Shire. Also, while there is some lack of clarity around the policies for the township in both the Small Towns Study of 2006 and the content of the proposed Clause 21.13, the later Settlement Strategy of 2011 and the Interim Report by the Panel in relation to proposed Amendment C84 in September 2012, make it clear that no growth is supported.

The policies also clearly recognise the special qualities of the environment of the township including its treed character and competing potential fire threats. The water catchment issues continue to remain pertinent especially for those parts of the township where reticulated sewerage is not available. The policies recognise an ongoing need for restructuring of old subdivided lots and the careful management of such limited development as is enabled by the controls.

Notably there is an ongoing suggestion that a comprehensive review of zoning and other controls is required in Macedon. The proposed MSS in this respect provides:

Conduct a review of the alignment of zoning and overlays with infrastructure and constraints; address community expectations; manage wildfire risk; protect important vegetation; respect town character.

3 Consideration of the issues

3.1 Broad options available to respond to the issues

It appears to the Panel that there are three broad approaches that could be taken to the submissions and the issues they raise:

- The first is a recommendation to approve the (exhibited or) post-exhibition Amendment essentially as supported by the Council.

This would see an additional 12 lots in Macedon township released for consideration of possible dwelling development and a potential for an additional 16 dwellings. This would add to the existing stock of 32 vacant but potentially developable sites under the ROs.

The Council and some submitters argue that this is an appropriate response to the introduction of reticulated sewerage in the township which has removed the concerns about adverse effects of development of catchment water quality; that the small number additional dwellings would off-set falling household sizes (better supporting commercial uses in the township and the train services); would increase rate return to the Council; and it would not be inconsistent with the no growth scenario or small town outcome identified in settlement strategies for the township. The development of the selected sites, it was also said, would not involve extensive clearing of vegetation and hence loss of local character and, at the same time, development on the lots would seem to be able to meet the fire safety requirements of the BMO. It was also said that further approval for dwelling construction would nevertheless be required under the Planning Scheme and these issues would be assessed in more detail at this time.

This option and the option below are opposed by CFA on the basis that a broad strategic review of fire risk for the township is required before any decision is taken to relax the current development restrictions. The Macedon Ranges Residents' Association Inc (MRRA) also opposed both options on strategic fire risk grounds but gave further grounds which include potential impacts on the bushland setting and environment of Macedon, some properties would require the extension of the sewerage system (which may not be possible given it is a 'back log' scheme) and there are numerous statutory mistakes associated with the Amendment (as well as the existing Incorporated Document) which have lead to confusion about the outcome of the Amendment. It was also said in opposition that the Amendment is inconsistent with a no growth strategy for the township.

- A second option would be to recommend approval of a modified Amendment releasing the above 12 lots for possible development of 16 dwellings together with some or all of the additional sites and dwellings supported by some of the submitters.

In this respect, further variation to the RO to allow additional dwelling construction on other lots was supported for a number of other properties by owners who presented at the Panel Hearing. Table 2 sets out those properties.

Property address	Lot size	New houses	Zone and Overlays
1 Ferrier Street and vacant land on the corner of Hotham Avenue and Barkly Avenue	c.3100 sq m	1	RCZ/BMO
31 Centenary Avenue	2387 sq m	1	LDRZ/BMO
29 Childers Road	1369 sq m	1	RCZ/BMO
6 Clarke Street (Lots 10 and 11) (part of 3.4 ha holding) NFA applies	0.2 ha each	2	RCZ/BMO/E SO5
10 Margaret Street, 4 lot limit applies under RO	Holding of 1.6 ha plus purchased adjoining roads	17 (or 13 above current RO control)	LDRZ/BMO
1 Russett Grove	921 sq m	1	LDRZ/BMO
8 Keating Street.	3958 sq m Part	1	LDRZ/BMO

Table 2: Further dwellings sought by Hearing parties

Further dwelling development was also sought by persons making written submissions only, for the additional properties in Table 3.

Property address	Lot size	New houses	Zone and overlays
9 Ferrier Street (Part of holding of 2760 sq m)	1413 sq m	1	RCZ/BMO
55 Mc Bean Avenue	Holding of 0.4 ha	1	LDRZ/BMO
30 Centenary Avenue	Part of 0.4 ha	1	LDRZ/BMO
121 Carrington Road (Lots 3, 4 and 5)(holding of 1852 sq m)	619 sq m	2	LDRZ/BMO

Table 3: Further dwellings sought in written submissions

In all perhaps 25 or more additional dwellings are sought for these properties not nominated in the Amendment. Further, the desire to develop more dwellings on 404 Black Forest Road than the additional two dwellings envisaged in RO14 was also outlined at the Hearing on behalf of the owners of that property.

This broad option (of inclusion of some or all of the perhaps 30 further dwelling options sought by submitters) would respond directly to the submissions made about the suitability for development of those properties. Certainly, when considered individually, those properties appear in many instances to be no less worthy

development candidates than many of the properties in the exhibited Amendment. This option could therefore be argued to be a fairer approach to lot development. This approach to allowing more lots than exhibited could also be said to offer even better support for commercial facilities in the township.

This second option runs the risk, however, of being more clearly inconsistent with the current no growth policy for the township, is opposed by the Council on fire or character grounds as well as the CFA and MRRA. It also raises issues of notice to neighbours abutting the additional lots and equity for other lot owners in the town who may be unaware that development expansion options beyond the advertised 17 dwellings was possibly to be considered.

- The third broad option available is a recommendation to not proceed with the Amendment as urged in a number of individual written submissions, by the CFA and the MRRA.

