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**AMENDMENT C455 - 18 KEWARRA DRIVE, CLIFTON SPRINGS  
RESOLUTION TO EXHIBIT UNDER DELEGATION**

**To: Peter Smith – Coordinator Strategic Implementation**  
**From: Allistair Krause – Strategic Planner**  
**Subject: Resolution to exhibit an amendment under delegation**  
**File number: C455**

**Purpose**

The purpose of this report is to seek a Council resolution (under delegation) to prepare and exhibit Amendment C455 subject to authorisation by the Minister for Planning.

**Summary**

- 18 Kewarra Drive was the subject of an adverse possession claim in 2005 which resulted in legal settlement between Council and the landowner. A planning scheme amendment is required to fulfil the Terms of Settlement.
- The amendment seeks the rezoning of the land from Public Park and Recreation Zone (PPRZ) to General Residential Zone – Schedule 1 (GRZ1). Additionally, Design and Development Overlay – Schedule 14 (DDO14) is proposed to apply to the rezoned land.
- The amendment is procedural and is unlikely to cause detriment to adjoining or nearby landowners.
- It is recommended that Council seek an exemption from notification (except to the landowner and prescribed Minister) and request a shorter exhibition period of two weeks.

**Recommendation**

**That Council:**

- 1) **supports the preparation and exhibition of Amendment C455ggee to the Greater Geelong Planning Scheme to:**
  - a) **rezone land at 18 Kewarra Drive, Clifton Springs from Public park and Recreation Zone to General Residential Zone – Schedule 1; and**
  - b) **apply a Design and Development Overlay – Schedule 14 to that land.**
- 2) **requests the Minister for Planning to authorise the preparation and limited exhibition of Amendment C455ggee.**

**Approved as a resolution of Council by Council's delegate:**



**P. Smith**  
**Date: 23 June 2023**

**Background**

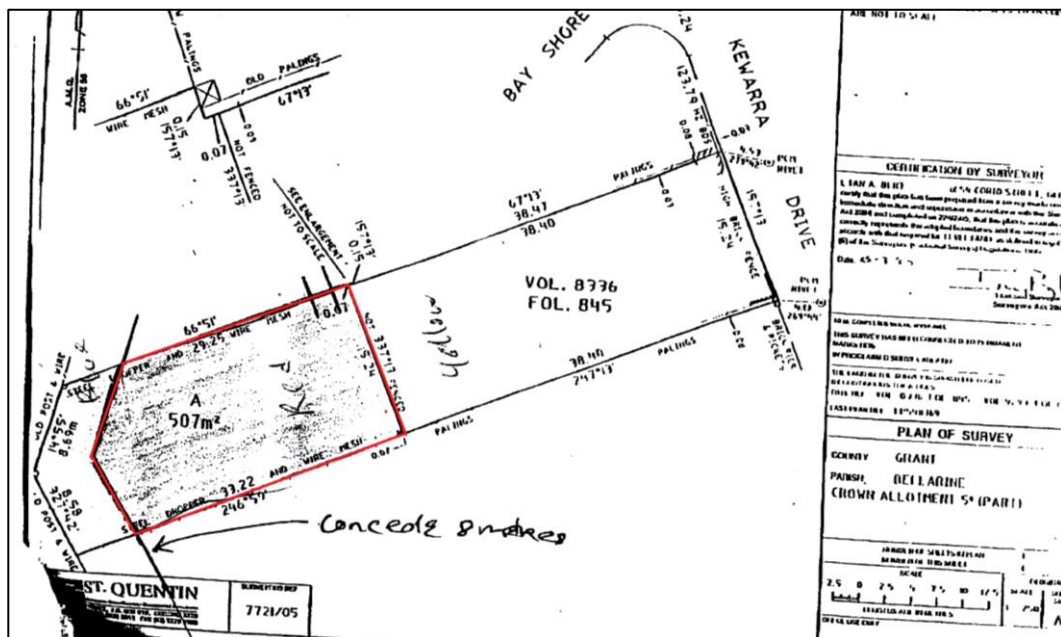
On 2 March 2023, the owner (Barrie Beckwith) of 18 Kewarra Drive, Clifton Springs contacted Council to advise that the Terms of Settlement requirements relating to an adverse possession claim in 2005 are yet to be fulfilled. Specifically, requirement 4 of the Terms of Settlement agreement is yet to be completed by Council in its entirety. Refer to below extract:

