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**9.4 COMBINED PLANNING SCHEME AMENDMENT C124 AND PLANNING PERMIT APPLICATION PLP203/17 FOR RE-ZONE AND DEVELOPMENT OF A SUPERMARKET, INSTALLATION AND DISPLAY OF SIGNAGE, LIQUOR STORE, SPECIALTY RETAIL AND MEDICAL CENTRE IN KILMORE - CONSIDERATION OF PANEL REPORT**

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**File No:** PL/05/223

**Attachments:**

1. Panel Report: C124 and PLP203/17 (excl. Permit Conditions)
2. Panel Recommended Permit Conditions PLP203/17
3. Amendment C124 Documentation
4. Draft Permit PLP203/17
5. PLP203/17 Exhibited Floor Plan
6. PLP203/17 Panel Hearing Plans

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**SUMMARY**

Proposed Planning Scheme Amendment C124 and Planning Permit Application PLP203/17, in accordance with Section 96A of the *Planning and Environment Act 1987*, seeks to develop land for a supermarket, medical centre and associated ancillary retail stores.

The amendment proposes to rezone 80 Clarke Street and 109 Northern Highway, Kilmore from Industrial 1 Zone to Commercial 1 Zone. The permit application seeks permission to develop land for buildings and works for the construction of a supermarket with retail stores and a medical centre, installation of signage, use of land for the sale of packaged liquor, alteration to a Road Zone Category 1 and removal of native vegetation.

Following public exhibition of the application, Council considered submissions at its Ordinary Council Meeting held 17 December 2018 and resolved to refer the application and all submissions to an Independent Planning Panel (the Panel).

The Panel's Report (Attachment 1) and the Panel's recommended permit conditions (Attachment 2) have been received which supports the amendment and permit. The Panel recommends the amendment be adopted by Council and the planning permit is granted, subject to changes as per the Panel's recommended conditions.

In accordance with the *Planning and Environment Act 1987*, Council is now required to consider the Panel Report and the Panel's recommendations. This report provides a summary of the key matters considered and the recommendations of the Independent Planning Panel.

Following consideration of the Panel Report, it is recommended that Council adopt Amendment C124 to the *Mitchell Planning Scheme* generally in accordance with the documents at Attachment 3 and that Council recommend the Minister for Planning grant planning permit 203/17 at Attachment 4, pursuant to the Panel's findings.

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COMBINED PLANNING SCHEME AMENDMENT C124 AND PLANNING PERMIT APPLICATION PLP203/17 FOR RE-ZONE AND DEVELOPMENT OF A SUPERMARKET, INSTALLATION AND DISPLAY OF SIGNAGE, LIQUOR STORE, SPECIALTY RETAIL AND MEDICAL CENTRE IN KILMORE - CONSIDERATION OF PANEL REPORT (CONT.)

### **RECOMMENDATION**

**THAT** Council:

1. Pursuant to Section 29 of the *Planning and Environment Act 1987*, adopt Amendment C124 to the *Mitchell Planning Scheme* generally in the form provided in Attachment 3.
2. Pursuant to Section 31 the *Planning and Environment Act 1987* forward the adopted Planning Scheme Amendment C124 to the Minister for Planning requesting approval.
3. Pursuant to Section 96G of the *Planning and Environment Act 1987*, recommend the Minister for Planning grant Planning Permit PLP203/17 generally in the form provided in Attachment 4.
4. Pursuant to Section 96H(1) of the *Planning and Environment Act 1987* forward Planning Permit 203/17 to the Minister for Planning.

### **BACKGROUND**

#### Subject Site and Planning Controls

The planning scheme amendment and permit application relates to land at 80 Clarke Street and 109 Northern Highway, Kilmore. The subject site is approximately 1.8 hectares in size and has frontages of approximately 96 metres to the Northern Highway and 144 metres to Clarke Street. The subject site is vacant. Abutting the west of the site is a car dealer/motor wreckers and scrapyards (industrial land), east is a single

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dwelling, south is the Coles/Aldi supermarket centre and north is Kilmore Creek (Figure 1).



