



19 March 2020

Submission of the Planning Authority

Amendment C216ball Part 2 to the Ballarat Planning Scheme

City of Ballarat's submission

Introduction

1. This submission is made by the City of Ballarat.
2. City of Ballarat is the Planning Authority for Amendment C216ball Part 2 (**Amendment**) to the Ballarat Planning Scheme (**Scheme**).
3. City of Ballarat has prepared and is the proponent of this Amendment.
4. The Amendment was exhibited as part of the parent Planning Scheme Amendment C216ball (**Amendment C216ball**), that was subsequently split into C216ball Part 1 and C216ball Part 2.
5. Amendment C216ball proposed to rezone 3 properties owned by the City of Ballarat to remove the public land zoning to allow for the sale of the properties.

Panel Directions

6. This submission responds to direction number 1 of the Panel Directions issued on 16 March 2020 that directs City of Ballarat to make available on its website its submission by 4:00pm on Friday 20 March 2020.
7. Panel Directions require this submission to address the following:
 - a) Background to the Amendment including the chronology of events
 - b) Strategic context and assessment
 - c) Issues identified in submissions and response to them
 - d) History of the current zoning of the subject site
 - e) Role of the site in the open space within Ballarat
 - f) Any suggested changes to the Amendment in the response to the submission.
8. Panel Directions also require City of Ballarat to provide an electronic copy of its open space strategy to the Panel by 4 pm on Friday 20 March 2020.

Background to the Amendment

9. Chronology of the amendment is at Attachment 1.
10. In 2016 City of Ballarat Property and Facilities Management Department completed a review of vacant and underutilised land owned by City of Ballarat. From this review City of Ballarat identified properties that were considered surplus to requirements.
11. On 26 August 2016 and 12 December 2018, Council resolved to commence and satisfy the required statutory processes required by the *Local Government Act* 1989 to dispose of properties assessed as surplus.
12. Upon completion of the process required by the *Local Government Act* 1989, City of Ballarat commenced Planning Scheme Amendment C216ball to rezone three properties owned by Council that are zoned for public purpose.

13. The three properties are:
 1. 15 Lake View Court, Ballarat North (**subject site**)
 2. Ealing Avenue Reserve located at Giot Drive, Wendouree
 3. 12A Albert Street, Sebastopol

14. At Ordinary Council Meeting on 3 July 2019, Council resolved to:
 1. Note that Council is required to undertake a planning scheme amendment to rezone three Council owned, public land zoned properties to proceed with the sale of these properties, as per Council resolutions R245/16 and R379/18.
 2. Seek authorisation from the Minister for Planning to prepare a planning scheme amendment, pursuant to Section 8A of the *Planning and Environment Act 1987* to rezone land at:
 - 15 Lake View Court, Ballarat North from Public Park and Recreation Zone to General Residential Zone Schedule 1
 - Part of Lot 1 PS545482N at Giot Drive Wendouree, from Public Park and Recreation Zone to General Residential Zone Schedule 1
 - 12A Albert Street, Sebastopol, from Public Use Zone Schedule 6 to Mixed Use Zone; and
 3. Place the Amendment on exhibition pursuant to Section 19 the Planning and Environment Act 1987.
R160/19

15. On 5 July 2019, City of Ballarat wrote to the Minister for Planning and sought authorisation to prepare Amendment C216ball, following the Council resolution of 3 July 2019.

16. In letter dated 19 July 2019, a delegate of the Minister for Planning requested the following information from the City of Ballarat:
 1. How does the proposed amendment support or implement the Local Planning Policy Framework, specifically Clause 19.02-6S (Open Space) of the Ballarat Planning Scheme.
 2. How does the proposed amendment address Ministerial Direction No. 1 Potentially Contaminated Land? The risk of potentially contaminated land affecting the proposed zoning change must be confirmed and inform the application for authorisation.

17. City of Ballarat responded to the request from the delegate of the Minister for Planning through the resubmission of the Explanatory Report and Planning Scheme Map Number 27 Environmental Audit Overlay on 10 October 2019.

