

8 GOVERNANCE AND CORPORATE PERFORMANCE

8.1 LAND IN KILMORE OCCUPIED BY KILMORE SES UNIT

Author: Michael Freeman - Strategic Assets Coordinator

File No: 107703

- Attachments:**
1. Title Information
 2. Locality and Site Plan
 3. 1992 Deed
 4. Water Board Letter and Low Cost Finance Agreement
 5. Council Resolution 7 April 1993
 6. Transfer of Land Form
 7. Legal Advice
 8. Legal advice - Future Sale

SUMMARY

The property at 103 White Street (PS321343D V10174 F099) currently occupied by the Kilmore SES, is held in Council proprietorship on title. Records indicate that Council purchased the land for the SES from the Mid Goulburn Regional Water Board. Records also suggest that the SES repaid Council the purchase price for the land.

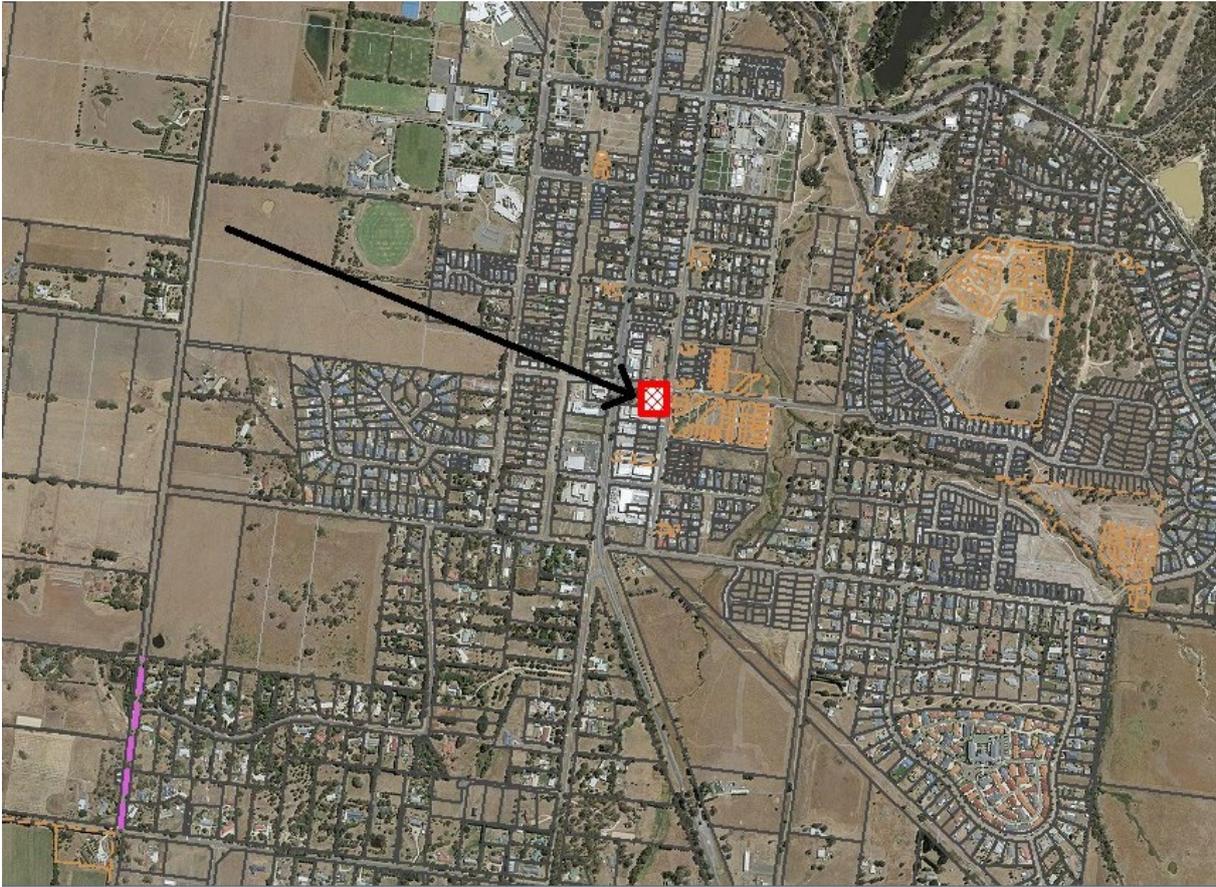
The Victorian Government Solicitor's Office (VGSO) has approached Council under instruction from the Victorian State Emergency Service to have the land at 103 White Street transferred so that legal and beneficial ownership of the property would reside with SES.