The arguments against proceeding with the Amendment include the need for a strategic fire risk assessment of the township; prematurity of the relaxation of the RO given the planned review of zoning and other overlays for the township; impacts on vegetation and township character; issues of precedent; as well as statutory irregularities with the Amendment.

Against this are arguments that there would be less support for commercial facilities and at the very least those lot owners whose properties were selected for exhibition would have their expectations thwarted.

3.2 Panel evaluation of issues

The Panel has considered the submissions which have been referred to it and the planning issues which the Amendment raises.

The Panel recommends to the Council that it should abandon this Amendment.

The reasons for this recommendation follow.

(i) Need for a strategic fire review

The whole of the area subject to Amendment C92 is included in the Bushfire Management Overlay (BMO) of the Planning Scheme. This is not surprising given that the area is one recognised as subject to extreme bushfire hazard, as was acknowledged at the Panel Hearing by Mr Ganey for the CFA.

The purposes of the overlay are:

To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

To assist to strengthen community resilience to bushfire.

To identify areas where the bushfire hazard requires specified bushfire protection measures for subdivision and buildings and works to be implemented.

To ensure that the location, design and construction of development considers the need to implement bushfire protection measures.

To ensure development does not proceed unless the risk to life and property from bushfire can be reduced to an acceptable level.

The overlay requires permission (with some exemptions) for subdivision and some other types of development (particularly that which would introduce an increase in population). It also requires a bushfire management statement to accompany the application and also provides that unless specific exemption is provided, the proposal must meet the requirements of Clause 52.47.

Clause 52.47 in turn has the following specific purposes:

To ensure that development is only permitted if the risk to life, property and community infrastructure can be reduced to an acceptable level.

To specify requirements for buildings, works and subdivision on land to which the Bushfire Management Overlay applies.

The clause sets out objectives and mandatory standards which must be met and other standards which should be met by applications for subdivisions and development applications under the BMO.

Relevantly, a mandatory standard¹⁹ for residential subdivision is:

Each lot must contain:

- *A static water supply and access to this water supply which meet the requirements of the relevant fire authority.*
- *Access and egress arrangements which meet the requirements of the relevant fire authority.*
- *Defendable space for the construction of a single dwelling to a BAL of 19 or less with reference to Table 1 of Standard BF6.1 for a subdivision of 10 lots or more.*
- *Defendable space for the construction of a single dwelling to a BAL of 29 or less with reference to Table 1 of Standard BF6.1 for a subdivision of less than 10 lots.*
- *Building envelope and a defendable space envelope that give effect to the required defendable space and BAL.*

Clause 52.47-6 contains standards relating to defendable space for development proposals for dwellings and dependent persons units. The standards include a mandatory standard requiring the defendable space for the structure to be calculated according to the *Building Act 1993* but utilising Table 1 in Clause 52.47 of the Planning Scheme which sets out defendable space requirements according to slope, vegetation class and its relative location

¹⁹ Standard BF2

upslope or downslope from the dwelling. The provisions of that clause envisage that the defensible space might be borrowed from another property in certain circumstances and exemptions may be made to the required setbacks with fire authority approval.

It is against these provisions of the Planning Scheme (as well as any other clauses requiring approval) that proposals for dwellings and further residential subdivision (of those lots where the RO restrictions had been relaxed) would be assessed to ascertain whether they should be permitted to proceed despite the recognised extreme fire hazard of the locality. As the Panel understands it, the standards of this clause were also loosely applied in the Review or post-Review process which led to the identification of the 17 lots which were exhibited as for relaxed RO controls in the Amendment. Mr Ganey who appeared for the CFA indicated that the BAL used in the assessment had been 29 and the rough assessment was based on a site inspection.

The question to be addressed is whether, in the circumstances that a 'rough' assessment against the provisions of the BMO and Clause 52.47 has been done²⁰ and will necessarily be done again more exactly when application is made for a dwelling on any of the Amendment lots, is this sufficient to dispose of the concerns expressed about bushfire hazard?

The Panel does not believe this is the case. My reasons are as follows.

The submission by the CFA in response to exhibition of the Amendment made reference to its earlier correspondence with the Shire of 2 November 2012 which included:

- *Research into life and property loss from bushfire consistently identifies that good planning is the best form of bushfire mitigation.*
- *The National Enquiry on Bushfire Mitigation and Management Council (Council of Australian Governments, 2004) expressed that land use planning that takes account natural hazard risks, is the single most important mitigation measure in preventing future disaster losses in areas of new development.*
- *The 2009 Victorian Bushfire Royal Commission (VBRC) also stated that bushfire planning should start at the highest strategic level ... when the state and local governments are planning and zoning new settlements.*
- *... the Victorian Government accepted and agreed to implement all of the VBRC recommendations.*

The submission also said that the *Strategic Assessment Guidelines* for preparing and evaluating planning scheme amendments include:

An amendment must be assessed to determine whether the changes proposed will result in any increase to the risk of life as a priority, property, community infrastructure and the natural environment from bushfire.

The submission also referenced the State Planning Policy which was updated as a result of the November 2011 bushfires, noting that Clause 13.05 includes:

²⁰ At the Panel Hearing, Mr Ganey for the CFA indicated that the CFA had written to the Council on 25 May 2012 when the Review was being undertaken advising that CFA preferred Option 1 (no change to the overlay).

- *Prioritise the protection of human life over other policy considerations in planning and decision making in areas at risk from bushfire.*
- *Where appropriate, apply the precautionary principle to planning and decision making when assessing the risk to life, property and community infrastructure from bushfire.*

The CFA submission also noted that Clause 13.05 refers to addressing the risk ‘*at both the local and broader context*’.