18. In letter dated 1 November 2019, a delegate of the Minister for Planning authorised Council to prepare Amendment C216ball. The Minister's authorisation was subject to the following conditions:
 - That the draft explanatory report be amended to:
 - Include the heading 'What the amendment does' as per the Explanatory Report template.
 - Explain how the amendment implements the objectives of planning in Victoria
 - Explain how the amendment addresses Clause 13.02-1S Bushfire Planning

- Briefly clarify whether the amendment makes proper use of the Victoria Planning Provisions in relation to each of the proposed VPP tools.
- Explain how the amendment addresses the relevant requirements of the Transport Integration Act 2010.
- Explain how the Environment Protection Authority (EPA) has been consulted and its views incorporated in the amendment.
- That the amendment documentation be updated throughout to refer to C216ball
- That the instruction sheet be amended to include reference to the proposed Environmental Audit Overlay Map, and to adopt the structure contained in the Guidelines on Preparing Planning Scheme Amendment Documentation September 2014 (former DTPLI) i.e. a separate line is required for each map that is to be amended, inserted or deleted.

19. Amendment C216ball was formally exhibited under section 19 of the *Planning and Environment Act 1989* between 21 November 2019 to 23 December 2019.

20. Notice of the Amendment C216ball was:

- Made available, including all exhibited documents, in-person at City of Ballarat's offices
- Posted on City of Ballarat's website and on the Department of Environment, Land, Water and Planning (**Department**) website
- Sent to all affected and adjoining property owners and occupiers
- Sent to prescribed Ministers and public authorities
- Published in Ballarat Times (local Ballarat newspaper) on 21 November
- Published in the Victorian Government Gazette on 21 November 2019

21. Two drop-in sessions were held at City of Ballarat offices on 25 November 2019 and 20 December 2019.

22. Amendment C216ball documentation as exhibited comprised the following:

1. Explanatory Report
2. Instruction Sheet
3. Notice of Preparation of Amendment
4. Ballarat Planning Scheme Maps (Zone Maps 12, 17, 27 and Map27 Environmental Audit Overlay)

23. City of Ballarat received three submissions to the amendment. Of these, two submissions were from public authorities that had no objection to the amendment. The final submission objected to the amendment.

24. The one objecting submission concerned the rezoning of land at 15 Lake View Court, Ballarat North only and not the properties at Giot Drive, Wendouree or 12A Albert Street, Sebastopol.

25. The submission objected to the rezoning of the subject site on the following grounds:

1. Previous assurances given to the submitter that the land would not be developed
2. Diminished amenity, both personal amenity and the amenity of the neighbourhood, through the construction of up to three dwellings and loss of trees on the land.

26. The submission requested some form of design and character controls be introduced through Amendment C216ball to control the form of development on the land and amenity impacts.
27. City of Ballarat wrote to this submitter in letter dated 23 January 2020 acknowledging the submission, outlining the process for Council's consideration of the submission and amendment, and offering to further discuss the submitter's concerns.
28. City of Ballarat officers considered the three submissions and did not recommend any changes to the proposed planning scheme changes. However given the nature of the objecting submission relating to only one of the three properties, officers recommended splitting the amendment to continue with the amendment process for 12A Albert Street, Sebastopol and Giot Drive, Wendouree, and request the Minister appoint an independent Planning Panel to make recommendations to Council regarding 15 Lake View Court, Ballarat North.
29. At Ordinary Council Meeting on 19 February 2020, Council resolved to:
1. Split Ballarat Planning Scheme Amendment C216ball into two parts:
 - Part 1 - Rezone part of Lot 1 PS545482N at Giot Drive Wendouree from Public Park and Recreation Zone (PPRZ) to General Residential Zone Schedule 1 (GRZ1) and rezone land at 12A Albert Street, Sebastopol, from Public Use Zone Schedule 6 and GRZ1 to Mixed Use Zone and apply the Environmental Audit Overlay (EAO) in accordance with Ministerial Direction No. 1.
 - Part 2 - Rezone land at 15 Lake View Court, Ballarat North, Wendouree from PPRZ to General Residential Zone Schedule 1
 2. Adopt Ballarat Planning Scheme Amendment C216ball Part 1 as exhibited and submit the Amendment to the Minister for Planning for approval.
 3. Request that the Minister for Planning appoint an independent Planning Panel pursuant to Section 23 and the provisions of Part 8 of the Planning and Environment Act 1987 to consider the submissions received to Amendment C216ball Part 2 to the Ballarat Planning Scheme.
 4. Notify submitters of Council's resolution to request the appointment of an independent Planning Panel by the Minister of Planning for Planning Scheme Amendment C216ball Part 2.
- R37/20

