

OFFICIAL

# **Planning Delegated Committee Meeting**

## **Agenda**

**8 September 2021 at 6:30pm**

**Virtual Meeting**



## PUBLIC SUBMISSIONS

- Due to COVID-19 restrictions around public gatherings the following has been put in place.
- Public representations may be made on any items listed on the agenda in a Planning Delegated Committee Meeting apart from those listed in the confidential section.
- To ensure the public can still participate, submissions must be emailed to [governance@ballarat.vic.gov.au](mailto:governance@ballarat.vic.gov.au) by no later than 4.30pm on the day of Planning Delegated Committee; and limited to no more than 200 words that will be read out by the Chief Executive Officer or nominated delegate at the virtual meeting prior to the matter being considered.
- If you would like to make your submission personally at the Virtual Council Meeting, please contact [governance@ballarat.vic.gov.au](mailto:governance@ballarat.vic.gov.au) to arrange this.

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## 1. WELCOME TO COUNTRY



The City of Ballarat acknowledges the Traditional Custodians of the land we live and work on, the Wadawurrung and Dja Dja Wurrung People, and recognises their continuing connection to the land and waterways. We pay our respects to their Elders past, present and emerging and extend this to all Aboriginal and Torres Strait Islander People.

## 2. APOLOGIES FOR ABSENCE

## 3. DECLARATION OF CONFLICT OF INTERESTS

## 4. CONFIRMATION OF MINUTES

## 5. OFFICER BRIEFING

## 6. PLANNING DELEGATED COMMITTEE REPORTS

### 6.1. PLP/2015/627/C 113 WEBSTER STREET, LAKE WENDOUREE

**Division:** Development and Growth  
**Director:** Natalie Robertson  
**Author/Position:** Connor Perrott – Manager, Statutory Planning

#### PURPOSE

1. The purpose of this report is to make a determination on Planning Permit Application PLP/2015/627/C.

#### BACKGROUND

<b>DATE RECEIVED</b>	20 July 2020
<b>PROPERTY ADDRESS</b>	113 Webster Street, Lake Wendouree
<b>APPLICANT</b>	Inception Planning
<b>PROPOSAL</b>	Amendment to permit to allow for the removal of the Red Flowering Gum tree (referred to in this report as the Marri Tree).  Existing permit PLP/2015/627/B approved the demolition of the existing dwelling, outbuilding and development of the land for a replacement dwelling, removal of vegetation (liquid amber), alterations to a crossover and front fence
<b>ZONE</b>	General Residential Zone, Schedule 1 (GRZ1)
<b>OVERLAY/S</b>	Heritage Overlay, Schedule 166 (HO166) Design and Development Overlay, Schedule 7 (DDO7) Vegetation Protection Overlay, Schedule 2 (VPO2)
<b>PERMIT TRIGGERS</b>	Clause 42.02-2
<b>RESTRICTIVE COVENANTS</b>	None

<b>CURRENT USE/ DEVELOPMENT</b>	Single dwelling
<b>CULTURAL HERITAGE MANAGEMENT PLAN</b>	The subject site is not in an area of Aboriginal Cultural Heritage Sensitivity
<b>SUBMISSIONS</b>	5 Objections received

### Proposal

2. This is an application to amend Planning Permit PLP/2015/627/B under Section 72 of *The Planning and Environment Act 1987* to allow the removal of one tree, being a *Corymbia calophylla* (otherwise known as a Marri Tree and also referred to as the Red-Flowering Gum) from the front garden of 113 Webster Street, Lake Wendouree.
  
3. The original planning permit sought to protect the Marri Tree by way of permit condition, therefore the proposed approval seeks to amend and remove several conditions on the planning permit and updates to the endorsed plans as follows:
  1. Remove reference to Condition 1b which required a previous set of amended plans to be provided deleting any reference to the removal of the tree;
  2. Remove Condition 7 – Tree Protection During Construction;
  3. Remove Condition 8 – Regulation of Activities in Tree Protection Zone
  4. Update the planning permit preamble to read “Demolition of existing dwelling, outbuilding and development of the land for a replacement dwelling, **removal of vegetation (liquid amber and marri tree)**, alterations to a crossover and front fence”;
  5. Update the endorsed plans to show the Marri Tree on the demolition site plan and no longer on the proposed site plan.
  
4. The need for the proposed amendments has resulted from the conflicting location of the Marri Tree in relation to the historic wrought iron fence with thick bluestone plinth and detailed pedestrian gate that is understood to be original to the site. The fence has been removed from the site (as allowed under PLP/2015/527/B) for repair works however is unable to be reinstalled in the approved configuration without significant damage to the Structural Root Zone (SRZ) of the Marri Tree.

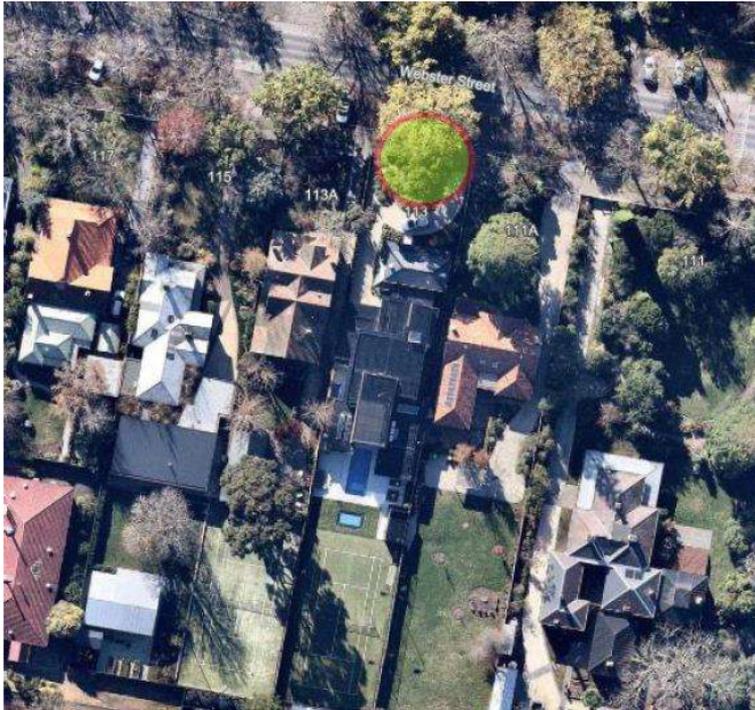


Figure 1. Site plan showing approximate location of subject tree at 113 Webster Street. (IntraMaps Image July 2021)



