

9.2. Our Place

9.2.1. CORRECTIONS AMENDMENT

This Report is For Decision

Responsible Director: Acting Director Infrastructure and Development, Jude Holt
Responsible Officer: Strategic Planner, Nathan Lord
Attachments: 1. Attachment A - Land to which amendment applies and changes being made [9.2.1.1 - 25 pages]
2. Attachment B - Corrections Amendment Explanatory Report DRAFT [9.2.1.2 - 3 pages]

Executive Summary

The purpose of this paper is to seek Council support to request authorisation from the Minister for Planning to prepare an amendment to the Mount Alexander Planning Scheme to correct errors and anomalies (Amendment C097). The amendment will ensure that the Planning Scheme is accurate and up-to-date, and that the mapping reflects the existing use and required protection of the land. The correction of these anomalies and minor errors will also contribute to the more effective operation and administration of the Mount Alexander Planning Scheme.

RECOMMENDATION

That Council:

- 1. Resolves to seek authorisation from the Minister for Planning to prepare a planning scheme amendment to the Mount Alexander Planning Scheme to correct errors and anomalies, in line with the supporting documents attached to this briefing paper.**
- 2. Delegates to the Manager Development Services the ability to prepare and submit supporting background information associated with the addresses listed in Attachment A, to delete any addresses (and associated corrections) following authorisation being sought if the item is not considered to be policy-neutral, and to prepare and submit planning scheme maps in line with the mapping changes listed in Attachment A.**
- 3. Resolves to exhibit the planning scheme amendment following authorisation from the Minister for Planning to prepare the amendment (should it be advised that exhibition of the amendment is required).**

MOVED COUNCILLOR MCCLURE

That the recommendation be adopted.

SECONDED COUNCILLOR MALTBY

CARRIED.

Context

Council keeps a record of any anomalies and errors that are identified within the Mount Alexander Planning Scheme, which will ultimately inform the preparation of a planning scheme amendment to correct these. The errors are identified either by landowners, or by planning officers throughout assessment of planning permit applications. The last corrections amendment Council undertook was Amendment C077, which was published on the Government Gazette on 13 October 2016. This amendment proposes to correct errors that have been identified since Amendment C077.

The majority of the errors and anomalies identified within the Planning Scheme are related to the application of the Heritage Overlay, and the properties listed in the Schedule to the Heritage Overlay. Mount Alexander Shire has a rich heritage of cultural landscapes, buildings, infrastructure and historical collections which shape our identity and pride of place, connecting us to our past, our future and our region. It is imperative that this valuable heritage is celebrated and protected both appropriately and accurately, through the application of relevant overlays such as the Heritage Overlay. This is beneficial to both Council officers through their assessment of planning permit applications, and community members, in understanding their property's significance and details.

A review of the Mount Alexander Planning Scheme was undertaken in 2019, and adopted by Council on 27 August 2019. A 'high priority' key recommendation of this Planning Scheme review is 'Review and update the Heritage Overlay', including rectifying mapping anomalies, with consideration to the Planning Practice Note 01 ('Applying the Heritage Overlay'). This amendment gives effect to this recommendation by correcting errors associated with the Heritage Overlay, under the guidance of Planning Practice Note 01.

Issues

The incorrect zoning of land and incorrect application of overlays may allow for inappropriate land use and development to occur on land that should otherwise be protected or retained for other uses. Private land owners seeking to apply for planning permits on their land may also be limited in what they can apply for if their land is incorrectly zoned or has the incorrect application of overlays.

The proposed planning scheme amendment includes a variety of different corrections to the planning scheme. However, the large majority of the corrections which form part of this amendment are related to the application of the heritage overlay mapping, and the description of properties within the Schedule to the Heritage Overlay. The incorrect application of the Heritage Overlay may result in a necessary planning permit being overlooked and a potentially adverse impact on heritage values. On the other hand, errors also cause inconvenience to landowners who have a Heritage Overlay incorrectly applied to their land, as it triggers a planning permit unnecessarily.

