

**Mount Alexander Planning Scheme Amendment C97malx
Corrections Amendment**

Panel Report

Planning and Environment Act 1987

12 August 2022

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment.
[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

Mount Alexander Planning Scheme Amendment C97malx

Corrections Amendment

12 August 2022



Alison McFarlane, Chair

Contents

	Page
1 Introduction.....	1
1.1 The Amendment.....	1
1.2 Procedural issues.....	2
1.3 Summary of issues raised in submissions.....	2
1.4 The Panel’s approach.....	3
2 Planning context.....	4
2.1 Planning policy framework.....	4
2.2 Planning scheme provisions.....	5
2.3 Ministerial Directions, Planning Practice Notes and Practitioner’s Guide.....	6
2.4 Discussion and conclusion.....	6
3 Changes requested by submitters.....	7
3.1 Muckleford – Yapeen Road, Yapeen.....	7
3.2 HO933 Landscape surrounding Pennyweight Flat.....	8
3.3 4 Wyndham Street, Newstead.....	9
3.4 Development Plan Overlay Schedule 8.....	11
3.5 30-32 Duke Street, Castlemaine.....	15
3.6 12 Reef Street, Maldon.....	16

Appendix A Document list

Appendix B Land affected by the Amendment

List of Tables

	Page
Table 1 Zone and overlay purposes.....	5

List of Figures

	Page
Figure 1 Calder Freeway location.....	1
Figure 2 Proposed mapping HO1058.....	7
Figure 3 HO1176 – 4 Wyndham Street, Newstead.....	9
Figure 4 Development Plan Overlay Schedule 8.....	12
Figure 5 Substation Lot 92 Kennedy Street, Castlemaine.....	13
Figure 6 30-32 Duke Street, Castlemaine zone plan.....	15
Figure 7 12 Reef Street, Maldon zone plan.....	16

Glossary and abbreviations

The Amendment	Mount Alexander Planning Scheme Amendment C97malx
Council	Mount Alexander Shire Council
DPO8	Development Plan Overlay Schedule 8
HO	Heritage Overlay

Overview

Amendment summary

The Amendment	Mount Alexander Planning Scheme Amendment C97malx
Common name	Corrections Amendment
Brief description	The Amendment proposes to correct the following errors and anomalies: <ul style="list-style-type: none"> - errors in the Heritage Overlay mapping and schedule - mapping of land that forms part of, or adjoins, the Calder Freeway
Subject land	The Amendment applies to approximately 100 properties in the Heritage Overlay and 123 properties adjoining the Calder Freeway
Planning Authority	Mount Alexander Shire Council
Authorisation	20 December 2021
Exhibition	4 February to 4 March 2022
Submissions	Support: 2 <ul style="list-style-type: none"> - Department of Environment, Land, Water and Planning - Department of Transport Requested changes: 6 <ul style="list-style-type: none"> - Anna Kay - Elizabeth Eager - Jane Lean - Ewen McDonald - Daryl Best - George Ryan

Panel process

The Panel	Alison McFarlane
Directions Hearing	By video conference, 21 June 2022
Panel Hearing	A Hearing was not conducted, and the matter was considered by the exchange of written material at the request of Council and the agreement of parties and the Panel
Parties	Mount Alexander Shire Council represented by Ursula Van Dyk, Strategic Planner Jane Lean Ewen McDonald represented by Tomkinson
Citation	Mount Alexander PSA C97malx [2022] PPV
Date of this report	12 August 2022

Executive summary

Mount Alexander Planning Scheme Amendment C97malx (the Amendment) proposes to correct:

- errors and anomalies in the Heritage Overlay mapping and ordinance
- mapping of zones for the Calder Freeway.

It is an administrative Amendment focussed on ensuring the Mount Alexander Planning Scheme is up-to-date and can be effectively administered by Mount Alexander Shire Council.

Exhibition of the Amendment in February and March 2022 attracted eight submissions. Two supporting submissions were received from government agencies, including the Department of Transport. Of the remaining six submissions, one related to an error proposed to be corrected by the exhibited Amendment and five submissions identified new issues. The issues raised were:

- places included in the Heritage Overlay have no heritage value
- inconsistency between Heritage Overlay mapping and ordinance
- request to rezone private land currently in the Transport Zone
- request to rezone commercial land to a Residential Zone
- request to amend Development Plan Overlay Schedule 8.

The Amendment is well founded and should proceed largely as exhibited. The Panel has considered the issues raised by submitters and concludes:

- HO1058 should be correctly mapped over the dwelling at 5419-676 Muckleford-Yapeen Road, Yapeen, consistent with the exhibited Amendment.
- The Heritage Overlay Schedule should be updated to label the heritage place 'landscape surrounding Pennyweight Flat' as HO993.
- Further work is required to inform any refinement of the boundary of HO1176, including potential removal of 4 Wyndham Street, Newstead. In the interim this property should explicitly benefit from the permit exemptions in the *Former Shire of Newstead Heritage Precinct Exemptions Incorporated Plan, 2012*.

The changes requested to Development Plan Overlay Schedule 8 and 30-32 Duke Street are beyond the scope of the Amendment.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that the Mount Alexander Planning Scheme Amendment C97malx be adopted as exhibited subject to the following:

- 1. Amend the Schedule to the Heritage Overlay to list the heritage place 'Landscape surrounding Pennyweight Flat' as 'HO993'.**
- 2. Amend the *Former Shire of Newstead Heritage Precinct Exemptions Incorporated Plan, 2012* to list 4 Wyndham Street, Newstead as a 'Not significant' place.**
- 3. Rezone land at 12 Reef Street, Maldon from Transport Zone 2 to General Residential Zone Schedule 1.**

1 Introduction

1.1 The Amendment

(i) Amendment background and description

The purpose of the Amendment is to correct errors in the Planning Scheme identified by landowners or by council officers during the six years since Council's last corrections amendment (Mount Alexander C77) was approved in 2016. The Amendment is intended to be policy neutral.