**Requirement 4:**

Council will do all acts reasonably necessary and where appropriate use its best endeavours and act with all reasonable expedition to enable Barrie to become the registered proprietor of the land colored red on the Plan ("the Red Land") (such land presently forming part of the land contained in Certificate of Title Volume 9293 Folio 651 of which Council is the current registered proprietor) including but not limited to having such land rezoned to a residential zoning and consolidating the land with Barrie's Land.

Upon internal review of the enquiry, Council's Property and Leasing Unit have confirmed that the disputed land was consolidated and transferred to Barrie Beckwith as owner in 2006/07. Whilst this is the case, rezoning of the land to a 'residential zoning' is yet to occur.

The below map extract, taken from the Terms of Settlement document, illustrates "The Red Land" required to be rezoned to a residential zoning.



On 10 March 2023, Council received a letter from Birdsey, Dedman & Bartlett Solicitors, who are representing the landowner, requesting that immediate action is taken to rezone the land as this zoning anomaly is affecting the sale of the property.

The purpose of this planning scheme amendment is to fulfil Council's agreed obligation to rezone the disputed land to a residential zoning.

**Discussion**

This amendment has arisen following the legal settlement of an adverse possession claim between Council and private resident in Kewarra Drive. Part of

the legal settlement requires Council to rezone the land from Public Park and Recreation Zone to the Residential 1 Zone. With the lapse of time since the settlement, the underlying zone in the area is now the General Residential 1 Zone and the land that is now in private ownership should be rezoned to be consistent with the underlying zone.

The planning scheme amendment will facilitate the removal of a public land use zone from privately owned land. A public land zone cannot apply to privately owned land.

Properties to the southeast of the subject land at 20-22 through to 28-30 Kewarra Drive were similarly affected by an adverse possession claim around the same time as the subject land. These were rezoned as part of the Amendment C92 in April 2005. The property at 18 Kewarra Drive was not included in the settlement for these other properties and was therefore not affected by C92.

### ***Financial Implications***

Council agreed in the Terms of Settlement in 2005 to pay all necessary costs and expenses to have the land rezoned and consolidated. Subsequently, the costs for the amendment are met within the department's budget. It is suggested that the amendment is processed as quickly as possible to avoid potential legal risks.

### ***Stakeholder Consultation and Communication***

The amendment is procedural and is unlikely to cause detriment to adjoining or nearby landowners. Subsequently, it is intended to seek an exemption from notification (except to the landowner and prescribed Minister) and a shorter exhibition period of two weeks.

### ***Policy/Legal/Statutory Implications***

The Amendment is consistent with the Planning Policy Framework. It also makes proper use of the Victorian Planning Provisions by removing a public land use zoning from privately owned land.

### ***Alignment to Council Plan***

The proposed Amendment C455 supports both the 'Improved health and safety of our community' and 'a thriving and sustainable economy' strategic priorities of the Council Plan 2018-22.

### ***Officer Direct or Indirect Interest***

No Council officers involved in the preparation of this report have any direct or indirect interest in the matter to which this report relates, in accordance with Section 80 (c) of the Local Government Act.

### ***Risk Assessment***

There are no notable risks associated with implementing the recommendation contained in this report.

