

Planning and Environment Act 1987
GREATER GEELONG PLANNING SCHEME
DELEGATED AUTHORITY REPORT
AMENDMENT C173

Subject: **Application for combined amendment and planning permit for 545 Barrabool Road, Ceres**
File number: **C173**

Summary

- This report considers a combined planning scheme amendment request and planning permit application to facilitate a 6 lot subdivision of land at 545 Barrabool Road, Ceres.
- The land is currently included in two zones, the northern portion of the land is within the Township Zone and the southern portion is included in the Farming Zone.
- An amendment to the Scheme is necessary to enable Council to consider a subdivision of the portion of the land within the Township Zone. Subdivision of the land is currently prohibited by the provisions of the Planning Scheme as any balance lot created within the Farming Zone is less than the minimum subdivision area of 40 hectares specified within the Schedule to the Farming Zone (Barrabool Hills Land system).
- It is considered appropriate to resolve this matter by including the site in the Schedule to Clause 52.03 (Specific sites and exclusions) to allow for the subdivision of the land to occur in accordance with an incorporated document. This approach is preferred to the rezoning the whole site to Township Zone as it has the advantage of not providing for any increased development opportunities beyond what the current Planning Scheme envisages for land within the Ceres Township.
- This is considered to be an enabling amendment that will facilitate the subdivision (and ultimately the development) of the land as intended by the Township Zone, and in a manner that will be complementary of the neighbourhood character of Ceres.
- A draft planning permit for a 6-lot subdivision has been prepared for the subdivision incorporating conditions from referral authorities, and has been attached to this report.
- It is recommended that the amendment be supported and the authorisation of the Minister for Planning sought.

Recommendation

That Council having considered any significant environmental effects, the effects of the environment on the future development of the land and any social and economic effects, resolves to support the preparation and exhibition of amendment C173 to the Greater Geelong Planning Scheme to amend the Schedules to Clause 52.03 (Specific sites and exclusions) and 81.01 (Incorporated documents) to permit the subdivision of land at 545 Barrabool Road, Ceres into six lots subject to:

- 1) the authorisation of the Minister for Planning being obtained;**
- 2) the exhibition of Planning Permit Application No. 1279/2008 for a 6 lot subdivision of the land**

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Report

Background

Application for Planning Scheme Amendment

An application has been received to amend the Schedule to Clause 52.03 (Specific sites and exclusions) to permit the subdivision of land at 545 Barrabool Road, Ceres, which by necessity would result in the creation of a lot below the minimum subdivision area specified in the Schedule to the Farming Zone.

The land at 545 Barrabool Road Ceres is held in one Certificate of Title comprising a total of 1.887 hectares. It is located at the western edge of Ceres, specifically on the south eastern corner of Barrabool Road and Cochranes Road, and also has a frontage to Heal Street to the east. The land falls within two zones – the northern portion of the site falls within the Township Zone compatible with the urbanised land to the east and north; the balance of the land to the south is held within the Farming Zone. That part of the site that is currently located within the Township Zone is also affected by a Design and Development Overlay Schedule 14, the effect of which is to trigger a permit application for development over 7.5 metres. Attachment 1 shows the area subject to the application and the current planning scheme zoning.

The amendment application seeks to include the document entitled, '545 Barrabool Road, Ceres Subdivision Plan, October 2008' as an incorporated document in the Scheme by reference within the Schedule to Clause 81.01. The Incorporated Document will make provision for an exception to the usual 40 hectare minimum subdivision area for land within the "Barrabool Hill's" Land System in the Farming Zone enabling the subdivision of land within the Township Zone portion of the land to proceed.

A previous application for planning permit (344/2007) was made by the land owner in 2007 seeking to subdivide the land in a similar manner to the current proposal. The owner's intention was to create urban scale allotments within the Township Zone, whilst subdividing the land along the zone boundary separating this part of the site from the land balance retained within the Farming Zone. The balance lot of 9,523m² would be below the minimum subdivision size of 40 hectares for the Farming Zone.

The applicant of this previous application initiated an Application for Review to VCAT against Council's failure to determine the application within the prescribed time. Before the conduct of the VCAT Hearing a 'Question of Law' was raised questioning whether a subdivision along the zone boundaries was lawful in light of the minimum lot requirement of 40 hectares in the Farming Zone (Barrabool Hills Land System).