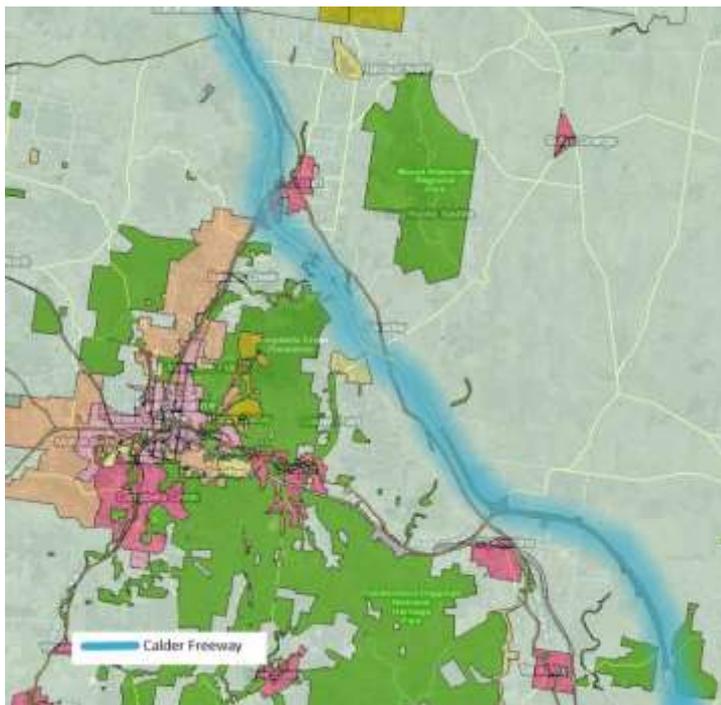
Specifically, the Amendment proposes to:

- correct the mapping and ordinance of places in the Heritage Overlay (HO)
- rezone land acquired by the Roads Corporation for the Calder Freeway from various existing zones to Transport Zone 2 (Principal road network)
- rezone various parcels outside the declared area of the Calder Freeway from various existing zones to Transport Zone 1 (State transport infrastructure), Public Conservation and Resource Zone, Farming Zone and Township Zone
- delete Public Acquisition Overlay Schedule 2 from land that has been acquired by the Roads Corporation for the Calder Freeway
- make a formatting correction to Environmental Significance Overlay Schedule 2
- update the Schedule to Clause 72.03 'What does this Planning Scheme consist of' to delete maps where the Public Acquisition Overlay no longer applies.

(ii) The subject land

The Amendment applies to Calder Freeway land broadly shown in Figure 1. It also applies to HO properties listed in Appendix B.

Figure 1 Calder Freeway location



Source: Explanatory Report adapted by PPV

1.2 Procedural issues

(i) Panel process

Prior to the Directions Hearing, Council requested the panel process occur through the exchange of written material¹ without a Public Hearing. This was discussed at the Directions Hearing and the Panel agreed to proceed in this way because:

- Council and the only submitter requesting to be heard agreed to this process
- there were a limited number of issues raised in the submissions.

A late request to be heard was received following the Directions Hearing. This party also agreed to the panel process occurring through exchange of written material.

The Panel reserved the right to convene a Hearing should it be unclear on any critical matters raised in submissions. Upon its review of submissions, the Panel decided convening the Hearing was unnecessary and advised parties of its decision.

(ii) Council resolution

Council's resolution of 17 May 2022:

1. Considers all submissions made to Mount Alexander Planning Scheme Amendment C97malx in accordance with Section 22 of the *Planning and Environment Act 1987*
2. Accepts two late submissions (late submission #1 and late submission #2) as allowed under Section 22(2) of the *Planning and Environment Act 1987*
3. Endorses the proposed changes to the amendment documentation in line with the officer recommendations outlined within this report
4. Resolves to request the Minister for Planning to appoint a planning panel to consider all submissions (including late submissions) to Amendment C97 in accordance with Section 23(1)(b) *Planning and Environment Act 1987*
5. Abandons part of the amendment in accordance with Section 28 of the *Planning and Environment Act 1987*, in line with officer recommendations outlined within this paper.

The Panel has considered all submissions referred to it, notwithstanding that part of the Council resolution that purports to abandon part of the Amendment.

The Panel notes that it is irregular for the fourth and fifth elements of the resolution to occur concurrently, however it is not its role to make legal rulings about the validity or otherwise of an amendment or procedure.

1.3 Summary of issues raised in submissions

Eight submissions were received in response to the exhibition of the Amendment as listed in Appendix A. All submissions were referred to the Panel.

Two submissions were received from government agencies (Department of Environment, Land, Water and Planning and Department of Transport) that did not oppose the Amendment.

Of the remaining six submissions, one related to an error proposed to be corrected by the exhibited Amendment and five submissions identified new issues. The issues raised were:

- places included in the HO have no heritage value

¹ Commonly referred to as 'on the papers'.

- inconsistency between HO mapping and ordinance
- request to rezone private land in the Transport Zone
- request to rezone commercial land to a Residential Zone
- request to amend Development Plan Overlay Schedule 8 (DPO8).

1.4 The Panel's approach

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, and submissions and other material presented to it. It has been selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Planning context
- Changes requested by submitters.

2 Planning context

2.1 Planning policy framework

Council submitted that the Amendment supports State policy objectives, the Planning Policy Framework and the Municipal Planning Strategy, which the Panel has summarised below.

(i) Victorian planning objectives

The Amendment will assist in implementing the following State planning policy objectives set out in section 4 of the *Planning and Environment Act 1987*:

- *“To provide for the fair, orderly and economic and sustainable use of land”* by ensuring that the Planning Scheme is accurate and up-to-date.
- *“To conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value”* by ensuring that heritage places are protected by the Planning Scheme.

(ii) Planning policy framework

Clause 13 (Environmental risks and amenity)

The objective of Clause 13.02-1S (Bushfire planning) is to strengthen the resilience of settlements and communities to bushfire through risk-based planning that prioritises the protection of human life. The Amendment supports this objective by not increasing bushfire risk.

Clause 15 (Built Environment and Heritage)

The objective of Clause 15.03-1S (Heritage conservation) is to ensure the conservation of places of heritage significance. The Amendment supports this objective by correctly and accurately identifying and mapping heritage places within the Planning Scheme.

Clause 18 (Transport)

The objective of Clause 18.01-2S (Transport system) is to facilitate the efficient, coordinated and reliable movement of people and goods by developing an integrated and efficient transport system. The Amendment supports this objective by correctly applying the Transport Zone to a declared road.

