

10.3 PROPOSED PLANNING SCHEME AMENDMENT C154 -15-35 EAST STREET KILMORE

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File No: PL/05/284

Attachments: 1. Amendment C154 - Amendment Documentation

1. EXECUTIVE SUMMARY

- 1.1 Council has received a request from Ethos Urban, on behalf of Kilmore Racing Club, to rezone the land at 15-35 East Street, Kilmore and the south adjoining parcel (identified as Reserve 1 on LP114048).
- 1.2 The proposed rezoning seeks to rezone the land from the Public Use Zone – Schedule 6 (PUZ6 – Local Government) to General Residential Zone – Schedule 1 (GRZ1 – Mitchell Residential Areas). It is also proposed to apply the Development Plan Overlay - Schedule 10 (DPO10 – Kilmore Strategic Development Sites).
- 1.3 The draft documentation for proposed Planning Scheme Amendment C154 forms Attachment 1 to this report.
- 1.4 This report recommends that Council request authorisation from the Minister for Planning to prepare an Amendment to the *Mitchell Planning Scheme*, generally in accordance with Attachment 1. Following receipt of authorisation, the Planning Scheme Amendment will be placed on public exhibition in accordance with the requirements of the *Planning and Environment Act 1987*.

RECOMMENDATION

THAT Council:

1. Seeks Ministerial Authorisation in accordance with Section 8(A) of the *Planning and Environment Act 1987* for the preparation of Planning Scheme Amendment C154, generally in accordance with the draft documentation at Attachment 1 to this report.
2. Subject to Ministerial Authorisation, Council officers prepare and exhibit a Planning Scheme Amendment in accordance with the requirements of the *Planning and Environment Act 1987*.

2. BACKGROUND

2.1 Subject site and surrounds

The subject site comprises three (3) lots formally referred to as Lot 1 on TP002368D, Lot 1 on TP002403E and Reserve 1 on LP114048. The titles do not include any restrictive covenants and the title plans do not include any easements.

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- 2.2 Each of the lots are privately owned by the Kilmore Racing Club. The southern lot (Reserve 1 on LP114048) was transferred from Kilmore Shire Council to the Kilmore Racecourse and Recreation Reserve Trustees in 1984. It was then transferred to Kilmore Racing Incorporated in 2004. In 2018, Kilmore Racing Incorporated joined with Kilmore Harness Racing Club Inc and Kilmore Turf Club Inc to form the Kilmore Racing Club.
- 2.3 The site is approximately 560 metres east of the Sydney Street retail precinct. It has direct interfaces to residentially zoned land to the north, south and west. The Kilmore Racecourse is located opposite the site on the eastern side of East Street. The Kilmore Equine Clinic also directly abuts the site to the west and is located at 16 George Street.
- 2.4 The site is triangular in shape, with direct interface to both East Street and Gipps Street (eastern and northern boundaries respectively). It is approximately 21,500m² in size and is relatively flat with a slight fall to the north.
- 2.5 The land has historically been vacant and is not used of for any prevailing purpose. There is no footpath or kerb constructed to the southern side of Gipps Street and there is an open drain constructed within the road reserve along the northern boundary of the site.
- 2.6 There are trees located adjacent to the site's eastern boundary. The trees include a group of six (6) small, low value trees and two (2) mature higher value trees. The site does not include any other significant vegetation. There are two (2) existing informal gravel crossovers to Gipps Street and one (1) to East Street.

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Figure 1 – Subject site location

- 2.7 The surrounding area is primarily zoned General Residential Zone – Schedule 1 (GRZ1 – Mitchell Residential Areas). The surrounding residential uses reflect the purpose of the GRZ1. A limited number of lots adjacent to the subject site also include ancillary facilities associated with the keeping of horses and the Kilmore Equine Clinic. This cluster of properties directly relates to the immediate proximity of the Kilmore Racecourse.
- 2.8 The site is currently zoned Public Use Zone 6 (PUZ6 – Local Government). The site is privately owned and the current application of the PUZ is inconsistent with the “*Ministerial Direction – The Form and Content of Planning Schemes*” which specifies that land within a PUZ must be publicly owned.
- 2.9 The site is not affected by any overlays. The land is not identified as being an area of cultural heritage sensitivity or within a designated bushfire prone area.

3. POLICY AND LEGISLATIVE IMPLICATIONS

- 3.1 Proposed Planning Scheme Amendment C154 is consistent with the relevant objectives of the *Council Plan 2017-2021*, including the following:

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Strategic Objective:	Responsible Planning To demand best practice outcomes when planning for future growth.
Relevant Key Strategies:	Plan for growth and change through best practice design of services, infrastructure, open space and recreation facilities. Plan for a diversity of housing and households

- 3.2 The proposed rezoning is consistent with the relevant directions of *Plan Melbourne 2017-2050* and the *Hume Regional Growth Plan*, which are State Government policies that identify Kilmore as a peri-urban town that can accommodate significant population growth.

4. CHARTER OF HUMAN RIGHTS IMPLICATIONS

- 4.1 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.