Image – 103 White Street Kilmore (Kilmore SES)



LAND IN KILMORE OCCUPIED BY KILMORE SES UNIT (CONT.)

Image – 103 White Street location in Kilmore



LAND IN KILMORE OCCUPIED BY KILMORE SES UNIT (CONT.)

RECOMMENDATION

THAT Council:

1. Support the transfer of title for 103 White Street, being PS321343D Volume 10174 Folio 099, to Victoria State Emergency Service Authority, and
2. Include a Section 173 Agreement that includes the following;
 - a) to require the SES to commit to the ongoing use of the site for State Emergency Services
 - b) that Council is given the first right of refusal to acquire the site if ever the SES intends to sell the land; and
 - c) that if the land is sold, the SES will apply all proceeds of sale of the land towards the establishment of an alternative facility within the Kilmore area for the provision of State Emergency Services.
3. Sign the Transfer of Land Form provided by the Victorian Government Solicitor (Attachment 6) to enact the transfer once the s173 agreement has been agreed and signed.

BACKGROUND

On 5 December 1984 the SES was allocated a portion of the 103 White Street by the Shire of Kilmore to use as their Depot, and from February 1990 the remainder of the yard was allocated to the SES when it ceased to be used by the Shire. The Shire Meeting of 19 December 1990 resolved to enter into a 'peppercorn' lease agreement with the SES for 10 years.

In 1990 the Shire of Kilmore and Water Board were split up as part of the local government reforms and the Water Board became the owner of the property.

The SES approached the Water Board in 1992 to buy the land for their operational base. At that time the SES could not purchase land directly due to the SES not being an incorporated association able to hold property on title.

A Deed was entered into between the Mid-Goulburn Regional Water Board and the Shire of Kilmore where the Water Board agreed to sell 103 White Street Kilmore to the Shire of Kilmore for the sum of \$30,000 on behalf of the SES.

The Shire entered into an agreement to provide low cost finance to the SES for \$26,000 to purchase the land. The remainder of the sale price was made up through Council retaining the annual SES subsidy of just over \$4,000.

At the Council Meeting of 7 April 1993, a recommendation that Council sign and seal the deed of assignment for Crown allotment 10, Section 10, Township of Kilmore was Carried. This Resolution directed the purchase of the land in White Street which is noted in the Council Minutes as the S.E.S. Depot. The minuted item from the Council Meeting is at Attachment 5.

LAND IN KILMORE OCCUPIED BY KILMORE SES UNIT (CONT.)

No money is recorded within Council's balance sheet as outstanding on the low-cost finance (loan) extended to the SES for the purchase of 103 White Street. The transactions for repayment would have been made during 1993 and 1995 and are not available. The finance system was updated during 2006. Nonetheless on 29 August 2013 the former Management Accounting Coordinator wrote to Council's Property Officer, and copied in the former Manager of Finance with the following information regarding the Kilmore SES Low Interest Finance Agreement:

"I can confirm that the Kilmore SES does not owe any money to Mitchell Shire Council under the Low Interest Finance Agreement entered into by the Kilmore Shire Council and the SES unit on 4/11/1992."

In accordance with section 4(2)(d) of the *Victoria State Emergency Service Act 2005*, the SES now has the legal status to acquire and hold property.

Early 2019 the Victorian Government Solicitor's Office, representing the State Emergency Service Authority, requested transfer of the land to the SES under Section 45 of the *Transfer of Land Act 1958* in fee simple and for nil consideration.

Attachments

1. Title Information.
2. Locality and Site Photos.
3. 1992 Deed between Shire of Kilmore and Mid Goulburn Regional Water Board
4. Letter from Mid Goulburn Regional Water Board and the Low Cost Finance Agreement between President, Councillors and Ratepayers of the Shire of Kilmore and the Kilmore/Broadford State Emergency Service.
5. Council Resolution 7 April 1993.
6. Transfer of Land Form.
7. Legal advice.
8. Legal advice – Future Sale.

Chronology of Events

- 1984 – SES allocated portion of 103 White St yard to house their operations by Shire
- 1989 – Shire of Kilmore resolution passed to allow SES to occupy whole yard.
- 1990 – Water Board becomes owner of land when Water Board and Shire are split as part of Local Government Reforms.
- 1992 – Water Board agrees to sell 103 White St to the Shire on behalf of SES via Deed of Agreement.
- 1992 – Council provide a low cost loan to the SES for 103 White Street land
- 1993 – Council passes a resolution to sign and seal the deed of assignment for 103 White Street, referred to as the SES Depot.
- 2005 – Victorian State Emergency Services Act 2005, SES have legal status to acquire and hold land.
- 2013 – Financial Services Coordinator confirms low cost loan to SES has been repaid.
- 2019 – Victorian Government Solicitors Office request transfer of land to SES.

