

Frequently Asked Questions - Amendment C235morn



What zoning change does Amendment C235morn propose?

It is proposed to rezone your property from the current Special Use Zone – Schedule 4 (SUZ4) to the Green Wedge Zone – Schedule 2 (GWZ2).

Why is this change being proposed?

To provide a simpler and more consistent set of planning controls for affected properties and to ensure that the Mornington Peninsula Shire's Green Wedge is protected from inappropriate uses and subdivision.

All properties affected by this proposed change are impacted by another planning control – the 'Metropolitan Green Wedge Land: Core Planning Provisions'. This control applies rules that in some cases contradict what is otherwise allowed under the SUZ4. For example, a planning permit cannot be issued for a land use on properties zoned SUZ4 that is prohibited under the Core Planning Provisions (unless the property is specifically exempt).

Amendment C235morn proposes to fix these confusing controls by rezoning each property to the GWZ2. The GWZ2 is more appropriate because the properties are located in the Shire's Green Wedge.

How will this affect my property?

Subdivision

The main change is that the mandatory minimum lot size for land subdivision will increase from 20 hectares to 40 hectares. This means that, for example, under the existing SUZ4, a property owner who has a 60-hectare site could apply for a planning permit to subdivide their property into three, 20-hectare lots. Under the GWZ2, the same property could not be subdivided as the resulting lots would be less than the new 40-hectare minimum.

Land Use

There won't be significant changes regarding which land uses are allowed, require a planning permit or are prohibited as the Core Planning Provisions are very similar to the Green Wedge Zone. However, you should consider your own circumstances and land uses that are occurring on your property to determine the impact this proposed amendment may have.

You may also have 'existing use rights'.

What are existing use rights?

Existing use rights apply when land is being used in a lawful manner, but a change to planning scheme controls now prohibits that land use or the land use requires a planning permit.

How can I prove my property has existing use rights?

You can obtain 'existing use rights' for your land if any of the following circumstances apply:

- The existing use was lawfully carried out before the proposed new planning controls take effect

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- If there is proof of the existing use being continuous for 15 years (the use cannot have ceased for a period of two years during this time)
- A permit for the existing use was been granted immediately before the new planning controls take effect and the use commences before the planning permit expires, or
- A permit for the existing use was been granted for an alternative use (a use that does not comply with the current planning controls), and this use commences before the planning permit expires.

How do I know if I have existing use rights?

If you believe your property has existing use rights but this has not been formally certified by Council, you will need to obtain a Certificate of Compliance. To do this, you need to fill out an application form and submit it to Council for assessment. When you lodge your application, you also need to pay a prescribed fee of \$330.70.

The application form can be found here: <http://www.mornpen.vic.gov.au/files/assets/public/new-website-documents/building-amp-planning/planning/docs/application-for-a-certificate-of-compliance.pdf>.

You can submit your completed form to Council via:

- email (preferred) to planning@mornpen.vic.gov.au. Please include Application for Certificate of Compliance (Existing Use Rights) in the email subject line, or
- mail to the Manager Planning Services, Mornington Peninsula Shire, Private Bag 1000, Rosebud 3939.

If you have any questions regarding 'existing use rights' or Certificates of Compliance, please contact the Planning Services team on 5950 1010 or email planning@mornpen.vic.gov.au.

Information required to prove existing use rights

Existing use rights can be proven by presenting a combination of the following information to Council:

- A certificate of title (including plan of subdivision and copies of any agreements or restrictions registered on title)
- A detailed description of the scale/nature of the use
- A scaled plan detailing the location of the use and any processes carried out, consistent with the written description detailed above
- Building and/or planning permits that have been issued for any buildings, structures etc, along with any certificate of occupancy/final inspection
- Copies of leases or licences (tenancy lease, mining lease, agricultural lease etc)
- Utility and/or insurance records.
- Purchase receipts from suppliers over the preceding 15 years, to demonstrate operation of the business

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- Invoices showing the use/business has been in operation for a range of dates throughout a 15 year period
- Old newspaper cuttings (available from local library)
- Observations made by Council staff (photographs)
- Records from old editions of the white or yellow pages
- Statements from existing and previous owners or occupiers detailing how the land has been used.

Can existing use rights be lost?

Yes, existing use rights can be lost if the use of the land has stopped for:

- A continuous period of two years
- Two or more periods which together total two years in any period of three years
- In the case of seasonal use, two years in succession, or
- In the event of damaged or destroyed building or works.

What are the stages in the process for Amendment C235morn?

- Stage 1 – Authorisation: The Minister must authorise Council to prepare Amendment C235morn.
- Stage 2 – Exhibition: If authorised, Council will then prepare for, and publicly exhibit Amendment C235morn. Before exhibition starts, all property owners and occupiers affected by Amendment C235morn will receive a letter from Council detailing the amendment, how and where to view the relevant documentation, and the dates for exhibition. During exhibition, anyone who wants their views on Amendment C235morn to be considered by Council must make a written submission. Council's letter will detail how and when to make a submission.
- Stage 3 – Review of Submissions and Council Decision: Once exhibition finishes, any submissions received will be considered by Council at a Planning Services Committee meeting. At this meeting, Council will decide whether to make changes to Amendment C235morn in response to submissions, refer unresolved submissions to an independent planning panel for review and recommendations, or abandon the amendment. Anyone who made a submission will be notified of the Committee's meeting in advance and can request to speak at the meeting.
- Stage 4 – Planning Panel: If submissions are referred to a panel, the panel may hold a public hearing to allow anyone who made a submission to address the panel. Following the hearing, the panel will prepare a report with recommendations for Council and the Planning Minister to consider.
- Stage 5 – Council Decision: Council will consider the panel's report and recommendations at a Planning Services Committee meeting and decide whether to adopt, make changes to

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or abandon the amendment. Again, submitters will be notified of this meeting in advance.