It is understood that many of the Heritage Overlay errors occurred following the amalgamation of the Shire. The list of corrections associated with the Heritage Overlay has been prepared following a thorough review of the schedule to the overlay, and the overlay mapping, against a number of conservation and heritage studies. The relevant studies include:

- Heritage Study of the Shire of Newstead, Jacobs, Taylor, Ballinger, Johnson and Rowe, 2004

- Shire of Metcalfe Heritage Study, Twigg and Jacobs, 1994
- Maldon Conservation Study, Jacobs, Lewis, Vines, 1977
- City of Castlemaine Architectural and Historical Study, Perrott Lyon Mathieson, 1979

The various types of corrections proposed as part of this amendment are listed below:

Heritage Overlay Mapping

- Properties lacking heritage overlay application in the mapping where it is required (i.e. where the property is listed in the Heritage Overlay schedule, but is not shown on the Planning Scheme mapping)
- Heritage overlay mapping is inaccurate (not consistent with property boundaries or buildings which are being protected)
- Heritage overlays no longer required where heritage building has been demolished and therefore no longer exists

Heritage Overlay Schedule

- Properties listed more than once in schedule (duplicates)
- Incorrect addresses (both street names and numbers) listed within the schedule
- Clerical errors (including spelling) within schedule

Correction of overlays other than heritage overlay

- Deletion of Public Acquisition Overlay where the land has since been acquired, and the land is being used for the purposes of a road. In these instances, the land will be rezoned to reflect the road category (and thus the body responsible for the road)

Correction of other schedules

- Correction of formatting error within the Environmental Significance Overlay – Schedule 2

Finance and Resource Implications

The planning scheme amendment is likely to assist in reducing the resource and administrative costs of the Mount Alexander Shire Council, given it will create a more accurate planning scheme. As a result, in the long term, this will have a positive impact on Mount Alexander Shire Council's resources as it will reduce the amount of time the Statutory and Strategic Planning units spend on the administration and assessment of planning scheme queries and unnecessary planning permit applications for the particular sites identified as a result of incorrectly applied zones and overlays.

The preparation of the amendment documentation is to be carried out by the Strategic Planning unit utilising current staff resources. Any amendment fees or fees resulting from a planning panel (if required) are to be funded by the Strategic Planning operating budget in FY2020/21 and possibly 2021/22.

Risk Analysis

In broad terms the planning scheme amendment is considered to be low risk, given its policy-neutral nature.

Reputation risk:

There is a low reputation risk associated with correcting the significant amount of errors identified within the Planning Scheme. The most recent corrections amendment was done in 2016. There are errors identified which appear to pre-date this corrections amendment in 2016, meaning the Planning Scheme has had a significant number of errors and anomalies for quite some time. This risk is sought to be managed through the diligent process in which it has been prepared, including the investigation of each potential error to be included within the Planning Scheme Amendment.

Separate to the errors and anomalies which are proposed to be corrected as part of this planning scheme amendment, there are a list of errors/anomalies which are considered to be more complex, and not policy-neutral. These errors and anomalies are not proposed to be corrected as part of this planning scheme, given the extensive background work which is required to support an amendment to correct these. There is a risk that any planning scheme amendment to correct these more complex errors and anomalies will be delayed given this additional investigation which is required, which may raise concern for property owners who have identified an error associated with their property and would like this corrected. Given the costs and preparation associated with planning scheme amendments, property owners will likely opt for the error to be corrected through Council's preparation of an amendment, as opposed to preparing an amendment themselves.

Strategic risk:

Given the amendment proposes to correct errors and anomalies within the planning scheme, it is considered to be policy-neutral, and therefore is expected to be eligible to be processed as a planning scheme amendment under Section 20 Part 4 of the *Planning and Environment Act 1987*. There is a risk that the Department of Environment, Land, Water and Planning (DELWP) will require the amendment to be processed under the standard planning scheme amendment process, which means that the process is delayed and the costs for preparation for exhibition are increased.

Should the planning scheme amendment undergo exhibition (not yet confirmed), submissions can be made by the public. There is a risk that submissions are made by the public which raise concerns regarding what is proposed to be corrected as part of the amendment. This risk can be managed through the appointment of an independent planning panel throughout the planning scheme amendment process (if required), who assess the submissions and provide recommendations to the planning authority. Further, this risk has been managed throughout the process of investigation into each error or anomaly individually.

Additionally, there is also a risk that if an independent planning panel is appointed to assess submissions to the amendment, the panel make recommendations to exclude some of the proposed corrections from the amendment because of their complexity. Related to this, there is a risk that the planning panel recommends further investigation into these corrections by an independent heritage or planning expert, which would add delays to the amendment process. Again, this risk is managed through the preparation of background information, to provide justification and explanation for each proposed correction where appropriate.