LAND IN KILMORE OCCUPIED BY KILMORE SES UNIT (CONT.)

Image – Street view 103 While Street showing buildings



LAND IN KILMORE OCCUPIED BY KILMORE SES UNIT (CONT.)

ISSUES AND DISCUSSION

Following the request from the VGSO, it is recommended that Council transfers the land to the SES.

Council has sought legal advice regarding the historical information and, in particular, the “intent” of the Shire of Kilmore to buy the land for the SES and provide a low-cost loan to the SES to repay the Shire.

Legal advice (Attachement 7 & 8) is attached, but the following extracts are worth noting; In their advice, the lawyers refer to the SES as the KBSES – Kilmore Broadford SES:

It is clear from all of the above that:

2.3.1 Council purchased the Site for and on behalf of KBSES and assisted KBSES with funding for both the repayment to Council of the purchase price for the Site and the purchase of the buildings on the Site; and

2.3.2 this was undertaken with the clear intent that the Site would be held by Council for the benefit and use of KBSES for the purposes of provision of state emergency services within the Kilmore/Broadford area in circumstances when KBSES could not own property in its own name.

The legal advice proceeds to argue there is a legal basis for Council agreeing to transfer the site to the SES subject to the SES agreeing to the transfer, that the SES holds the site for the purpose of emergency services, and Council placing a section 173 agreement on the site ensuring the site, or proceeds from sale of the site are only used for the original purpose, being for emergency services.

Should Council not agree to the transfer the land, the SES may pursue the matter through the VGSO. The legal fees involved to retain the land may be high.

Council has approached Goulburn Valley Water, which now represents the interests of the former water board, to ascertain if they hold any interest in the land, noting the Deed required Council to split any proceeds of sale with the Water Board if sold after 10 years. The following response was received from the GV Water Executive Manager of Governance;

I confirm on behalf of GVW that it doesn't have any further interest in this agreement on the basis that there is no 'proceeds' realized from the title transfer process.

Also, due the significant timeframe that has elapsed, and significant changes in circumstances by all parties, it is the Corporation's position that the insertion of the same Clause (Clause II) is not required (assuming that Mitchell Shire, as the other party to the agreement, is also not intending to insert this Clause to seek entitlement of potential proceeds in the future).

CONSULTATION

Consultation has been undertaken regarding the requested transfer with GV Water and advice received was discussed above.

The VGSO is representing the interests of the SES and is requesting Council transfer the land and has provided a *Transfer of Land* form to facilitate this process.

LAND IN KILMORE OCCUPIED BY KILMORE SES UNIT (CONT.)

If Council did not wish to transfer the land to the SES it would be prudent to discuss this further with the VGSO to determine their level of commitment to pursuing this through legal means.

FINANCIAL, RESOURCE AND ASSET MANAGEMENT IMPLICATIONS

There is no evidence that Council (the Shire) contributed any money towards the purchase of 103 White Street outside those monies which made up the loan to the SES as part of the low-cost finance agreement. Council's records show that the loan has been fully re-paid.

The VGSO has provided Council an execution copy of the Transfer of Land. Should Council decide to go down this path and all agreement and transfer documents are provided by the VGSO, then Council is likely to have minimal legal costs.

The transfer of the property would have no implications for maintenance costs as Council does not have any maintenance responsibilities.

Transferring the land would remove Council's risk liabilities as the proprietor of the land and ensuing possible insurance claims.

The current valuation of the land is \$303,000 and capital improved value \$376,000. If Council transfers the property to the SES the value of the land will be removed from Council's balance sheet and it will be considered a loss on disposal.

POLICY AND LEGISLATIVE IMPLICATIONS

The matter of the land at 103 White Street, Kilmore is unusual and falls outside the scope of Council's Policies. If the Legal advice is applied, then this is the disposal of an asset for which Council is the proprietor on title only and held in trust by Council for another party until transfer can take place. Even though it would be the disposal of an asset for practical purposes.

It has been confirmed that, in accordance with legislation, the State Emergency Service of Victoria is able to own property.