Figure 2. *Corymbia calophylla* – Marri Tree looking East (Tony Marshall 5<sup>th</sup> July 2021)

### Subject site and locality

5. The subject site is formally recognised as Lot 2 on Plan of Subdivision 725330L. The site is located on the southern side of Webster Street, approximately 200m west of the Webster Street and Drummond Street North intersection. The property has a 17m frontage to Webster Street, depth of 98m and a total area of 1697sqm. To the north, east and west, the site is surrounded by well-established residential development of varying lot sizes. The southern boundary abuts the Australian Catholic University (ACU) Ballarat campus which fronts onto Mair Street and Ripon Avenue.

6. The site is located within one of Ballarat's most prestigious heritage streetscapes where residential buildings were constructed from the early 1860's (and possibly earlier) to the 1940's and into the early 1950's. The original dwelling that was located on the site was constructed circa 1875 with two significant canopy trees, a Liquid Ambar and Marri Tree planted soon after. The property is now occupied by a new dwelling, tennis court and circular driveway that was approved under planning permit PLP/2015/627/B.
7. Webster Street is renowned for its well-established front gardens, many with prominent front fences of various styles and large established canopy trees. The road reserve is flanked by mature Oak trees that provide significant canopy coverage and further support the garden character of the site and streetscape.
8. The property is located within the General Residential Zone, Schedule 1 (GRZ1) and is affected by the Heritage Overlay, Schedule 166 (HO166), Design and Development Overlay, Schedule 7 (DDO7) and Vegetation Protection Overlay, Schedule 2 (VPO2).



Figure 3. Aerial image of subject site highlighted red

### Permit/Site History

9. Planning permit PLP/2015/627 was approved on 25 November 2015. This permit allowed for the "demolition of the existing dwelling, outbuilding and development of the land for a replacement dwelling (utilising the original building fabric), removal of vegetation (liquid amber), alterations to a crossover and front fence". The permit triggers were for demolition under the Heritage Overlay, buildings and works (including the new crossover) under both the Heritage and Design and Development Overlays and tree removal under the Vegetation Protection Overlay, Schedule 2. It is noted that the changes to the existing fence to be realigned to a central configuration were approved under this original planning permit.
10. The permit was then amended in April 2018 to facilitate alternate development plans, a tennis court and a new/secondary vehicle crossover. The existing conditions of the site generally reflect these plans. The fence design was modified at this point to allow for a second vehicle entry point and the circular driveway. It is understood the fence was removed for repair following this approval.

11. The permit was then amended for a third time in August 2019 to accommodate minor alterations to the rear of the dwelling. This amendment application also sought approval to remove the Marri Tree. At the time of that assessment, Planning Officers were not satisfied that suitable evidence had been provided to justify the removal of the tree. As such, the application was amended to retain the tree. During this amendment process, a thorough investigation into the health of the tree was undertaken. This assessment concluded that the tree was in good health.
12. Since this amendment was approved, Council Officers have met with the applicant and property owners to discuss the conflict between the fence and tree further. It was then agreed that Council would assist the property owner with risk prevention pruning and replacement of the existing cable brace. These works have now been carried out.

### Submissions

13. Council has received five objections in response to the application. The concerns raised by objectors are summarised as follows:
- Discontent at the incremental changes to the subject site over time and the possibility that the removal of the tree will impact upon the garden character of the area;
  - The tree is healthy, it should not be removed;
  - The historic fence should not be reinstated to the detriment to the tree; and
  - Loss of habitat for native wildlife.
14. An online mediation meeting was held on Tuesday 20 July 2021. This meeting was attended by the Responsible Officer, the Manager of Statutory Planning, Cr Eddy, the applicant, the property owners and one of the five objectors. The mediation meeting did not result in the withdrawal of any objections.

### Referrals

15. The following internal referrals have been undertaken:

Department	Advice
City Design Studio Vegetation Officer	<p><i>Can the tree be reasonably retained? – Yes</i></p> <ul style="list-style-type: none"> <li>▪ Mature <i>Corymbia calophylla</i> – Flowering Gum;</li> <li>▪ Tree has reached full size;</li> <li>▪ Good life expectancy;</li> <li>▪ Overall tree health is good and displaying good vigour;</li> <li>▪ Excellent buttressing at lower trunk level which indicates good vigor and stability;</li> <li>▪ Branching habit is generally good and consistent with the species for a tree of this age and species;</li> <li>▪ One branch attachment has been braced. Installed many years ago, this installation has proven to be effective;</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Minor root disturbance observed along boundary. Possibly caused during the removal of the iron railing fence and bluestone footings;</li> <li>▪ Target requirements easily managed through normal Arboricultural practice;</li> <li>▪ As with all trees, there is a possibility of limb failure. In this cast the tree can be managed through normal Arboricultural practice;</li> <li>▪ Amenity pruning advised;</li> </ul> <p><i>Does the tree contribute to the overall street scape of the area? – Yes</i></p> <ul style="list-style-type: none"> <li>▪ The tree makes a significant contribution to the streetscape because of its size, age, species and its contribution to overall amenity. It contributes significantly to the historic character of the Webster Street precinct;</li> <li>▪ <i>Corymbia calophylla</i> considered rare locally;</li> <li>▪ The combined loss of vegetation due to the development and construction of the circular driveway within the front setback has elevated the significance of this tree. It has made the tree more prominent, and its retention is therefore more important.</li> </ul> <p><i>Can the fence be fully reinstated in its original condition in its original alignment using conventional methods? - No</i></p> <ul style="list-style-type: none"> <li>▪ Only a small “tribute” of the original fence can be reinstated;</li> <li>▪ The original remaining fence layout has now been greatly changed;</li> <li>▪ If traditional methods are used to reinstate the fence, there is no way it can be reinstated in its original condition or alignment using conventional methods;</li> <li>▪ Modifying the construction of the fence could be achieved subject to a detailed design bridging construction or rethinking around alignment;</li> <li>▪ If there are attempts made to reinstate the fence, there must be careful consideration around the requirement to provide the tree with protection to ensure its ongoing viability, especially for works within the structural root zone.</li> </ul> <p>Trees such as these are not easily replaced and any decisions around removal or retention must be given careful consideration. Given the tree’s prominence, current contribution to the surrounding amenity and good prospects of longevity in the landscape, every effort should be made to ensure the tree is protected from future damage that may see any decline in the tree’s health but more importantly structural integrity.</p>
<b>Officer comment</b>	The assessment provided by Council’s Vegetation Officer supports the retention of the tree and subsequent refusal of the application. A more comprehensive report which further supports the above points has been attached as an appendix to this assessment.