(iii) Municipal Planning Strategy

Council submitted that the Amendment supports the Municipal Planning Strategy as follows:

- It does not increase bushfire risk, consistent with Clause 02.03-3 (Environmental risks and amenity – bushfire). The Amendment applies the Township Zone to a small area of land where its previous arterial/freeway designation has been revoked. This land is used as a municipal road.
- It supports the protection of heritage places consistent with Clause 02.03-5 (Building environment and heritage).
- It is consistent with township land use framework plans at Clause 02.04 (Strategic framework).

2.2 Planning scheme provisions

The purpose of the zones and overlays relevant to Amendment are provided in Table 1.

Table 1 Zone and overlay purposes

Provision	Purposes
All	To implement the Municipal Planning Strategy and the Planning Policy Framework.
Zones	
Farming Zone	<p>To provide for the use of land for agriculture.</p> <p>To encourage the retention of productive agricultural land.</p> <p>To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.</p> <p>To encourage the retention of employment and population to support rural communities.</p> <p>To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.</p> <p>To provide for the use and development of land for the specific purposes identified in a schedule to this zone.</p>
Public Conservation and Resource Zone	<p>To protect and conserve the natural environment and natural processes for their historic, scientific, landscape, habitat or cultural values.</p> <p>To provide facilities which assist in public education and interpretation of the natural environment with minimal degradation of the natural environment or natural processes.</p> <p>To provide for appropriate resource based uses.</p>
Transport Zone	<p>To provide for an integrated and sustainable transport system.</p> <p>To identify transport land use and land required for transport services and facilities.</p> <p>To provide for the use and development of land that complements, or is consistent with, the transport system or public land reservation.</p> <p>To ensure the efficient and safe use of transport infrastructure and land comprising the transport system.</p>
Overlays	
Development Plan Overlay	<p>To identify areas which require the form and conditions of future use and development to be shown on a development plan before a permit can be granted to use or develop the land.</p> <p>To exempt an application from notice and review if a development plan has been prepared to the satisfaction of the responsible authority.</p>
Public Acquisition Overlay	<p>To identify land which is proposed to be acquired by a Minister, public authority or municipal council.</p> <p>To reserve land for a public purpose and to ensure that changes to the use or development of the land do not prejudice the purpose for which the land is to be acquired.</p> <p>To designate a Minister, public authority or municipal council as an acquiring authority for land reserved for a public purpose.</p>

Provision	Purposes
Heritage Overlay	<p>To conserve and enhance heritage places of natural or cultural significance.</p> <p>To conserve and enhance those elements which contribute to the significance of heritage places.</p> <p>To ensure that development does not adversely affect the significance of heritage places.</p> <p>To conserve specified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.</p>

2.3 Ministerial Directions, Planning Practice Notes and Practitioner's Guide

(i) Ministerial Directions and Planning Practice Notes

The Explanatory Report discusses how the Amendment meets the relevant requirements of Ministerial Direction 11 (Strategic Assessment of Amendments) and *Planning Practice Note 46: Strategic Assessment Guidelines*, August 2018. That discussion is not repeated here.

Planning Practice Note 1: Applying the Heritage Overlay, August 2018 guides use of the HO. It states that heritage places must be both scheduled and mapped and care should be taken to ensure there is an accurate correlation between the two.

The Ministerial Direction – *The Form and Content of Planning Schemes* states a planning scheme may only include land in a public land zone if the land is Crown land or is owned, vested in or controlled by a Minister, government department, public authority or a municipal council.

(ii) Practitioner's Guide to Victorian Planning Schemes

A Practitioner's Guide to Victorian Planning Schemes (Practitioner's Guide) sets out key guidance to assist practitioners when preparing planning scheme provisions. The guidance seeks to ensure:

- the intended outcome is within scope of the objectives and power of the Planning and Environment Act and has a sound basis in strategic planning policy
- a provision is necessary and proportional to the intended outcome and applies the Victoria Planning Provisions in a proper manner
- a provision is clear, unambiguous and effective in achieving the intended outcome.

2.4 Discussion and conclusion

For the reasons set out in the following chapters, the Panel concludes that the Amendment is supported by, and implements, the relevant sections of the Planning Policy Framework, and is consistent with the relevant Ministerial Directions and Practice Notes. The Amendment is well founded and strategically justified, and the Amendment should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapter.

3 Changes requested by submitters

3.1 Muckleford-Yapeen Road, Yapeen

(i) The issue

The issue is whether HO1058 should be removed from land at 5419-676 Muckleford to Yapeen Road, Yapeen.

(ii) What is proposed?

HO1058 currently applies to “House - Strathloddon, Muckleford-Yapeen Road” at 5419-676 Muckleford – Yapeen Road, Yapeen. The Amendment proposes to correct mapping of the place so it covers the existing dwelling.

Figure 2 Proposed mapping HO1058



Source: PPV

(iii) Submissions

Council submitted the dwelling referenced in the *Newstead Heritage Study*, 2004 was significantly altered in 2013/14. The dwelling now largely presents as a new building.

Council submitted a new heritage study of the site would be required to justify the complete removal of HO1058 and noted the heritage study citation describes ‘Strathloddon’ as historically significant at a State level, and scientifically and architecturally significant at a local level.

The owner of the dwelling objected to the HO on the grounds that the building is not “*heritage*”, the matter had been dealt with at length in 2013 and should be resolved through removal of the overlay.

Considering the landowner’s opposition to the Amendment, Council said its resolution of 17 May 2022 was to abandon this part of the Amendment under section 28 of the *Planning and Environment Act*. This approach would not present an immediate risk to heritage values of the site as existing structures have already been substantially changed.

(iv) Discussion

No information has been provided to the Panel to explain the context of the matters considered “*at length*” in 2013.

With the extensive development that took place in 2013-14, it is likely the heritage significance of the dwelling has diminished. However, given the heritage significant of the homestead and site is described as historically significant at a State level, a cautious approach is required. The Panel agrees with Council that a new heritage study should be prepared to confirm if the significance identified in the 2011 study remains.

The Panel disagrees that abandoning this part of the Amendment is an appropriate way forward. Any remaining heritage values should be protected by the HO until the new study is carried out. Therefore, mapping of HO1058 should be corrected as exhibited to provide the required protection.

