
9.2 PLANNING SCHEME AMENDMENT C139: CORRECTION OF ZONE ANOMALIES - CONSIDERATION OF SUBMISSIONS

Author: Justin Harding - Strategic Planner

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Attachments: 1. Amendment C139 Summary of Submissions

SUMMARY

Proposed Planning Scheme Amendment C139 seeks to correct zoning anomalies in Kilmore, Bylands and Wandong. The proposed zone corrections relate to public zones affecting private land or public land being incorrectly zoned.

Amendment C139 was placed on public exhibition between 27 September 2019 and 8 November 2019, in accordance with Council's resolution on 18 February 2019. Exhibition comprised a mailout to affected landowners, newspaper advertising and notice in the *Victoria Government Gazette*.

In total 11 submissions have been received. A summary of the submissions received, and officer response is provided in Attachment 1 to this report. Of the 11 submissions, ten (10) support the amendment and one (1) objects.

The objection pertains to the proposed rezoning of former railway land in Bylands from Public Use Zone 4 to Farming Zone. The submission will need to be referred to an Independent Planning Panel as the matters raised in the submission cannot be resolved.

It is recommended that Amendment C139 be referred to the Independent Planning Panel for review and consideration of the unresolved submission.

RECOMMENDATION

THAT Council:

1. Request the Minister for Planning to appoint an Independent Planning Panel under Part 8 of the *Planning and Environment Act 1987* to consider Amendment C139.
2. Submit to the Independent Planning Panel Council's response to submissions, as generally outlined in Attachment 1 to this report.

BACKGROUND

Amendment C139 seeks to correct zoning anomalies that have either been requested by affected landowners, requested by VicTrack or identified as actions by a township structure plan. These changes will improve the accuracy of the *Mitchell Planning Scheme* by ensuring land is zoned appropriately.

Amendment C139 proposes to correct the following zoning anomalies:

PLANNING SCHEME AMENDMENT C139: CORRECTION OF ZONE ANOMALIES - CONSIDERATION OF SUBMISSIONS (CONT.)

- **Former railway line land that connected Heathcote Junction to Kilmore, south of Union Lane.** The railway line has been decommissioned. The land is privately owned, used as a road reserve or surplus to VicTrack requirements. It is proposed to rezone from Public Use Zone 4 (Transport, PUZ-4) to Farming Zone. This matter received one (1) opposing submission and is discussed in detail later in this report.
- **Land at and adjacent to the intersection of Sutherland Street and Rutledge Street, Kilmore.** The Road Zone Category 2 does not match the road reserve and constructed intersection. It is proposed to correct the Road Zone Category 2, General Residential Zone and Special Use Zone 4 (Private Educational or Religious Institutions) in this area. No opposing submissions have been received regarding this proposed rezone.
- **Land owned by Goulburn Valley Water at 52-65 Anderson Road, Kilmore and private land adjoining at 50 Anderson Road, Kilmore.** The zoning for this area contains several anomalies relating to the Goulburn Valley Water storage facility. It is proposed to correct the Farming Zone and Public Use Zone in this area. No opposing submissions have been received regarding this proposed rezone.
- **The Wandong Memorial Park at 3279 Epping Kilmore Road, Wandong.** It is proposed to rezone the park from Low Density Residential Zone to Public Park and Recreation Zone. No opposing submissions have been received regarding this proposed rezone.

ISSUES AND DISCUSSION

Exhibition of Amendment C139

Amendment C139 was placed on formal exhibition from 27 September 2019 to 8 November 2019 in accordance with the relevant requirements of the *Planning and Environment Act 1987*. Exhibition was also undertaken in accordance with the *Mitchell Shire Community Framework 2018*. Exhibition comprised:

- Notification of relevant referral agencies and affected landowners including a plain English information sheet;
- Notice in the North Central Review (1 October 2019);
- Notice in the *Victoria Government Gazette* (3 October 2019);
- Copies of all amendment documentation were made available on Council's website, and the Department of Environment, Land, Water and Planning (DELWP) website; and
- Hard copies of amendment documentation were available at the Wallan Planning and Building Office and the Kilmore and Broadford Library and Customer Service Centres.

PLANNING SCHEME AMENDMENT C139: CORRECTION OF ZONE ANOMALIES - CONSIDERATION OF SUBMISSIONS (CONT.)

Submission Review

Amendment C139 has received 11 submissions. Of the submissions received:

- Five (5) are from referral authorities who support the amendment;
- Four (4) are from affected or neighbouring landowners who support the amendment;
- One (1) is from a community group Friends of the Bendigo-Kilmore Rail Trail who withdrew their opposing submission to the proposed rezone of land in Bylands; and
- One (1) is from a neighbouring landowner who opposes the proposed rezone of land in Bylands.