Parts of the Local Planning Policy Framework were also referred to including the recognition in the current MSS that much of the Shire is at risk from wildfire and has a history of severe bushfires. The MSS also says that ‘*Wildfires in forest and bushland areas around Mount Macedon have caused considerable damage to property and loss of life or injury*’ and ‘*Land use and development planning in the Shire must recognise and minimise the level of fire risk*’.

The CFA correspondence on 2 November 2012 then went on to say that the CFA did not object to the Amendment (which was at that stage proposed to be exhibited), but this view was expressed following explicit acknowledgement of the Council’s decision to accept Option 3 of the Review report contrary to an earlier expressed CFA view. The acceptance was conditional, even so, upon three sites being removed prior to exhibition.

As noted earlier, CFA advised of its intention to oppose the Amendment outright at the Panel Hearing on the evening before that Hearing.

Mr Ganey’s submissions at the Hearing for CFA repeated many of the same points above but he also noted:

Historically bushfire risk management in land use planning has largely been dealt with after a decision is made to rezone land rather than at the strategic level.

In November 2011 and acknowledging the VBRC’s recommendations and reports, changes were made to Ministerial Direction 11 which now explicitly require planning authorities to address bushfire in the strategic assessment of a planning scheme amendment.

He also said:

It is CFA’s view that strengthening community resilience to bushfire [as is policy at Clause 13.05-1 of the Planning Scheme] can be achieved by:

- *Directing growth to areas of low risk.*
- *Carefully considering growth in areas at moderate risk.*
- *Growth in areas of extreme risk should be avoided.*

He went on to set out the particular circumstances that give rise to the extreme risk in the township. These included the town’s abuttal to vast areas of vegetation including:

- *State Forest in the west to south west*
- *Macedon Regional Park to the north*
- *Grasslands and scattered patches of forest to the south and south east.*

He said that, excluding the grassland, the vegetation represents high amounts of fuel and is on land that contains steep topography. He said the entire township has the potential to experience ember attack depending on weather conditions. He said that if the Amendment were approved, potentially an additional 17 dwellings and families could be living in the high risk township.

One of the bases for the opposition by the Macedon Ranges Residents' Association Inc. (MRRRA) was also the issue of fire risk. The Association's written submission included that the Amendment inappropriately and excessively relies on the BMO – which they said was not a guarantee of public safety. The written submission also raised the matter of the uncertainty around the CFA formal submission to the Amendment.

At the Panel Hearing, Ms Christine Pruneau for the MRRRA addressed these and other matters in more detail. She said that Macedon is included in the Victorian Bushfire Risk Register as one of the 52 worst fire risk towns in Victoria and has extreme fire risk. She said that land immediately north and to the north west of the township is pine plantation while large areas of public land within, to the west and north east of the town, is Macedon Regional Park. She also said that Wombat State Forest is some four kilometres west of the town. She noted the presence of extensive vegetation on some private lots and the often unmade and vegetated road reserves which are beneficial in terms of amenity but which hamper safe access and egress.

Ms Pruneau also referred to some elements of the State and local policies listed above including assessing bushfire risk scientifically; avoiding areas of high risk from fire hazard; applying the precautionary principle; considering risk in surrounding areas; reducing risk to an acceptable level and ensuring bushfire protection measures can be implemented on a property basis.

It was the MRRRA submission that the Amendment pursues rather than avoids development in a high fire risk situation. Ms Pruneau also said that while the Practice Note 64 relating to Local Planning for Bushfire Protection of August 2013 recommends that a structured scientific analysis of bushfire risk needs to be undertaken and should be produced at the time of a relevant amendment, such an assessment and analysis does not form part of the current Amendment. She also said that information which would indicate that all 17 development sites can definitely provide adequate defendable space is also lacking. She further said that while perhaps some assessment had been done, it has not resulted in any clear or conclusive outcomes. She submitted the substantive evidence that the Amendment meets the objectives and strategies for bushfire have not been provided.

Most pertinently, the MRRRA submission said that the Amendment does not address bushfire risk at the required scale. In particular it was said:

Amendment C92 discusses bushfire risk at a scale no broader than the candidate sites themselves, and fails to address bushfire risk at landscape, local or even adjoining property scale. State policy requires assessment at a far broader scale, and more methodically than selecting candidate sites based on their vegetation covers alone.

The bigger picture is important. Two criteria applied to the most vulnerable bushfire towns are: location in areas where the area's physical characteristics assist in building fire intensity, and likely being affected by fires well fed by fuel load.

...extensive BMO application in the areas surrounding Macedon indicates consideration of bushfire risk is vital for Macedon.

The submission pointed out that the Department of Planning and Community Development's²¹ 2012 submission to the exhibited Macedon RO Review had noted that the Council did not appear to have addressed bushfire risk at the broader landscape scale.

She said that it was inappropriate for the Council to rely upon a bushfire risk assessment at the planning application stage as proposed, rather than at the Amendment stage. This is supported, she said, by Practice Note 64 which includes:

Some mitigation can be secured through subsequent permit approvals but essential bushfire protection measures should be secured at the planning scheme amendment stage and not deferred for subsequent consideration.

In summary, it was the MRRRA submission that:

... reliance on BMO provisions, backed only by an inconclusive partial assessment, is not best practice or a 'bigger picture' strategic approach to the protection of human life demanded in a town with extreme fire risk.

It is also noted that the DPCD response to the draft Review report and the three options included in it, commented that the critical issues in relation to proceeding to implement the Review seem to be protection of vegetation and managing bushfire hazard.²²

Another written submission raising similar matters to the MRRRA was that by Mr Fitt. His submission again argued that the BMO and its defensible space requirements is not an adequate safeguard against bushfire – citing instances of houses with defensible space that had been destroyed in the Black Saturday fires. Fire was also a concern in the written submissions by Ms Turner and Mr Carroll.