(v) Conclusion

The Panel concludes:

- HO1058 should be correctly mapped over the dwelling at 5419-676 Muckleford-Yapeen Road, Yapeen, consistent with the exhibited Amendment.

3.2 HO933 Landscape surrounding Pennyweight Flat

(i) The issues

The issue is the inconsistency between the mapping and ordinance reference to the heritage place known as ‘Landscape surrounding Pennyweight Flat’.

(ii) What is proposed?

The mapping and ordinance relating to the ‘Landscape surrounding Pennyweight Flat’ was not included in the exhibited Amendment.

(iii) Submissions

Ms Edgar’s submission identified the heritage place ‘Landscape surrounding Pennyweight Flat’ is listed in the HO schedule as HO933, however is mapped as HO993.

Council confirmed that this is an error and proposed the HO schedule be amended to provide consistency between the ordinance and mapping.

(iv) Discussion

Consistent labelling of heritage places in the ordinance and maps is required to ensure the proper operation of the Planning Scheme. The Panel agrees with Council’s proposed method to correct the error.

(v) Conclusion and recommendation

The Panel concludes:

- The HO Schedule should be updated to label the heritage place ‘landscape surrounding Pennyweight Flat’ as HO993.

The Panel recommends:

1. Amend the Schedule to the Heritage Overlay to list the heritage place ‘Landscape surrounding Pennyweight Flat’ as ‘HO993’.

3.3 4 Wyndham Street, Newstead

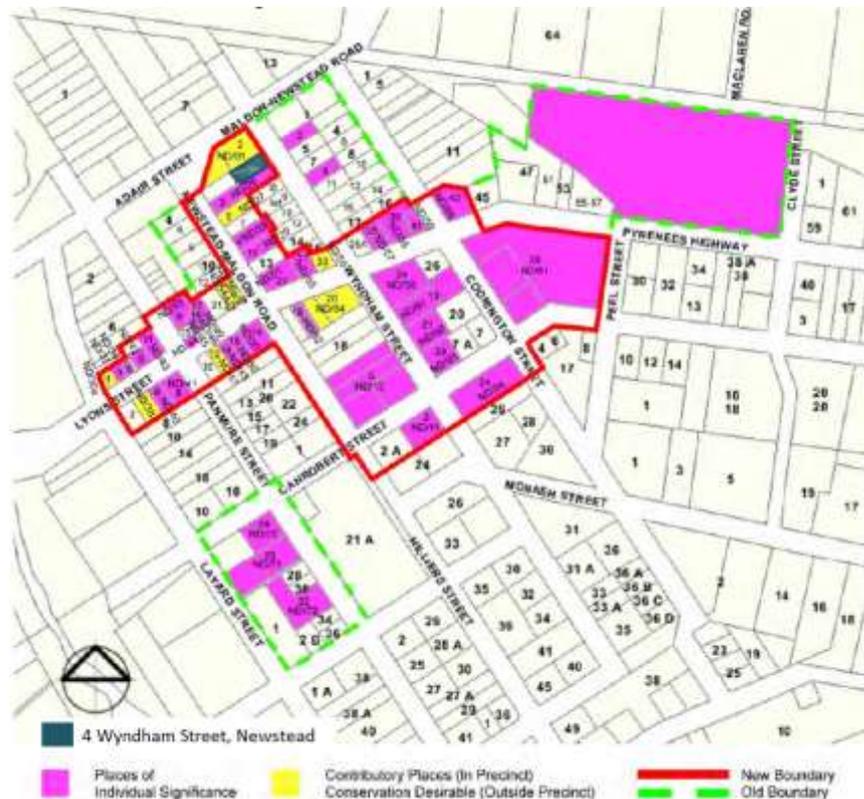
(i) The issue

The issue is whether HO1176 should be removed from land at 4 Wyndham Street, Newstead.

(ii) What is proposed?

HO1176 applies to the Newstead Heritage Precinct. The mapping and ordinance relating to HO1176 was not included in the exhibited Amendment. Figure 3 shows the boundary of HO1176 (red line) and the location of 4 Wyndham Street within the precinct (in dark green).

Figure 3 HO1176 – 4 Wyndham Street, Newstead



Source: Newstead Heritage Study adapted by PPV

The precinct boundaries were identified through *Review of the Newstead Heritage Study Precincts and Specific Heritage Places*, October 2011.

(iii) Submissions

Council advised 4 Wyndham Street was subdivided from 1 Hilliers Street, Newstead. The land at 1 Hilliers Street is identified as 'not significant' in the *Former Shire of Newstead Heritage Precinct Planning Permit Exemptions Incorporated Plan* (which is an incorporated document to the Planning Scheme).

Council submitted there is insufficient strategic justification to delete HO1176 from this property because:

- Precinct boundaries go beyond heritage places.
- While 4 Wyndham Street is not individually significant or contributory, surrounding properties are.
- An independent heritage study would be required to support removal of HO1176 from the property.

Ms Lean submitted HO1176 should be removed from 4 Wyndham Street for the following reasons:

- The overlay is a legacy of including 1 Hilliers Street in the precinct.
- As a separate title, the original rationale for including the land in the HO no longer applies.
- The dwelling at 4 Wyndham Street is newly built.
- The HO creates burdensome planning permit requirements and has limited siting options that maximise solar efficiency.
- Correcting the anomalous application of the HO on 4 Wyndham Street falls within the scope of the Amendment.
- There is local support for the removal of the HO.

In its concluding submission Council noted:

- Planning decisions must balance sustainability and heritage objectives.
- Subdivision does not always equate to removal of a HO or other planning provision.
- Precinct boundaries are informed by a range of features, including the volume of heritage places in locality and the visual connection between these places.
- While 4 Wyndham Street did not exist when the *Former Shire of Newstead Heritage Precinct Exemptions Incorporated Plan, 2012* was introduced, it is logical that it benefits from the permit exemptions that apply to 1 Hillier Street.
- The land at 4 Wyndham Street was intentionally included within the heritage precinct (when it formed part of 1 Hilliers Street) and is not an error or anomaly.
- A review of the Newstead precinct boundaries may be warranted at some stage, however, is not a priority on the Strategic Planning work program.
- A review of boundaries would need to be completed holistically and not property by property.

