9.6 PLANNING SCHEME AMENDMENT C139: CORRECTION OF ZONE ANOMALIES - CONSIDERATION OF PLANNING PANEL REPORT

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File No: *PL/05/272*

Attachments: *1. Amendment C139 Panel Report*
2. Amendment C139 Documentation

SUMMARY

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.

Following public exhibition of Amendment C139, Council considered submissions at its Ordinary Council meeting held 18 May 2020 and resolved to refer the Amendment and one (1) unresolved submission to an Independent Planning Panel.

The Independent Planning Panel's Report (Attachment 1) was received on 1 July 2020. The Panel recommends Amendment C139 be adopted as exhibited.

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

Following consideration of the Panel Report it is recommended that Council adopt Amendment C139 to the *Mitchell Planning Scheme* (Attachment 2). This report also recommends that Council submit the adopted Amendment to the Minister for Planning requesting approval.

RECOMMENDATION

THAT Council:

1. Pursuant to Section 29 of the *Planning and Environment Act 1987,* adopt Planning Scheme Amendment C139 to the *Mitchell Planning Scheme*.

2. Pursuant to Section 31 of the *Planning and Environment Act 1987*, forward the adopted Planning Scheme Amendment C139 to the Minister for Planning requesting approval.

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:

- **Former railway line land that connected Heathcote Junction to Kilmore, south of Union Lane, Bylands.** 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 (area shown at Figure 1). This matter received one (1) opposing submission and was considered in detail by the Independent Planning Panel.
- **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 were 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 were received regarding the 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 were received regarding the proposed rezone.

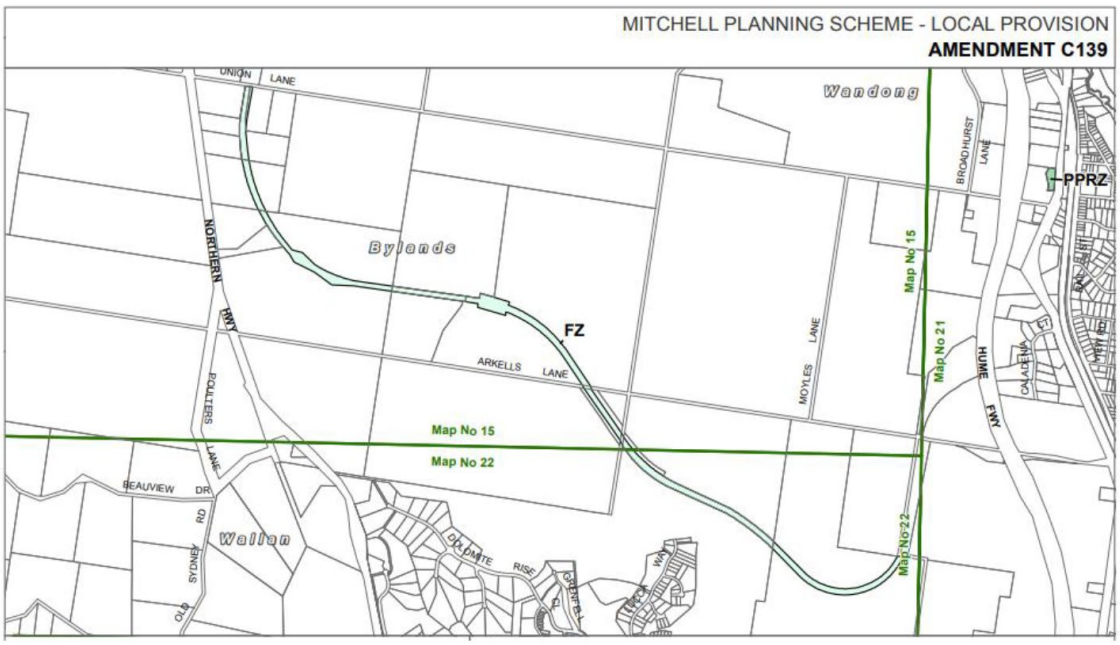

Figure 1: Former railway line rezone area, Bylands

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 of Amendment C139 was also undertaken in accordance with the *Mitchell Shire Community Framework 2018*.

Submissions to Amendment C139

Amendment C139 received 11 submissions. Of the submissions nine (9) supported the amendment, one (1) was withdrawn and one (1) objection was unable to be resolved. Council considered submissions to Amendment C139 at its Ordinary Council meeting held 18 May 2020 and resolved to request the Minister for Planning to appoint an Independent Planning Panel to consider Amendment C139.

ISSUES AND DISCUSSION

Planning Panel Hearing

Following Council consideration of submissions, the Minister for Planning appointed a one (1) person Independent Planning Panel. The role of the Planning Panel is to conduct a public hearing, consider all unresolved submissions, review the strategic merit of Amendment C139 and provide a report to the Minister for Planning and Council detailing their findings and recommendations. Prior to the Hearing all submitters were invited to provide further written and verbal presentations to the Panel as part of proceedings.

A Panel Hearing was conducted on 26 June 2020. In accordance with social distancing restrictions the Hearing was conducted via videoconference. Council Officers and

three (3) submitters presented at the Hearing. All three (3) submitters at the Hearing were focused on the Bylands rezoning component of Amendment C139.

Planning Panel Report

Council received the Planning Panel Report on 1 July 2020. The Panel's findings and recommendations support the strategic intent of Amendment C139 and is a favorable outcome for Council. The Panel recommends that Amendment C139 is adopted as exhibited. As the only contested element of Amendment C139 is the proposed

rezoning of the former rail line in Bylands from PUZ-4 to Farming Zone, the Panel Report and therefore this Council Report focuses on that proposal.

A summary of the Panel's findings to submissions and Council's response arising through the exhibition of Amendment C139 is provided below.

Submission	**Panel Findings**
Ministerial Direction: Form and Content of Planning Schemes	Most land proposed to be rezoned in Bylands is privately owned. The Panel agreed with Council that the current application of PUZ-4 to privately owned land in Bylands is inconsistent with the Ministerial Direction on Form and Content which specifies that land within a Public Use Zone must be publicly owned.
Application of Farming Zone to VicTrack Land	The Panel agreed that the application of the Farming Zone to the VicTrack portion of land (Figure 2) is appropriate given that the land has been identified as surplus to requirements and is intended to be sold. The Panel noted this is consistent with the *Victorian Government Land Transactions Policy and Guidelines 2016*, which requires that land subject to the Public Use Zone is rezoned prior to sale.
Use of former railway alignment for rail trail	The Panel agreed with Council that the rezoning of the land to Farming Zone does not preclude its use for a rail/walking trail or other public use in the future, subject to appropriate agreements with landowners and planning approvals.
Potentially Contaminated Land	The Panel considers that Council has appropriately determined the land proposed to be rezoned is not contaminated, in accordance with the requirements of *Ministerial Direction 1: Potentially Contaminated Land.*

Figure 2: VicTrack Land, Bylands

Future Use of VicTrack Land

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 showed the potential rail trail route as following the former rail alignment (p. 15). The Feasibility Study noted that compulsory acquisition would not be utilised to secure land for the project.