### ***Environmental Implications***

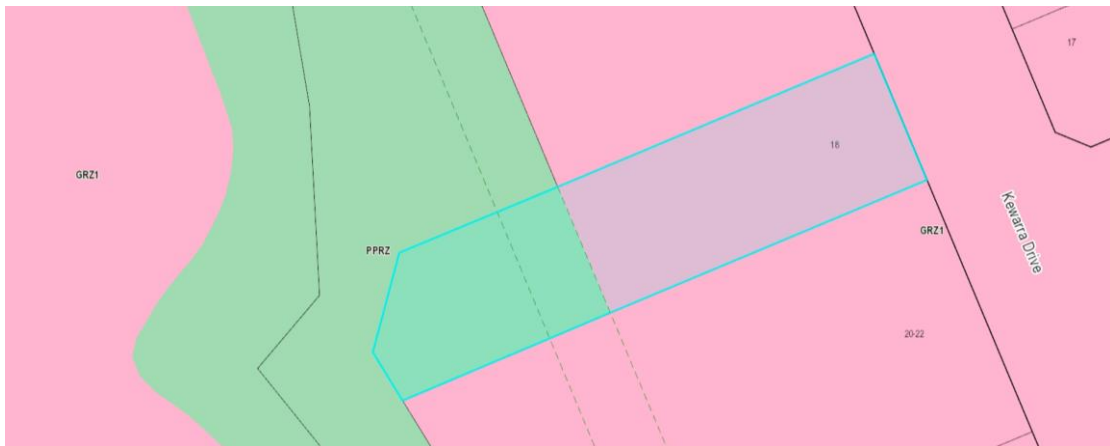
There are no environmental impacts arising from this amendment.

### Appendix 1 – Location plan / aerial photo



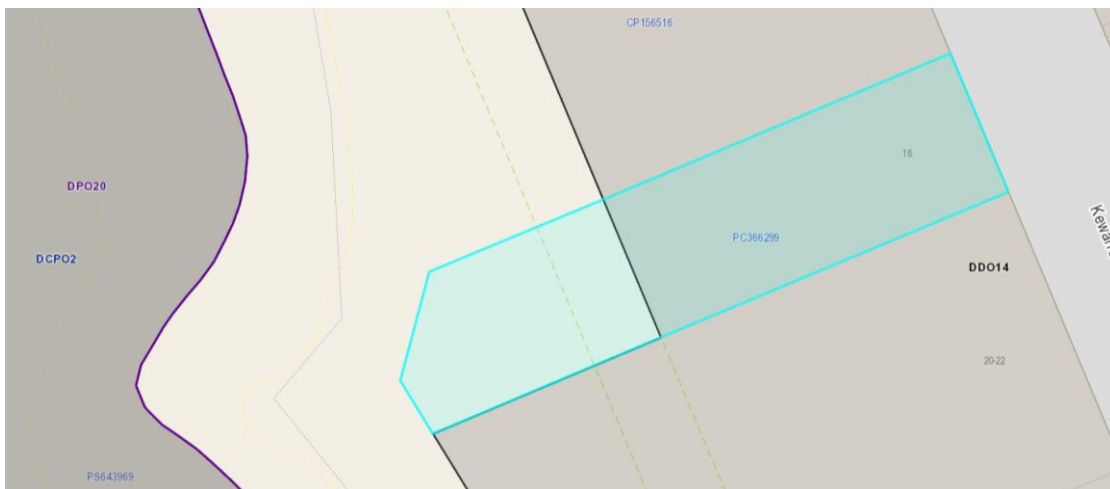
Source: PlacesWEAVE with Nearmap February 2022 aerial layer.