(iv) Discussion

It is usual for heritage precincts to include non-contributory places. This enables development, including subdivision, to be regulated in proximity to the significant or contributory places. The

positive benefit of including non-contributory places in the heritage precinct is evident in the development outcome achieved for 4 Wyndham Street, where a contemporary building has been developed between individually and contributory properties. Importantly the siting, height and design of the new dwelling appears to maintain the rhythm, scale and character of the precinct (notwithstanding the owner is not satisfied that solar efficiency has not been maximised).

The Panel considers the issues raised by the submitter warrant further consideration, particularly because there is only one contributory place in the precinct that is located with any proximity to 4 Wyndham Street (being the dwelling at 2 Wyndham Street). All other significant places are orientated towards Hillier Street. This should be the subject of further work. Heritage precincts have broader public interest so any future changes to precinct boundaries ought to be subject of a formal notice process.

In meantime, it is appropriate to make changes to the *Former Shire of Newstead Heritage Precinct Exemptions Incorporated Plan, 2012* to explicitly include 4 Wyndham Street. These exemptions offer significant benefit by only requiring planning permits for development at non-contributory places that is of a scale likely to impact on the integrity of the precinct.

(v) Conclusion and recommendation

The Panel concludes:

- Further work is required to inform any refinement of the boundaries of HO1176, including potential removal of 4 Wyndham Street, Newstead.
- The land at 4 Wyndham Street, Newstead should explicitly benefit from the permit exemptions in the *Former Shire of Newstead Heritage Precinct Exemptions Incorporated Plan, 2012*.

The Panel recommends:

- 2. Amend the *Former Shire of Newstead Heritage Precinct Exemptions Incorporated Plan, 2012* to list 4 Wyndham Street, Newstead as a 'Not significant' place.**

3.4 Development Plan Overlay Schedule 8

(i) The issue

The issue is whether DPO8 should be amended to delete the requirement for an electrical substation to be removed before development commences.

DPO8 applies to land at 92 Kennedy Street, Castlemaine (Figure 4). Clause 3.0 of DPO8 applies the following requirement to permits:

Development must not commence until the electrical sub-station on the south-west corner of the site has been removed from the land.

Figure 4 Development Plan Overlay Schedule 8



Source: PPV

(ii) What is proposed?

The mapping and ordinance relating to the DPO8 was not included in the exhibited Amendment.

(iii) Submissions

Council advised:

- DPO8 was introduced into the Planning Scheme by Mount Alexander Planning Scheme Amendment C74 (Amendment C74) in 2016.
- The condition requiring relocation of the substation was based on the understanding it would either be decommissioned or relocated inside Flowserve’s premises at 5-7 Parker Street, Castlemaine.
- In 2019, Council was advised removal of the substation was no longer possible because it was in use and costs to relocate it were prohibitive.
- Recognising the site provides a key residential infill opportunity, Council officers undertook their own investigations to determine the health, safety and amenity impacts of retaining the substation in its present location.

- Council was briefed on the option of preparing a planning scheme amendment to amend DPO8 in November 2020.
- Preparation of an amendment was not supported by Council, and the matter has not progressed further.

Mr McDonald submitted:

- Constraints on the site have changed since the land was rezoned.
- Removal of the substation is no longer physically or circumstantially possible.
- As removal of the substation cannot be achieved, the permit requirement is an error.
- Relevant authorities have advised there is no practical or safety restriction to building dwellings around the existing substation.
- The substation is used intermittently.
- The substation occupies 6 per cent of the site area and can be easily isolated from future residential development because of its corner location.
- There are fencing and screening options to soften the interface between the substation and future dwellings.
- DPO8 could be amended to apply the permit requirement for removal of the substation to the substation lot² only (Figure 5) rather than the whole site.

Figure 5 Substation lot 92 Kennedy Street, Castlemaine



Source: PPV

² Crown Allotment 1, Section 26, Township of Castlemaine. The submission incorrectly referred to the lot as 'Section 6'.

Mr McDonald sought the Panel's view on 'back' zoning the site to an industrial zone if a residential outcome could not be achieved.

In its concluding submission Council noted:

- The requirement for removal of the substation was deliberate and is not an error.
- While circumstances may have changed since the rezoning, Council has not altered its position that the substation should be removed.
- The requirement to remove the substation is consistent with the DPO purpose *"to identify areas which require the form and conditions of future use and development to be shown on a development plan before a permit can be granted to use or develop the land"*.
- It is concerned about the proximity of the substation to residential development and the modification to DPO8 suggested by the submitter is unlikely to be satisfactory, but in any event is beyond the scope of the Amendment.

(iv) Discussion

The Panel agrees with Council that amending DPO8 as requested by the submitter is beyond the scope of the Amendment. Even if strategic justification was established, the change is not policy neutral and may materially affect owners, occupiers and agencies that have not been notified of the Amendment.

For the benefit of future consideration of this matter, the Panel makes the following observations:

- The strategic value of the land as an infill location was established through Amendment C74.
- Conditions and requirements for permits in a Development Plan Overlay schedule are a method to achieve the objectives of the development plan.
- There are no objectives specified in DPO8 that assist in determining how significant relocation of the substation is to achieve an acceptable outcome for the site.
- The Victoria Planning Provisions are primarily based on the principle that there should be discretion for most developments and that applications are to be tested against objectives and performance outcomes rather than merely prescriptive mandatory requirements.
- Infrastructure is commonly integrated within residential development.
- There would be community benefit from realising the development potential of the land.

The Panel has not considered the merits of back zoning the site to its previous industrial zone as this is not a formal proposal before it. The Panel observes there is significant commentary in the Amendment C74 Explanatory Report about the previous Industrial 1 Zone, including it is *"inappropriate given that the land is no longer used for industrial purposes and is surrounded by residentially zoned land"* and zoning the land to a more appropriate residential zone reduces *"the likelihood of industrial development negatively impacting on the amenity of surrounding dwellings"*.

(v) Conclusion

The Panel concludes:

- Amending DPO8 is beyond the scope of the Amendment.

3.5 30-32 Duke Street, Castlemaine

(i) The issue

The issue is whether 30-32 Duke Street, Castlemaine should be rezoned to a Commercial Zone.