**Officer Direct or Indirect Interest**

16. No officer involved in the preparation of this report has declared any direct or indirect conflict of interest.

## Planning Policy Framework

17. The following policies are relevant to the consideration of this application:

- Clause 15.01-5S *Neighbourhood Character* - To recognise, support and protect neighbourhood character, cultural identity, and sense of place.
- Clause 21.01-4 *Environmental and Landscape Values* - Protecting and enhancing the distinctive sense of place, cultural identity and the natural, cultural and historic landscape across the Ballarat municipality.
- Clause 21.06-1 *Urban Design* - To protect and enhance the quality and character of built areas, considering context and local values.
- Clause 21.06-3 *Neighbourhood Character* - To recognise places of distinct neighbourhood character.

## Zoning

18. The site is located in the General Residential Zone, the purposes of which include:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To encourage development that respects the neighbourhood character of the area.
- To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.
- To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

## Overlays

19. The following overlays apply to the land:

- Heritage Overlay, Schedule 166 (HO166);
- Design and Development Overlay, Schedule 7 (DDO7);
- Vegetation Protection Overlay, Schedule 2 (VPO2)

## Heritage Overlay

20. The purpose of the Heritage Overlay is to protect, conserve and enhance heritage places of natural or cultural significance, including those elements which contribute to the significance of heritage places, and to ensure that development does not adversely affect the significance of heritage places.

21. The *Ballarat Heritage Precincts – Statements of Significance 2006* describes the Central Ballarat Heritage Precinct (HO166) as being characterised by *numerous well-maintained private gardens, some of which contain notable mature tree specimens... Other features of the precinct are the mature street plantings, grass/gravel shoulders, early tram shelters, the landscaped private and public open space, fences, private gardens and mature canopy trees.*"

22. Mature canopy trees on private property are an identified feature of this Heritage Precinct. The wrought iron fence (now removed) is also protected under the provisions of the Heritage Overlay.

## Design and Development Overlay

23. The purposes of the Design and Development Overlay are:

- To retain and enhance high quality Edwardian and inter-war residential urban character that has special significance to the City of Ballarat.
- To retain the existing rhythm and scale of development along the street frontage.
- To encourage new development that complements existing Edwardian and inter-war development in form, scale, height siting, materials and colour.
- To retain views of Nazareth House from Mill Street, west of Drummond Street North. To retain a visual connection between the street space and private land.
- To retain the existing garden character featuring exotic canopy trees.

#### Vegetation Protection Overlay

24. The purposes of the Vegetation Protection Overlay are:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To protect areas of significant vegetation.
- To ensure that development minimises loss of vegetation.
- To preserve existing trees and other vegetation.
- To recognise vegetation protection areas as locations of special significance, natural beauty, interest and importance.
- To maintain and enhance habitat and habitat corridors for indigenous fauna.
- To encourage the regeneration of native vegetation.

The statement of nature and significance of the vegetation protected by Schedule 2 to the Vegetation Protection Overlay is:

- Trees in private gardens and public spaces are significant as an important component of high quality and distinctive urban character in areas identified in the Ballarat Urban Character Study, 1999.
- Garden trees are significant for their contribution to the amenity, aesthetic and cultural values of these urban character areas, particularly in residential areas.
- Garden trees enhance individual properties and soften the appearance of buildings.
- The canopies of trees in private gardens make a significant contribution to the quality and character of the adjacent public street spaces.

The vegetation protection objectives to be achieved in accordance with Schedule 2 to the Vegetation Protection Overlay are:

- To retain the amenity, aesthetic character and cultural value that garden trees and street trees contribute to areas of high quality and distinctive urban character, particularly in residential areas.
- To retain the presence of tree canopies as a significant feature contributing to the character of these areas, and of the public street space in particular.
- To prevent the loss of garden trees incurred by new development.

25. Clause 42.02-2 (VPO) states a planning permit is required for the removal of any tree that is at least 4 metres high and located in a private front garden or within the road reserve.

26. Before deciding on an application the Responsible Authority must consider:

- Whether the proposal meets the above vegetation protection objectives;
- The impact that the proposed tree removal would have on:
  1. The character of the area;
  2. The appearance of development on the site;

- For any proposal to plant new trees on the site, whether the proposed species are consistent with the character of existing vegetation, and the proportion of new trees that would be semi-advanced or advanced in size.
- Whether the lopping or removal of the vegetation is appropriate due to its age or health.

**Particular Provisions**

There are no relevant Particular Provisions.

**Planning Scheme Amendments**

There are no planning scheme amendments relevant to this application.

**KEY MATTERS**

27. The proposed tree removal raises three key considerations to be assessed as follows:
- The overall health of the tree;
  - The impact of the tree removal upon the character of the surrounding area; and
  - The proposed replacement planting.