Attachment 1 to this report provides a summary of the submissions and the officer response. The one (1) objection, one (1) withdrawn submission and five (5) of the supporting submissions pertain only to the proposed rezone of the former Heathcote Junction to Heathcote railway land in Bylands from PUZ-4 to Farming Zone.

Kilmore and Wandong Rezones

No submissions requesting changes to the proposed zone corrections at the Conway Street/Rutledge Street, Kilmore road reserve, the Goulburn Valley Water facility at Anderson Road, Kilmore or the Wandong Memorial Park have been received. It is recommended to proceed with the proposed rezones in Kilmore and Wandong as exhibited and these matters are therefore not discussed further in this report.

Former Wandong to Kilmore Rail Reserve, Bylands

Amendment C139 proposes to rezone the former rail reserve south of Union Lane in Bylands from PUZ-4 to Farming Zone (Figure 1). One (1) submission opposes this component of Amendment C139. An adjoining landowner at 310 Arkells Lane objects to the rezone as they consider the land should remain within VicTrack ownership and wish to see the land utilised for a rail trail and consider that rezoning the land to Farming Zone will prevent this future use.

Four (4) submissions from affected and neighbouring landowners support Amendment C139 as they wish to see the zoning in the area and on their properties corrected to reflect the private ownership of their land. One (1) submission from community group Friends of the Bendigo-Kilmore Rail Trail have withdrawn their submission. One (1) submission from VicTrack supports the rezone as the remaining section of the former railway line still in their ownership has been deemed surplus to requirements.

PLANNING SCHEME AMENDMENT C139: CORRECTION OF ZONE ANOMALIES - CONSIDERATION OF SUBMISSIONS (CONT.)

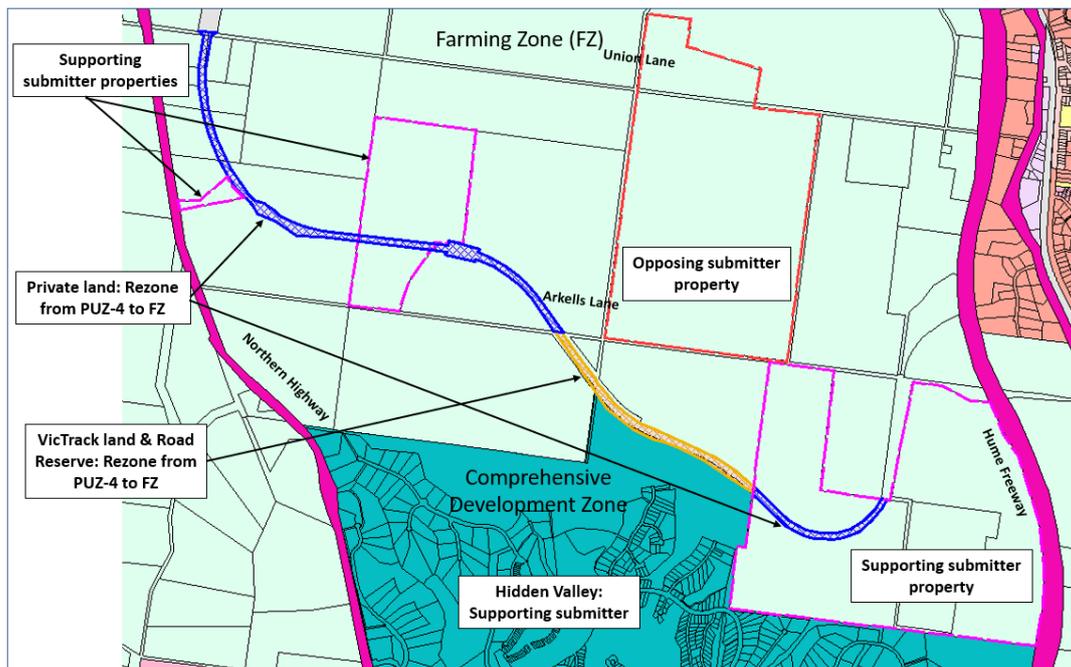


Figure 1: Bylands rezone area, submitter locations and ownership of former rail line

The objection to Amendment C139 is not supported for several reasons as discussed below.

Ministerial Direction: Form and Content of Planning Schemes & Purpose of Public Use Zone

The *Mitchell Planning Scheme* must be in accordance with the *Ministerial Direction: Form and Content of Planning Schemes*. Section 12 of this Ministerial Direction specifies that “A planning scheme may only include land in a Public Use Zone if the land is Crown land, or is owned by, vested in or controlled by a Minister, government department, public authority or municipal council”.

