

# MINUTES

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## COUNCIL MEETING

**Tuesday 23 August 2022**  
**6:00 pm**

**City Hall**  
**57 Little Malop Street, Geelong 3220**

**LIVE STREAMED ON THE CITY'S WEBSITE:**

[www.geelongaustralia.com.au/meetings](http://www.geelongaustralia.com.au/meetings)

**COUNCIL:**

Cr P Murrihy (Brownbill Ward) - Mayor  
Cr T Sullivan (Bellarine Ward) - Deputy Mayor  
Cr S Asher (Bellarine Ward)  
Cr J Mason (Bellarine Ward)  
Cr E Kontelj (Brownbill Ward)  
Cr S Mansfield (Brownbill Ward)  
Cr B Harwood (Kardinia Ward)  
Cr B Moloney (Kardinia Ward)  
Cr R Nelson (Kardinia Ward)  
Cr A Aitken (Windermere Ward)  
Cr K Grzybek (Windermere Ward)

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## **2.3. Proposed Amendment C435ggee and Planning Permit PP-468-2021 - 190-216 Princes Highway, Corio (KFC Site Stead Park)**

**Source:** City Planning & Economy  
**Director:** Gareth Smith

### **Purpose**

1. To seek Council support to prepare and exhibit Amendment C435ggee to the Greater Geelong Planning Scheme under Section 96A of the *Planning and Environment Act 1987*.

### **Background**

2. The amendment affects the land at 190-216 Princes Highway, Corio forming part of Stead Park. The affected land includes a KFC restaurant and take away food premises and associated access and car parking.
3. An application has been received from St Quentin Consultants on behalf of Council to rezone the land in advance of its sale which was endorsed as part of the recent budget.
4. The site is currently zoned Public Park and Recreation Zone (PPRZ) and is partly affected by the Special Building Overlay (SBO).
5. The amendment seeks to rezone the land from PPRZ to the Commercial 2 Zone (C2Z) and apply the Road Closure Overlay (RCO).

### **Key Matters**

6. The purpose of the combined application is to amend the planning zoning and to subdivide to assist the future sale of the site and provide the future owner with a commercially useable and developable site.
7. The land is currently leased on a retail lease to KFC until 2033, which has occupied the site since the 1980s. Through the recent council budget, it has been resolved to sell the land as it is not used for or required by Council for public open space purposes.
8. Significant drainage assets are located within proposed Lot 2 and a 7m wide easement for drainage purposes is proposed over the main drain.
9. The St Georges Road Flood Study recommended augmentation of the main drain to mitigate flooding higher in the catchment. Whilst construction is not currently a high priority, any subdivision must not compromise the ability for works to be undertaken. The draft permit will include a condition to set aside an additional easement within the 'car park' portion of Lot 2 to allow for a future pipe alignment.

## ORIGINAL RECOMMENDATION

Cr Murrhly moved, Cr Aitken seconded –

**That Council:**

- 1. Support the preparation and exhibition of Amendment C435ggee to the Greater Geelong Planning Scheme to:**
  - 1.1 Rezone the affected land at 190-216 Princes Highway, Corio, from Public Park and Recreation Zone to Commercial 2 Zone; and**
  - 1.2 Apply the Road Closure Overlay to part of the land.**
- 2. Consider the application for a planning permit to:**
  - 2.1 Re-subdivide the land containing the KFC restaurant and take away food premises and associated access and car parking facilities from the balance of the land;**
  - 2.2 Remove the existing drainage easement from Lots 3, 4 and 5 on LP 13397; and**
  - 2.3 Create a new drainage easement on proposed new Lot 2.**
- 3. Request the Minister for Planning to authorise the preparation and exhibition of Amendment C435ggee and Planning Permit PP-468-2021.**

## AMENDMENT

Cr Grzybek moved, Cr Nelson seconded –

**Add Point 4:**

- 4. Request the Chief Executive Officer, consistent with the Council Open Space Policy 2003, ensure the proceeds of the sale of the site be deposited into the Open Space Reserve Fund for future open space purchases or upgrades, including any opportunities for open space improvement locally specifically including Stead Park.**