**Health of the Marri Tree**

28. The decision guidelines of the VPO include whether the lopping or removal of the vegetation is appropriate due to its age or health.
29. In the documentation submitted with the application, which includes various arboricultural reports, the advice has been relatively consistent in that the health of the tree (in an uninterrupted lifestyle – i.e. without the reintroduction of the fence) is not in a state of decline. This is further supported by historic file notes from three Arborists employed by Council over a period of more than three years and an additional consulting arborist who conducted a thorough climbing investigation in October 2018. The results of the climbing inspection (which is considered to be the most indicative of the true health of the tree) determined that it was not at risk of failure and was in overall good health at the time of inspection.
30. Whilst it is possible the tree was impacted during the construction of the dwelling and works on site, in what is understood to be an act of good faith between the property owners and Council to support the regenerative health of the tree after completion of these works, Council have assisted the property owners in the maintenance of the Marri Tree by providing professional pruning services and the replacement of a cable brace following the completion of the replacement dwelling.
31. A visual assessment by the Council's Vegetation Officer (a qualified Arborist) was undertaken on 5 July 2021. The resultant report concludes that the tree is in overall good health and has a Useful Life Expectancy (ULE) of between 15 and 30 years provided it is pruned and maintained appropriately.
32. It is therefore considered that without the interference of the reinstatement of the fence, the Marri Tree is in good health and would likely live for a considerable length of time.

**Impact of tree removal upon neighbourhood character**

33. With the health of the tree determined to be sound, consideration must be given to the impact of its proposed removal upon neighbourhood character.

34. At a primary level, the protection of this tree must be considered from a neighbourhood character perspective given that Schedule 2 to the VPO was applied to the site in the interests of “urban character vegetation”. This overlay aims to protect trees in private front gardens implying that their contribution to the streetscape is important and provides amenity, aesthetic and cultural value.
35. The Ballarat Planning Scheme emphasises the importance of neighbourhood character and all the contributing factors within the built and natural environment. This is supported by Clause 21.01-4 *Environmental and Landscape Values* which seeks to protect the distinctive sense of place, cultural identity and the natural, cultural and historic landscape across Ballarat.
36. Whilst the exact age of the Marri Tree is not known, there is a strong likelihood that it was planted around the time that the original dwelling was constructed in the late 19<sup>th</sup> Century, making it up to 150 years old. The tree has undeniably become part of the fabric of the neighbourhood and provides a clear historic connection to place.
37. The concept of connection to place implies a strong social and cultural connection to a particular article and is inherently what underpins the value within which communities seek to protect neighbourhood character. The removal of the Marri Tree would contravene state policy at Clause 15.01-5S *Neighbourhood Character* which provides guidance with regard to the recognition, support and protection of neighbourhood character, cultural identity and sense of place. The Marri Tree displays a strong aesthetic, cultural and historical presence along Webster Street as one of the few non-indigenous species (native to Western Australia) that is not of European origins protected by Schedule 2 of the VPO.
38. On a broader scale, the Marri Tree is one of two specimens in Ballarat of this approximate age and size with the other tree located within the Ballarat Botanical Gardens. On this basis, it is reasonable to suggest that this specific tree adds to the character of Ballarat as a whole when considering the context and local value it holds.
39. The significance of garden character is reflected in the objectives of both the VPO and Design and Development Overlay, Schedule 7. Both these overlays are clear in protecting front garden character, particularly with respect to established ‘exotic’ canopy trees. The synergy between the aspirations of the two overlays further supports the retention of the Marri Tree. Given previous amendments have allowed for the removal of an established and large Liquid Amber located within the front garden of the property, and that all other vegetation aside from the Marri Tree has now been removed, this Marri Tree remains the only ‘original’ vegetation left of what is understood to have been a well-established cottage garden.
40. The Marri Tree is in good health and should remain so with regular maintenance from qualified Arborists. It is a rare example of a species to have grown to such size and to allow its removal would contradict the provisions of the VPO.

#### **Proposed Replacement Planting**

41. The proposed replanting on site requires consideration in accordance with the decision guidelines of Schedule 2 to the VPO. The cottage-style gardens of many surrounding properties feature open lawns, various exotic trees, shrubs and flowering plants. The landscape plan that was provided with this amendment (which assumes the loss of the Marri Tree) seeks to provide a densely planted garden with central garden path paved

in bluestones pitchers, filled with various flowers and deciduous trees. There is no grass proposed at the front as the circular driveway severely restricts the plantable area.

42. What is understood to replace the Marri Tree are two Forest Pansies located symmetrically on the inside of the circular driveway either side of the garden path. Whilst it is acknowledged that these trees can grow up to 5m in height, their size at maturity will still be significantly less than the exotic trees located in the surrounding area and therefore do not reasonably reflect the character that is intended here. Given the proposed feature trees will be a shadow of what the existing Marri Tree is at almost 15m tall, the proposed replacement trees are not considered suitable justification to support the removal of the Marri Tree.

#### **Fence**

43. The applicant is of the view that the Marri Tree must be removed to facilitate the reinstatement of the original fence. It is noted that this fence no longer has an association with the dwelling on the site. This is on the basis the original dwelling was previously demolished and a new dwelling constructed in its place. Furthermore, in order to reinstate the fence, it would need to be reconstructed in a different format to its original location and design given the dual crossovers now exist. As such, the historic integrity of the fence is now severely undermined and its reinstatement would not outweigh the historic value associated with the retention of the Marri Tree.

#### **Conclusion**

44. It is considered that the removal of a healthy and rare Marri Tree that holds social, cultural and historical value would have an irreversible impact on the neighbourhood and garden character of the subject site and Webster Street and the proposed replanting would not provide a suitable replacement.

#### **OFFICER RECOMMENDATION**

##### **45. That Council:**

- 45.1. Having caused notice of Planning Permit Application PLP/2015/627/C to be given under Section 52 of the *Planning and Environment Act 1987*; and having considered all the matters required under Section 60 of the *Planning and Environment Act 1987* decide to Refuse to Grant an Amendment in respect of the land known and described as 113 Webster Street, Lake Wendouree for the removal of one Marri Tree and related amendments to permit conditions on the following grounds:**

- 1. The application fails to comply with the Planning Policy Framework at Clause 15.01-5S and Local Planning Policy at Clauses 21.01-4, 21.06-1 and 21.06-3. The removal of the Mari Tree contravenes objectives seeking to protect areas of natural and cultural significance and would adversely impact upon the established garden setting of the subject site and Webster Street in general.**
- 2. The application fails to comply with the purposes, objectives and decision guidelines of Schedule 2 to the Vegetation Protection Overlay at Clause 42.02 of the Ballarat Planning Scheme.**

**ATTACHMENTS**

1. Governance Review [6.1.1 - 1 page]

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#### **ALIGNMENT WITH COUNCIL VISION, COUNCIL PLAN, STRATEGIES AND POLICIES**

1. The report aligns with Council's Vision, Council Plan, Strategies and Policies.

#### **COMMUNITY IMPACT**

2. There are no community impacts identified for the subject of this report.

#### **CLIMATE EMERGENCY AND ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

3. There are no climate emergency and environmental sustainability implications identified for the subject of this report.