A section of the PUZ-4 land bordering Hidden Valley is owned by VicTrack (Figure 2). The VicTrack owned section is suitable to be used for a rail trail, bridle trail and local walking trail for Hidden Valley residents and other community members, subject to further investigation. The VicTrack land presents the opportunity provide a key section of the future shared path network from Wallan through Hidden Valley and Bylands to Kilmore and Wandong-Heathcote Junction.

The Panel agreed with Council that rezoning the land from PUZ-4 to Farming Zone will not preclude its use for a trail. VicTrack cannot legally sell or gift the land to Council until the current PUZ-4 is removed. Council Officers have commenced investigations into utilising the VicTrack land for a local walking trail for Hidden Valley residents and will present a report to Council with options regarding use of this land in the future.

CONSULTATION

All submitters were presented with the opportunity to be heard by the Independent Planning Panel. Council publicly released the Planning Panel Report within the prescribed timeframes of receiving the report. All submitters were notified of the

release of the Panel's Report and a copy has been made available for viewing on Council's website.

All submitters to Amendment C139 have also received written notification of the process for Council's consideration of the Planning 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

Sufficient funds for the costs incurred by the Planning Panel were allocated within the Strategic Planning budget for the 2020/21 financial year. The operating budget of Council's Strategic Planning Department has allowed for the fees associated with the request to approve this Planning Scheme Amendment should Council resolve to adopt and seek Ministerial approval for the Amendment.

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.*

RISK IMPLICATIONS

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
Reputational risk to Council in that some parties may feel their submissions are not resolved.	Low	The Independent Planning Panel Report recommends Council adopt the Planning Scheme Amendment as exhibited.	The processing of this Amendment will only include officer time and no additional financial cost to Council.

SUSTAINABILITY IMPLICATIONS (SOCIAL AND ENVIRONMENTAL)

It is not considered that adopting the Planning Scheme Amendment will have any adverse effects on the environment or sustainability as the changes are 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

The Independent Planning Panel has submitted its findings which are supportive of Amendment C139 and recommends Council adopts the Amendment as exhibited.

Subsequently, it is recommended that Council adopt Planning Scheme Amendment C139 to the *Mitchell Planning Scheme* and now seek formal approval of the Amendment from the Minister for Planning.

Planning and Environment Act 1987

Panel Report

Mitchell Planning Scheme Amendment C139

1 July 2020

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How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment. [section 27(1) of the *Planning and Environment Act 1987* (the Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the Act]

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

Mitchell Planning Scheme Amendment C139

1 July 2020

Michael Kirsch, Chair

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Glossary and abbreviations

Act	*Planning and Environment Act 1987*
Council	Mitchell Shire Council
DELWP	Department of Environment, Land, Water and Planning
EPA	Environment Protection Authority
FBKRT	Friends of the Bendigo-Kilmore Rail Trail
FZ	Farming Zone
GBCMA	Goulburn Broken Catchment Management Authority
GRZ	General Residential Zone
GVW	Goulburn Valley Water
MD1	Ministerial Direction 1 - Potentially Contaminated Land
PPN30	General Practice Note - Potentially Contaminated Land, June 2005
PUZ1	Public Use Zone Schedule 1
PUZ4	Public Use Zone Schedule 4
PUZ6	Public Use Zone Schedule 6
the Guidelines	Victorian Government Land Transactions Policy and Guidelines, 2016

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Overview

Amendment summary	
The Amendment	Mitchell Planning Scheme Amendment C139
Brief description	The Amendment corrects zone map anomalies
Subject land	Land within Bylands, Kilmore and Wandong
Planning Authority	Mitchell Shire Council
Authorisation	Conditional authorisation in an email dated 6 May 2019, including the need to demonstrate that the Amendment is consistent with Ministerial Direction 19
Exhibition	27 September to 8 November 2019
Submissions	Number of submissions: 11 - Goulburn Valley Water (GVW) - Kalocade Pty Ltd - Department of Environment, Land, Water and Planning (DELWP) - Hidden Valley Australia Pty Ltd - Environment Protection Authority (EPA) - Friends of the Bendigo-Kilmore Rail Trail (FBKRT) - Catherine Fasso - Goulburn Broken Catchment Management Authority (GBCMA) - John Cellante - Mark Peters - VicTrack

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Panel process	
The Panel	Michael Kirsch (Chair)
Directions Hearing	Held 'on the papers', directions and timetable issued on 12 June 2020
Panel Hearing	Via video conference, 26 June 2020
Site inspections	No on-site inspections were undertaken The Panel relied on aerial photographs and photographs and videos provided by Council and submitters
Appearances	Mitchell Shire Council represented by Justin Harding Friends of Bendigo-Kilmore Rail Trail represented by Lindsay Clay Catherine Fasso Leon and Montserrat Pezzimenti
Citation	Mitchell PSA C139 [2020] PPV
Date of this Report	1 July 2020

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Executive summary

Mitchell Planning Scheme Amendment C139 (the Amendment) seeks to correct various zoning anomalies that affect land in Wandong, Bylands and Kilmore.

The only contested element of the Amendment was the proposed rezoning of a section of the former Wandong, Heathcote and Sandhurst rail line from Public Use Zone 4 to Farming Zone. The rezoning was supported by various landowners, including VicTrack, but opposed in part by two submitters.

The objectors submitted that the land owned by VicTrack should be retained in public ownership and be used for public open space purposes, potentially as part of a rail trail through the area. A submission was also received from the Environment Protection Authority (EPA) that related to possible contamination of the former rail line.

The Panel agrees with Council that this rezoning is consistent with the Ministerial Direction on the Form and Content of Planning Schemes which requires that privately owned land not be subject to a 'public' zone. It will also facilitate the sale of land owned by VicTrack that is now deemed to be 'surplus to requirements'. In relation to the EPA submission, the Panel is satisfied that Council has appropriately considered and responded to these matters.

The Panel acknowledges the support for a rail trail through this area and the retention of the VicTrack land in public ownership, but these are matters for Council to consider and are not reasons for retaining the current zone or applying an alternative 'public' zone at this time.

The Panel is satisfied that the Amendment should proceed, including the proposed rezoning of the former rail line.

Recommendation

Based on the reasons set out in this Report, the Panel recommends that Mitchell Planning Scheme Amendment C139 be adopted as exhibited.

1 Introduction

1.1 The Amendment

(i) Amendment description

The purpose of the Amendment is to correct various zoning anomalies that affect public and private land in Wandong, Bylands and Kilmore.