The Council submission at the Hearing in addressing the Strategic Assessment Guidelines said that bushfire risk had been a central consideration in determining the appropriateness of proposed candidate sites. It was said that the Council had adopted a precautionary approach to this issue by the Amendment having '*addressed bushfire risk by bushfire hazard identification and risk management strategies*'.

Panel concluded view on this issue is that no proper strategic fire analysis has been presented which would support this Amendment.

The above policy extracts and the CFA and MRRRA submissions not only emphasise the importance of planning for fire in Macedon but they identify that there is a distinction between taking a strategic approach to fire risk and identifying the characteristics of particular lots and their immediate surrounds.

²¹ Now Department of Transport, Planning and Local Infrastructure

²² Reported in the Review report.

The Panel agrees with that distinction.

It is clear that a 'rough' site-focussed analysis has been done for the lots which are the subject of the Amendment in terms of whether it is likely that a BAL of 29 or less can be achieved and whether access is adequate (as well as no need for excessive clearing of significant vegetation).

This assessment, in so far as it is not a thorough or complete assessment, produces the difficulty identified by Ms Pruneau: it remains unclear whether development on the Amendment lots will be able to achieve the Clause 52.47 requirements. It may be therefore that the Amendment would create false expectations for the landowners. On the other hand the matter raised by the Panel at the Hearing is also of concern. Having relaxed the RO restrictions on the Amendment lots on the basis that the lots have at potential to be developed, there may be some thought by permit decision-makers that any subsequent application for a dwelling should be approved - even if the balance of all relevant factors properly considered would recommend against that approval.

The identification of lots for development does not appear, however, to have involved any broad assessment of whether it is appropriate to allow even this limited number of additional dwellings in a town identified for no growth principally on the basis of fire hazard. The Panel was not presented with any cogent argument that a strategic analysis of fire hazard for the township supports the Amendment outcome.

The Panel does not consider that the Amendment is an appropriate response to the State policies at Clause 13.05. It fails to:

- *Prioritise the protection of human life over other policy considerations in planning and decision making in areas at risk from bushfire.*

In this respect, the only reasons advanced which supported the Amendment are a desire to increase the population base of the town for commercial and transport reasons and to make use of some possible unused capacity in the sewerage system and other utilities. Mr Nevin's submissions relied on local policies seeking to '*creatively enhance attractive and efficient living environments*' and policies seeking '*to consolidate existing townships.*' In the Panel's view, adding households to a township in an area of extreme fire hazard is not to prioritise the protection of human life over other policy considerations.

It has to be said that the concern is not merely for the additional 16 or 17 households that potentially would be added: on one view they would knowingly accept the fire risk. It is also for the households already in the area. As was put in submissions, the Amendment would lead to further persons and property in the area needing to be protected in the event of fire, and as a result fire management resources would be spread more thinly and greater demands would be placed on egress routes.

In this respect the Panel notes the argument put in some of the submissions that adding additional households may improve fire safety in the area, by seeing removal of vegetation and road construction. In as much as many of the sites are already largely cleared of vegetation (or at least are said to be) and access is already satisfactory, this offsetting effect to the disbenefits of additional assets and persons at risk would not arise.

The State Policy also encourages decision makers to

- *... apply the precautionary principle to planning and decision making when assessing the risk to life, property and community infrastructure from bushfire.*

The Panel does not believe that a precautionary approach is represented by adoption of this Amendment.

In the Panel's view, this issue of the absence of a strategic assessment of fire issues is sufficient reason alone to abandon the Amendment. However there are further matters which recommend against approval.

(ii) Prematurity given required zones and overlays review

While it was Mr Nevin's submission for the Council that the Review which the Amendment implements was undertaken in response to the need for a review of planning controls identified in the Small Towns Study of 2006 and listed in the Settlement Strategy of 2011 and the Council Plan of 2011-12, the Panel has some difficulty with this assertion or at least with the appropriateness of this Review proceeding on the basis of a claim of being a response to those studies and policies.

As noted earlier, the 2006 Small Towns Study recommended:

Conduct a review of the anomalies between existing residential zone boundaries and sewerage infrastructure and the existence of different zones covering areas of similar development density. This review should address the restructure of lot sizes, the control of infill development, a reduction in the number of zones, the need for the preparation of Outline Development Plans and fire management requirements.

The Settlement Strategy, while it supported no growth in the township, indicated:

Submissions received concerning Macedon generally related to a desire to allow for moderate infill development. Specific evaluation of State Policy and particular areas would be required.

As also noted earlier, the proposed MSS provides:

Conduct a review of the alignment of zoning and overlays with infrastructure and constraints; address community expectations; manage wildfire risk; protect important vegetation; respect town character.

Also, while Panel was further advised that the Council Plan 2009-2013 (Year 3) includes a specific action to prepare a Planning Overlay Review for Macedon, it is unclear whether this relates only to the RO (which appears to be the justification offered for the Amendment dealing only with the RO) or whether it was a more general review.

The Panel notes also the recommendations of the interim report by the Panel considering Amendment C84 about the need for development of separate structure plans for Macedon and Mount Macedon for the new MSS – both towns having been identified for a no growth future.

The Panel further notes that this issue is also addressed in the DPCD submission to the draft Review report which identifies the Review's awkward relationship with the Settlement Strategy.²³

If it is the case that, even within the context of a no growth scenario for the township, some review of planning controls is to be undertaken, then this review of the RO conducted in isolation would appear to be premature.