(ii) What is proposed?

The mapping and ordinance relating to 30-32 Duke Street was not included in the exhibited Amendment.

The land is in General Residential Zone Schedule 1 (Figure 6). It has been 'rated' as a commercial property since 1969 and currently used as 'Best Motors'.

Figure 6 30-32 Duke Street, Castlemaine zone plan



Source: PPV

(iii) Submissions

Council submitted the Castlemaine Commercial Centre was defined by the *Castlemaine Commercial Centre Study*, 2012. The site is outside the defined area and expanding the area would be inconsistent with Clause 17.02-2L (Out of centre development). Rezoning the land from a residential to commercial zone would warrant further strategic analysis and justification, is not policy neutral, and is beyond the scope of the Amendment.

It noted Best Motors benefits from existing use rights which allows the continued operation of the current business.

(iv) Discussion

Even if strategic justification was established, the change is not policy neutral and may materially affect owners, occupiers and agencies that have not been notified of the Amendment.

For the benefit of future consideration of this matter, the Panel notes the appropriate zone for the land will not just be a product of its current use. Strategic planning must take a longer term perspective and consider preferred outcomes for the land beyond the Best Motors site.

(v) Conclusion

The Panel concludes:

- Rezoning land at 30-32 Duke Street, Castlemaine is beyond the scope of the Amendment.

3.6 12 Reef Street, Maldon

(i) The issue

The issue is whether private land at 12 Reef Street, Maldon should be zoned Transport Zone 1 (State transport infrastructure).

(ii) What is proposed?

The mapping and ordinance relating to 12 Reef Street, Maldon was not included in the exhibited Amendment. Figure 7 shows the exiting zone configuration of the zone and surrounds.

Figure 7 12 Reef Street, Maldon zone plan



Source: PPV

(iii) Submissions

Council submitted 12 Reef Street, Maldon was likely once part of the Maldon Railway Station complex as housing for the station master or other railway staff. The Victorian Government disposed of the property in 1995 and it has since been used as a private residence. Council acknowledged inclusion of the land in the Transport Zone 1 is an anomaly. It supported rezoning the land to General Residential Zone Schedule 1, consistent with surrounding land, having satisfied itself:

- There has been continued use of the land as a residence (supported by documents provided by the submitter and gathered by Council officers).
- Rezoning of the land to a residential zone will not increase the bushfire risk.
- The land is not considered to be potentially contaminated.
- The land is no longer required for transport purposes.

(iv) Discussion

The Panel notes Council's analysis of the key planning considerations and agrees the current zoning of the land should be revised to the appropriate private land zone to meet the requirements of the Ministerial Direction *The Form and Content of Planning Schemes*.

Rezoning to General Residential Zone Schedule 1 is consistent with the zone that applies to surrounding residential land. HO182 will continue to apply to land in the station complex, including 12 Reef Street.

(v) Conclusion and recommendation

The Panel concludes:

- Land at 12 Reef Street, Maldon should be rezoned to the appropriate private land zone which is General Residential Zone Schedule 1.

The Panel recommends:

- 3. Rezone land at 12 Reef Street, Maldon from Transport Zone 2 to General Residential Zone Schedule 1.**

Appendix A Document list

No.	Date	Description	Provided by
1	23/6/22	Panel Directions	Planning Panels Victoria
2	6/7/22	Distribution List Version 2	"
3	21/7/22	Council submissions with Attachments (Documents 4-17)	Council
4	"	List of affected properties	"
5	"	Amendment maps	"
6	"	Current planning provisions associated with each affected property	"
7	"	<i>Former Shire of Newstead Heritage Precinct Exemptions Incorporated Plan, August 2012</i>	"
8	"	<i>Heritage Study of the Shire of Newstead Stage 2, Section 1 Report, May 2004</i>	"
9	"	<i>Heritage Study of the Shire of Newstead Stage 2, Section 2 Environmental History, May 2004</i>	"
10	"	<i>Review of the Newstead Heritage Study Precincts and Specific Heritage Places, October 2011</i>	"
11	"	<i>Heritage Study of the Shire of Newstead Stage 2, Section 3, Heritage Citations, May 2004, revised November 2011</i> <ul style="list-style-type: none"> - Volume 1 Campbells Creek - Volume 2 Campbelltown to Muckleford South - Volume 3 Newstead - Volume 4, Sandon to Yapeen 	"
12	"	<i>Maldon Conservation Study, 1977</i>	"
13	"	<i>Metcalfe Heritage Study, 1994</i> <ul style="list-style-type: none"> - Volume 3: Building Citations Barfold to Elphinstone - Volume 4: Building Citations Faraday to Taradale 	"
14	"	Further details on Amendment C94malx	"
15	"	Further details on Amendment C96malx	"
16	"	Further details on Amendment C95malx	"
17	"	Department of Transport advice 12 Reef Street, Maldon	"
18	28/7/22	Submissions of Jane Lean	J Lean
19	29/7/22	Submission of Ewan McDonald with Attachments (Documents 20 to 25)	E McDonald
20	"	Attachment 1 – Ground Lease for substation site	"
21	"	Attachment 2 – Current overlays	"

No.	Date	Description	Provided by
22	“	Attachment 3 – Flowserve advice	“
23	“	Attachment 4 – Powersafe Victoria advice	“
24	“	Attachment 5 – Site and context plan	“
25	“	Attachment 6 – Flowserve advice 2014	“
26	4/8/22	Council concluding submission	Council
27	5/8/22	Panel correspondence	PPV