Subsequent to the conduct of a merits based hearing the question of law was referred to Deputy President Gibson for determination. Upon review, Deputy President Gibson ruled that a subdivision along zone boundaries is not lawful in light of the minimum lot requirement of 40 hectares in the Farming Zone (Barrabool Land System). VCAT reference no. P2872/2007 provides a detailed overview of the case, and has become a red dot decision. In her ruling, Deputy President Gibson noted:

"It is not as though there is no alternative solution allowing land in two separate zones to be used or developed in accordance with the primary purpose of each

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zone, if that is the most appropriate planning outcome. The solution lies in an amendment to the planning scheme. The whole of the land could be rezoned or the land could be included in the schedule to clause 52.03 and an incorporated document could authorise the proposed subdivision.”

The Amendment is required because subdivision of the land is currently prohibited by the Planning Scheme provisions. The Amendment does not seek to amend either the zoning of the land or the overlays that apply to the subject land.

Application for Planning Permit

The subdivision proposes to subdivide along the zone boundary with one lot of 9,523m² in area in the Farming Zone and the remaining 5 smaller lots in the Township Zone. These lots vary in size from 1,540m² to 2,094m² in area.

The proposed lots 1, 4, 5 & 6 will obtain access via Cochranes Road; Lots 2 & 3 will be accessed via Heal Street. No vehicular access is proposed onto the Road Zone Category 1 (Barrabool Road).

Discussion

The application has been made as a Section 96A application, that is, a combined application for Planning Scheme Amendment and permit application for subdivision. In this instance it is recommended that Council deal with this request under the combined process as the two applications are inextricably linked, will result in an efficient use of Council resources and will involve only one exhibition and review process for both the applicant and the local community.

Planning Scheme Amendment Assessment

It is clear from the VCAT Deputy President ruling that a subdivision of the land is prohibited by the Planning Scheme. Therefore, in order to advance a subdivision of the Township Zone land an amendment to the Planning Scheme must be made.

The land was included in the then ‘Township Zone’ in the 1975 Geelong Region Interim Development Order (GRIDO) and has since continued to be zoned Township in both the old and new format Planning Schemes. The old format scheme in Greater Geelong immediately before the implementation of the current new format Scheme on 26 July 2000, at Clause 12 contained provision for land in more than one zone to be subdivided along the zone boundary of land where one of the zones was a non-urban zone. In this regard, the ‘split’ of land into two zones was not considered to be a significant issue to deal with in other ways. This is unlike the situation now with the Victoria Planning Provisions based Schemes that do not contain special provisions for land in two zones. In the current Scheme, it is the convention that zone boundaries should align with title boundaries or other defined features such as road centrelines or watercourses, unless there is a deliberate reason not to. In her ruling on this issue, VCAT Deputy President Gibson stated:

“In my view, this statement is clear evidence that the omission of such a provision dealing with land in two zones was not accidental. The omission of such a provision is a compelling reason why zone boundaries should align with title boundaries. The unstated inference is that they do not, then all the

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provisions of the planning scheme applicable to land which is proposed to be used or developed (including subdivided) must be complied with.

The Department may have been optimistic in assuming that all zone boundaries would align with title boundaries or other defined features. Clearly they do not, but no change to the Victoria Planning Provisions has been made to remedy the situation, which would imply that so far as the Government is concerned there is no problem.”

The split of land into two zones is not necessarily an impediment to subdivision. It is where the Scheme specifies a minimum lot size for a zone that the problem arises, and this is mostly found in the suite of rural zones. It is noted that to the east of the site at 15 Heal Street is similarly within two zones, as is land at 100 McCann Street at the eastern edge of Ceres. There may be other instances elsewhere in Greater Geelong and it is recommended that these should be dealt with as part of a general review of the Scheme zones and provisions. It is not proposed to deal with the other Ceres sites as part of this Amendment.

There has been a deliberate intention to retain the northern portion of the subject land in the Township Zone over the past 30 plus years. The land forms the western boundary of the Ceres Township and provides a ‘balance’ to the form of the town. The subdivision will ‘complete’ Ceres and will be generally in keeping with the subdivision pattern of the town.