The Panel would anticipate that any general review of zoning as well as overlays would include consideration of issues such as fire hazard and how the controls best respond to it.

(iii) The strategic RO review

The Panel considers that, even if it were appropriate to conduct this Review in advance and separately from a more thorough assessment of the current controls applying in the township or without a more strategic consideration of fire issues (which is not the Panel's view), how the Review was undertaken and the process around it are less than clear. It appears to the Panel that there are questions about whether the Review and its follow up were conducted satisfactorily.

To begin, the Panel remains perplexed about the actual process of selection of the lots in the Review. The Panel was told and the Review indicates that the process of selection involved the Council supplying the consultant with a map of undeveloped and vacant lots and '*a summary of recent applications or expressions of interest for consideration of allotments within the study area*'. The consultant was required to review the list.²⁴

The Review report discusses various factors which appear to have influenced the selection of candidate lots including:

- zoning
- landscape character and visual impact
- bushfire management
- infrastructure requirements
- water supply
- power supply
- reticulated gas
- roads and access

The Review also contains a discussion of opportunities and constraints around the issue of removal of the RO, concluding²⁵:

The potential value to the community of the additional development is not substantial. There are, however, potential opportunities to use existing infrastructure, and provide for convenient pedestrian access to the facilities and services in ... [the town centre].

²³ Reported in the Review report.

²⁴ Page 21 Review report.

²⁵ Page 40

Nowhere in the Review report, however, is there a systematic discussion of how the factors have influenced the selection of the 29 lots. Even in the section which maps candidate lots by precinct there is no notation against the lots indicating the basis of their individual suitability.

In this the Panel agrees with the submission by Mr Fitt that the selection process is less than satisfactory. The Panel, informed by its three site inspections, agrees that, contrary to the Council submissions at the Hearing, many of the Amendment lots have considerable remnant native vegetation present such as 11 and 35 McBean Avenue and the lots and adjoining road reserve in RO14.

The Review report supports the Option 3 outcome and the nominated lots. The report itself, however, notes the substantial concern by the community about removal of the RO revealed by responses to exhibition of the three options. It also acknowledges the only limited value to the community of relaxing the RO as in Option 3: the only additional positive effects identified were that removal *'may be useful in reminding the community of the purpose of the overlay, and of the continued need to maintain environmental quality and character of the residential area.'*

And that:

The increased awareness which will arise from consideration of the Bushfire Management Overlay requirements, for example, may be useful in increasing community awareness of the need to improve the level of safety of existing residential areas in general.

In the Panel's view, these are only possible beneficial outcomes and in any case they could easily and possibly better be achieved by other means such as community education about fire issues. It also might be said that, as well as this social benefit of heightened community awareness of the tension between bushfire and environmental issues, there may be a level of tension introduced into community relations as a result of this process.

The Panel would also say that while Mr Nevin's submissions at the Hearing provided a little more information on the selection process – how maps showing vacant land parcels, lot sizes, vegetation cover and planning restrictions were prepared, as well as an analysis being undertaken of the condition of the road system and *'ground truthing'* being conducted, no further detail was provided which would indicate that a systematic application of the various factors to particular lots occurred.

The process by which the later reduction of the 29 lots to the 13 exhibited lots also remains unclear to the Panel despite some questioning at the Panel Hearing. It is clear that three of the 16 lots were removed at the behest of the CFA but there seem to be a further 13 deleted for other reasons.

As noted earlier the Council submission at the Panel Hearing included that this post-Review process involved:

- *The further examination of the planning controls affecting vacant allotments including discussions with Statutory Planning Officers;*
- *The capability to meet with the requirements of the BMO; and*
- *Potential impact on the environmental and landscape values.*

The process was not explained in any more detail except that there was some suggestion that some of the owners of the candidate lots were opposed to or not interested in having the RO relaxed for their property. In terms of the above reasons, the potential impact on environmental and landscape values would seem to be a factor in the original selection of the 29 and the effect of planning controls was also apparently taken into account early in the Review process.

In all, setting aside for the moment the issue of the need for a strategic fire review of the township and a general review of controls, if the Council seeks to rely on the Review and the process of its translation into the Amendment as providing the strategic justification for this Amendment, and indeed this was Mr Nevin's submission, the Panel finds that the process lacks an adequate level of transparency and rigour to provide that basis.

(iv) Irregularities in the Amendment documentation

Ms Pruneau made extensive submissions about the failings in the Amendment documentation and provided various documents providing a forensic analysis of its failings.

The Panel agrees that the Amendment should not have proceeded to exhibition in the current form. The current Restructure Plan provisions are described in Section 1.2 of this report.

RO10 currently clearly contains mistakes and out of date title information in the list of affected addresses extending over 21 or so pages. This is revealed if by nothing else by the inclusion of the further 'updated list' in that Restructure Plan of similar length. That there are two lists is confusing and may be an error in itself. It may be that a working or background document has somehow come to be included in the current Incorporated Plan.

The Amendment proposes to continue with the two list approach.

The listing is unhelpful to anyone including an owner who wishes to establish the effect of RO10 on a property. It was reported to the Panel that even Council officers were unaware of the effect of the plan on certain properties when owners made enquiries.

Even if the view were taken that the inclusion of the second list was in error, the Amendment was publicly exhibited with it included. It is not possible to know what reliance anyone reviewing the Amendment may have placed on the second list. It is possible to read the second list together with the introductory notes and come to a different conclusion about a property than if the first list is read together with the notes.

What is needed is the conversion of an updated, corrected and complete list of properties and controls into plan form. It is understood that this was a matter discussed some years ago at the time of the New Format Planning Scheme Panel Hearing.