RISK IMPLICATIONS

Risk Ranking is determined using [ROHS201-G1- Corporate Risk Matrix](#). Risk is identified as Low, Medium, High or Very High.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that, should Council not agree to the transfer, legal action may ensue.	Medium	Explore the VGSO desire to pursue this matter through legal means.	Yes as may not need additional legal input.
There is a risk that, should Council not agree to the transfer, there may be adverse public reaction to the decision.	Low	So long as the land remains for use as an SES facility, it is unlikely the public would be concerned about the title holder.	Yes

LAND IN KILMORE OCCUPIED BY KILMORE SES UNIT (CONT.)

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
Council is losing an asset of significant value	Low	Council continues to hold the title and licenses the land to the SES. At the time of sale neither entity could foresee the change to the Victorian State Emergency Services Act (2005) giving power to the SES to hold land on title.	Yes
There is a risk that, should Council not agree to the transfer, there may be adverse publicity in local newspapers.	Medium	Make a public commitment to the ongoing support of the SES at its present location regardless if land is transferred or not.	Yes but may include additional legal expenses if challenged by the VGSO where transfer not agreed.
As Council is the proprietor on title, Council can be called in as a joint party to any claim made due to an accident/incident on the property.	Medium	Transfer the property completely removes Council from legal responsibility for the land.	Yes as may not need additional legal input.
As Council is the proprietor on title, Council can become caught up in action/s should there be breaches of any legislation and/or regulations, for example planning, building, Essential Safety Measures.	Medium	Transfer the property completely removes Council from legal responsibility for the land. Or Formally license the property however Council retains some accountability	Yes as may not need additional legal input.

SUSTAINABILITY IMPLICATIONS (SOCIAL AND ENVIRONMENTAL)

LAND IN KILMORE OCCUPIED BY KILMORE SES UNIT (CONT.)

There may not be any social implications should the transfer occur, however there may be a negative community response based on the lack of support for a community service if it does not occur.

There are no known environmental implications associated with the property should the transfer occur.

CHARTER OF HUMAN RIGHTS IMPLICATIONS

The rights protected in the *Charter of Human Rights and Responsibilities Act 2006* were considered in preparing this report and it's determined that the subject matter does not raise any human rights issues.

CHILDREN AND YOUNG PEOPLE IMPLICATIONS

There are no direct implications for children or young people.

OFFICER DECLARATION OF CONFLICT OF INTEREST

No officers involved in the preparation of this report have any direct or indirect interest in this matter.

CONCLUSION

The history of the property at 103 White Street, Kilmore as recounted in this report has been based on the available records, both electronic and hard file.

Records indicate that the Shire of Kilmore entered into an agreement with the SES to enable the SES to purchase the property at 103 White Street which the Shire of Kilmore, and its successors, would hold on title and in trust for the SES. The Shire of Kilmore resolved at their Meeting of 7 April 1993 to purchase the land occupied by the SES.

Council's former Management Accounting Coordinator confirmed in 2013 that no money was owing on the loan to the SES.

The records and legal advice obtained in relation to the matter support the request from the Victorian Government Solicitor's Office for the transfer of the property to SES ownership to be a valid application.

Council is not legally impelled to transfer the land, but this could be pursued by the VGSO through legal means.

Council can apply a s173 agreement on the title to ensure future use of the site as an SES depot, or any proceeds of sale are used for SES services in Kilmore.

A response to the VGSO is required and the recommendation is to transfer the property at 103 White Street to the SES.

LAND IN KILMORE OCCUPIED BY KILMORE SES UNIT (CONT.)

MITCHELL SHIRE COUNCIL

Council Meeting Attachment

GOVERNANCE AND CORPORATE PERFORMANCE

19 AUGUST 2019

8.1

**LAND IN KILMORE OCCUPIED BY KILMORE
SES UNIT**

Attachment No: 1

Title Information


[Title Searches](#)
[Instruments](#)
[My eTitles](#)
[Find Title by Volume/Folio](#)
[Lot & Plan Enquiry](#)
[Street Address](#)
[Request Title](#)
[Title History](#)

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REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958
 VOLUME 10174 FOLIO 099 Security no : 124077035745X
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LAND DESCRIPTION

Lot 2 on Plan of Subdivision 321343D.
 PARENT TITLE Volume 10168 Folio 714
 Created by instrument PS321343D 17/06/1994

REGISTERED PROPRIETOR

Estate Fee Simple
 Sole Proprietor
 MITCHELL SHIRE COUNCIL of 113 HIGH STREET BROADFORD VIC 3658
[AM779428M](#) 16/05/2016