## **AMENDED MOTION**

**Cr Grzybek moved, Cr Nelson seconded -**

### **That Council:**

- 1. Support the preparation and exhibition of Amendment C435ggee to the Greater Geelong Planning Scheme to:**
  - 1.1 Rezone the affected land at 190-216 Princes Highway, Corio, from Public Park and Recreation Zone to Commercial 2 Zone; and**
  - 1.2 Apply the Road Closure Overlay to part of the land.**
- 2. Consider the application for a planning permit to:**
  - 2.1 Re-subdivide the land containing the KFC restaurant and take away food premises and associated access and car parking facilities from the balance of the land;**
  - 2.2 Remove the existing drainage easement from Lots 3, 4 and 5 on LP 13397; and**
  - 2.3 Create a new drainage easement on proposed new Lot 2.**
- 3. Request the Minister for Planning to authorise the preparation and exhibition of Amendment C435ggee and Planning Permit PP-468-2021.**
- 4. Request the Chief Executive Officer, consistent with the Council Open Space Policy 2003, ensure the proceeds of the sale of the site be deposited into the Open Space Reserve Fund for future open space purchases or upgrades, including any opportunities for open space improvement locally specifically including Stead Park.**

**Carried**

### **Financial Sustainability**

10. Council's budget for the 2022-2023 financial year included the approval to sell the council land at 200 Princes Highway, Corio being contained within portions of Lots 28-30 and Lot 14 on title plan 955288J, portion of Lots 5 and 23 of lodged plan 133967 and portion of Ballara Avenue, an unmade road which will be discontinued. Consistent with the Council Open Space Policy 2003, the proceeds of the sale of the site will be deposited into the Open Space Reserve Fund for future open space purchases or upgrades, including any opportunities for open space improvement locally.
11. It is necessary to rezone this land from PPRZ to C2Z to enable it to be sold.

### **Community Engagement**

12. Should Council support the preparation and exhibition of the combined planning scheme amendment and planning permit, the City will request authorisation from the Minister for Planning to exhibit the application. The exhibition will take place for a one month period and will provide the community an opportunity to review the proposal and make a submission. Notices will be sent to affected owners and occupiers and will be published in the local newspapers.
13. Consultation with relevant authorities has taken place during consideration of the proposal and will be undertaken again formally as part of the exhibition process.

### **Social Equity and Sustainability**

14. The combined planning scheme amendment and planning permit is unlikely to result in any adverse social impacts on the area and adjoining land uses. The site has been used by KFC for many years and will remain in commercial use following the rezoning and land sale.
15. The land is not required for public open space purposes and does not reduce the open space offering in this part of the municipality.

### **Relevant Law/Policy/Legal Implications**

16. Amendment C435ggee is consistent with the Planning Policy Framework of the Greater Geelong Planning Scheme as outlined in **Attachment 1**.
17. The amendment is prepared to accord with the requirement that public land to be sold must be zoned appropriately.
18. To ensure that the land is not used for a sensitive use, a condition on the planning permit will require the owner to enter into a Section 173 Agreement.

### **Alignment to Community Plan and Vision**

19. This report aligns with Our Community Plan 2021-2025 strategic priority:  
Sustainable growth and environment.
20. This report aligns with the Community led 30-year Vision, "Greater Geelong: A Clever and Creative Future" community aspiration:  
Sustainable development that supports population growth and protects the natural environment.

### ***Conflict of Interest***

21. No officer involved in the preparation of this report declared a general or material conflict of interest.

### ***Risk Assessment***

22. It is necessary to rezone the land before it can be sold. There is a risk of a delay to the sale of the land if the planning scheme amendment is not supported or deferred. There are no other significant notable risks that will arise from the combined planning scheme amendment and planning permit.
23. An easement is proposed to be included in the planning permit to address potential augmentation of the main drain to mitigate flooding higher in the catchment arising from the St Georges Road Flood Study. The applicant accepts this easement which will extend across open or car parking areas of the site.
24. Consideration has been given to the current and past use of the site and surrounding land. There is a low risk of the site experiencing transfer of potential contamination from external land. For the unlikely possibility that the land would be used in the future for a sensitive use, it is proposed that the draft planning permit include a condition requiring the landowner to enter into a Section 173 Agreement that the land cannot be used for a sensitive land use.