Figure 1: Aerial Photo of 80 Clarke Street and 109 Northern Highway, Kilmore

An amendment to the *Mitchell Planning Scheme* is necessary to allow the proposed commercial development of the site. Under the provisions of the existing Industrial 1 Zone, the use of land for a supermarket and associated shops is prohibited. The only overlay that applies to the subject site is the Design and Development Overlay Schedule 4 (Kilmore Town Centre & Key Gateway Sites).

#### Combined Planning Scheme Amendment and Planning Permit Application Process

Council received a request for a combined amendment and permit application in accordance with Section 96A of the *Planning and Environment Act 1987* on 2 June 2017. Council at a Special Council Meeting held 29 January 2018 resolved to consider the request and seek Ministerial authorisation to prepare and exhibit the combined amendment and permit application. Ministerial authorisation to prepare and exhibit the combined amendment and permit application was granted on 7 August 2018.

The combined amendment and permit application was placed on formal exhibition from 17 September to 22 October 2018 in accordance with the requirements of the *Planning*

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*and Environment Act 1987*. Exhibition was also undertaken in accordance with the *Mitchell Shire Community Engagement Framework 2018*. Exhibition comprised:

- Notification of relevant referral agencies and affected landowners including a plain English information sheet.
- Two weeks of advertising in the North Central Review (18 and 25 September 2018).
- Notice in the *Victoria Government Gazette* (20 September 2018).
- Two drop-in sessions were held in the Kilmore Library.
- Copies of the amendment and permit documentation were made available on Council's website and the Department of Environment, Land, Water and Planning (DELWP) website.
- Hard copies of all amendment and permit documentation were available at the Wallan Planning and Building Office and the Kilmore and Broadford Library and Customer Service Centres.

### Submissions

The combined amendment and permit application received ten (10) submissions. Six (6) submissions were received from referral authorities, one (1) from a community group, two (2) from neighbouring landowners and one (1) from the applicant. Of the submissions received:

- Three (3) were from referral authorities and one (1) was from the applicant who support the combined amendment and permit.
- Two (2) submissions were supportive and were resolved with recommended changes prior to the Panel Hearing.
- Four (4) submissions were unresolvable as the changes requested were not supported. Two (2) of these submissions objected to the permit component only and not to the proposed rezoning.

Council at its Ordinary Council Meeting held 17 December 2019 considered the submissions and resolved to request the Minister for Planning to appoint an Independent Planning Panel to consider Amendment C124 and Planning Permit PLP203/17.

## **ISSUES AND DISCUSSION**

### Planning Panel Hearing

Following Council consideration of submissions, the Minister for Planning appointed a two (2) person Independent Planning Panel. The role of the Planning Panel is to conduct a public hearing, consider all submissions, review the strategic merit of the

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combined amendment and permit and provide a report to the Minister for Planning and Council, detailing their findings and recommendations.

The Panel conducted a two (2) day public hearing on 12 and 13 May 2018, at Kilmore Trackside. A preceding Directions Hearing was held at the same venue on 24 January 2019. The proponent and two (2) submitters presented at the hearing. Council was represented by Terry Montebello of Maddocks Lawyers with John Henshall of Ethos Urban appearing as an expert witness who provided evidence regarding the economic impact of the application.

#### Revised Panel Hearing Plans

On 26 February 2019 the proponent issued revised plans to all parties to the Panel Hearing, in response to submissions and Council requested changes (Figure 3, full set of drawings at Attachment 6). These plans, in addition to the exhibited plans (Attachment 5), were considered by the Planning Panel. The revised plans make several changes to the layout of facilities and carpark/loading area;

- The supermarket setback from the top of the Kilmore Creek bank increased from 8 metres to 20 metres.
- The carpark, loading dock and delivery truck access has been revised. The revised delivery truck access removes reverse movements from the general public car park.
- The number of ancillary stores has reduced from 14 to 9, with a minor reduction in ancillary retail floor space from 1,047 square metres to 935 square metres, a reduction of 112 square metres.
- The medical centre has been relocated to the south-east corner of the site, fronting the Clarke Street/Northern Highway intersection. The two retail stores fronting the Northern Highway have been combined with the relocated medical centre to provide a single additional building.
- Pedestrian paths from the Clarke Street entrance and Northern Highway entrance to the centre are provided.
- The amenities block has been relocated from the south west of the supermarket complex frontage to the north east.
- A reduction in native vegetation removal, from 7 to 3 trees. Approximately 80 trees will be planted throughout the development.