ENCUMBRANCES, CAVEATS AND NOTICES

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

DIAGRAM LOCATION

SEE [PS321343D](#) FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

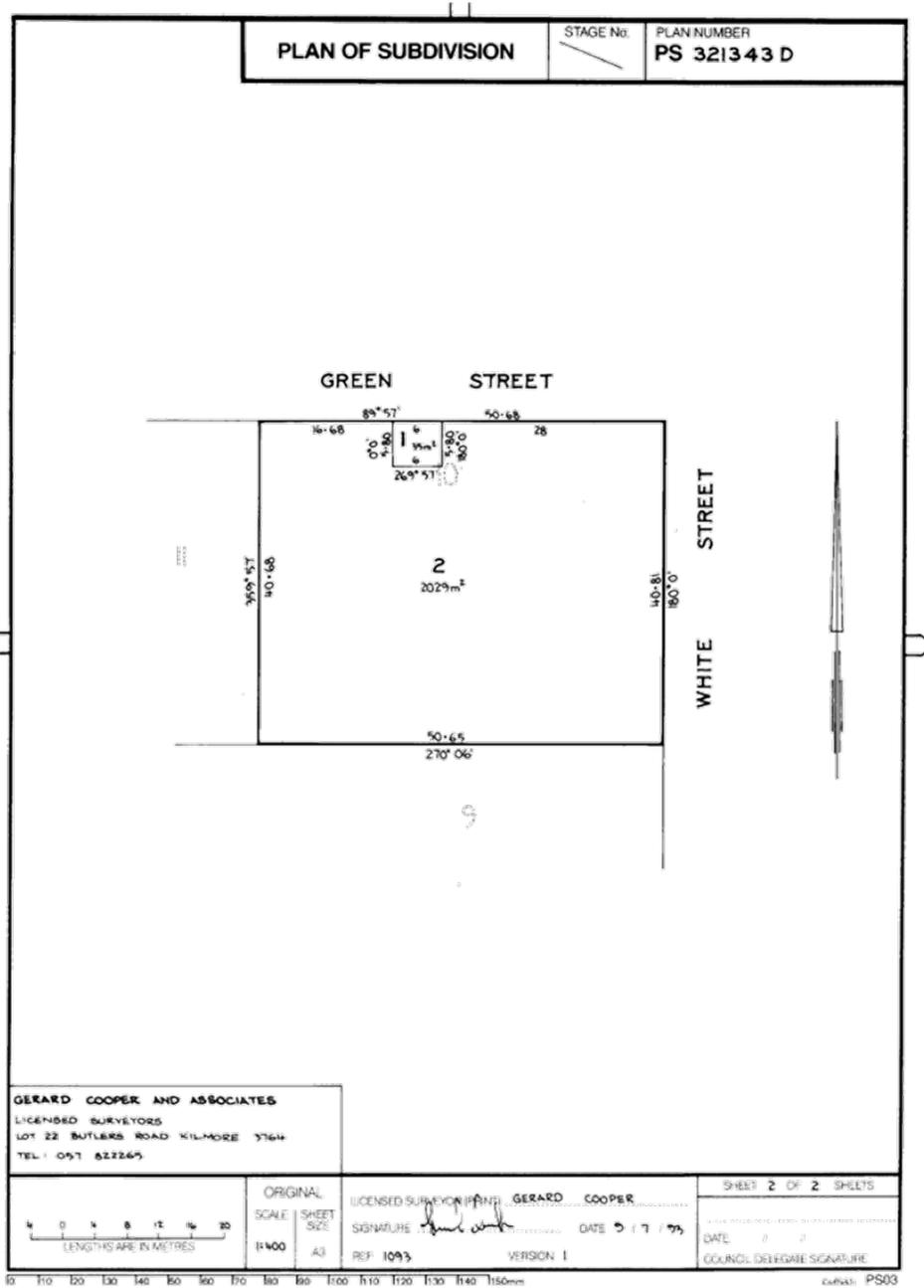
Additional information: (not part of the Register Search Statement)

Street Address: 103 WHITE STREET KILMORE VIC 3764

ADMINISTRATIVE NOTICES

NIL

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MITCHELL SHIRE COUNCIL

Council Meeting Attachment

GOVERNANCE AND CORPORATE PERFORMANCE

19 AUGUST 2019

8.1

**LAND IN KILMORE OCCUPIED BY KILMORE
SES UNIT**

**Attachment No: 2
Locality and Site Plan**

Locality Plan – 103 White Street outlined in red