### ***Environmental Sustainability***

25. The amendment and planning permit are unlikely to create any adverse environmental issues as it is reflecting an existing commercial use and development on the site.
26. The land is highly modified and comprises relatively sparse vegetation except for grasses and plantings within the existing road reserves.
27. No development is proposed within the amendment and permit area so there will be no impacts on existing vegetation.
28. The Special Building Overlay applies to a portion of the site and will remain untouched by the amendment. Any future development will be assessed against this established provision and also the proposed C2Z which has as one of its purposes to ensure that uses do not affect the safety and amenity of adjacent, more sensitive uses.
29. Whilst there is no documented history of potentially contaminating activities on the site since the 1980s, there is a low risk of transfer of contamination from a former landfill to the north-east of the site. Sensitive uses are to be restricted through conditions on the draft planning permit.

### ***Attachments***

1. Attachment 1 - Amendment C 435 ggee [2.3.1 - 13 pages]

## ATTACHMENT 1

### **Background**

1. Amendment C435ggee and permit application PP-468-2021 is a combined planning permit application and planning scheme amendment under section 96A of the *Planning and Environment Act 1987*.
2. The land subject to the amendment and the concurrent planning permit is at 190-216 Princes Highway, Corio. See **Appendix 1** for plan of the subject site and area. **Appendix 2a and 2b** show the current zoning and overlays.
3. The land included in the application comprises the following lots:
  - 3.1 LP13397. L5, 8, 11, 13, 16, 44, 48, 55, 56, 60, 61, 62, 63, 64, 65, 66, 67, 71, 72;
  - 3.2 LP14404. L3-7;
  - 3.3 TP213232. L1;
  - 3.4 TP254237. L1, 2;
  - 3.5 TP258192. L1;
  - 3.6 TP258962. L1-3;
  - 3.7 TP431302. L1; and
  - 3.8 TP955288. L1-43
4. The application has been made by St Quentin consulting on behalf of the City of Greater Geelong.
5. Council proposes to rezone, subdivide, and sell the land which is occupied by the KFC restaurant and take away. Prior to selling the land, it is proposed to 'tidy-up' the land through the rezoning and subdivision process to ensure the appropriate land planning controls are implemented.
6. The amendment proposes to rezone the land from Public Park and Recreation Zone (PPRZ) to the Commercial Zone Schedule 2 (C2Z) to facilitate its sale. Refer to **Appendix 3a and 3b** for the proposed new zone and overlay.
7. Specifically, the amendment will:
  - 7.1 Rezone 1570 square metres of land that is currently PPRZ to C2Z; and
  - 7.2 Apply the Road Closure Overlay (RXO) to both Ballara Avenue and Stasia Avenue within the site.
8. The planning permit application is sought to facilitate the subdivision and consolidation of the allotments comprising the site. Refer to **Appendix 4** for a plan showing the proposed subdivision. Specifically, it proposes to allow, subject to conditions:
  - 8.1 Three-lot subdivision;
  - 8.2 Subdivision of land adjacent to a Transport Zone 2 (TRZ2);
  - 8.3 Creation of an easement for drainage; and
  - 8.4 removal of an existing drainage easement.
9. The existing zoning of the land is PPRZ. Land to the immediate north of the area proposed to be rezoned is included in the C2Z (the Corio McDonalds restaurant).