More specifically, the Amendment proposes to:

- rezone land located in Bylands (south of Union Lane) and Wandong, (south of Arkells Lane) from Public Use Zone 4 (PUZ4) to Farming Zone (FZ)
- rezone part of 52-65 Anderson Road, Kilmore from FZ and Public Use Zone 6 (PUZ6) to Public Use Zone 1 (PUZ1)
- rezone part of 52-65 Anderson Road, Kilmore from PUZ1 to FZ
- rezone part of 50 Anderson Road, Kilmore from PUZ6 to FZ
- rezone 3279 Epping-Kilmore Road, Wandong from Low Density Residential Zone to Public Park and Recreation Zone
- rezone land fronting the western end of Rutledge Street, Kilmore from Road Zone Category 2 and Special Use Zone Schedule 4 to General Residential Zone Schedule 1
- rezone the road reserve at the intersection of Rutledge Street and Sutherland Street, Kilmore from Special Use Zone 4 to Road Zone Schedule 2.

The Amendment is intended to correct zoning anomalies associated with:

- the former rail line that connected Heathcote to Kilmore
- the realignment of Sutherland Street and Rutledge Street, Kilmore
- the disposal of land in Kilmore that is owned by VicTrack and has been identified for residential development
- a GVW water storage facility in Kilmore
- the Wandong Memorial Park.

(ii) Submissions

The Amendment attracted 11 submissions, including:

- four submissions from referral authorities/agencies that supported the Amendment or specific elements of it (GVW, DELWP, GBCMA and VicTrack)
- a submission from the EPA that did not object to the Amendment but provided comments on contamination issues
- three submissions from affected or neighbouring landowners who supported the rezoning of the former rail line (Catherine Fasso, John Cellante and Mark Peters)
- a submission from Hidden Valley Australia Pty Ltd that was resolved
- a submission from the Friends of the Bendigo-Kilmore Rail Trail (FBKRT) that raised various issues in relation to the rezoning and use of the former rail line
- one objecting submission from Kalocade Pty Ltd that opposed the rezoning of the former rail line.

The only unresolved issues related to the proposed rezoning of the former rail line in Bylands (south of Union Lane) and Wandong (south of Arkells Lane) from PUZ4 to FZ.

1.2 Background

Council advised that the zoning anomalies that the Amendment is intended to correct were either identified during the preparation of the Kilmore Structure Plan 2016 and the Wandong-Heathcote Junction Structure Plan 2016, or were initiated by landowners who had requested a rezoning.[1]

1.3 The Panel's approach

The Panel considered all written submissions made in response to the exhibition of the Amendment and submissions and other material presented to it during the Hearing. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

Given that the only contested element of the Amendment was the proposed rezoning of the former rail line, the Panel has prepared an abridged report that focusses on that proposal.

1.4 Discussion

The Panel agrees with Council that the Amendment is necessary in order to correct various mapping anomalies and notes that the only opposing submissions related to the proposed rezoning of the former rail line from PUZ4 to FZ. The issues related to this rezoning are discussed in the following chapter.

The Panel is satisfied that the Amendment is strategically justified and is consistent with the relevant Ministerial Directions and Practice Notes, subject to its discussion and commentary about the contested rezoning in the following chapter.

The Panel recommends that the Amendment be adopted as exhibited.

[1] Catherine Fasso and VicTrack

2 Issues

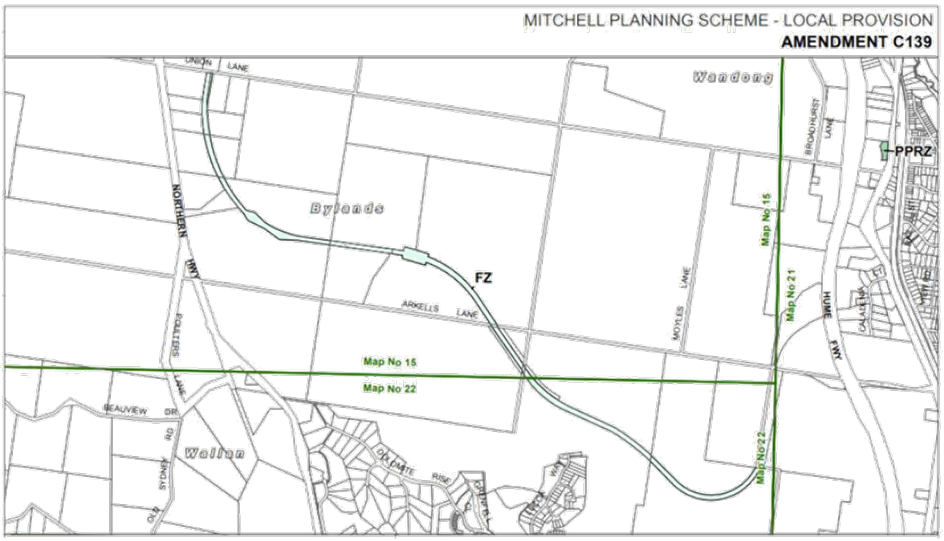
2.1 The issues

The issues are:

- whether the section of former rail line should retain the PUZ4, be rezoned FZ or be rezoned to a different 'public' zone
- whether Council has given appropriate consideration to potential contamination issues.

The Amendment proposes the rezoning of the former rail line (shown on Figure 1) from PUZ4 to FZ. The rail line was part of the discontinued Wandong, Heathcote and Sandhurst line.

Figure 1 Exhibited Farming Zone



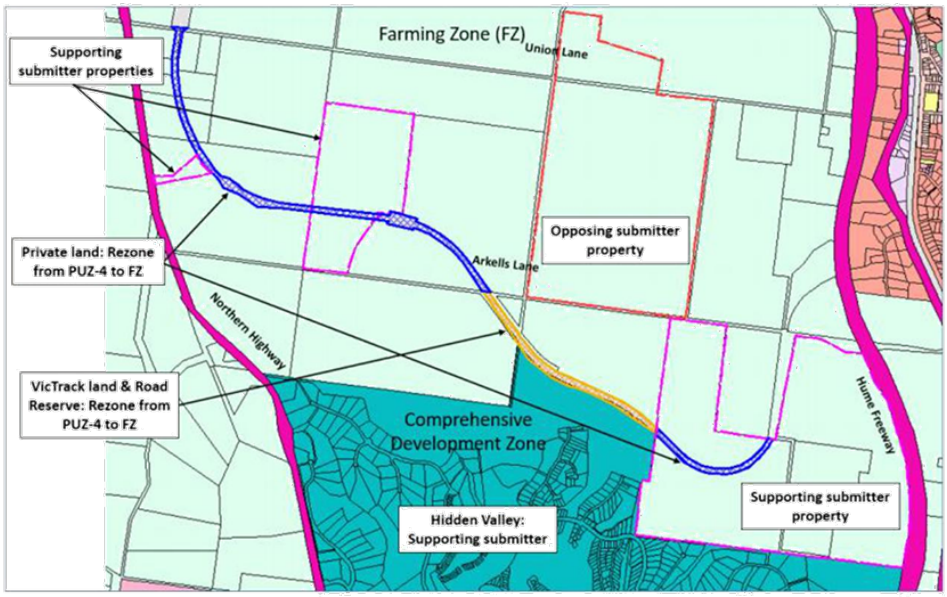
Council advised that the rezoning of this area had been initiated at the request of two affected landowners - Ms Fasso and VicTrack.