Appendix B Land affected by the Amendment

No.	Zone/ Overlay reference	Address	What is being corrected?
1	HO427	523 Goughs Range Road, Welshmans Reef	Incorrect location of HO427.
2	HO365	565 Baringhup Road, Baringhup	Incorrect mapping application of HO365.
3	HO45	32 Castlemaine Road, Maldon	HO schedule description missing street number.
4	HO46	34 Castlemaine Road, Maldon	HO schedule description missing street number.
5	HO47	36 Castlemaine Road, Maldon	HO schedule description missing street number.
6	HO48	38 - 40 Castlemaine Road, Maldon	HO schedule description missing street number.
7	HO49	48 Castlemaine Road, Maldon	HO schedule description lists incorrect street number.
8	HO51	1159 Castlemaine-Maldon Road, Maldon	HO schedule description missing street number.
9	HO52	1115 Castlemaine-Maldon Road, Maldon	HO schedule description missing street number.
10	HO54	8 Chapel Street North, Maldon	HO schedule description lists incorrect street number.
11	HO55	5-7 Chapel Street North, Maldon	HO schedule description lists incorrect street number.
12	HO82	2 Cox Street, Maldon	HO schedule description missing street number.
13	HO83	4 Cox Street, Maldon	HO schedule description missing street number.
14	HO92	9 Fountain Street, Maldon	HO schedule description lists incorrect street name.
15	HO93	17 Fountain Street, Maldon	Subject site is vacant and HO93 does not apply, however the site is within a broader HO area (hence application of HO444).
16	HO94	19 Fountain Street, Maldon	HO schedule description lists incorrect street name.
17	HO95	2 Francis Street. Maldon	HO schedule description missing street number.
18	HO97	6 Gray Street, Maldon	HO schedule description lists incorrect street number.
19	HO248	17 Morris Street, Maldon	HO schedule description missing street number.

No.	Zone/ Overlay reference	Address	What is being corrected?
20	HO345	1A Warnock Street, Maldon	HO schedule street name has incorrect spelling for street name.
21	HO346	1 Warnock Street, Maldon	HO schedule street name has incorrect spelling for street name.
22	HO347	3 Warnock Street, Maldon	HO schedule street name has incorrect spelling for street name.
23	HO348	15 Warnock Street, Maldon	HO schedule street name has incorrect spelling for street name and mapping application is incorrect.
24	HO349	19 Warnock Street, Maldon	HO schedule street name has incorrect spelling for street name and mapping application is incorrect.
25	HO350	6 Warnock Street, Maldon	HO schedule street name has incorrect spelling for street name and missing street number, and mapping application is incorrect.
26	HO351	11 Warnock Street, Maldon	HO schedule street name has incorrect spelling for street name and missing street number.
27	HO800	22 High Street, Harcourt	Formatting error in the HO schedule description.
28	HO91	9 Chapel Street, Maldon	HO91 should only be on 5 Fountain Street.
29	HO1222	8 Church Street, Newstead	Description inconsistent with Newstead Heritage Study. Also incorrect labelling of HO on map (states HO1220 instead of HO1222).
30	HO893	18 Steele Street, Chewton	Incorrect street name in description.
31	HO122	26 High Street, Maldon	HO119 has been incorrectly applied to this property (it applies to next door at 20 High Street). HO122 lists this address in the schedule, but the mapping does not reflect this. The HO122 has been incorrectly applied elsewhere.
32	HO130	43 High Street Maldon (doesn't exist)	43 High Street and HO130 do not exist.
33	ESO2	N/A	Formatting anomaly.
34	HO1056	74 Vaughan Springs Road, Yapeen	Building demolished therefore overlay no longer required.
35	HO20	5 Tailings Lane, Maldon	Incorrect street name and missing street number in HO schedule.
36	HO19	22 Adair Street East, Maldon	Street number missing from schedule.
37	HO849	22 Pethybridge Road, Taradale	Controls are incorrect and need to be updated.

No.	Zone/ Overlay reference	Address	What is being corrected?
38	HO1062	170 Fryers Road, Campbells Creek	Street name incorrect and needs to be updated, and mapping needs to reflect the protected items.
39	HO357	464 Baringhup West Road, Baringhup West	Street name incorrect and needs to be updated, and mapping needs to be updated to ensure it is only applied to the building which needs to be protected.
40	HO131	44 High Street, Maldon	Incorrect mapping of HO131.
41	HO132	45 High Street, Maldon	45 High Street and the 'shop' listed in the schedule do not exist.
42	HO133	47-49 High Street, Maldon	Description is inaccurate and needs to be updated, and the mapping does not show HO133.
43	HO129	39-41 High Street, Maldon	Incorrect HO mapping, incorrect street number, incorrect description.
44	HO1029 (and HO1090)	872 Creswick- Newstead Road, Sandon	NOTE: this is a VicPlan error and nothing is required to be fixed (see background report for additional detail).
45	HO259	30 Newstead Road, Maldon	Incorrect street number and incorrect mapping/application of HO.
46	HO258	28 Newstead Road, Maldon	Incorrect application of HO on map, and incorrect street number.
47	HO443	N/A	External paint controls to be applied consistent with Maldon Design Guidelines.
48	HO444	N/A	External paint controls to be applied consistent with Maldon Design Guidelines.
49	HO445	N/A	External paint controls to be applied consistent with Maldon Design Guidelines.
50	HO868	95 High Street, Taradale	Building demolished.
51	HO123	28 High Street, Maldon (doesn't exist)	Address does not exist, so needs to be deleted from schedule. HO123 is also mapped on the nature strip outside corner of Fountain and High Streets.
52	HO491	38 Adair Street, Maldon	Property is incorrectly described in the schedule.
53	HO13	143 High Street, Maldon	HO13 relates to 34 Adair Street but a smaller HO13 overlay is also incorrectly applied to 143 High St mapping.
54	HO23	1 Pond Drive, Maldon	Incorrect street name and number.
55	HO24	3 Baxter Street, Maldon	HO schedule missing street number.
56	HO25	11 Baxter Street, Maldon	HO schedule missing street number.
57	HO35	18 Camp Street, Maldon	Incorrect mapping of overlay.