The revised plans are considered a general improvement on the exhibited plans, particularly the delivery vehicle arrangements and consolidated medical centre and shopfronts on the corner of the Northern Highway and Clarke Street. The revised plans form the basis of the Panel's recommendations regarding the draft planning permit.

COMBINED PLANNING SCHEME AMENDMENT C124 AND PLANNING PERMIT APPLICATION PLP203/17 FOR RE-ZONE AND DEVELOPMENT OF A SUPERMARKET, INSTALLATION AND DISPLAY OF SIGNAGE, LIQUOR STORE, SPECIALTY RETAIL AND MEDICAL CENTRE IN KILMORE - CONSIDERATION OF PANEL REPORT (CONT.)



Figure 3: Panel Hearing Revised Floor Plans

### Planning Panel Report

The Panel's findings and recommendations support the rezone of the subject site from Industrial 1 to Commercial 1 Zone. In the executive summary the Panel Report noted that *"the strategic justification for the Amendment is unequivocal and the rezoning of the land was not contested in any great detail"*.

The Panel generally supports the revised plans and only recommended minor technical changes to permit conditions. The revised carpark, loading bay, pedestrian access and increased creek setback are in accordance with Council's consideration of submissions on 17 December 2018.

The revised location of the amenities block and location of three (3) carparks in the north of the site close to the creek bank were not supported by Council at the Panel Hearing, however the Panel provided support for these design changes.

### Summary of Key Issues

COMBINED PLANNING SCHEME AMENDMENT C124 AND PLANNING PERMIT APPLICATION PLP203/17 FOR RE-ZONE AND DEVELOPMENT OF A SUPERMARKET, INSTALLATION AND DISPLAY OF SIGNAGE, LIQUOR STORE, SPECIALTY RETAIL AND MEDICAL CENTRE IN KILMORE - CONSIDERATION OF PANEL REPORT (CONT.)

<b>Issue and Panel Report Page Number</b>	<b>Summary</b>
Need for specialty retail stores and economic impact Pages 18 - 22	Economic Impact Assessments found that Kilmore has an existing low commercial vacancy rate, a high level of escape expenditure (it is estimated that 50% of all retail expenditure by Kilmore residents is done outside of Kilmore's trading area) and would have minimal impact on existing traders in Kilmore.  The Panel finds that <i>"co-location of specialty shops with the supermarket will provide an improved retail offer to Kilmore residents and retain escape expenditure that currently is spent out of town"</i> (Executive Summary).
Kilmore Creek and northern Wall Treatment Pages 23 - 49	Prior to the Panel Hearing the Goulburn Broken Catchment Management Authority (GBCMA) and the proponent agreed to a 20-metre building setback from the top of the creek bank. The GBCMA withdrew their submission prior to the Panel Hearing as discussed above in this report. The Panel therefore did not consider this matter in detail.  The Panel supports: <ul style="list-style-type: none"> <li>- Provision of a chain mesh fence on the northern boundary of the site for safety and security purposes</li> <li>- An in-ground grow wall treatment on the northern and western walls of the supermarket complex.</li> </ul>
Location of amenities Pages 24-28	The revised plans locate the amenities block on the eastern frontage of the supermarket complex. Council Officers at the Hearing sought to have the amenities block internalised and the shopfronts extended along the eastern frontage to improve amenity and activation near to the creek bank.  The Panel considers that the revised amenities location is superior to the exhibited plans which located the amenities block near the loading bay on in the south west of the supermarket complex. The Panel further considers that locating the amenities near the improved creek environment will provide community benefit for those using the creek bank shared path and that a shopfront in this area may not be commercially viable.
Traffic Management and Access Pages 28 - 30	Prior to the Hearing an independent Traffic Impact Assessment (TIA) was prepared for Council which informed changes to the pedestrian access and developer contributions. The TIA provided recommendations regarding upgrades to Clarke Street, turn lanes for the Clarke Street/Northern Highway intersection and appropriate developer contributions to the Clarke and Murray Street intersection upgrade.  The Panel supports: <ul style="list-style-type: none"> <li>- Provision of a pedestrian refuge at the Northern Highway entrance</li> <li>- Provision of 3.5 metre wide through traffic lane and 3.3 metre wide turning lane on Clarke Street</li> <li>- Widening the delivery vehicle exit on Clarke Street to ensure delivery vehicles do not encroach on the westbound through lane</li> </ul> The revised plans improve pedestrian access through the carpark, with dedicated paths to the supermarket complex from the Clarke Street and Northern Highway entrances.  The number of disabled car parks has been increased from six to eight, with two disabled car parks located adjacent the medical centre. All carparks are 2.6