Ms Fasso approached Council in 2018 and sought the rezoning of that part of her property that she believed had been incorrectly zoned PUZ4. The area in question was part of the former rail line that had been purchased by Ms Fasso in 1994 in conjunction with land on either side of the line. Ms Fasso submitted that at the time of purchase the land had been subject to the 'general farming zone'.

VicTrack also approached Council in 2018 and requested various rezonings, including the rezoning of its remaining landholding in this section of the former rail line. Council advised that VicTrack sought the rezoning in order to facilitate its sale.

Council noted that after the closure of the rail line in 1968, some land had been sold to private owners, and some had been retained in public ownership - vested in VicTrack. Figure 2 shows the extent of private and public ownership of the land.

Figure 2 Ownership within the exhibited Farming Zone



In 2017, Council prepared a feasibility study into the use of the rail line as part of a broader 'rail trail'.[2] That study had contemplated a potential rail trail route following the former rail line, however, Council advised that the study had only provided "*high level analysis*" and had not taken into account that the route would "*bisect various smaller properties in Bylands*".

Council also advised that the "*endorsed*" study reflected Council's position that it would not use "*compulsory acquisition*" to acquire land for the trail. Council has not progressed the proposal since that time.

2.2 The appropriate zone

(i) Submissions

Council supported the rezoning of the former rail line from PUZ4 to FZ and submitted that:

- applying the PUZ4 to privately owned land was inconsistent with the Ministerial Direction on the Form and Content of Planning Schemes:

  A planning scheme may only include land in a Public Use Zone, a Public Park and Recreation Zone or a Public Conservation and Resource 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.[3]
- the land owned by VicTrack needed to be rezoned to enable its sale.

Council submitted that the FZ was the appropriate 'replacement' zone given the characteristics and location of the land, and was consistent with the use of the FZ on affected properties and in the surrounding area.

[2] Wallan to Heathcote Rail Trail Feasibility Study 2017
[3] Section 12 of the Ministerial Direction

While Council acknowledged the support of some submitters for retaining the VicTrack land in public ownership and potentially forming part of a rail trail, it noted that the rezoning did not preclude this and that other rail trails in the region were subject to a range of zones.

Submissions from some of the affected landowners supported the rezoning, including Catherine Fasso, John Cellante, Mark Peters and VicTrack. The private landowners submitted that the PUZ4 was an anomaly and that the land had previously been zoned 'general farming zone'. This suggested that there had been a zoning 'translation' error at some point, but Council was unable to confirm whether this had been the case. These submitters also opposed any proposal to use their land as part of a rail trail.

Ms Fasso noted that the PUZ4 bisected her property and submitted that the rail trail 'proposal' was not a relevant consideration in determining the appropriate zone for the land and was not a reason for retaining a 'public' zone over private land. Ms Fasso also noted that some rail trails did not rely exclusively on former rail lines, and instead followed property boundaries and used road reserves.

VicTrack supported the rezoning and advised that the land has "*been declared surplus to transports needs and should align with the surrounding underlying zoning*".

Lindsay Clay made submissions on behalf of the FBKRT and outlined its advocacy role and support for the rail trail project. The FBKRT initially objected to the FZ rezoning, but subsequently confined its objection to the rezoning of the 'public' land owned by VicTrack. The FBKRT acknowledged that the 'horse had bolted' in relation to the privately owned land, but submitted that the VicTrack land should retain the PUZ4 until Council decides what to do with the rail trail proposal in this area.

Leon and Montserrat Pezzimenti's initial submission on behalf of Kalocade Pty Ltd also objected to the FZ, but like the FBKRT they subsequently confined their objection to the rezoning of the public land owned by VicTrack. They submitted that this section of the former rail line had various environmental, habitat, landscape, cultural and historical features that warranted its retention as public land for recreation purposes and possible inclusion within a broader rail trail. They queried whether the proposed FZ was appropriate for the land because the embankments and cuttings along the route and the various planning scheme overlays would constrain its use for farming.

They also queried whether all of the land identified by Council as privately owned was in fact privately owned and suggested that the ownership of the land should be verified before the Amendment proceeds. This concern reflected their submission that publicly owned land should not be rezoned.

They concluded that all of the public land should have a 'public' zone that provides for its ongoing public ownership and use.

(ii) Discussion

The Panel agrees that the current application of the PUZ4 to the privately owned land is inconsistent with the Ministerial Direction on the Form and Content of Planning Schemes and that this land should be rezoned. The Panel also agrees with Council that the FZ is an appropriate replacement zone given the rural character of the land and the broader area, and the existing application of the FZ within that area. Although the Pezzimentis queried whether the land was appropriate for farming, and therefore the FZ, the Panel is satisfied that the FZ

is an appropriate zone for 'rural' land, regardless of whether it might be constrained for agricultural use.

The rezoning of the land owned by VicTrack is also appropriate given that the land has been identified as being 'surplus to requirements' and is intended to be sold. Surplus public land subject to a PUZ is typically rezoned prior to sale, consistent with Victorian Government Land Transactions Policy and Guidelines 2016 (the Guidelines). The Panel is satisfied that the FZ is also an appropriate zone for this land and agrees with Council that the Comprehensive Development Zone Schedule 1 (Hidden Valley) that applies to the south (refer to Figure 2) would not be appropriate given that its purposes include residential development.

The Panel acknowledges that the VicTrack land has a number of environmental, landscape, and scenic values that would be attractive as part of a rail trail or broader open space area, however this is not a reason for the Panel to oppose its rezoning. The rezoning is necessary to implement the decision to sell the land, consistent with the Guidelines referred to earlier. The decision to sell the land is a matter for the State Government and it is open to Council to seek to purchase the land or advocate its transfer as part of the rail trail proposal that it assessed in 2017. As Council noted, the rezoning would enable the land "*to be purchased privately or purchased or leased by Council for future use as walking trail for Hidden Valley residents*".[4]

The Panel agrees with Council's observation that rezoning the land to the FZ (both the private and public land) does not preclude its use for a rail trail or other public use in the future, subject to appropriate agreements and approvals being achieved. These are matters for the stakeholders and interested parties, and are not relevant to the Panel's assessment of the Amendment.

Finally, the Pezzimentis queried the ownership status of the 'private' land and whether parts of it might be publicly owned. The Panel accepts Council's advice and the title information it provided about the location of public and private land and also notes that it is consistent with the title information provided by VicTrack in its request for the rezoning. In any event, the Panel is satisfied that all of this land should be rezoned, regardless of whether it is privately or publicly owned.

(iii) Conclusion

The Panel concludes that the exhibited rezoning of the former Wandong, Heathcote and Sandhurst rail line from PUZ4 to FZ is appropriate and should proceed.