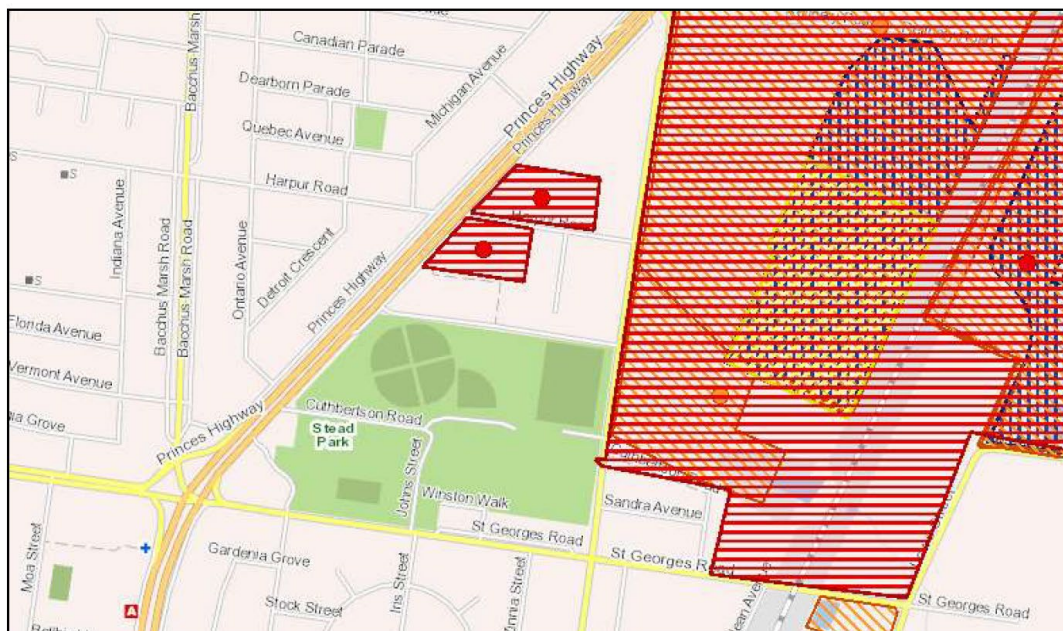
Princes Highway to the west of the land is included in the TRZ2 with St Georges Road to the south included in the TRZ2. The broader extent of the Stead Park land to the east and north is included in the PPRZ. Land to the west and south of the adjoining roads is included in the General Residential Zone Schedule 4 (GRZ4) and General Residential Zones Schedule 1 (GRZ1) respectively. (See **Appendix 2.**)

10. The affected land is relatively flat. It contains a KFC restaurant and associated access and car parking.
11. The land is owned by Council. KFC has leased the land to be subdivided from Council since the 1980s. The current lease to KFC commenced on 25/3/2019 and extends through to December 2033.

### **Discussion**

12. The justification for the proposed rezoning and subdivision application is confirmed through the conflicting nature of the current use of the land in the Public Park and Recreation Zone and, through the process of preparing council owned land for sale.
13. The use of the land as a food and drink premises conducted by/on behalf of a private operator conflicts with the purpose of the PPRZ. A purpose of the PPRZ is:
  - 13.1 "To recognise areas for public recreation and open space".
14. The PPRZ is the main zone for public open space and public recreation areas. Generally, land in the PPRZ is overseen by a public land manager, for example, a Council, and any use is conducted on their behalf.
15. Ministerial Direction on The Form and Content of Planning Schemes advises that:
  - 15.1 "A planning scheme may only include land in a Public Use Zone, a Public Park and Recreation Zone or a Public Conservation Zone and Resource Zone if the land is Crown land, or is owned by, vested in or controlled by a Minister, government, public authority or municipal council."
16. The land is in council ownership, but it is not available for public use or as a park and it has been leased to KFC since the 1980s. Should the land be sold to a private buyer whilst in the PPRZ, this would conflict with the Ministerial Direction.
17. To reflect the long-term use of the land and to accord with the Ministerial Direction, consideration must be given to the appropriate 'non-public use' zone for the land. Clause 34.02 Commercial 2 Zone (C2Z) is the most appropriate zone.
18. A purpose of the C2Z is:
  - 18.1 "To develop commercial areas for offices, appropriate manufacturing and industries, bulky goods retailing, other retail uses, and associated business and commercial services."
19. The C2Z allows the current use of the land subject to obtaining a planning permit. Given the KFC restaurant and take away is an established use, a permit is not required for the use in this instance. The C2Z is considered the most appropriate zone in the context of the current use of the site and any likely uses and development that Council would support in the future.
20. The C2Z zoning is the same as the nearby McDonalds restaurant and takeaway premises.
21. As part of any rezoning of land to a zone that would allow for a sensitive use, Ministerial Direction No. 1 Potentially Contaminated Land, applies.