COMBINED PLANNING SCHEME AMENDMENT C124 AND PLANNING PERMIT APPLICATION PLP203/17 FOR RE-ZONE AND DEVELOPMENT OF A SUPERMARKET, INSTALLATION AND DISPLAY OF SIGNAGE, LIQUOR STORE, SPECIALTY RETAIL AND MEDICAL CENTRE IN KILMORE - CONSIDERATION OF PANEL REPORT (CONT.)

<b>Issue and Panel Report Page Number</b>	<b>Summary</b>
	<p>metres wide as required by car park standards. Of the 249 carparks, 63 comply with the minimum length requirement of 4.9 metres, with the remaining 186 being 5.5 metres long, exceeding the minimum requirement</p> <p>Loading dock and delivery truck access has been revised. Delivery trucks move forward through the carpark from the Northern Highway access point, and then reverse into the loading dock in an area restricted from general public parking, removing reverse truck movements through the public car park.</p> <p>All changes to pedestrian access, disabled car parks and delivery access improve on the exhibited design and increase safety and usability.</p>
<p>Landscaping and tree removal Page 30</p>	<p>The revised proposal seeks to remove three native trees, which is a reduction from the exhibited plans which sought to remove seven native trees, and to plant approximately 80 trees throughout the development.</p> <p>The carpark contains planting along the Clarke Street and Northern Highway frontages, and tree plantings between all rows of carparks. Landscaped vegetated areas are located on the south east corner of the supermarket complex.</p> <p>The permit conditions pertaining to landscape provide Council with the opportunity to ensure appropriate plant species are utilised prior to development commencing.</p>
<p>Developer works and contributions Page 30</p>	<p>The Panel considers there is sufficient direction in Permit Condition 3 to secure infrastructure contributions.</p> <p>The following developer works are proposed as part of the application:</p> <ul style="list-style-type: none"> <li>- Shared paths on the Northern Highway frontage and on the Kilmore Creek bank. The Northern Highway shared path will connect to the future Kilmore Creek pedestrian bridge</li> <li>- A footpath on the Clarke Street frontage</li> <li>- Removal or relocation of power poles on Clarke Street (subject to further design considerations)</li> <li>- Undergrounding of the swale drain on the Northern Highway frontage</li> </ul> <p>These developer works will provide community benefit through improved pedestrian connectivity and relocation or removal of power poles from Clarke Street which is a safety concern.</p> <p>Council Officers have reached an agreement with the proponent for a developer contribution providing apportionment towards the upgrade of the Clarke and Murray Street roundabout and propose entering into a Section 173 Agreement with the applicant.</p>

## CONSULTATION

All submitters were presented with the opportunity to be heard by the Independent Planning Panel. The Panel Hearing was a public session and any person was welcome to attend the Hearing and observe the proceedings.

Council publicly released the Panel's Report within the prescribed timeframes of receiving the report. All submitters were notified of publication of the Panel Report and

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a copy has been made available for viewing on Council's website, the Broadford Library, Kilmore Library and the Wallan Planning and Building Office.

All submitters to Amendment C124 have also received written notification of the process for Council's consideration of the Panel Report, including the details of this Ordinary Council Meeting. All submitters will be notified of the outcome of Council's consideration of this report.

### **FINANCIAL, RESOURCE AND ASSET MANAGEMENT IMPLICATIONS**

The proponent is required to pay for the costs incurred by the Planning Panel. Costs incurred for Council's independent reviews of the application and representation at the Planning Panel were allocated within the Strategic Planning operating budget for the 2018-2019 financial year. The proponent is required to pay the associated fees with the request to approve this planning scheme amendment should Council resolve to adopt and seek Ministerial approval.