As shown at Figure 1, the majority of the proposed rezone land is held in private ownership and is currently not compliant with the *Ministerial Direction: Form and Content of Planning Schemes*. Therefore, the submitters request to change the amendment to retain the PUZ-4 on the privately-owned portion of the rezone area is not possible as per the Ministerial Direction. This view was supported by the Department of Environment, Land, Water and Planning (DELWP) Hume Regional Planning office.

The purpose of the Public Use Zone is “To recognise public land use for public utility and community services and facilities”. The portion of the former railway land owned by VicTrack is not utilised for public purposes as the rail line was closed in 1968 and dismantled in 1975. Schedule 4 refers to transportation uses. Therefore, the Public Use Zone applied to the VicTrack portion of the rezone area is not appropriate and is recommended to be rezoned to Farming Zone to allow for future sale of the land.

PLANNING SCHEME AMENDMENT C139: CORRECTION OF ZONE ANOMALIES - CONSIDERATION OF SUBMISSIONS (CONT.)

Use of former rail line for rail trail

At its Ordinary Council meeting held 19 March 2018, Council endorsed the findings of the *Wallan to Heathcote Rail Trail Feasibility Study 2017* (Feasibility Study). The Feasibility Study at Page 15 showed the potential rail trail route as following the former rail alignment.

The Feasibility Study provided a high-level analysis of the proposed route for the rail trail and did not consider that this route would bisect several smaller properties in Bylands. During consultation of the Feasibility Study several landowners, including Bylands landowners affected by Amendment C139, opposed the use of the former rail line for a rail trail as the route shown would divide their properties.

Council responded to these concerns by noting in the Feasibility Study at Page 37 that compulsory acquisition would not be utilised to secure land for the project. It is also noted that the PUZ-4 cannot be utilised for compulsory land acquisition purposes.

One section of the PUZ-4 land bordering Hidden Valley is owned by VicTrack (shown in detail at Figure 2). All other sections of the former rail line proposed to be rezoned are within private ownership. VicTrack supports Amendment C139. The VicTrack owned section is not suitable to be used for a rail trail as the eastern end has no through connectivity to a road reserve, however there is potential for the VicTrack land to be utilised for public purposes such as a local walking trail for Hidden Valley residents subject to further investigation.

Rezoning from PUZ-4 to Farming Zone will allow for use of this land for a walking trail should investigations deem it appropriate. VicTrack cannot legally sell or gift the land to Council under the current PUZ-4 zoning as the land is not used as a railway line. It is recommended that Council proceed with the Planning Panel for Amendment C139 while consulting with VicTrack and the Hidden Valley developer to investigate future uses of the VicTrack land.

PLANNING SCHEME AMENDMENT C139: CORRECTION OF ZONE ANOMALIES - CONSIDERATION OF SUBMISSIONS (CONT.)



Figure 2: VicTrack land aerial. Access is currently available via an unnamed and partially made road reserve at the western extent of the land or Arkells Lane

The proposed rezone will not compromise provision of a shared path through Bylands to connect Wandong and Wallan to Heathcote Junction. A shared path trail connecting Wandong-Heathcote Junction and Kilmore could be provided in the area by utilising the existing Arkells Lane and Northern Highway road reserves. Arkells Lane and Northern Highway have wide road reserves which can allow for road/driver and bike-rider separation. Voluntary acquisition of land could be sought where the road reserves contain features, such as dense vegetation, that would prevent shared path access.

Utilising existing road reserves with voluntary land acquisition would significantly reduce the cost of providing a shared path as land acquisition costs are significantly reduced. Acquiring land adjacent road reserves is also significantly less disruptive to properties as road reserves are typically property or lot boundaries. Therefore, utilising road reserves provides significant cost and community benefits versus utilising the previous railway line land which would bisect properties and significantly add to the cost of development.

Future rail trail zoning

The PUZ-4 is not utilised for rail trails. The Great Victorian Rail Trail in Tallarook is predominately within the Road Zone Category 1 and Farming Zone. The Great Southern Rail Trail in Gippsland is predominately within the Road Zone Category 1 and Public Park and Recreation Zone. The O'Keefe Rail Trail between Heathcote and

PLANNING SCHEME AMENDMENT C139: CORRECTION OF ZONE ANOMALIES - CONSIDERATION OF SUBMISSIONS (CONT.)

Bendigo utilises several zonings, including Public Park and Recreation Zone, Rural Conservation Zone and Farming Zone.