22. Ministerial Direction No. 1 establishes two tests that must be met in determining if land is potentially contaminated:
- 22.1 1. Zoning of the land allowing sensitive uses to establish (whether or not subject to a permit); and
- 22.2 2. Land is potentially contaminated.
23. Planning Practice Note 30 – Potentially Contaminated Land provides steps to determine whether land is potentially contaminated. If these steps have been undertaken and Council are satisfied that the land is not potentially contaminated, Ministerial Direction No. 1 does not apply.
24. Ministerial Direction No. 1 states:
- Requirement to be met - sensitive uses, children’s playground or secondary school**
5. In preparing an amendment which allows (whether or not subject to the grant of a permit) land to be used for a sensitive use, children’s playground or secondary school a planning authority must:
- satisfy itself whether or not the land, or parts of the land, are potentially contaminated;
  - where it has determined that the land is not potentially contaminated, state the determination in the amendment Explanatory Report; and
  - where it has determined the land, or parts of the land, are potentially contaminated, must state the determination in the amendment Explanatory Report and satisfy itself that the environmental conditions of that land are or will be suitable for that use.
25. A ‘sensitive’ use includes a residential hotel, primary School, childcare centre, and caretaker’s house. These uses are section 2 permit required uses in the proposed C2Z with all other sensitive uses prohibited in the zone.
26. It is noted the land is currently zoned for public open space, however public open space is not strictly a sensitive use as defined by Ministerial Direction No. 1 and Planning Practice Note 30 (PPN30).
27. It is highly unlikely the site will be used as a residential hotel, primary/secondary school, childcare centre, or caretaker’s house, given the proposed sale to KFC and their ongoing intention to continue operating at the site, but the possibility cannot be absolutely dismissed.
28. In its role as an applicant, Council has stated to their planning consultant that the site has not had potentially contaminating activities undertaken on it since at least the mid 1980s. However, as mentioned in PPN30 2021, potential contamination may occur from activities undertaken on land adjacent to the subject site. One of the activities listed within PPN30 2021 which has the potential to contaminate adjacent land is landfill operations. From a brief search of the area on Vic Unearthed, the applicant notes that a former landfill located to the north-east of the site along with other notable sites as specified on Vic Unearthed.
29. Identified by the EPA Priority Sites Register and highlighted on the below Vic Unearthed extract:
- 29.1 Address: 246 - 258 Princes HWY Corio Issue: Former petroleum storage site;
- 29.2 Address: 232 - 244 Princes HWY Corio Issue: Former petroleum storage site; and
- 29.3 Address: 90 Refinery Rd Corio Issue: Current petroleum storage site/Viva Energy Australia Geelong Refinery 1/Formal Corio landfill.



Extract from Vic-Unearthed

30. As part of deciding on this combined rezoning and planning permit application, Council must be satisfied that the land is not potentially contaminated. The reports submitted by the proponent provide that the risk of transfer of potential contamination to the subject site of the permit and amendment is low.
31. As the land is currently zoned PPRZ, and given its land use history, its low potential contamination risk and its ongoing use as a convenience restaurant, the recommended action is to include a condition on the draft planning permit requiring the landowner to enter into a Section 173 Agreement pertaining that the land known as Lot 2 containing the fast-food premises cannot be used for any sensitive land use, unless otherwise agreed in writing by the Responsible Authority.
32. In support of the proposal, the applicant has summarised their justification for the proposed rezoning:
  - 32.1 There is no identified shortage of open space;
  - 32.2 The size of land owned by Council in Stead Park will be reduced by approximately 1.8 per cent following the sale of the lot to be created;
  - 32.3 The land to be sold has not been used for public park purposes since the restaurant was constructed in the early 1980s and is unlikely to revert to a park in the future; and
  - 32.4 The Council has sold a part of Stead Park in the past to McDonalds. Council has no plans to sell other parts of the park.
33. The amendment is consistent with the Planning Policy Framework in the Planning Scheme. Specifically, the amendment supports and implements Clause 15.01-3S Subdivision design and Clause 15.01-1S Urban design through the subdivision's response to the:
  - 33.1 Existing development responding to its context in terms of character, cultural identity, natural features and surrounding landscape;