#### **ECONOMIC SUSTAINABILITY IMPLICATIONS**

4. There are no economic sustainability implications identified for the subject of this report.

#### **FINANCIAL IMPLICATIONS**

5. The cost of running a VCAT hearing is already included within the Statutory Planning Unit's approved budget.

#### **LEGAL AND RISK CONSIDERATIONS**

6. Potential of tree failure.

#### **HUMAN RIGHTS CONSIDERATIONS**

7. It is considered that the report does not impact on any human rights identified in the *Charter of Human Rights and Responsibilities Act 2006*.

#### **COMMUNITY CONSULTATION AND ENGAGEMENT**

8. The planning permit application was advertised pursuant to Section 52 of the *Planning and Environment Act 1987*.

#### **GENDER EQUALITY ACT 2020**

9. There are no gender equality implications identified for the subject of this report.

#### **CONFLICTS OF INTEREST THAT HAVE ARISEN IN PREPARATION OF THE REPORT**

10. Council officers affirm that no general or material conflicts need to be declared in relation to the matter of this report.

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## 6.2. PLANNING SCHEME AMENDMENT C225 - WOODMANS HILL

**Division:** Development and Growth  
**Director:** Natalie Robertson  
**Author/Position:** Rex Zhang– Strategic Planner

### PURPOSE

1. To advise Council on the outcome of public exhibition of Planning Scheme Amendment C225ball (Woodmans Hill Rezoning).
2. To consider the adoption of Planning Scheme Amendment C225ball.

### BACKGROUND

3. Amendment C225ball proposes to rezone approx. 11.9 hectares of land in Brown Hill from Rural Living Zone (RLZ) to Commercial 2 Zone (C2Z) to facilitate commercial development and promote the development of the area as a gateway precinct to Ballarat.
4. The amendment was prepared to facilitate development of the land generally in accordance with the *Woodmans Hill Gateway Masterplan (2015)*. The area was identified in the masterplan for 'potential future development'.



### KEY MATTERS

5. The amendment was publicly exhibited between 1 July 2021 and 2 August 2021. A total of 17 submissions were received during the exhibition process. Twelve submissions were supportive of the amendment, four submissions offered neutral comments or information while one submission opposed the amendment but was later withdrawn.
6. Four submissions offered neutral comments or information and did not oppose the amendment.
  - **Waddawarung Traditional Owners Aboriginal Corporation** offered no advice on this amendment.

- **The Environmental Protection Authority (Victoria)** noted that there is medium potential for contaminated land due to previous vegetable farming use. Overall risk of the land is low.
  - **Central Highlands Water** noted that there is no formal servicing plan for this area at the present. However, the proponent has engaged with engineers and Central Highlands Water to ascertain the feasibility of providing these services.
  - **Moorabool Shire Council** noted current concerns with the operation, safety and geometry of the Brewery Tap Road / Western Highway intersection which may be further affected by future commercial development. Council officers will request an update on the timing of the intersection's upgrade, which is the responsibility of Regional Roads Victoria.
7. One private submission opposed the amendment with concerns that the Commercial 2 Zone would allow inappropriate development in areas bordering Rural Living Zone properties and introduce additional traffic risk to Brewery Tap Road.
  8. Council officers discussed the intent and background of the amendment with the submitter and consensus was reached for the landowners within the proposed rezoning area to lodge a Section 173 Agreement in order to protect the amenity of neighbouring properties on Orchard Lane.
  9. The proposed Section 173 Agreement will ensure that:
    - Kokoda Street along the northern boundary of the parcels will not be constructed any further west of residential properties on the east side of Orchard Lane.
    - A two metre high earth mound and colorbond fencing will be erected at the north-western and western boundary of the land.
    - No vehicle access to Orchard Lane will be provided from Kokoda Street or any rezoned Commercial 2 Zone parcels.
  10. As a result, the opposing submission has been withdrawn with the consensus that the Section 173 Agreement will be lodged.
  11. As the amendment has been exhibited in accordance with the *Planning and Environment Act 1987* and there are no unresolved submissions, it is recommended that Amendment C225ball be adopted.

## OFFICER RECOMMENDATION

### 12. That the Planning Delegated Committee:

#### 12.1 Adopt Ballarat Planning Scheme Amendment C225ball as exhibited and submit to the Minister for Planning for approval

## ATTACHMENTS

1. Governance Review [6.2.1 - 1 page]
2. Ballarat C 225 ball Explanatory Report Exhibition Gazetted [6.2.2 - 7 pages]

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**ALIGNMENT WITH COUNCIL VISION, COUNCIL PLAN, STRATEGIES AND POLICIES**

1. Planning scheme amendment C225ball supports the following goals of the City of Ballarat Council Plan 2017-2021:
  - *Prosperity* – The amendment allows for commercial development of the land and supports future prosperity and growth of the Woodmans Hill area as a gateway precinct to Ballarat.
  - *Sustainability* – the amendment supports the growth and development of the area in a structured way, reflective of community needs and aspirations.
2. The amendment facilitates further implementation of the Woodmans Hill Gateway Masterplan (2015).

**COMMUNITY IMPACT**

3. The amendment will have a positive community impact by promoting the development of the Woodmans Hill area as a gateway precinct to Ballarat.

**CLIMATE EMERGENCY AND ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

4. The amendment has no impact on either consideration.

**ECONOMIC SUSTAINABILITY IMPLICATIONS**

5. The amendment facilitates further commercial development of the Woodmans Hill Gateway precinct. This will increase the economic sustainability of the area.