There was also some lack of clarity about the changed outcomes given the way that entitlements for dwellings are to be shown in the first list. 'No further house' which currently applies to some of the Amendment properties is clear enough, but, as the MRRRA submission points out, in some instances it is proposed to change properties to 'House' where a house has already been constructed. In such cases there may be an argument that this means an additional dwelling is now being permitted by the revised RO. Clearer expression of whether the entitlement is for one or more houses needs to be made. Mr

Nevin's closing submission for the Council made some useful suggestions about how this could be improved. This approach should be included in any redrafting of the Restructure Plan for RO10.

The Panel is also of the view that a further statutory difficulty with the Amendment is the use of the RO to effectively apply a development plan to the land at 404 Black Forest Road and 29 Hunter Street. It appears also that the 'development plan' has had only preliminary thought put into it and has a number of problems as pointed out by submitters.

The owner of 404 Black Forest Road opposed the notations on the RO14 plan as introducing requirements which need further consideration. The Panel was advised that there had been no consultation with the owner concerning the layout shown in RO14. The CFA requested that RO14 should be modified by removing the defensible space and building envelopes shown (as the defensible spaces unacceptably extended across lot boundaries); or include a note that these were purely indicative and subject to be being refined through the permit process. The MRRRA submission also noted that all five RO14 protection zones, including some inner zones, extended across adjoining land (including a new road reserve), which are not required to be managed the same way as the sites themselves. The extensive works and vegetation removal necessary for the construction of Hunter and Hayes Streets were noted as well as the required drainage line upgrade. The housing is also sited unacceptably close to the drainage line and dams, it was submitted.

The Panel concurs with criticisms of RO14. The RO is simply the wrong planning tool to manage the development of this land if it is to proceed. The plan included as RO14 fails to properly respond to the constraints of the site (as well as fire issues) and inappropriately would tie any development to that plan. A better formulated Development Plan Overlay would appear more appropriate if any development is to be contemplated.

The Panel's concluded view is that the Amendment contains a large number of errors, inconsistencies and structural deficiencies and for this reason alone it should not proceed.

(v) Is this no growth?

As discussed, the local policies as currently in the Planning Scheme and as proposed support a no growth outcome for Macedon for a variety of reasons but notably due to high wildfire risk.

Whether the addition of around 16 house sites to the current stock of 30²⁶ or so undeveloped lots in the township (plus a potential 25-30 further house sites if submitters' properties were also to be added), would amount to no growth for the township was an issue on which submitter views varied. Some submissions took the view that at least the extent of growth represented by the exhibited Amendment should not be considered to be inconsistent with a no growth outcome. Mr Nevin said that the Amendment would not provide for '*significant growth*' of the township and it would retain its status as a small settlement.

In the Panel's view the additional lots which might potentially be developed if the Amendment were approved would not represent '*no growth*' in the township. It is not to

²⁶ This figure differs from the 20 existing sites identified in the Review of the RO.

the point that the settlement could still be described as *'small'*. The reality is there would be some household growth – indeed the Amendment is advocated by the Council on the basis that the increase in households would better support commercial facilities. The Panel also considers that describing the increase in developable lots as not representing *'significant growth'* is a misnomer: any growth is significant in the context of the extreme fire risk of the area.

(vi) Precedent issues

As has been referred to above, some of the support for the Amendment relied upon the fact that it would better utilise infrastructure and provide improved support for commercial and transport facilities serving the township.

It is noted in passing that Ms Pruneau queried whether the additional capacity claimed for the sewerage system existed (its being a backlog scheme). The Panel, however, observes that there was no opposition to the Amendment by the relevant sewerage authority on this basis. Some extension to the system for any developments west of the railway line was said to be required but there was no suggestion that this addition would be problematic for the system as a whole.

Despite this infrastructure capacity and the economic support which additional town residents might offer the commercial and other facilities, the Panel does not believe this is a basis on which to support the Amendment.

For one thing the support given by an additional Amendment dwellings would be slight, especially when trade diversion to other centres is taken into account.

More significantly, if the Amendment were to be approved on the basis that it offered such support, the same argument could be made on any number of future occasions for even more numerous dwelling site releases. It would set an unsatisfactory precedent to allow this argument to prevail against other considerations.

(vii) Fairness and equity issues

The final issue which needs to be addressed is the one of fairness for the various affected persons.

The very first objective of the Act envisages that planning outcomes should be fair as well as orderly, economic and sustainable.

The question that arises is, if the Amendment is abandoned, would this be a fair outcome? Is the fairness issue such that the other considerations which recommend against adoption of the Amendment should be set aside? If so what is the better outcome?

The submitters to the Amendment who sought to have their land added to this Amendment are a key group of persons who would likely be frustrated by an outcome which meant that there was no prospect of their property being considered for development at present. This is especially likely for those who participated in the Panel Hearing, sometimes with consultant representatives.

With respect to the submitters' properties, while the Panel does not have the benefit of formal CFA advice about those lots, it has to be said that many of them seem no less a

candidate for possible development than the Amendment lots when looked at from an immediate BAL assessment perspective. In many instances the lots are already completely cleared or almost so²⁷, in a suburban setting, on a made main through road and with no major areas of vegetation immediately adjacent.

The Panel also heard that some submitters had not been made aware of the introduction of the existing controls. The submission for the Youngs included that they believe that they never received notice of the application of the RO in the late 1970s, despite their owning the land since 1970.