Condition 3 of the draft planning permit requires the applicant to enter into a Section 173 agreement for developer contributions. This will provide funding for necessary infrastructure upgrades to service the proposed development.

### **POLICY AND LEGISLATIVE IMPLICATIONS**

The proposed development is consistent with the *Mitchell Shire Council Plan 2017-2021*. Key Strategy 3.1 of the Council Plan states that Council should "Plan for growth and change through best practice design of services, infrastructure, open space and recreation facilities". The proposed amendment and permit application has been prepared and exhibited in accordance with the relevant provisions of the *Planning and Environment Act 1987*.

### **RISK IMPLICATIONS**

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
Disruption during construction and operation of the development.	Medium	The proposed Permit Conditions include requirements pertaining to amenity, traffic, access, environment, car parking and construction phase to minimise risks.	If the development is approved it is anticipated there will be minor issues during construction and operation, however these issues are typical for any major development and will be manageable by Council and relevant government agencies.

### **SUSTAINABILITY IMPLICATIONS (SOCIAL AND ENVIRONMENTAL)**

#### Social

The proposed development will provide the community with additional retail choices. The proposal is estimated to generate 210 ongoing jobs within Kilmore. The proposed

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improvements to the Kilmore Creek bank and the provision of commercial facilities in that area will provide enhanced social opportunities for residents.

### Environment

The subject site is undeveloped vacant land located at the northern end of Kilmore's town centre. The proposed development seeks to improve the northern end of Sydney Street and part of the Kilmore Creek corridor through tree plantings.

### **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**

Provision of the range of facilities which are proposed, including retail, community and medical facilities, will benefit children and young people in various ways. Full and part time employment opportunities for young people are likely to present themselves. An additional medical centre will improve access to medical services.

### **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 Independent Planning Panel has submitted its Report and provided recommendations. Council is now required to formally consider this Panel Report. After considering all submissions received the Panel supports the rezone of the subject site from Industrial 1 Zone to Commercial 1 Zone. The Panel recommends that Planning Permit 203/17 is approved subject to minor changes.

Following consideration of the Panel Report, it is recommended that Council adopt Amendment C124 to the *Mitchell Planning Scheme* as exhibited and provided in the form of Attachment 3 to this report and that Council recommend the Minister for Planning grant Planning Permit 203/17, provided in the form of Attachment 4 in accordance with the Panel's findings. This recommendation is in accordance with the *Kilmore Structure Plan 2016*.

If approved this will provide for a high-quality supermarket, medical centre and retail complex which will provide greater retail choice, local jobs and access to medical services for Kilmore residents.

COMBINED PLANNING SCHEME AMENDMENT C124 AND PLANNING PERMIT APPLICATION PLP203/17 FOR RE-ZONE AND DEVELOPMENT OF A SUPERMARKET, INSTALLATION AND DISPLAY OF SIGNAGE, LIQUOR STORE, SPECIALTY RETAIL AND MEDICAL CENTRE IN KILMORE - CONSIDERATION OF PANEL REPORT (CONT.)

# **MITCHELL SHIRE COUNCIL**

## **Council Meeting Attachment**

### **DEVELOPMENT AND INFRASTRUCTURE**

**19 AUGUST 2019**

**9.4**

**COMBINED PLANNING SCHEME  
AMENDMENT C124 AND PLANNING PERMIT  
APPLICATION PLP203/17 FOR RE-ZONE AND  
DEVELOPMENT OF A SUPERMARKET,  
INSTALLATION AND DISPLAY OF SIGNAGE,  
LIQUOR STORE, SPECIALTY RETAIL AND  
MEDICAL CENTRE IN KILMORE -  
CONSIDERATION OF PANEL REPORT**

**Attachment No: 1**

**Panel Report: C124 and PLP203/17 (excl.  
Permit Conditions)**

*Planning and Environment Act 1987*

**Panel Report**

**Mitchell Planning Scheme Amendment C124 and Planning Permit PLP203/17**

**109 Northern Highway and 80 Clarke Street, Kilmore**

**29 April 2019**



*Planning and Environment Act 1987*

Panel Report pursuant to section 25 of the Act

Mitchell Planning Scheme Amendment C124 and Planning Permit PLP203/17

109 Northern Highway and 80 Clarke Street, Kilmore

29 April 2019



David Merrett, Chair



Michael Ballock, Member

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## Glossary and abbreviations