No.	Zone/ Overlay reference	Address	What is being corrected?
58	HO37 (& HO17)	2 Castlemaine Road, Maldon	Incorrect mapping of overlay.
59	HO144	66 High Street, Maldon	Incorrect mapping of overlay.
60	HO153	79B High Street, Maldon	Incorrect description in HO schedule.
61	HO154	76 High Street, Maldon	76 High Street should not have an individual HO.
62	HO155	78 High Street, Maldon	Incorrect mapping of overlay.
63	HO7 & HO9	24 Adair Street, Maldon and un-numbered lot abutting on western side	HO7 and HO9 cover the same house and property. Single HO to be applied.
64	HO12	30A Adair Street, Maldon	Incorrect street number.
65	HO15 & HO16	36 Adair Street, Maldon	The 38 Adair street at HO16 is a duplication, as 38 Adair Street is already protected by HO983. Therefore HO16 to be removed from mapping and schedule. HO15 needs to align with property boundary.
66	HO811	N/A	This property is not included in the Victorian Heritage Register database, therefore this needs to be updated in the schedule.
67	HO203 & HO204	2-4 Main Street, Maldon	This is a duplication and it all refers to the one shop.
68	HO209 & HO210	12 Main Street, Maldon	These two HOs (HO209 and HO210) apply to the same property so should be covered under one overlay. The address is incorrect and needs to be updated (street number).
69	HO219	33 Main Street, Maldon	Schedule description anomaly with the office name, and the mapping application is incorrect.
70	HO221	35-37 Main Street, Maldon	Anomaly with street number which required updating. Mapping anomaly.
71	HO233	61 Main Street, Maldon	HO233 refers to 61 Main Street, which is part of the former Phoenix Building and is already covered within HO230.
72	HO234	63 Main Street, Maldon	The property is listed in the schedule to be protected but the mapping does not reflect this - HO234 is not applied to the site in the mapping.
73	HO250	1 Newstead Road, Maldon	Mapping anomaly with application of HO250. Error with HO37 (neighbouring property at 2 Castlemaine Rd) and HO16 (38 Adair St) also being applied to the subject site, which are for separate properties and have been incorrectly added to this property.

No.	Zone/ Overlay reference	Address	What is being corrected?
74	HO256 & HO257	16 Newstead Road, Maldon	There is no 18 Newstead Road - it is all 16 Newstead Road Maldon. Therefore mapping and schedule needs to be updated to reflect this.
75	HO284	3 Pond Drive, Maldon	HO schedule missing street number.
76	HO67	1 Church Street, Maldon (Maldon Neighbourhood Centre')	This is the site of the Presbyterian Church. It has three HOs (HO67, HO84, HO85) applied across it, which do not align with any buildings or property boundaries. It needs to be fixed to have just the one HO across it (this will be HO84: ' Presbyterian Church 1 Church St). This site is now the Maldon Neighbourhood Centre.
77	HO68	3 Church Street, Maldon	While it was bought by the Presbyterian Church for Ministers House, it is not part of the Church & Hall, therefore description needs to be updated.
78	HO84 & HO85	1 Church Street, Maldon (Maldon Neighbourhood Centre')	This is the site of the Presbyterian Church. It has three HOs (HO67, HO84, HO85) applied across it, which do not align with any buildings or property boundaries. It needs to be fixed to have just the one HO across it (this will be HO84: ' Presbyterian Church 1 Church St). This site is now the Maldon Neighbourhood Centre. 4 Edward and 2 Edward Streets no longer exist - this is all one property/site.
79	HO74	18 Church Street, Maldon	The HO doesn't align with the property boundaries.
80	HO75	22 Church Street, Maldon	The HO doesn't align with the property boundaries.
81	HO110, HO111, HO113	2-6 High Street, Maldon	The building being protected is only one house/property, however three different Has have been applied to the property. The property is 2 - 6 High Street, not separate 2, 4, 6, High Streets.
82	HO128	38 High Street, Maldon	HO128 applies to 38 High Street however this does not show on the mapping. There is also a separate un-numbered HO applied to the site which is to be deleted.
83	HO175	3 Hornsby Street, Maldon	This property has another HO applied to it (HO286, which lists 4 Reef Street in the HO schedule), which should be removed. The HO175 which applies to this property does not align with property boundaries and needs to be amended to ensure it does.
84	HO173	1 Hornsby Street, Maldon	HO mapping incorrect with HO173 not aligning with property boundaries, and an additional HO which doesn't apply to this property having been applied.

No.	Zone/ Overlay reference	Address	What is being corrected?
85	HO286	1 and 3 Hornsby Street, Maldon/6 Reef Street, Maldon	4 Reef Street Maldon does not exist. There is no property between 6 Reef Street (HO287) and 1 Hornsby (HO173)/the rear of 3 Hornsby (HO175).
86	HO288	8 Reef Street, Maldon	A separate HO289 has been applied to the site incorrectly, and the HO288 which applies does not align with property boundaries.
87	HO290	10 Reef Street, Maldon	HO288 and HO289 (which relate to other, neighbouring properties) have been incorrectly applied to this property. HO290 is for 10 Reef St, but this is not shown on the mapping.
88	HO174	2 Hornsby Street, Maldon and 2A Hornsby Street, Maldon	There has been a new dwelling built on 2A Hornsby (which was subdivided off from 2 Hornsby) which is not protected by a HO, so the HO needs to be reduced so it only applies to 2 Hornsby. Given the surrounding area is subject to a HO, the HO444 is proposed to be extended to 2A Hornsby Street.
89	HO338	39-41 Templeton Street, Maldon	Incorrect address in HO schedule, and mapping incorrectly applied.
90	HO333	31-33 Templeton Street, Maldon	Incorrect address in HO schedule.
91	HO335	31-33 Templeton Street, Maldon	Incorrect address in HO schedule.
92	HO99	9 Gray Street, Maldon	Street number missing from schedule.
93	HO193	17 Johns Road, Maldon	Street number missing from schedule.
94	HO200	18 Lawrence Street, Maldon	HO200 does not apply to whole building/property.
95	HO311	8 Spring Street, Maldon	Mapping anomaly.
96	HO317	3 Templeton Street, Maldon	Mapping anomaly with HO number.
97	HO230	53 - 61 Main Street, Maldon	53-55, 57-59 and 61 Main Street Maldon are all the same property/building, so all need to be covered in the schedule and the HO230 applies to the whole property. Mapping needs to be corrected as it does not show HO230.
98	PAO2, TRZ1, TRZ2, TZ, FZ, PCRZ	Various locations along the Calder Freeway area (see mapping)	The land has been acquired and declared as a freeway, therefore the PAO purpose is complete and needs to be deleted, and the land rezoned accordingly.
99	HO119	20 High Street, Maldon	HO119 lists 20 High Street in schedule so the mapping needs to reflect this.

No.	Zone/ Overlay reference	Address	What is being corrected?
100	HO1058	676 Muckleford-Yapeen Road, Yapeen	Mapping anomaly: HO does not cover house, it covers vacant land immediately to the east of the land.