- 33.2 Ensure the interface between the private and public realm protects and enhances personal safety; and
- 33.3 The formalisation of the site's layout which creates a neighbourhood centre that includes services to meet day to day needs and an urban place with a strong sense of place that is functional, safe and attractive.
- 34. The amendment supports and implements Clause 17.01-1S Diversified economy as the proposal will allow the existing restaurant and take away food premises to operate on a single title which enables future use of the premises to operate with increased certainty.
- 35. The amendment supports and implements Clause 18.02-3S Road systems as the creation of the internal road which is constructed and in use, will ensure that the road space complements land use and is managed to meet community and business needs.
- 36. The amendment supports and implements Clause 21.07-4 Economic Development and Employment by facilitating business opportunities within the City's strategic economic growth sectors.
- 37. The amendment supports and implements Clause 21.18-1 Corio Norlane by providing for a safe, functional, and efficient road network, areas of active open space and appropriately sited economic opportunities.
- 38. The combined planning scheme amendment and planning permit application is considered a logical proposal and the planning scheme provisions to be applied will yield a good planning outcome.
- 39. The proposal provides for the orderly subdivision of the land that is responsive to its characteristics, opportunities, and constraints and appropriately consolidates an established urban area.

#### ***The Proposed Planning Permit***

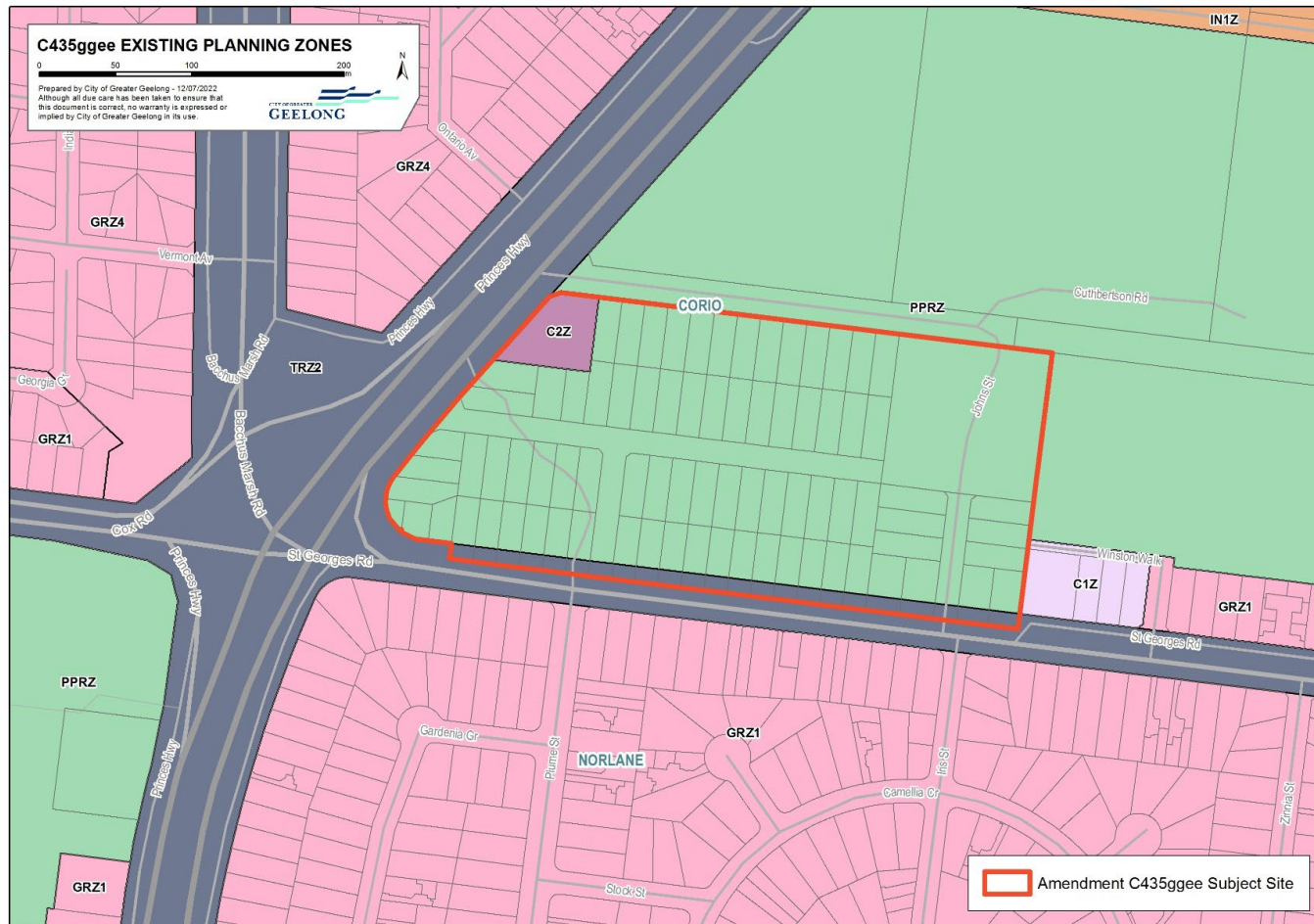
- 40. The purpose of the planning permit application is to seek approval for the re-subdivision of numerous dated titles to reflect the existing conditions of the site of Stead Park along with the removal of an easement no longer required, the creation of a new easement for drainage purposes and for access to land adjacent to the TRZ2.
- 41. The proposed subdivision seeks to create three allotments all of which will partially front Princes Highway, Lot 2 which is proposed to hold the existing KFC fast food premises will feature two parts to account for the existing car parking associated with the use, the subdivision will also create a council road which dissects the overall site from the existing access from the Princes Highway to St Georges Road which borders the southern boundary of the site.