Rezoning the land from PUZ-4 to Farming Zone will allow for use of any section of the former rail line for a rail trail, or walking trail, in future, should landowners voluntarily agree to do so. Therefore, it is of no benefit to retain the PUZ-4, including on the VicTrack owned parcel, and the submitters request is not supported. Council proceeding with correcting a zoning anomaly does not constitute an abandonment of its previous resolution regarding the Feasibility Study.

Next Steps

It is recommended that Amendment C139 be referred to the Independent Planning Panel for review and consideration of unresolved submissions. Once the Panel have conducted a Panel Hearing, and reviewed submissions a Panel Report with recommendations is issued to Council. Council will then have the opportunity to consider the Panel Report at a future Council Meeting.

CONSULTATION

All submitters will be notified of Council's decision following consideration of this report. Any mediation that continues to occur with submitters would be consistent with the officer response identified within Attachment 1 of this report.

If an Independent Planning Panel is appointed, all submitters will be notified of the hearing proceedings and will be given the opportunity to present to the Planning Panel.

If a Panel Hearing is conducted, and a report released with its findings and recommendations, Council is required to release the Panel Report within 28 days of its receipt. The Panel Recommendations would be subject to a future report to Council for formal consideration.

FINANCIAL, RESOURCE AND ASSET MANAGEMENT IMPLICATIONS

If a Planning Panel is appointed, Council is responsible for the payment of the Panel's costs, including hearing time, report writing time and expenses (e.g. accommodation). The full extent of the panel costs will depend on the number of panel members required, the complexity of submissions and the length of hearing time. Council's Strategic Planning operating budget will be able to accommodate the Panel costs.

POLICY AND LEGISLATIVE IMPLICATIONS

Council Plan

Proposed Planning Scheme Amendment C139 is consistent with the relevant objectives of the Council Plan 2017 – 2021, including the following:

Strategic Objective: Responsible Planning

To demand best practice outcomes when planning for future growth.

Relevant Key Strategies: *Employ best practice planning tools to achieve desired outcomes.*

PLANNING SCHEME AMENDMENT C139: CORRECTION OF ZONE ANOMALIES - CONSIDERATION OF SUBMISSIONS (CONT.)

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?
Some parties may feel they have not had a chance to have their say and have not had their submission resolved.	Low	Should Council adopt the recommendations in this report, there is an opportunity for parties to be involved in an upcoming Planning Panel process which will provide the opportunity to make formal submissions to an independent body. This is part of a typical planning scheme amendment process.	The costs associated with the next phase of the planning scheme amendment process is accommodated within the existing budget.

SUSTAINABILITY IMPLICATIONS (SOCIAL AND ENVIRONMENTAL)

It is not expected that the proposed Planning Scheme Amendment will have any adverse effects on the environment or sustainability as the changes are considered to be minor in nature.

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 implications for children and young people in terms of correcting the identified anomalies through this proposed Planning Scheme Amendment.

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

As a result of one (1) unresolved submission objecting to Amendment C139 it is recommended that Council resolve to request the Minister for Planning to appoint an Independent Planning Panel to conduct a public hearing to consider the unresolved submissions. Both unresolved submissions object to the rezoning of the former railway land in Bylands from PUZ-4 to Farming Zone in order to allow future use of the land for a rail trail.

The submissions cannot be considered as most of the PUZ-4 land is within private ownership and therefore is not in accordance with *Ministerial Direction: Form and Content of Planning Schemes*. It is unlikely that the future trail will follow the former rail route as Council would be required to acquire private land. Acquisition of land along

PLANNING SCHEME AMENDMENT C139: CORRECTION OF ZONE ANOMALIES - CONSIDERATION OF SUBMISSIONS (CONT.)

the former rail line is not supported by Bylands property owners as this would divide their properties. The endorsed *Wallan to Heathcote Rail Trail Feasibility Study 2017* notes that no compulsory acquisition of land will be utilised for the rail trail. Rail trails throughout Victoria are not within the PUZ-4, with the Farming Zone allowing use of land for a rail trail. Therefore, it is of no benefit to retain the PUZ-4 to ensure the former rail line route can be utilised for a rail trail.

PLANNING SCHEME AMENDMENT C139: CORRECTION OF ZONE ANOMALIES - CONSIDERATION OF SUBMISSIONS (CONT.)