2.3 Potential contamination

(i) Submissions

The EPA did not object to the Amendment, but queried whether Council had had adequate regard to possible contamination of the land given its former use for railway purposes and whether "*it is appropriate to rezone the land where a sensitive use may occur*". These issues were expressed in the context of Ministerial Direction No 1 Potentially Contaminated Land (MD1) and General Practice Note Potentially Contaminated Land (PPN30). The EPA submitted that:

[4] The Hidden Valley estate is to the south of the VicTrack land

> Railway yards are listed in Planning Practice Note 30, Potentially Contaminated Land, as having a high potential for contamination. Similarly, rail lines, particularly those utilised by diesel powered locomotives and for freight transport, have potential for land and groundwater contamination issues. There may also be site specific contamination risks associated with rail infrastructure such as the use of asbestos, treated timber sleepers or contaminated fill.

Council noted that the EPA had not objected to the Amendment and submitted that it had appropriately considered the potential contamination of the land and concluded that the former rail line "*has not been used for any purpose which could potentially contaminate land*".

In support of this, Council advised that:

- the land had only been used as a rail line and not as a 'railway yard' as referred to by the EPA and in PPN30
- the rail line was closed in 1968 and the rail infrastructure was dismantled in 1975
- the train service had predominantly used steam rather than diesel locomotives
- a recent inspection had confirmed that all rail infrastructure has been removed and that there was no visible evidence of any contamination.

Council also referred to two recent planning scheme amendments that proposed the rezoning of former rail line land, including:

- the EPA "*authorisation*"[5] of Amendment C151 that proposes the rezoning of a section of former rail line in Kilmore from PUZ4 to General Residential Zone (GRZ)[6]
- the approval of Amendment GC91 in July 2019 that rezoned another section of former rail line in Kilmore from PUZ4 to GRZ in July 2019.

Council noted that Amendment C139 proposes a similar rezoning and that neither of these other proposals had raised contamination concerns.

Council also submitted that:

> There is limited opportunity for new sensitive uses on the former railway land, as under the provisions of the Farming Zone dwellings require a permit and due to the lot sizes of the affected properties further subdivision is prohibited.

(ii) Discussion

The "*purpose*" of MD1 is "*to ensure that potentially contaminated land is suitable for a use to be allowed under an amendment to a planning scheme and which could be significantly adversely affected by any contamination*". It requires that "*a planning authority must satisfy itself that the environmental conditions of that land are or will be suitable for that use*" and provides requirements for how a planning authority must do this.

The consideration of MD1 is typically triggered when an amendment proposes a zone that allows for "*sensitive use*" of the land when the existing zone does not. In this instance, the current PUZ4 allows for sensitive uses with a permit and in some instances without a permit.[7] In this context it is arguable whether MD1 applies, however it is appropriate that the Panel respond to the broader matters raised by the EPA and Council's response.

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[5] In accordance with Ministerial Direction 19 that relates to planning scheme amendments that might "*significantly impact the environment, amenity and human health*"

[6] This amendment was on exhibition at the time of the C139 Hearing

[7] The use must be for the purpose described in the Table to the Clause (Transport) and must be carried out on behalf of the public land manager

The Panel is satisfied that Council has informed itself about the potential contamination of the land, based on its knowledge and investigations of the former land uses and its experience with other Amendments that have rezoned former rail land in the area. Notably, the Panel was advised that the rail line had not been used as a "*railway yard*", a use identified as having high potential for contamination in PPN30.

In relation to the VicTrack land, the Panel notes that the Victorian Government Land Transactions Policy and Guidelines 2016 (the Guidelines) include a "*due diligence*" requirement that:

> Prior to the disposal, acquisition or lease of land, Victorian Government agencies must conduct an appropriate level of due diligence to ensure they are fully informed of the status and attributes of the land.

The Guidelines include a specific reference to "*contamination*" that includes:

> Where an agency (as the seller or acquirer) suspects land to be contaminated, it must complete an initial review of the land's past and present uses, as well as surrounding land uses to qualitatively assess the potential for contamination to be present, in accordance with the Potentially Contaminated Land Planning Practice Note (DSE 2005) and Ministerial Direction No 1, Potentially Contaminated Land.[8]

The Panel understands that the sale of this land would require consideration of the Guidelines, including the possible need for a contamination assessment. To inform this process, Council should provide a copy of the EPA's submission to VicTrack. It should also provide a copy of the submission to the other landowners affected by this rezoning for information purposes.

Finally, the Panel notes that under the FZ, the sensitive uses identified by the EPA would require a buildings and works permit and a use permit, and that the permit process would provide an opportunity to further consider possible site contamination if Council considered that necessary.

(iii) Conclusion

The Panel concludes that Council has adequately responded to the matters raised in the EPA submission and that, on the basis of the information provided to it, there are no contamination issues that preclude the rezoning from proceeding.

[8] Victorian Government Land Transactions Policy and Guidelines p5

Planning and Environment Act 1987

MITCHELL PLANNING SCHEME

AMENDMENT C139mith

EXPLANATORY REPORT

Who is the planning authority?

This amendment has been prepared by Mitchell Shire Council which is the planning authority for this amendment.

The amendment has been made at the request of Mitchell Shire Council.

Land affected by the amendment

The amendment applies to various parcels of public and private land throughout Wandong, Bylands and Kilmore as shown on the planning scheme maps forming part of this amendment.

Specifically, the amendment affects land as outlined below:

- Land south of Union Lane, Bylands and south of Arkells Lane, Wandong, within Public Use Zone Schedule 4 (Transport).
- Road reserve at the intersection of Sutherland Street and Rutledge Street, Kilmore.
- Land adjoining the intersection of Sutherland Street and Rutledge Street on the north-east side.
- 50 and 52-65 Anderson Road, Kilmore.
- 3279 Epping-Kilmore Road, Wandong.

What the amendment does

The amendment corrects zone map anomalies within Bylands, Kilmore and Wandong.

The amendment:

- Rezones land located in Bylands (south of Union Lane) and Wandong, (south of Arkells Lane) to Farming Zone.
- Rezones part 52-65 Anderson Road, Kilmore from Farming Zone and Public Use Zone 6 to Public Use Zone 1.
- Rezones part 52-65 Anderson Road, Kilmore from Public Use Zone 1 to Farming Zone.
- Rezones part 50 Anderson Road, Kilmore from Public Use Zone Schedule 6 to Farming Zone.
- Rezones 3279 Epping-Kilmore Road, Wandong from Low Density Residential Zone to Public Park and Recreation Zone.
- Rezones land fronting the western end of Rutledge Street, Kilmore from Road Zone Category 2 and Special Use Zone Schedule 4 to General Residential Zone Schedule 1.
- Rezones the road reserve at the intersection of Rutledge Street and Sutherland Street, Kilmore from Special Use Zone 4 to Road Zone Schedule 2.