- 42. The proposed Lot 1 (corner allotment entailing The Fort Youth Centre and The Northern Skate Park, car parking and open space) is currently contained wholly within the Public Park and Recreation Reserve and will remain so.
- 43. The proposed Lot 2 is to be held over two parts (existing KFC and associated car parks) and is proposed to be zoned C2Z.
- 44. The remainder of the land is to be held in a balance allotment Lot 3 of 3.895 hectares (Norlane Bowling Club, Stead Park Playground, Rollerama Drain, Dog Park and the remainder of Ballara Avenue and Staisa Avenue) which will be wholly contained in the PPRZ and will consolidate a range of existing titles.

45. The subdivision proposes the creation of the road which will be in both the PPRZ and C2Z to reflect the zones abutting the proposed road and to reflect the existing conditions of the site.
46. A redundant easement affecting Lots 3, 4 and 5 on LP13397 (to become proposed Lot 2) as noted on the submitted subdivision plan will be removed as part of the application.
47. A new easement is proposed to provide for any future main drain upgrades that are needed to accommodate augmentation works for the main catchment. The proponent accepts this proposed additional easement.
48. The permit to subdivide the land from the reserve and remove the reserve restriction is a logical proposal and will facilitate the sale of the land. The subdivision of the land will form a new Lot for the KFC site.
49. Internal referrals were sent to Council's Engineering, Transport, Recreation and Open Space units. Comments received have informed the initial assessment of the permit application. VicRoads was also notified and offered no objection. Barwon Water, Powercor and Downer were also consulted, and they have contributed conditions for the preparation of a draft planning permit.
50. From an open space perspective, there are no fundamental issues with the permit or the planning scheme amendment, as this is a situation that formalises the current state of the land and facilitates the sale of the KFC site.
51. A recommendation that proceeds from the sale of land rezoned from PPRZ to C2Z be deposited into the Open Space Reserve Fund for future open space purchases or upgrades will be a matter for budget consideration and is not relevant to the consideration of the combined amendment and planning permit.
52. A draft permit will be prepared for exhibition.