MITCHELL SHIRE COUNCIL

Council Meeting Attachment

DEVELOPMENT AND INFRASTRUCTURE

18 MAY 2020

9.2

**PLANNING SCHEME AMENDMENT C139:
CORRECTION OF ZONE ANOMALIES -
CONSIDERATION OF SUBMISSIONS**

Attachment No: 1

Amendment C139 Summary of Submissions

Attachment 1: Summary of Submissions and Council Officer Responses to Mitchell Combined Planning Scheme Amendment C139

No	Submitter	Submission Summary	Summary Council Officer Response	Status
1	Goulburn Valley Water (GVW)	GVW provided no objection to Amendment C139.	Support noted; no response required.	No response required.
2	Affected neighboring landowner, former railway line (310 Arkells Lane, Bylands)	Considers the former railway line should remain within VicTrack ownership and continue to be within Public Use Zone 4 (Transport, PUZ-4).	Submission cannot be supported: <ul style="list-style-type: none"> - Submission not in accordance with <i>Form and Content of Planning Schemes</i>. - The majority of the PUZ-4 land is within private ownership. - The PUZ-4 is not utilised for rail trails, rezoning of land to Farming Zone will still allow for use of land for a rail trail should landowners agree. - The PUZ-4 cannot be utilised for acquisition of land. - The submission is not in accordance with the endorsed <i>Wallan to Heathcote Rail Trail Feasibility Study 2017</i> which specifies no compulsory acquisition of land for a potential rail trail. 	Unable to resolve – no changes proposed. Submission to be referred to Panel.
3	Department of Environment, Land, Water and Planning (DELWP) Hume Regional Planning Approvals	DELWP provided no objection to Amendment C139.	Support noted; no response required.	No response required.
4	Tract Consulting on behalf of Hidden Valley Pty Ltd	The Hidden Valley land manager utilises an unnamed road reserve for maintenance access to the north of the estate. Part of this road reserve is within Public Use Zone 4 and is proposed to be rezoned to Farming Zone. The submitter sought clarification regarding the ownership	Councils mapping system showed the area in question is a government road reserve. The submission was forwarded to a road reserve expert at DELWP who also advised that the land is a government road reserve. Hidden Valley have withdrawn their concern and support the amendment.	No further response required.

No	Submitter	Submission Summary	Summary Council Officer Response	Status
		and status of the road reserve due to concern the area may be sold and maintenance access prevented.		
5	EPA	The EPA provided no objection to Amendment C139. The EPA advised Council to ensure that the land proposed to be rezoned is suitable for any proposed use and associated development.	The proposed rezones seek to correct anomalies only. It is considered that the proposed rezones provide for suitable use and development of land.	No further response required.
6	Friends of the Bendigo-Kilmore Rail Trail.	The submitter objected, raising similar issues to Submission 2.	The submitter attended the Hearings Committee held 9 March 2020. After the Hearings Committee the submitter considered the supportive submissions presented and reviewed the draft Amendment C139 Council Report. On consideration of supportive submitters and the Council Report the submitter has withdrawn their objection.	No further response required.
7	Affected landowner, former railway line (510 Arkells Lane, Bylands)	Supports Amendment C139. Advises the Public Use Zone bisects their property. The submitter notes that the Ministerial Form and Content of Planning Schemes states that a planning scheme may only include land in a Public Use Zone if the land is Crown Land or is owned by, vested in, or controlled by a Minister, government department, public authority or municipal council. The submitter advises they do not support utilising the former railway land that bisects their property for a rail trail.	Submission supported.	Support is noted. Submission to be referred to Panel to support proposed zone correction in Bylands.
8	Goulburn Broken Catchment Management Authority (GBCMA)	The GBCMA provided no objection to Amendment C139.	Support noted; no response required.	No response required.

No	Submitter	Submission Summary	Summary Council Officer Response	Status
9	Affected neighboring landowner, former railway line (1020 Northern Highway, Bylands)	<p>The submitter owns land adjacent the former railway line. The submitter advises that they believed the former railway to be zoned General Farming and that the Public Use Zone is an error.</p> <p>The submitter advises that Public Use Zone can only be applied to land owned and controlled by government agencies.</p>	Submission supported.	Support is noted. Submission to be referred to Panel to support proposed zone correction.
10	Affected landowner, former railway line (2977 Epping-Kilmore Road, Bylands)	Advises the Public Use Zone bisects their property. The submitter does not consent to any public use of the land, and strongly objects to any use of their land for a rail trail.	Submission supported.	Support is noted. Submission to be referred to Panel to support proposed zone correction.
11	VicTrack	VicTrack supports Amendment C139, noting the former rail line south of Arkells Lane is now closed, is declared surplus to requirements and should align with the surrounding zoning.	Submission supported.	Support is noted. Submission to be referred to Panel to support proposed zone correction.