Strategic assessment of the amendment

Why is the amendment required?

The amendment corrects several zone anomalies. These corrections are required to ensure zone controls are accurate across the municipality.

Wandong, Bylands & Kilmore: Former Railway Reserve

The amendment rezones land within Bylands and Wandong from Public Use Zone Schedule 4 (Transport) to Farming Zone. The land is a former railway line that connected Heathcote Junction to Kilmore. The railway line has been decommissioned. The land is privately owned used as a road reserve or owned by and surplus to VicTrack requirements. Surrounding land is within the Farming Zone and the correction will ensure the land is zoned in accordance with its current and future use. The correction is required prior to the intended sale of the land by VicTrack in accordance with State Government policy for disposal of surplus government land.

Road reserve at Intersection of Sutherland Street and Rutledge Street, Kilmore and Adjoining Land

The amendment rezones the Sutherland Street and Rutledge Street intersection from Special Use Zone Schedule 4 (Private Education and Religious Institutions) to Road Zone Category 2, to reflect the road reserve alignment.

The amendment rezones part of the land fronting the north side of Rutledge Street from Road Zone Category 2 and Special Use Zone Schedule 4 to General Residential Zone to reflect the surrounding residential zoning and future residential use as nominated by the *Kilmore Structure Plan 2016*. Approximately 1,600 square metres of land is rezoned. The land is owned by VicTrack and is surplus to requirements. The correction is required prior to sale of the land in accordance with State Government policy for disposal of surplus government land.

50 and 52-65 Anderson Road, Kilmore

Land at 52-65 Anderson Road is owned by Goulburn Valley Water. The southern part of this property is used as a water storage site. The water storage site is zoned Farming Zone and Public Use Zone 6 (Service and Utility). The amendment rezones the land to Public Use Zone Schedule 6 to reflect its ownership and use.

Part of the privately-owned land at 50 Anderson Road, which adjoins the water storage site, is zoned Public Use Zone Schedule 6. The amendment corrects this zone error by rezoning the land to Farming Zone to reflect its ownership and use.

The northern part of 52-65 Anderson Road is a former reservoir. The amendment rezones the land from Public Use Zone 1 (Local Government) to Farming Zone as the land is surplus to Goulburn Valley Water's requirements. The correction is required prior to sale of the land in accordance with State Government policy for the disposal of surplus government land.

Correction of the Anderson Road zone anomalies is in accordance with Action 55 of the *Kilmore Structure Plan 2016*.

Wandong Memorial Park: 3279 Epping-Kilmore Road, Wandong

3279 Epping-Kilmore Road, Wandong is the Wandong Memorial Park, a Council owned recreation reserve. The amendment rezones the land from Low Density Residential Zone to Public Park and Recreation Zone to reflect its use.

How does the amendment implement the objectives of planning in Victoria?

The amendment ensures that zone controls are correctly applied to land so that it can be used and developed in accordance with the *Mitchell Planning Scheme.*

How does the amendment address any environmental, social and economic effects?

The amendment is administrative in nature and corrects errors. The amendment will not result in any adverse environmental, social or economic effects.

Does the amendment address relevant bushfire risk?

The correction of zone errors does not impact on bushfire risk.

Does the amendment comply with the requirements of any Minister's Direction applicable to the amendment?

The amendment is consistent with the Ministerial Direction on the Form and Content of Planning Schemes under section 7(5) of the Act. The amendment has been prepared in accordance with the requirements of Minister's Direction No.11 – Strategic Assessment Guidelines.

How does the amendment support or implement the Planning Policy Framework and any adopted State policy?

The amendment seeks to correct zone anomalies in the Mitchell Planning Scheme and will not have any impact on the Planning Policy Framework.

How does the amendment support or implement the Local Planning Policy Framework, and specifically the Municipal Strategic Statement?

The amendment seeks to correct zone anomalies in the Mitchell Planning Scheme and will not have any impact on the Local Planning Policy Framework.

Does the amendment make proper use of the Victoria Planning Provisions?

By correcting the identified zoning anomalies in the planning scheme, the amendment makes proper use of the Victorian Planning Provisions.

How does the amendment address the views of any relevant agency?

VicTrack requested rezoning of the former railway line and rezone of land adjoining the intersection of Sutherland Street and Rutledge Street, Kilmore was requested by VicTrack.

Goulburn Valley Water agreed to rezoning of land at 52-65 Anderson Road, Kilmore during preparation of this amendment.

In accordance with Ministerial Direction 19 the EPA was consulted with during preparation of this amendment. The EPA does not oppose the amendment.

Does the amendment address relevant requirements of the Transport Integration Act 2010?

The amendment has no effect on the relevant requirements of the *Transport Integration Act 2010.*

Resource and administrative costs

- **What impact will the new planning provisions have on the resource and administrative costs of the responsible authority?**

The amendment is not expected to have an impact on the resource and administrative costs of the responsible authority.

ATTACHMENT 1 - Mapping reference table

Location	Land /Area Affected	DELWP Mapping Reference
Wandong	2977 Epping-Kilmore Road	Mitchell C139 004znMaps15_22 Exhibition
	3279 Epping-Kilmore Road	Mitchell C139 001znMap21 Exhibition
	Lot 1, TP956960, Arkells Lane	Mitchell C139 004znMaps15_22 Exhibition
	Lots 1 and 2, TP554198, Arkells Lane	Mitchell C139 004znMaps15_22 Exhibition
Bylands	Lot 1, TP113926, Arkells Lane	Mitchell C139 004znMaps15_22 Exhibition
	470 Arkells Lane	Mitchell C139 004znMaps15_22 Exhibition
	530 Arkells Lane	Mitchell C139 004znMaps15_22 Exhibition
	1040 Northern Highway	Mitchell C139 004znMaps15_22 Exhibition
	335 Union Lane	Mitchell C139 004znMaps15_22 Exhibition
Kilmore	50 & 52-65 Anderson Road	Mitchell C139 002znMaps15_16 Exhibition
	Road Reserve at intersection of Sutherland Street and Rutledge Street	Mitchell C139 003zn Map 16 Exhibition

	Allotments 1-4, Sec 35, PP5420: Lots front the north-west side of the Sutherland Street and Rutledge Street intersection	Mitchell C139 003zn Map 16 Exhibition