Identification of the issues raised in submissions and City of Ballarat's response

30. The key issues raised in this submission are:
1. Previous assurances given to the submitter that the land would not be developed
 2. Diminished amenity, both personal amenity (loss of views from habitable rooms) and the amenity of the neighbourhood through the construction of up to three dwellings and associated loss of trees on the land.
31. In response;

Assurances the site would not be sold

32. City of Ballarat is required to manage land in its ownership in accordance with the *Local Government Act 1989* and is entitled to own, sell and use land. City of Ballarat has no

record of making assurances to the submitter that this land would be retained in Council ownership and has undertaken the process required by the legislation in order to notify the community of intent to sell the land. No submissions were received.

Multiple dwellings and neighbourhood character

33. The subject site is proposed to be zoned General Residential Zone – Schedule 1 consistent with surrounding land. The purposes of the General Residential Zone are:
1. To implement the Municipal Planning Strategy and the Planning Policy Framework.
 2. To encourage development that respects the neighbourhood character of the area.
 3. To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.
34. Clause 21.02 of the scheme seeks to provide for the growth of Ballarat while maintaining a compact, efficient and productive settlement, consistent with the long-term vision of the 10 Minute City.
35. The subject site is within an ongoing change area as identified by Clause 21.02-5. Ongoing change areas are defined as residential areas valued for their existing character and housing supply.
36. The objective of ongoing change areas is to facilitate limited incremental growth in ongoing change areas at a scale and density appropriate to the area.
37. City of Ballarat considers that a development outcome of more than one dwelling on this site appropriate in the context of the above policy, and Clause 21.02-7 that aims to provide a range of choices in housing design, location and density.
38. The subject site is in an established neighbourhood of Ballarat North that has good access to central Ballarat, and a range of neighbourhood recreation and local services.
39. City of Ballarat views the subject site as having potential for multiple dwellings (subject to planning permit approval) that would assist with meeting demand for growth while growing Ballarat consistent with the 10 Minute City objective.
40. In order to deliver and manage the built form outcome there are the applicable provisions in Clause 54 (for single dwelling) and 55 (for multiple dwellings) of the scheme. The provisions of Clause 55 and of the General Residential Zone will determine the number of dwellings that can be accommodated on the subject site.
41. Response to neighbourhood character is considered and required through the above provisions, for example Clause 55.02-1 requires a design response must respect the existing or preferred neighbourhood character.
42. City of Ballarat consider these provisions adequate to address the neighbourhood character.

Personal amenity

43. The submission raised issues concerning the loss of personal amenity (views from habitable rooms) due to future dwelling/s on the site.

44. The Victoria Planning Provisions and Ballarat Planning Scheme do not give any consideration to personal views, therefore beyond the height considerations of the General Residential Zone there is no additional consideration that can be given in a planning context to this issue raised by the submitter. Further, the views from the submitter's property are of the kind that would normally be expected in a suburban setting and not detrimental to existing residential amenity.
45. Part of the subject site that supports native vegetation is subject to the provisions of the Environmental Significance Overlay- Schedule 5. Under these provisions a planning permit is required to remove any native vegetation.
46. City of Ballarat considers these controls adequate to address the issue of native vegetation removal and impact on amenity, noting that planning officers would give fair consideration to any future planning permit application made to remove native vegetation against the objectives and decision guidelines of these controls.

History of the current zoning of the subject site

47. The subject site was created as a reserve in 1978 as a condition of the subdivision LP126274Y.
48. The site was owned by the Shire of Ballarat, and post local government amalgamations, the City of Ballarat.
49. The site has been zoned Public Park and Recreation Zone since the introduction of the Victoria Planning Provisions in 1997-2000.
50. No historical information on the zoning of the subject site was available for the preparation of this report, however it is understood from City of Ballarat Property and Facilities Management Department that the site has been in continuous public ownership with a public zone since its creation.