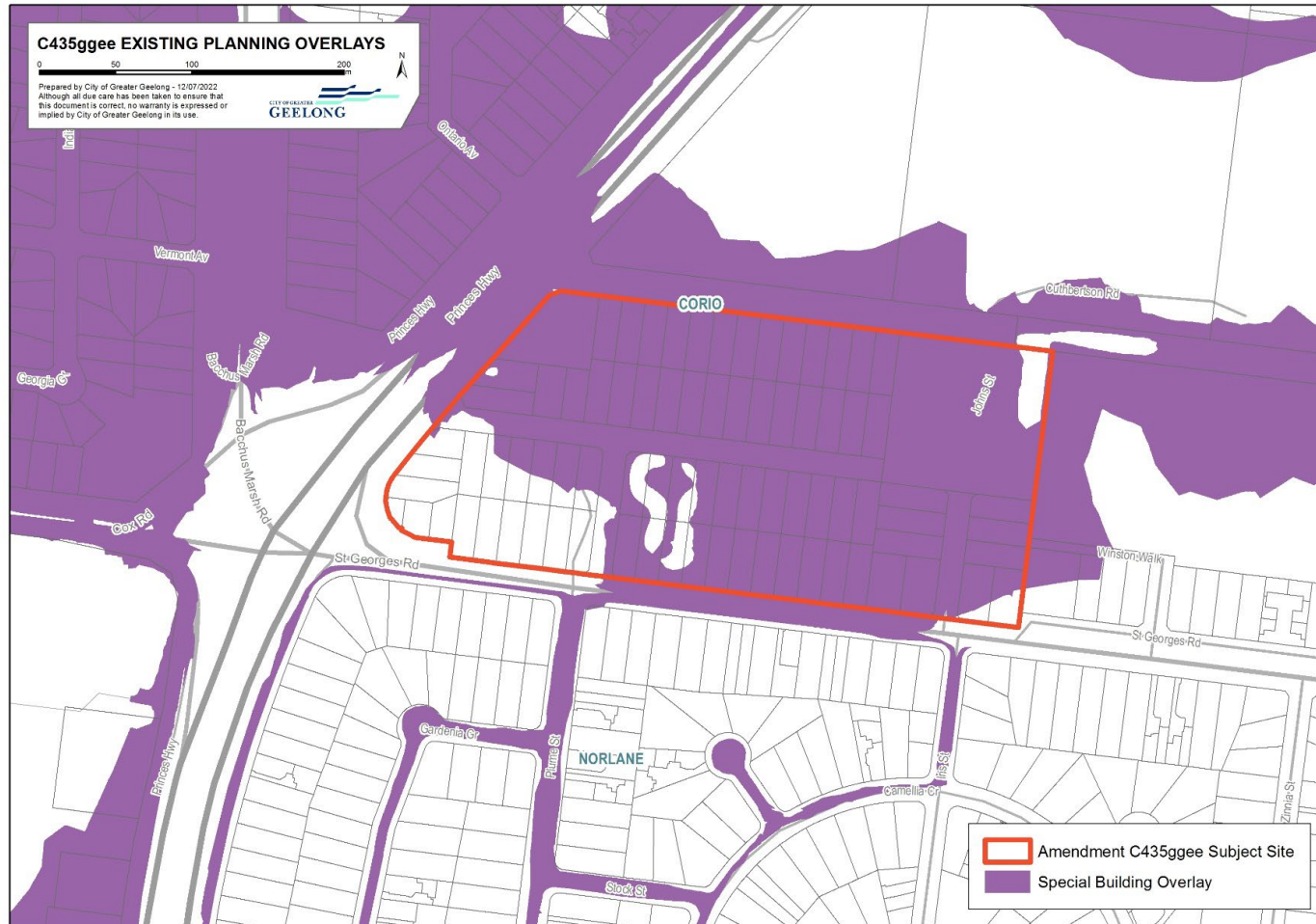




### Appendix 2a Existing Zoning Map



### Appendix 2b Existing Overlay Map



**Appendix 3a Proposed Commercial 2 Zone Extent**





**Appendix 4 Proposed Subdivision Plan**