**HUMAN RIGHTS CONSIDERATIONS**

6. There are no implications on human rights resulting from the amendment.

**COMMUNITY CONSULTATION AND ENGAGEMENT**

7. Amendment C225ball was formally exhibited between 1 July 2021 and 2 August 2021. 17 submissions were received during the exhibition process. One opposing submission was resolved and has been withdrawn.

**GENDER EQUALITY ACT 2020**

8. There are no gender equality implications identified for the subject of this report.

**CONFLICTS OF INTEREST THAT HAVE ARISEN IN THE PREPARATION OF THIS REPORT**

9. No Council Officer who has provided advice in relation to this report have a conflict of interest regarding this matter.

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OFFICIAL

*Planning and Environment Act 1987*

## BALLARAT PLANNING SCHEME

### AMENDMENT C225BALL

#### EXPLANATORY REPORT

##### Who is the planning authority?

This amendment has been prepared by the City of Ballarat who is the planning authority for this amendment.

The amendment has been made at the request of Kaufmann Property Consultants.

##### Land affected by the Amendment

The amendment applies to four land parcels in Brown Hill, namely: Crown Allotment 21 (Section 24), Crown Allotment 20 (Section 24), Lot 1 on PS 629326M and Lot 2 on PS 629326M. The land is located in the Woodmans Hill Gateway area at the eastern entrance of the Western Highway to Ballarat.

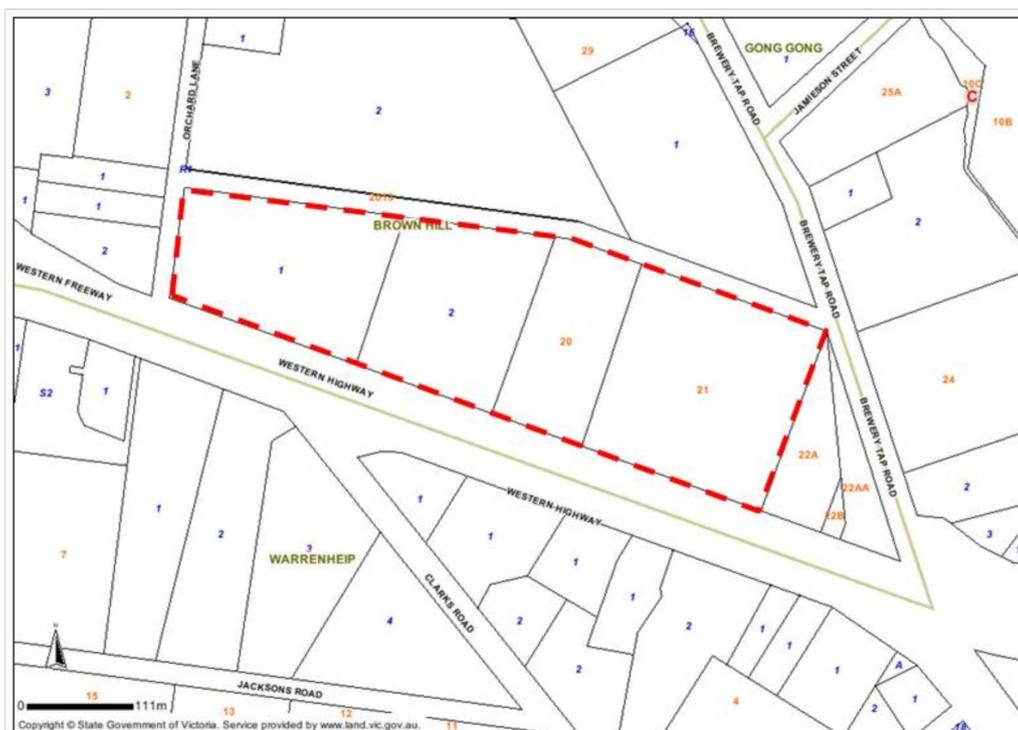


Figure 1: Land affected by the amendment

##### What the amendment does

The amendment will rezone approx. 11.9 hectares of land in Brown Hill from Rural Living Zone (RLZ) to Commercial 2 Zone (C2Z) to facilitate development in accordance with the *Woodmans Hill Gateway Master Plan (2015)*.

Specifically, the amendment will:

- Rezone Crown Allotment 21 (Section 24), Crown Allotment 20 (Section 24), Lot 1 on PS 629326M and Lot 2 on PS 629326M, Brown Hill from Rural Living Zone to Commercial 2 Zone.

- Amend Planning Scheme Map No. 31.

### **Strategic assessment of the Amendment**

#### **Why is the Amendment required?**

The amendment is required to facilitate the development of land generally in accordance with the *Woodmans Hill Gateway Mater Plan (2015)*.

The amendment is required to facilitate the commercial development of the land and promote the development of the gateway precinct to Ballarat.

The proposed amendment is also consistent with the recommendations of the C173 Panel Report dated 1 December 2014.

#### **How does the Amendment implement the objectives of planning in Victoria?**

The amendment appropriately implements several objectives of planning in Victoria under section 4 of the *Planning and Environment Act 1987 (the Act)*, in particular:

- To provide for the fair, orderly, economic and sustainable use and development of the land,
- To secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria,
- To balance the present and future interests of all Victorians.

The amendment gives effect to these guiding principles and objectives by encouraging orderly development of land which forms part of a gateway precinct.

Economic, environmental and traffic assessments have been prepared for the land to ensure that all social, environmental and economic matters have been appropriately considered which is consistent with the objectives of planning in Victoria.

#### **How does the Amendment address any environmental, social and economic effects?**

It is considered that the proposed amendment implements the objectives of planning in Victoria of the Act and adequately addresses any environmental, social and economic effects given that the proposal is considered to achieve a net community benefit for the reasons outlined in this report and supporting reports.