Role of the site in provision of open space within Ballarat

51. The subject site was declared surplus from the review undertaken by City of Ballarat Property and Facilities Management.
52. The subject site has no recreational infrastructure for the local community, is poorly located for community access, and has no connectivity to larger sites or linear movement corridors.
53. City of Ballarat Property and Facilities Management assessed the disposal of the site as having limited local impact to open space provision.
54. Additionally, the area of Ballarat North has a number of areas of open space with recreational assets such as walking trails, swimming pool, and native vegetation.
55. The Ballarat Open Space Strategy notes that sites may be retired from the open space network to assist in providing a well-balanced distribution of open space. The subject site does not meet the minimum suggested dimensions for a local park outlined at 7.1 of the Strategy.

Suggested changes to the Amendment in response to submissions

56. City of Ballarat has not suggested any changes to the Amendment in response to submissions.

Conclusion

57. This completes City of Ballarat's submission

A handwritten signature in black ink, appearing to read 'V McLeod', written in a cursive style.

Virginia McLeod
Senior Strategic Planner

Attachment 1

Chronology of events

Date	Event
2016	City of Ballarat Property and Facilities Management Department completed a review of vacant and underutilised land owned by City of Ballarat. From this review City of Ballarat identified properties that were considered surplus to requirements.
26 August 2016	<p>Council resolved to commence and satisfy the required statutory processes required by the <i>Local Government Act 1989</i> to dispose of properties assessed as surplus.</p> <ul style="list-style-type: none"> • 15 Lake View Court, Ballarat North • Part of Lot 1 PS545482N at Giot Drive Wendouree
12 December 2018	<p>Council resolved to commence and satisfy the required statutory processes required by the <i>Local Government Act 1989</i> to dispose of properties assessed as surplus.</p> <ul style="list-style-type: none"> • 12A Albert Street, Sebastopol
3 July 2019	<p>Council resolved to:</p> <ol style="list-style-type: none"> 1. Note that Council is required to undertake a planning scheme amendment to rezone three Council owned, public land zoned properties to proceed with the sale of these properties, as per Council resolutions R245/16 and R379/18. 2. Seek authorisation from the Minister for Planning to prepare a Planning Scheme Amendment, pursuant to Section 8A of the Planning and Environment Act 1987, to rezone land at: <ul style="list-style-type: none"> • 15 Lake View Court, Ballarat North from Public Park and Recreation Zone to General Residential Zone Schedule 1 • Part of Lot 1 PS545482N at Giot Drive Wendouree, from Public Park and Recreation Zone to General Residential Zone Schedule 1 • 12A Albert Street, Sebastopol, from Public Use Zone Schedule 6 and General Residential Zone Schedule 1 to Mixed Use Zone; and 3. Place the Amendment on exhibition pursuant to Section 19 of the Planning and Environment Act 1987.
5 July 2019	Council wrote to the Minister and sought authorisation to prepare Amendment C216.
1 November 2019	Minister authorised Council to prepare Amendment C216.
21 November 2019 – 23 December 2019	Amendment C216 formally exhibited.
19 February	<p>Council resolved to:</p> <ol style="list-style-type: none"> 1. Split Ballarat Planning Scheme Amendment C216 into two parts: <ul style="list-style-type: none"> • Part 1 - Rezone part of Lot 1 PS545482N at Giot Drive Wendouree from Public Park and Recreation Zone (PPRZ) to General Residential Zone Schedule 1 (GRZ1) and rezone land at 12A Albert Street, Sebastopol, from Public Use Zone Schedule 6 and GRZ1 to Mixed Use Zone and apply the Environmental Audit Overlay (EAO) in accordance with Ministerial Direction No. 1.

	<ul style="list-style-type: none"> • Part 2 - Rezone land at 15 Lake View Court, Ballarat North, Wendouree from PPRZ to General Residential Zone Schedule 1 <ol style="list-style-type: none"> 2. Adopt Ballarat Planning Scheme Amendment C216ball (Part 1) as exhibited and submit the Amendment to the Minister for Planning for approval. 3. Request that the Minister for Planning appoint an independent Planning Panel pursuant to Section 23 and the provisions of Part 8 of the Planning and Environment Act 1987 to consider the submissions received to Amendment C216ball (Part 2) to the Ballarat Planning Scheme. 4. Notify submitters of Council's resolution to request the appointment of an independent Planning Panel by the Minister of Planning for Planning Scheme Amendment C216ball (Part 2).
2 March 2010	Amendment C216 (Part 1) submitted to Minister for adoption and approval.
13 March 2020	Directions hearing for Amendment C216 (Part 2).