Climate Impact Statement

Mount Alexander Shire is vulnerable to weather events that will be magnified by a changing climate. Given the relatively policy-neutral nature of this Planning Scheme Amendment, it is not expected that there will be any detrimental impacts on the land and broader environment.

Alternate Options

The alternative option is to not seek authorisation from the Minister for Planning to proceed with the proposed planning scheme amendment. This is strongly discouraged as the amendment will ensure that the Planning Scheme is administered correctly and the Planning Scheme mapping accurately reflects land use and built form.

Communication and Consultation

A Communication and Consultation plan is not attached and has not been prepared.

Council was provided with guidance from DELWP in regards to the approach for a planning scheme amendment to correct errors and anomalies, which includes the preparation of two separate amendments:

- A policy-neutral planning scheme amendment to correct straight-forward errors and anomalies (this proposed amendment).
- A second amendment which proposes to correct more complex errors or anomalies within the planning scheme (this has not yet been prepared and is a work in progress).

Some 'corrections' planning scheme amendments are progressed under Section 20 Part 4 of the *Planning and Environment Act 1987*, which does not require exhibition. The Planning and Environment Regulations 2015 provide a list of 'prescribed' amendments at Regulation 8, sub-regulation 1, which do not require exhibition. The following list includes those which best reflect this proposed amendment:

- an amendment to correct an obvious or technical error in the Victoria Planning Provisions or a planning scheme; and
- an amendment to clarify or improve the style, format, language or grammatical form of a clause in the Victoria Planning Provisions or a planning scheme, if the intended effect of that clause or any other clause in the Victoria Planning Provisions or a planning scheme is not changed by that amendment; and
- an amendment to clarify or improve the style, format, language or grammatical form of a clause in the Victoria Planning Provisions or a planning scheme, if the intended effect of that clause or any other clause in the Victoria Planning Provisions or a planning scheme is not changed by that amendment; and
- an amendment to a planning scheme to delete a Public Acquisition Overlay from land if the person or body designated in the planning scheme as the acquiring authority for that land has acquired the land.

Given the amendment is considered to be policy-neutral, and both corrects obvious/technical errors, it is intended to progress the amendment via Section 20(4), unless otherwise advised by DELWP.

Legislation

Planning and Environment Act 1987

Section 4(1) of the *Planning and Environment Act 1987* sets out the objectives of planning in Victoria, the first of which is to provide for the fair, orderly, economic and sustainable use, and development of land. Correcting anomalies associated with zoning and overlays of land ensures that use and development of land is appropriate.

Section 8A(2) of the *Planning and Environment Act 1987* stipulates that a municipal council may only prepare an amendment to a planning scheme if it is authorised to do so by the Minister for Planning. This report is seeking a resolution to request authorisation from the Minister for Planning.

Section 12 of the *Planning and Environment Act 1987* requires planning authorities to (among other things) provide sound, strategic and co-ordinated planning of the use and development of land in its area, regularly review the provisions of the planning scheme for which it is a planning authority, and prepare amendments to a planning scheme. The amendment will assist in the efficiency of the Mount Alexander Planning Scheme by ensuring zoning and overlays are applied appropriately.

Section 20(4) of the *Planning and Environment Act 1987* allows the Minister for Planning to exempt themselves from giving notice of the amendment where they believe that compliance with requirements is not warranted, or not in the interests of Victoria or any part of Victoria. Given the policy-neutral nature of the amendment, it is proposed to have the amendment progressed via this section of the Act.

Strategies and Policy Impacts

Council Plan 2017-2021

Our Place - Well planned for growth.

Manage and protect our heritage.

Undertaking a planning scheme amendment to correct errors and anomalies identified within the Planning Scheme will improve the performance and comprehension of the planning scheme.

The Strategic Planning unit is responsible for ensuring the planning scheme reflects the vision, principles and pillars of the Council Plan 2017-2021. Regular monitoring and review is required to fulfil that responsibility, to ensure the planning scheme is kept accurate and up-to-date. Given the majority of errors are associated with the Heritage Overlay, the amendment seeks to ensure that identified places of heritage within the Shire are protected in an appropriate manner.

Declarations of Conflict of Interest

Under Section 130 of the Local Government Act 2020, Officers providing advice to Council must disclose any interests, including the type of interest.

No conflicts of interest

The Officers involved in reviewing this report, having made enquiries with the relevant members of staff, report that there are no conflicts of interest to be disclosed.