### Appendix 2 – Existing zone map



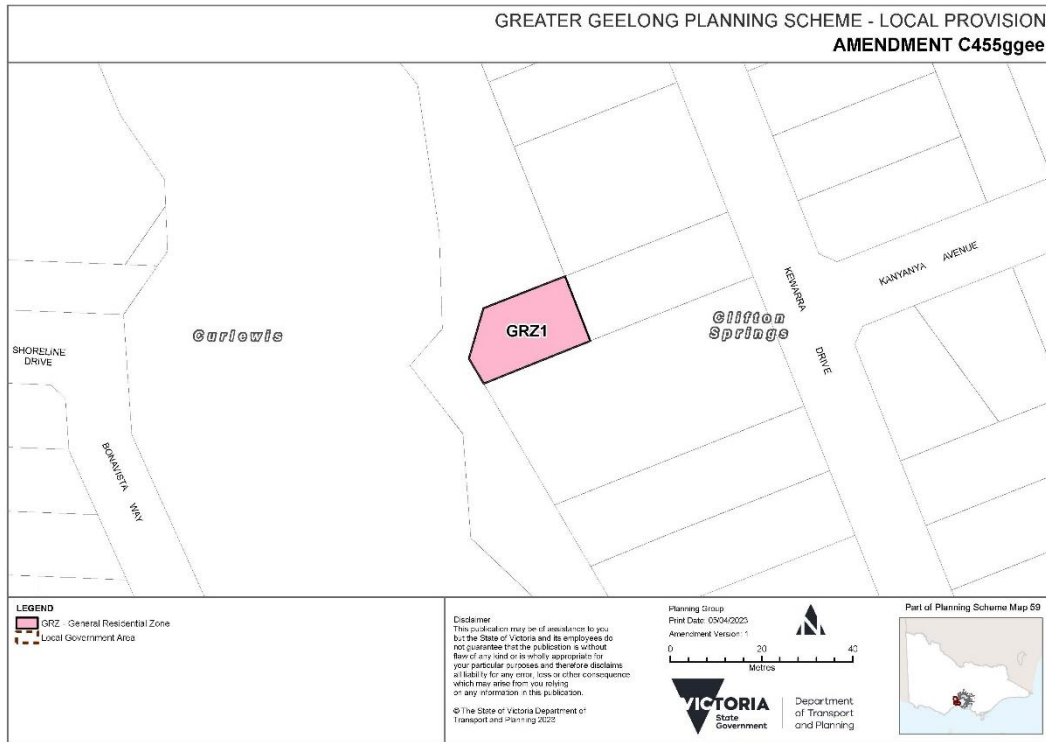
Source: PlacesWEAVE with Planning Zones.

### Appendix 3 – Existing overlays map

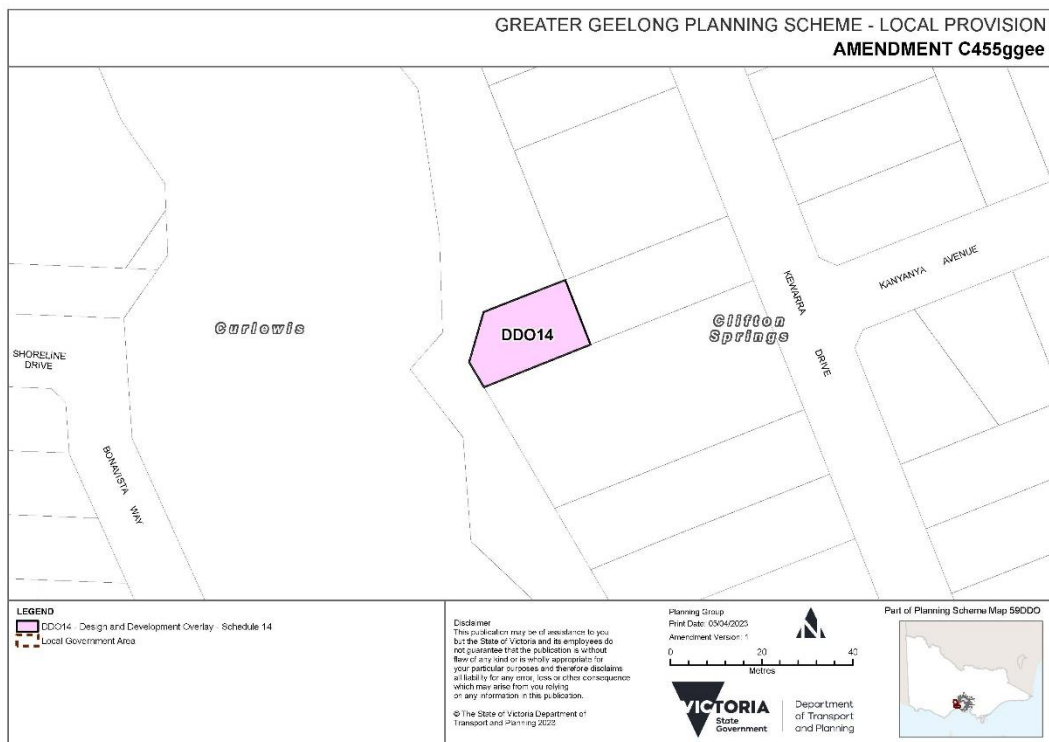


Source: PlacesWEAVE with Planning Overlays.

### Appendix 4 – Proposed Zoning and Overlays



Above Image: Proposed Zoning Map



Above Image: Proposed Overlays Map