C1Z	Commercial 1 Zone
Council	Mitchell Shire Council
DDO4	Schedule 4 to the Design and Development Overlay
Dimasi EIA	Dimasi Economic Impact Assessment
GBCMA	Goulburn Broken Catchment Management Authority
IN1Z	Industrial 1 Zone
KADRRA	Kilmore and District Residents and Ratepayers Association
KSP	Kilmore Structure Plan 2016
planning permit	Planning Permit PLP203/17
the Proponent	Lascorp Development Group
TfV	Transport for Victoria

## Overview

Amendment summary	
<b>The Amendment</b>	Mitchell Planning Scheme Amendment C124 and Planning Permit PLP203/17
<b>Common name</b>	109 Northern Highway and 80 Clarke Street, Kilmore
<b>Brief description</b>	<p><b>Amendment</b></p> <p>Rezone the land from Industrial 1 Zone to Commercial 1 Zone</p> <p><b>Planning Permit PLP203/17</b></p> <p><u>Exhibited</u> - Construct a supermarket, medical centre and retail premises, use the land for the sale of packaged liquor, alteration of access to Road Zone Category 1 and removal of vegetation</p> <p><u>Amended</u> - Construct a supermarket, medical centre and retail premises, installation and display of signage, use the land for the sale of packaged liquor, alteration of access to Road Zone Category 1 and removal of vegetation</p>
<b>Subject site</b>	109 Northern Highway and 80 Clarke Street, Kilmore
<b>The Proponent</b>	Lascorp Development Group
<b>Planning Authority</b>	Mitchell Shire Council
<b>Authorisation</b>	7 August 2019
<b>Exhibition</b>	14 September to 22 October 2018
<b>Submissions</b>	<p>Number of Submissions: 10    Opposed: 4</p> <ol style="list-style-type: none"> <li>1. Goulburn Broken Catchment Management Authority</li> <li>2. Christos Karamoshos</li> <li>3. Lascorp Development Group</li> <li>4. Goulburn Valley Water</li> <li>5. Environment Protection Authority</li> <li>6. Kilmore and District Residents and Ratepayers Association</li> <li>7. Transport for Victoria and Regional Roads Victoria</li> <li>8. Mia Kilmore and Mia Corp</li> <li>9. Country Fire Authority</li> <li>10. Department of Environment, Land, Water and Planning</li> </ol>

Mitchell Planning Scheme Amendment C124 and Planning Permit PLP203/17 | Panel Report | 29 April 2019

Panel process	
<b>The Panel</b>	David Merrett (Chair) and Michael Ballock
<b>Directions Hearing</b>	Kilmore Trackside, 24 January 2019
<b>Panel Hearing</b>	Kilmore Trackside, 12, 13 and 14 March 2019
<b>Site inspections</b>	Unaccompanied, 24 January and 12 March 2019
<b>Appearances</b>	<p>Mitchell Shire Council represented by Terry Montebello of Maddocks, who called expert evidence on retail economics from John Henshall of Ethos Urban Economic Assessments</p> <p>Lascorp Development Group represented by Chris Townshend QC of Counsel, instructed by Amy Golvan of Lascorp Development Group, who called expert evidence from:</p> <ul style="list-style-type: none"> <li>- town planning from David Barnes of Hansen Partnership</li> <li>- retail economics from Justin Ganly from Deepend Consulting</li> <li>- traffic engineering from Henry Turnbull of the Traffix Group</li> <li>- landscape architecture from Tim Vernon of CDA Design Group</li> </ul> <p>Kilmore and District Residents and Ratepayers Association represented by Anne Radden Rose</p> <p>Mia Kilmore and Mia Corp represented by Mark Bartley of HWL Ebsworth Lawyers, who called expert evidence on retail economics from Marianne Stoettrup of Matters More</p>
<b>Citation</b>	Mitchell Planning Scheme PSA C124 [2019] PPV
<b>Date of this Report</b>	29 April 2019