- **Stage 6 – Minister’s Decision:** If Council decides to adopt Amendment C235morn (with or without changes), it will forward the amendment to the Minister for a decision. If the Minister approves Amendment C235morn, the Mornington Peninsula Planning Scheme will be updated and the properties will be rezoned. The Minister’s decision cannot be appealed. If Council decides to abandon Amendment C235morn, Council must notify the Minister of its decision (and all submitters) and no changes will be made to the Planning Scheme (i.e. no properties will be rezoned).

When will the rezoning happen?

The process to change the planning scheme and rezone land generally takes 12-18 months and includes community consultation and an opportunity to be heard at an independent planning panel. The planning scheme amendment process is outlined at <https://www.planning.vic.gov.au/schemes-and-amendments/amending-a-planning-scheme>

What is the Mornington Peninsula Planning Scheme?

The Mornington Peninsula Planning Scheme is a legal document that sets out rules for how land across the Shire can be used, developed and subdivided. All local government areas have a planning scheme.

Planning Schemes have three main parts:

1. Maps showing how land is affected by zones and overlays
2. Ordinance setting out the written requirements of a planning scheme
3. Incorporated documents (such as the Code of Practice)

A planning scheme is prepared by a council or the Minister for Planning and approved by the Planning Minister. The local council is generally responsible for administering its own planning scheme to ensure land is used and developed in a way that delivers a net community benefit.

Mornington Peninsula Shire is responsible for administering the Mornington Peninsula Planning Scheme. You can view the planning scheme here: <https://www.planning.vic.gov.au/schemes-and-amendments/browse-planning-scheme/planning-scheme?f.Scheme%7CplanningSchemeName=Mornington+Peninsula>

You can read more about planning schemes here: <https://www.planning.vic.gov.au/schemes-and-amendments/planning-scheme-structure>

What is a land use zone?

A ‘zone’ is a tool in the Planning Scheme that specifies land uses that are allowed to occur on a property as-of-right, require a planning permit, or are prohibited. Different zones apply to different areas. For instance, residential zones generally apply in areas where housing is located, commercial zones generally apply in town centres where shops and offices are located,

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and rural zones apply to land outside townships where agricultural activities (such as farming, wineries, etc) occur or in areas where the protection of rural landscapes, biodiversity, cultural heritage sites or water catchments is important.

What is the Special Use Zone – Schedule 4 (SUZ4)?

The SUZ4 is a zone that allows for 'integrated recreational and residential development in appropriate locations'. It allows for a range of uses such as a medical centre, food and drink premises, convenience shop and accommodation (including aged care facilities and retirement villages).

The SUZ4 has a mandatory minimum subdivision lot size of 20 hectares. A permit may be granted to create smaller lots in exceptional circumstances which are outlined in the schedule.

You can view the SUZ4 via the planning scheme link above and navigating to 'Zones', clicking on the '+' icon next to 'VPP 37 – Special Purpose Zones' and selecting 'Schedule 4 to the Special Use Zone'.

What is the Green Wedge Zone – Schedule 2 (GWZ2)?

The Green Wedge Zone is used for land in the Shire's Green Wedge. It facilitates agriculture and farming with other complementary land uses (such as sporting and recreation facilities, certain types of accommodation and public infrastructure) and seeks to ensure that land is used sustainably. The Green Wedge Zone also seeks to protect biodiversity, cultural heritage sites, and open scenic landscapes. Schedule 2 to the Green Wedge Zone applies a mandatory minimum subdivision lot size of 40 hectares.

You can view the GWZ2 via the planning scheme link above and navigating to 'Zones', clicking on the '+' icon next to 'VPP 35 – Rural Zones' and selecting 'VPP 35.04 Green Wedge Zone', and 'LPP 35.04 Schedule 2 to the Green Wedge Zone'.

What is the Morrington Peninsula Green Wedge?

Green Wedges are the non-urban areas of Melbourne that lie outside the Urban Growth Boundary (UGB). The UGB stops the spread of urban areas into sensitive agricultural and environmental land. Both Green Wedges and the UGB are designated by the State Government. There are 12 designated Green Wedges across Melbourne – one of which is the Morrington Peninsula Green Wedge.

Morrington Peninsula's Green Wedge has a special role and character that continues to be highly valued by the local community and the wider population of Melbourne. Council has a plan in place to protect the Green Wedge into the future – the Morrington Peninsula Green Wedge Management Plan (MPS 2019). You can read more about this Plan here:

<https://www.mornpen.vic.gov.au/About-Us/Strategies-Plans-Policies/Strategy-Plan-Listing/Green-Wedge-Management-Plan>.

Most land within the Green Wedge is zoned 'Green Wedge Zone' (GWZ).

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What are the 'Metropolitan Green Wedge Land: Core Planning Provisions'?

These provisions are located at Clause 51.02 of the Planning Scheme:

<https://www.planning.vic.gov.au/schemes-and-amendments/browse-planning-scheme/planning-scheme?f.Scheme%7CplanningSchemeName=Mornington+Peninsula>.

The purpose of these provisions is:

- To protect metropolitan green wedge land from uses and development that would diminish its agricultural, environmental, cultural heritage, conservation, landscape natural resource or recreation values.
- To protect productive agricultural land from incompatible uses and development.
- To ensure that the scale of use is compatible with the non-urban character of metropolitan green wedge land.
- To encourage the location of urban activities in urban areas.
- To provide transitional arrangements for permit applications made to the responsible authority before 19 May 2004.
- To provide deeming provisions for metropolitan green wedge land.

The provisions outline which land uses are as-of-right, require a planning permit or are prohibited.