- The amendment is not anticipated to have any significant adverse environmental effects.
- The site has historically been used for grazing and agricultural uses and is cleared of all native vegetation and does not support any significant environmental features. The evidence from Biosis (October 2014) presented to and supported by the Planning Panel in Amendment C173 concluded that vegetation and environment within the area designated in C173 as "Potential Future Development" (which is the subject site) is currently unsuitable as habitat for most wildlife and as a wildlife movement corridor.
- There is likely to be a positive effect on air, land and water quality of the protected area.
- The effect on the health of ecological systems and the biodiversity they support (including ecosystems, habitats, species and genetic diversity) will be improved through the restoration of the waterway and stormwater management.
- There will be no impact on natural resources.
- In support of this application, an Economic Impact Assessment has been undertaken by Ethos Urban (April 2020) which confirms the positive economic benefits and no impact to the retail hierarchy.
- The amendment will have a positive economic effect through construction jobs, ongoing employment opportunities and catchment of trade which is currently being lost as demonstrated by the Economic Impact Assessment (Ethos Urban, April 2020).
- Traffic and access movements are acceptable as demonstrated in the Traffix Group Assessment (March 2020).

There are no Aboriginal cultural heritage issues on the site that may require specific consideration.

**Does the Amendment address relevant bushfire risk?**

The site is located within a designated bushfire prone area, therefore consideration to the policy at Clause 13.02-1S in relation to bushfire planning is required. The broader area, including the other land in the Mixed Use Zone and Rural Living Zone is also within the designated bushfire prone area.

A bushfire hazard assessment has been prepared to address the proposed rezoning of the site. The site and adjoining property have been categorised as "BAL Low & 12.5". Vegetation in the surrounding area has been classified as "low threat & grassland".

The proposed rezoning and construction of any buildings can appropriately implement the strategies in Clause 13.02 that aim to prioritise protection of human life, meeting the Country Fire Authority (CFA) strategic planning principles for bushfire. As the site is largely of low risk landscape, any buildings can be setback sufficiently from any hazardous vegetation to achieve a BAL-12.5 rating under AS 3959-2009 Construction of Buildings in Bushfire-prone Areas (Standards Australia, 2009).

It is also noted that the list of land uses at Clause 13.02-1S are generally of a sensitive nature and where large numbers of people congregate. This proposal does not seek to introduce a use listed in the policy. Importantly it is submitted that:

- The risk of bushfire to people, property and community infrastructure as a result of this amendment is negligible and no more than what currently exists in the locality.
- The implementation of appropriate bushfire protection measures to address the identified bushfire risk can be addressed at the Planning or Building Permit stage as required.
- Any bushfire protection measures can be implemented without unacceptable biodiversity impacts.

The risk to existing residents of the area will be reduced by the development of additional urban areas and associated low threat or non-vegetated land. This will eventually create more areas that can achieve a BAL-LOW rating with potential to be excised from the BPA in the future, given that they are sufficiently distance from any hazardous vegetation.

The parcels have vehicular access from Kokada St, Orchard Lane and Brewery Tap Road and is adjacent to the Western Highway. Any access arrangements, including internal accessways, can be designed to enable the safe and efficient movement of vehicles in and around the site.

The Country Fire Authority (CFA) provided a response in relation to the proposed rezoning of the site from Rural Living Zone to Mixed Used Zone (later revised to Commercial 2 Zone). The CFA is satisfied that a Bushfire Planning Assessment for the subject land is not required at this time. The CFA will be formally notified as part of the amendment's exhibition.

**Does the Amendment comply with the requirements of any Minister's Direction applicable to the amendment?**

The amendment is consistent with Ministerial Direction No. 1 – Potentially Contaminated Land. The site is currently classified as "Other Uses-Agriculture" and potential contamination is considered a medium risk. The application of the Commercial 2 Zone ensures that sensitive uses such as accommodation and animal production are prohibited on the site. The proposed C2Z will also protect the amenity of adjacent, more sensitive uses.

The amendment complies with the requirements of the Ministerial Direction – The Form and Content of Planning Schemes (section 7(5) of the Act) and Ministerial Direction No. 11 (Strategic Assessment of Amendments).

**How does the Amendment support or implement the Planning Policy Framework and any adopted State policy?**

The proposal supports the relevant objectives and strategies of the PPF through the facilitation of a commercial development which has access to all services and infrastructure, has excellent access and will improve road network linkages and will have significant economic benefits. These outcomes of the amendment support or give effect to the policy framework and provide a net community benefit.

**How does the Amendment support or implement the Local Planning Policy Framework, and specifically the Municipal Strategic Statement?**

The amendment is consistent with the Local Planning Policy Framework and in particular supports its objectives as follows:

The amendment supports Clause 21.01-4 Key Issues, “planning for sufficient land supply for economic growth” and “supporting growth in the tourism industry in Ballarat” through the rezoning of the site to the Commercial 2 Zone (C2Z).

The most relevant policy is Clause 21.09-4 Woodmans Hill, which seeks to implement the Woodmans Hill Gateway Precinct Master Plan (January 2015). It recognises the Woodmans Hill Gateway as one of the major entry points to the City, and highlights the opportunity to improve the entry experience, both visually and from a land use perspective.

The masterplan does not make specific recommendations to the existing zoning of the site. However, it does recognise the subject site as a ‘potential future development site’ with the recommendation:

*‘That the Rural Living Zone land with highway frontage between Brewery Tap Road and Orchard Lane, and flower farm at 12 Brewery Tap Road both be recognised as ‘potential future development site’s, but that rezoning of the sites to facilitate development be required to be undertaken by a proponent as a site specific amendment, supported by the general intent of this plan.’*

### **Does the Amendment make proper use of the Victoria Planning Provisions?**

The amendment makes proper use of the Victorian Planning Provisions by applying the Commercial 2 Zone (C2Z) to the site in order to facilitate the development of the land. The Commercial 2 Zone is the most appropriate zoning for the site. The purpose of the C2Z aligns with the use and development outcomes envisioned in Clause 21.09-4 Woodmans Hill and the *Woodmans Hill Gateway Master Plan (2015)*, which identifies the site as a ‘potential future development site’.