MITCHELL PLANNING SCHEME - LOCAL PROVISION
AMENDMENT C139
PPRZ
HUME FWY
EPPING - KILMORE RD
RAIL ST
WANDONG AV
DRY CREEK CR
AFFLECK ST
KOORALINGA DR
THEODORE CT
Wandong
LEGEND
PPRZ - Public Park and Recreation Zone
Local Government Area
Part of Planning Scheme Map 21
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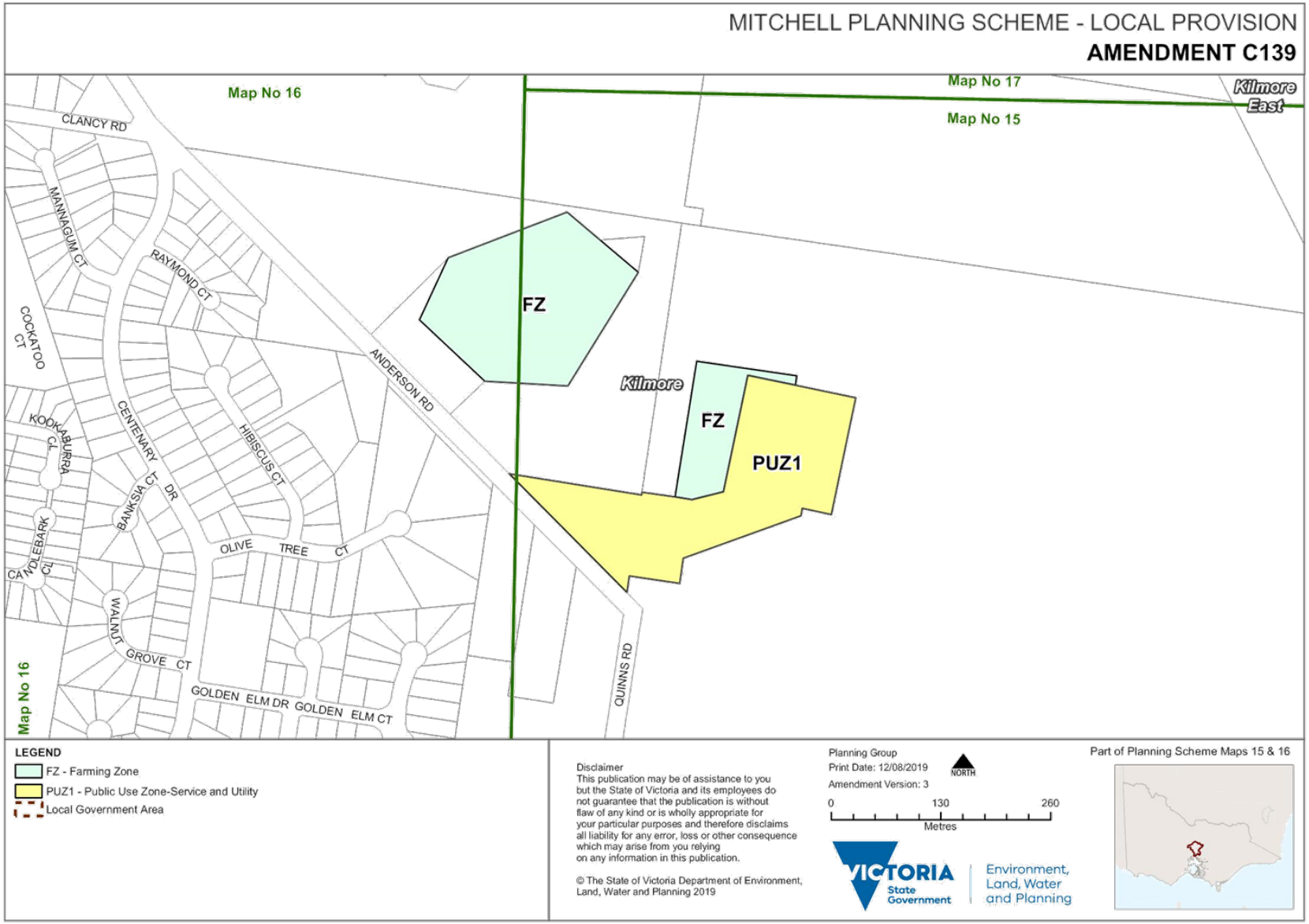
MITCHELL PLANNING SCHEME - LOCAL PROVISION
AMENDMENT C139
Map No 16
Map No 17
Map No 15
Kilmore East
CLANCY RD
MANNAGUM CT
RAYMOND CT
COCKATOO CT
ANDERSON RD
FZ
Kilmore
FZ
PUZ1
KOOKABURRA CL
CENTENARY DR
BANKSIA CT
HIBISCUS CT
OLIVE TREE CT
CANDLEBARK CL
WALNUT GROVE CT
GOLDEN ELM DR
GOLDEN ELM CT
QUINNS RD
Map No 16
LEGEND
FZ - Farming Zone
PUZ1 - Public Use Zone-Service and Utility
Local Government Area
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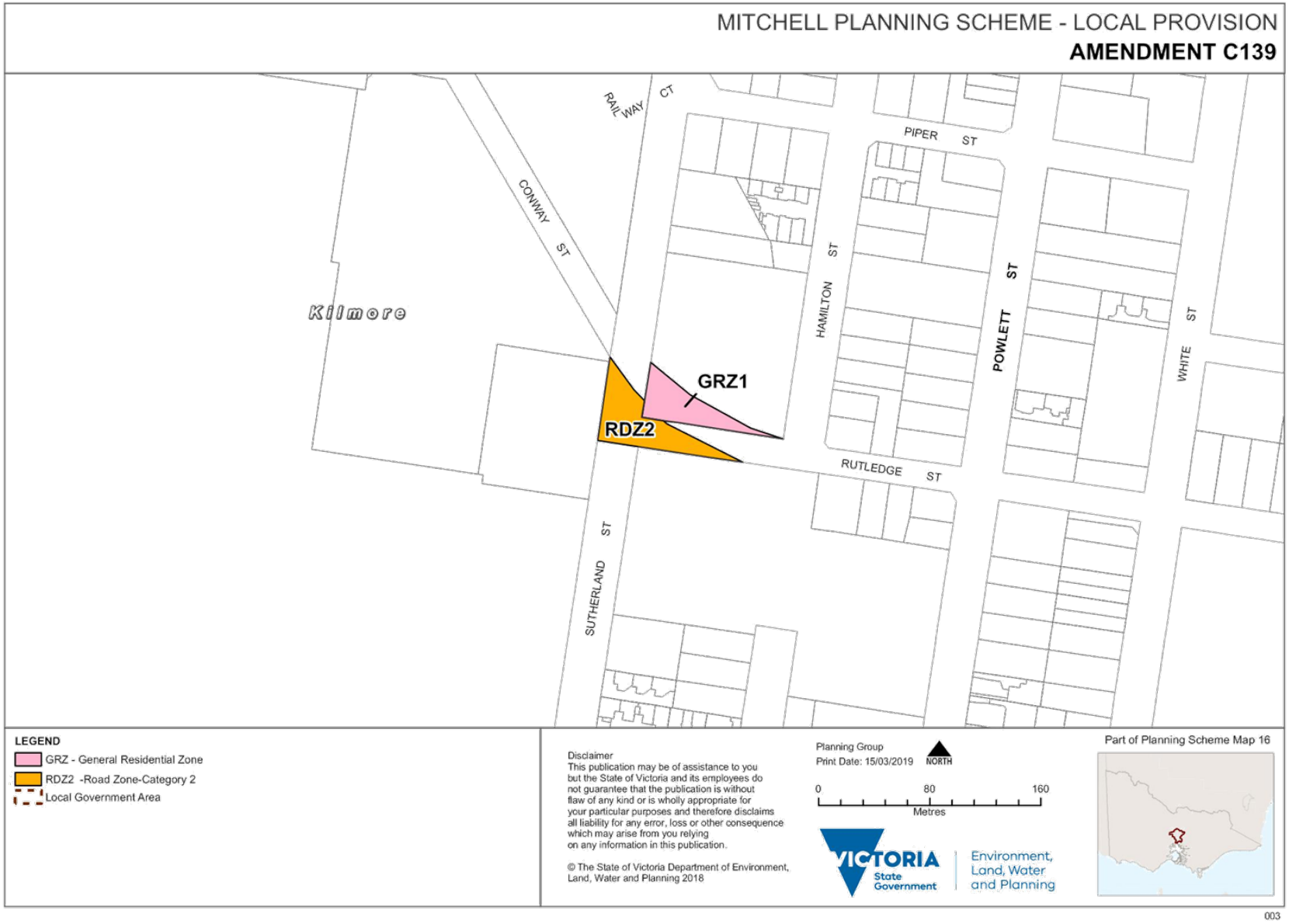
MITCHELL PLANNING SCHEME - LOCAL PROVISION
AMENDMENT C139
RAIL WAY CT
CONWAY ST
PIPER ST
HAMILTON ST
POWLETT ST
WHITE ST
Kilmore
GRZ1
RDZ2
RUTLEDGE ST
SUTHERLAND ST
LEGEND
GRZ - General Residential Zone
RDZ2 -Road Zone-Category 2
Local Government Area