The subject land is one of only a small number of parcels within the Township Zone that could be subdivided, with the others further east along Heal Street and in McCann Street. The Township Zone encourages this type of subdivision in accordance with State and Local planning policies. Ceres is not a designated growth location in Council’s urban development policies, but land that is already zoned should reasonably be able to be developed. This Amendment is not seeking to extend the urban zonings of Ceres beyond its current limit but will facilitate a small addition to the township within the limit of Cochranes Road.

Of the two options outlined by VCAT Deputy President, it is not considered appropriate to support a rezoning of the balance of the subject site to Township Zone. This would extend the urban boundary of Ceres way beyond its intended limit and convert more of the Barrabool Hills into urban use. There is no precedent or local planning policy that would support this proposition. The only possible way forward to enable the Township zoned land to be fully utilised for its intended purpose, is to include the land in Clause 52.03 that provides for site specific provisions.

The purposes of Clause 52.03 Specific sites and exclusions are:

- To recognise specific controls designed to achieve a particular land use and development outcome existing on the approval date.
- To provide in extraordinary circumstances specific controls designed to achieve a particular land use and development outcome.

The practical implementation of this planning provision is that land identified in the Schedule to the Clause may be used or developed in a manner that would otherwise be prohibited or restricted by the Planning Scheme.

There are only four locations in Greater Geelong that are included in the Schedule to the clause, all of which relate to State Government initiated projects such as the TAC Geelong development and the Regional Fast Rail

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Project. It is not a clause that has been used by Council to over-ride the general planning policies or provisions of the Scheme; rather, it has been seen to be reserved for special or unusual circumstances. This is one of those circumstances.

Other Planning Schemes have used this clause for smaller scale projects, including Wyndham City Council which has used this provision to enable subdivision of land in two zones. This proposal has been modelled on the Wyndham provision.

The Amendment seeks to include the land within the Schedule to Clause 52.03 and inserts an Incorporated Document in the Schedule to Clause 81.01 (Documents Incorporated in this Scheme). The Incorporated Document ('545 Barrabool Road, Ceres Subdivision Plan, October 2008') exempts the land from the minimum subdivision area specified in the Schedule to the Farming Zone (Clause 35.07) and replaces it with a minimum subdivision area of not less than approximately 9,500 square metres (i.e. equivalent to the size of that part of the land located within the Farming Zone). The Draft Amendment documents are attached to this report.

This is considered to be the best approach to 'enable' the land to be used as the Scheme intends.

Any proposal that may involve rezoning of the land (be it Township or Farming) changes the intent of the current Scheme and is not considered an appropriate outcome.

Whilst the balance of the land in the Farming Zone will become a lot of 9,523m² which is below the minimum lot size for the Zone (Barrabool Hills Land System), it will remain in the Farming Zone and by virtue of the subdivision provisions of that Zone, will not be able to be further subdivided.

Planning Permit Application Assessment

The application for Planning Permit has been assessed by the Statutory Planning Unit, with the relevant delegate assessment attached to this report. The assessment considers that the proposed subdivision meets the objectives of both zones, and essentially addresses an anomaly within the Scheme. The proposed subdivision complies with the relevant requirements of Clause 56 (Residential Subdivision) and is consistent with local planning policies. The form of the subdivision is considered appropriate and a draft planning permit is being prepared for exhibition. The application to subdivide is considered to be an appropriate response to the Township Zone and the neighbourhood character of the area.

Financial Implications

The new planning provisions sought by this Amendment are not expected to result in a cost burden to the Responsible Authority in resourcing or administering the Planning Scheme as amended.

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Policy/Legal/Statutory Implications

The proposal is consistent with the general objectives and relevant planning policies of the SPPF and LPPF of the Planning Scheme. It will effectively deal with an 'anomaly' in the Planning Scheme and enable land to be subdivided and developed as intended by the land zoning. The appropriate planning scheme tools are being implemented to deal with this proposal.

Risk Assessment

N/A

Social Considerations

The proposal will add a small number of residential allotments within the township boundaries of Ceres.

Environmental Implications

The environmental implications of the proposed subdivision are outlined and addressed in the attached delegate report considering the permit application.

Communication

Notification of the amendment and planning permit to affected landowners and occupiers as per the requirements of the Planning and Environment Act 1987 will occur as part of the exhibition of the planning scheme amendment.

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ATTACHMENT 1