The Panel is not surprised by this claim as the way that RO10 is presented, even if a landowner saw a public notice about its introduction (and the Panel is unsure what notice was given), it would have been extremely difficult to understand its effect given the enormous list of formal property titles. There has to be some sympathy for persons who were unable to have input to the impost of controls on their property. There may well be unknown others affected in the same manner as the Youngs.

Others who have purchased land with restrictions since the ROs were first introduced may have failed to notice or be properly informed about the RO and its effects. These circumstances, however, are not a reason for the RO to be relaxed on their property as the maxim of '*buyer beware*' has to be applied.

Nevertheless, despite some sympathy with some of the submitters' cases, the Panel considers that, in addition to the general issues with the Amendment discussed earlier, there are a number of additional difficulties if further submitters' properties were to be added to the Amendment and it proceeded.

Those additional difficulties are:

- The number of lots for which development controls are now sought to be relaxed is more than double the number that was put on exhibition. There is an issue of transformation to be addressed.
- Most significantly, if it was contemplated approving the Amendment with additional properties, the issue of further notice and fairness to others arises.

There are a number of aspects to this:

- The Amendment was publicly advertised as including a small number of lots only. The number could substantially increase. Persons who did not object to or supported the Amendment involving 17 lots may have a different view if lot numbers were substantially greater.
- So far as the Panel is aware, neighbours to the submitters' properties (or at least the lots owned by submitters which were not included in the exhibited Amendment) have not been given any notice of the possibility that development controls might be relaxed on land abutting theirs. This matter would require addressing if, contrary to the Panel's recommendations, the Amendment were to proceed. The views of those neighbours would need to be considered.

²⁷ The Panel notes that the Council submissions at the hearing sometimes did not accurately describe the extent of vegetation present on those lots.

- Further, there may be other owners of lots in the Amendment area who chose not to participate in the Amendment process and request that their properties also be included. This may have been because they believed that only selected lots were or could be under consideration for development. Those persons would be disadvantaged if it was thought that additional places should or could be added.

The exclusion of other third party objectors and other lot owners who may have wished to argue for the inclusion of their lot in the Amendment are matters of fairness which would arise if additional places were added and the Amendment proceeded.

The Panel considers that an appropriate balance of fairness is achieved for these groups by the recommendation that the Amendment not proceed.

The Panel of course appreciates that if the Amendment did not proceed in some form, perhaps the most disaffected group would be the owners of the Amendment properties.

Regrettably there is little that can be done to ameliorate the immediate consequences for this group. The Panel considers that this issue of whether any additional dwellings might be added to some part of the township might be re-considered as part of the forthcoming general review of zonings and overlays and assessment of strategic fire hazard issues.

4 Overall conclusion and recommendation

Concluding comments

For the reasons set out in the previous chapter of this report, the Panel recommends to the Council that the Amendment should be abandoned. This is not a case of a finding based on the balancing of strongly competing considerations both for and against an amendment. The arguments in favour of this Amendment are in the Panel's view considerably less substantial than those against.

The matter which the Panel regards as the most significant is the extreme bushfire hazard of the township area and the apparent absence of prior consideration of strategic fire issues. The Panel acknowledges that the Council may have earlier formed the view that these matters were adequately addressed by the candidate lots being given a preliminary assessment against the BAL requirements of the Planning Scheme and because they would be assessed more exactly in a permit context. The Panel would urge the Council, however, to carefully consider this matter again and the issue of whether the BAL assessment adequately substitutes for a strategic approach being taken to fire hazard. The extreme regional fire hazard conditions in Macedon township warrant such a careful reconsideration.

Recommendation

Based on the reasons set out in this Report, the Panel recommends:

Amendment C92 to the Macedon Ranges Planning Scheme should be abandoned.

Appendix A Attachment to Explanatory Report

ATTACHMENT TO EXPLANATORY REPORT FOR C92 TO THE MACEDON RANGES PLANNING SCHEME

Details of proposed changes to the *Macedon Ranges Shire Restructure Area Plans Incorporated Document, 1999*.

Pg 1	Updates the references to RO4, RO5 and RO10. Adds RO14 – Hunter Street Restructure Plan
Pg 5	Updates <i>RO4 – Bent Street Restructure Plan</i> to <i>RO4 – Bent Street Restructure Plan (Revised 2013)</i> and incorporates the changes recommended in the RO Review Report to identify two additional dwelling sites at 6 Keating Street (Lots 28 and 29 LP987) and 57 Victoria Street (Lot 23 LP987).
Pg 6	Updates <i>RO5 – Macedon South West Restructure Plan</i> to <i>RO5 – Macedon South West Restructure Plan (Revised 2013)</i> and incorporates the changes recommended in the RO Review Report to identify one additional dwelling site at 10 Bruce Street (Lots 8, 9, 10, 11 and 12 LP11219).
Pg 13	Within Schedule A Column 1 amend “10 Barkly Avenue Lots 89, 90 & 91 LP3273” to include Lot 88 LP3273.
Pg 14	Within Schedule A Column 1 following “66 Bent Street” insert “404 Black Forest Drive, Macedon (Lot 68 Parish of Macedon)” and in Column 2 insert “H(3)”.
Pg 16	Within Schedule A Column 1 following “42 Bruce Street CP 155911” insert “Rear of 38A Bruce Street Lot CM PS494199” and in Column 2 insert “H”. Within Schedule A Column 2 following “10 Bruce Street Lots 8, 9, 10, 11 & 12 LP11219” delete “NFH” and insert “H”.
Pg 22	Within Schedule A Column 2 following “37 Greene Street CA’s 3, 5, 7 & 9 Sec 86” delete “NFH” and insert “H”. Within Schedule A Column 2 following “23 Greene Street CA’s 2 & 4 Sec 87” delete “NFH” and insert “H”. Amend “CA’s 2 & 4 Sec 87” to “Lots 1 & 33 Sec 87”.
Pg 23	Within Schedule A Column 1 following “39 Hunter Street CP153697” insert “29 Hunter Street Lot 67 Parish of Macedon” and in Column 2 insert “H(4)”.
Pg 26	Within Schedule A Column 2 following “35 McBean Avenue PC360087” delete “NFH” and insert “H(2)”. Within Schedule A Column 2 following “11 McBean Avenue Lots 11, 12, 13 & 14 LP13894” delete “NFH” and insert “H”. Within Schedule A Column 1 following “1 McBean Avenue Lot 5 LP 13391” insert “Rear of 1A McBean Avenue (CP150488)” and in Column 2 insert “H”.
Pg 28	Within Schedule A Column 2 following “96 Railway Place CA’s 6 & 8 Sec 85” delete “HSC” and insert “H”. Amend “CA’s 6 & 8 Sec 85” to “PC367192” Within Schedule A Column 2 following “84 Railway Place CA’s 2, 4, 6, 8 & 10 Sec 86” delete “NFH” and insert “H”.
Pg 32	Within Schedule A Column 2 following “6 Walton Street CA’s 4 & 5 Sec 83” delete “NFH” and insert “H”. Amend “CA’s 4 & 5 Sec 83” to “PC370996”
Pg 35	Add RO14 – Hunter Street Restructure Plan to affect 29 Hunter Street and 404 Black Forest Drive, Macedon