Clause 21.09-4 includes the objective for the precinct “to achieve a land use mix that has a focus on highway related functions, with ancillary retail and support for existing tourism uses that capture passing economic activity that contributes to the Ballarat economy.” This matches the objective of the C2Z “To encourage commercial areas for offices, appropriate manufacturing and industries, bulky goods retailing, other retail uses, and associated business and commercial services.”

The C2Z will provide for an orderly outcome through consolidating commercial land use and built form outcomes for the site. Sensitive uses such as accommodation (other than Caretaker’s house and Residential hotel) and animal production are prohibited in the C2Z. The C2Z will also apply sufficient land use restrictions and threshold distances to discourage the “use of the land for industrial purposes, freight and logistic depots”, as outlined in the Master Plan. These restrictions will be applicable to all four parcels of the site as they are adjacent to the existing Low Density Residential Zone (LDRZ) and Rural Living Zone (RLZ).

Consideration is given to the application of a Development Plan Overlay (DPO) to the site as recommended in the Master Plan. The proposed controls under the Commercial 2 Zone, along with the existing application requirements within DDO2 and Clause 21.09-4 Woodmans Hill are sufficient to address land use, access, bushfire and other matters stipulated in the Master Plan. A further layer of control such as a DPO is considered unnecessary and is not expected to advance any strategic planning outcome beyond what is currently provided for in the planning scheme.

The existing Schedule 2 to the Design and Development Overlay (DDO2) will ensure that the land is developed in an orderly manner in line with the Planning Panel’s recommendations in C173. DDO2 provides a number of design objectives and outlines “to ensure that buildings and works are generally consistent with the Woodmans Hill Gateway Precinct Master Plan”. This includes:

- Noise attenuation – ensures that new development deals with noise impacts from the Western Highway.
- Building height, bulk and setbacks – ensures that new development is respectful of the landscape and natural values of the area and considers the alignment of the Western Highway and the and Public Acquisition Overlay for the future Freeway.
- Front fences – designed to minimise visual impacts.
- Landscaping – deals with landscaping outcomes to be achieved.
- Advertising signage – seeks to avoid visual clutter and signs which may interfere with road safety.
- Access – ensures that access is provided via local roads or a service road arrangement with no direct access from Western Highway.

A bushfire hazard assessment has been prepared to address the proposed rezoning of the site. The site is located within a designated bushfire prone area and is not affected by a Bushfire Management Overlay (BMO). The site is categorised as “BAL Low & 12.5” while surrounding vegetation is classified as “low threat & grassland”. As the site is largely of low risk landscape, any buildings can be setback

sufficiently from any hazardous vegetation to achieve a BAL-12.5 rating under AS 3959-2009 Construction of Buildings in Bushfire-prone Areas (Standards Australia, 2009).

**How does the Amendment address the views of any relevant agency?**

Preliminary discussions with relevant agencies have confirmed that there are no foreseeable issues with the serviceability or infrastructure provision to the site.

The Country Fire Authority (CFA), Environmental Protection Authority (EPA) and Vicroads will be formally notified as part of the amendment's exhibition.

**Does the Amendment address relevant requirements of the Transport Integration Act 2010?**

The amendment is not likely to have an impact on the transport system, as defined by section 3 of the Transport Integration Act 2010. A Traffic Engineering Assessment has been prepared which identifies "no traffic engineering reason why the subject site should not be rezoned from Rural Living Zone to Commercial 2 Zone – Schedule 2."

Vicroads has provided a response in relation to the Woodmans Hill Master Plan (2015) which designates the site as a 'potential future development site'. Comments provided by Vicroads were implemented through Clause 21.09-4 Woodmans Hill and Schedule 2 to the Design and Development Overlay (DDO2) as part of amendment C173.

Clause 21.09-4 provides guidance on the traffic and access requirements for land uses adjacent to Western Highway through the form of application requirements. Applications are required to:

- Specifically address how the proposal capitalises on the access and visual exposure to the highway.
- Demonstrate why the use requires access and visual exposure to the highway for the economic viability of its operations.
- Demonstrate how the built form, layout, use, access arrangements and buffering are planned to ensure an appropriate interface with surrounding sensitive land uses on rural living and low density residential land and protect the existing rural character of the area. a
- Demonstrate that safe and appropriate access is provided, consistent with the Woodmans Hill Gateway Precinct Master Plan (January 2015).

DDO2 requires that "access to any development must be via local roads or via a service road arrangement. No direct access is permitted onto the Western Highway."

Vicroads will be formally notified as part of the amendment's exhibition.

**Resource and administrative costs**

The cost implications for a responsible authority in implementing and administering the new planning provisions is comparable to any other planning scheme implementation.

**Where you may inspect this Amendment**

The amendment can be inspected free of charge at the Ballarat City Council website at [www.ballarat.vic.gov.au](http://www.ballarat.vic.gov.au); or

**Ballarat City Council**  
**The Phoenix Building**  
**25 Armstrong Street South**  
**BALLARAT CENTRAL VIC**

The amendment can also be inspected free of charge at the Department of Environment Land, Water and Planning website at [www.delwp.vic.gov.au/public-inspection](http://www.delwp.vic.gov.au/public-inspection)

**Submissions**

Any person who may be affected by the Amendment may make a submission to the planning authority. Submissions about the Amendment must be received by 2 August 2021.

A submission must be sent to City of Ballarat, PO Box 655, Ballarat VIC 3350, or via email to [strategicplanningsubmissions@ballarat.vic.gov.au](mailto:strategicplanningsubmissions@ballarat.vic.gov.au).

**Panel hearing dates**

In accordance with Clause 4(2) of Ministerial Direction No.15 the following panel hearing dates have been set for this amendment:

- Directions hearing: 11 October 2021
- Panel hearing: 8 November 2021

**ATTACHMENT 1 – Mapping reference table**

Location	Land /Area Affected	Mapping Reference
Brown Hill	Crown Allotment 21, Crown Allotment 20, Lot 1 on PS 629326M and Lot 2 on PS 629326M, Western Highway	Ballarat C225ball 001znMap31 Authorisation

**7. GENERAL BUSINESS - MATTERS ARISING FROM THE AGENDA**

**8. CLOSE**