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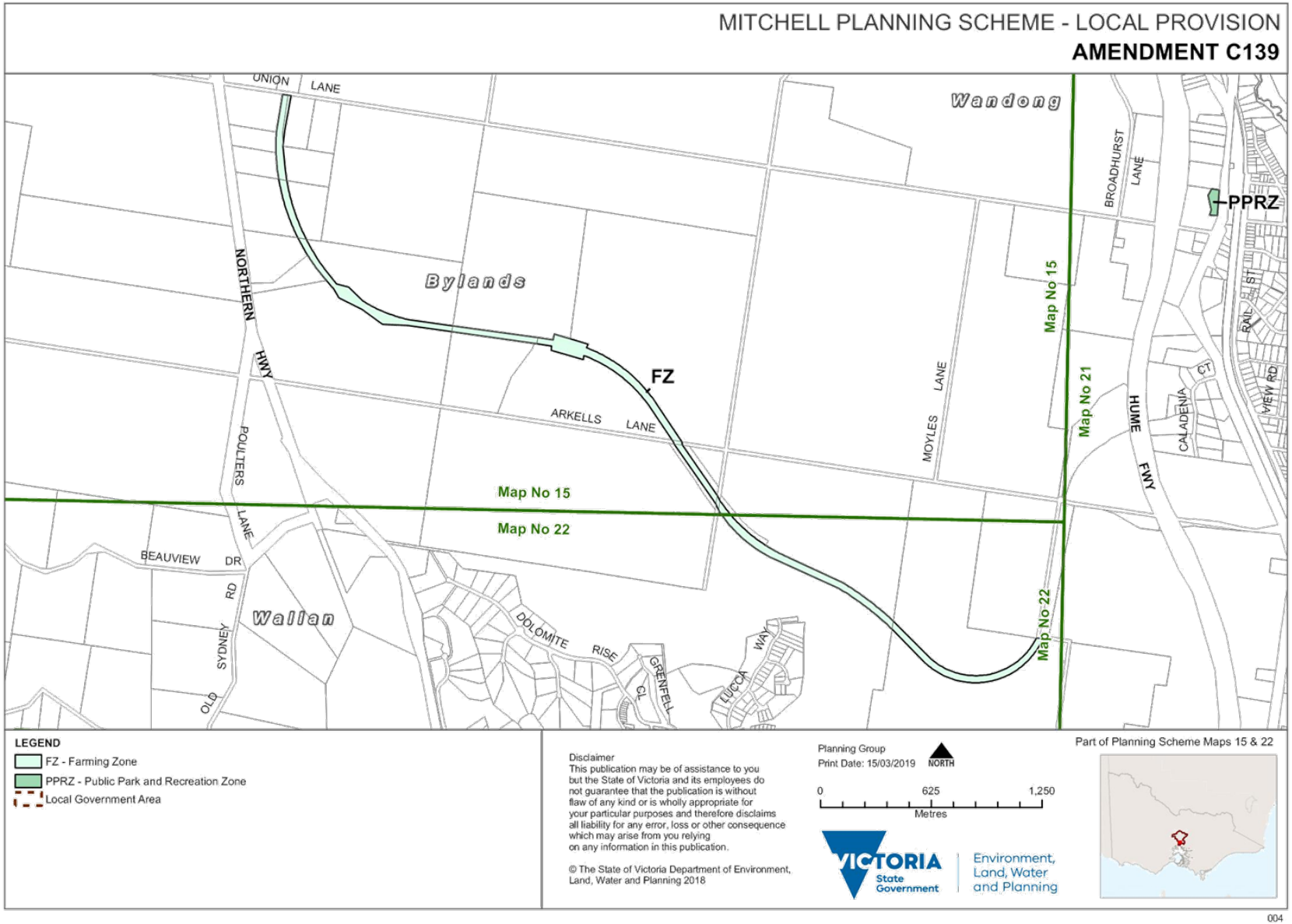
MITCHELL PLANNING SCHEME - LOCAL PROVISION
AMENDMENT C139
UNION LANE
Wandong
BROADHURST LANE
PPRZ
Bylands
NORTHERN HWY
FZ
ARKELLS LANE
MOYLES LANE
Map No 15
Map No 21
HUME FWY
CALADENIA CT
RNL ST
VIEW RD
POULTERS LANE
Map No 15
Map No 22
BEAUVIEW DR
SYDNEY RD
OLD
Wallan
DOLOMITE RISE
GRENFELL CL
LUCCA WAY
Map No 22
LEGEND
FZ - Farming Zone
PPRZ - Public Park and Recreation Zone
Local Government Area
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Part of Planning Scheme Maps 15 & 22
004

Planning and Environment Act 1987

MITCHELL PLANNING SCHEME

AMENDMENT C139mith

INSTRUCTION SHEET

The planning authority for this amendment is the Mitchell Shire Council.

The Mitchell Planning Scheme is amended as follows:

Planning Scheme Maps

The Planning Scheme Maps are amended by a total of four attached map sheets.

Zoning Maps

1. Amend Planning Scheme Map Nos. 15, 16, 21 and 22 in the manner shown on the four attached maps marked "Mitchell Planning Scheme, Amendment C139mith".

End of document