Note: The Council resolved to alter this list at its meeting of 28 August 2013 (after exhibition of the Amendment). The following changes were made: deletion of the properties at the rear of 38A Bruce Street (page 16) and rear of 1A McBean Avenue (page 26) and inclusion of CA1 Section 83 Township of Macedon (vacant site west of 86 Greene Street fronting Nursery Road).

Appendix B List of submitters

No.	Submitter
1	J Wyatt
2	J Jenkins
3	C Hildebrand
4	D and W Taverna
5	S Turley
6	R Eather
7	D Fitt
8	R Fitt
9	Christine Pruneau for Macedon Ranges Residents' Association Inc
10	M Horner
11	C and Q Bartels
12	H Britt and E Cordingly
13	K Birch
14	J and J Morrison
15	J Philipps
16	Dr J Anderson
17	B Strange
18	W and P Duncan
19	M Allen
20	L and S Smith
21	W Kernan
22	Macedon/Mount Macedon Community Planning Group, Planning Controls Sub-Committee
23	D Rogan
24	J Leonello
25	G Smallwood
26	Macedon resident
27	PO Box 271 Macedon
28	Dr C Marks
29	S Clarke
30	B Pascoe

31	E and E Jeske
32	J Palthe
33	D and L Thornton
34	G and F Climas
35	F Clarke
36	P Wilson
37	Western Water
38	Environment Protection Authority
39	Department of Planning and Community Development
40	Country Fire Authority
41	P and G Shaw
42	Linda A Green
43	Peter and Anita Haywood
44	Stephanie Barnes
45	Damian Leatch
46	Jeffrey and YM David and Janine Vains
47	John and Jenny Barnes
48	VicRoads
49	Michael and Margaret Garvey
50	Goulburn-Murray Water
51	Robert and Geraldine Johnston
52	Simon Hill
53	Terry and Christine Vernon
54	Karl and Waltraud Dorniczak
55	Larry Bagshaw
56	Graham Overall and Julie Revell
57	Western Water
58	Coral Young for Craig and Jo Byrne
59	TGM Group Pty Ltd for Gary Smith
60	Jude Veldze
61	Tom and Gillian Flood
62	Southern Rural Water
63	Graeme Eagles and Coralee Hayden-Long

64	Ian V Douglas
65	Peter Thomas and Justine Noy
66	Dianne Dawe
67	Eddie and Leonie Tworkowski
68	Matthew and Brooke Pascoe

Appendix C Panel Hearing documents

Document No.	Description	Presented by
PA1	Council submission	Macedon Ranges Shire Council
PA2	Council submission appendices	Macedon Ranges Shire Council
CFA3	CFA submission	CFA
L4	Urban Design and Management on behalf of Geoff and Frances Climas' submission	Urban Design and Management
L5	CFA email concerning Climas' property	Urban Design and Management
L6	Urban Design and Management on behalf of Michael and Margaret Garvey submission	Urban Design and Management
Y7	Coral Young on behalf of Craig and Jo Byrne submission	Coral Young Town Planner
Y7A	Photo of Byrne land	Coral Young Town Planner
HR8	Shire of Gippsland submission to Premier of Victoria October 1977 re compensation money for restructure area	Helen Relph
LU9	Project Planning & Development Pty Ltd on behalf of Margaret and Alan Young submission	Project Planning & Development Pty Ltd
LU10	Mornington Peninsula Planning Scheme Amendment C172 explanatory report	Project Planning & Development Pty Ltd
T11	E and L Tworkowski submission	E and L Tworkowski
PA12	Supporting submissions not referred to Panel	Macedon Ranges Shire Council
P13	Matthew and Brooke Pascoe submission	Matthew and Brooke Pascoe
PA13A	VCAT case re Pascoe property, 8 February 2013	Macedon Ranges Shire Council
M14	Map showing 10 Keating Street	Rebecca Morgan
MA15	Macedon Ranges Residents' Association Inc. submission with attachments	Macedon Ranges Residents' Association

Document No.	Description	Presented by
PA18	Existing Incorporated Plan	Macedon Ranges Shire Council
PA19	Council closing submission	Macedon Ranges Shire Council