5. CHILDREN AND YOUNG PEOPLE IMPLICATIONS

- 5.1 The Kilmore Structure Plan has identified areas for community facilities and open spaces which have the ability to provide local infrastructure to support the needs of young people. The subject site has good access to the existing open space network as identified in the Kilmore Structure Plan.

6. ISSUES AND DISCUSSION

Kilmore Structure Plan

- 6.1 The subject site is identified within Precinct 1A – Established Areas of the Kilmore Structure Plan (KSP) and Action A48 specifically relates to the site: “*Rezone land owned by Kilmore Racecourse currently zoned PUZ to support its development as part of the Kilmore Racecourse complex*” (p.85).
- 6.2 The intention of Action A48 was to support a commercial or other ancillary use (for example, accommodation or conference centre) to support the Kilmore Racecourse activities on both sides of East Street.
- 6.3 The proposed rezoning can still facilitate the above land uses if they were to become viable and subject to planning approvals. A purpose of the GRZ1 is “*to allow a limited range of other non-residential uses to serve local community needs in appropriate locations*”. This purpose then informs the

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table of uses with accommodation, convenience shop, food and drink premises as well as place of assembly (function centre) all permissible land uses in the GRZ subject to a planning permit.

- 6.4 The Kilmore Racing Club has provided correspondence confirming the subject site is surplus to its ongoing operations and requirements. The Club has adequate area for all current and future activities within the primary land title encompassing the racecourse itself on the eastern side of East Street. This land is appropriately zoned to facilitate the ongoing use of the land for racing and associated purposes.
- 6.5 Additionally, a number of equine training-based activities associated with the racecourse are now largely located to the north of the racecourse. Objective LE4 of the KSP seeks *“to maintain and strengthen Kilmore’s equine industry as an important employment generator”* (p.84). Figure 43 of the KSP recognises that the growth of the equine precinct will likely be to the north.
- 6.6 The existing zones applied to the land north of the Kilmore Racecourse include the Farming Zone, Low Density Residential Zone and Rural Living Zone. These zones are better suited to accommodate the equine associated activities given they are more likely to provide land of larger size than the subject site.

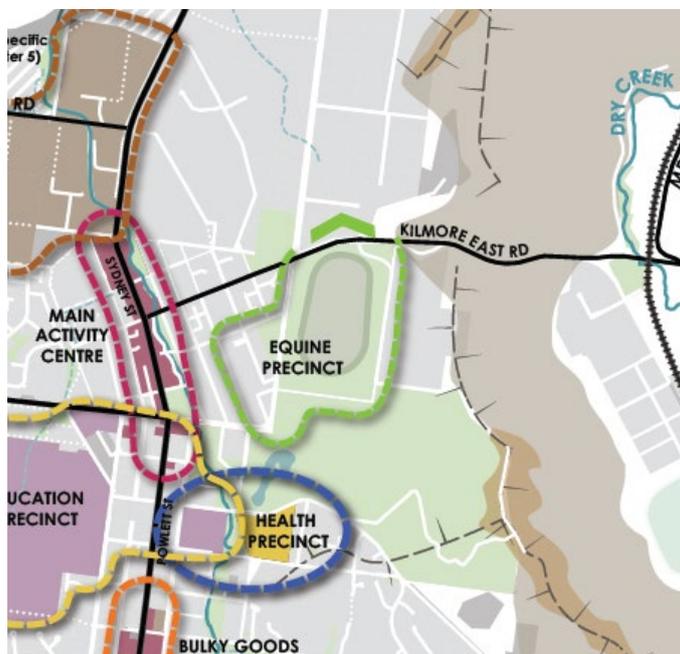


Figure 2 – Excerpt of Figure 43 from Kilmore Structure Plan showing growth of Equine Precinct to the north.

- 6.7 The private ownership of the site, its scale and location closely reflect the characteristics of Strategic Infill Development Sites within Precinct 1 identified by the KSP (p. 36-37). Sites similar to the subject site will play an important role in the delivery of diverse future housing outcomes in Kilmore given the close proximity to existing services and facilities.

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- 6.8 In the context of the site being deemed surplus to requirements by the Kilmore Racing Club and a commercial use or other use ancillary to the Racecourse activities unlikely to be pursued, the GRZ becomes the most appropriate zone given the immediate residential interfaces and the site's location.
- 6.9 Application of the Development Plan Overlay
- 6.10 The application of DPO10 to Strategic Infill Development Sites is supported by the KSP.
- 6.11 The DPO10 is a planning tool capable of facilitating the orderly future development of the site in a manner that reflects the preferred character set out for Precinct 1A in the KSP (p.108-110).
- 6.12 The DPO10 will specifically require the preparation of a Development Plan, to Council's satisfaction, for the site including written and plan-based responses to the Design and Development Objectives contained within Section 4.5.2 of the KSP (p.120).
- 6.13 Kilmore Neighbourhood Safe Place

In 2016, the designation of the Kilmore Neighbourhood Safe Place (NSP) was agreed on by Council and the Kilmore Racing Club. A formal Deed of Consent was signed for the purpose of an NSP on non-Council owned land.

- 6.14 The deed sets out that the NSP is defined as the following land:

- Certificate of Title Vol 1989 Fol 650, at Crown Allotment 13M1 Parish of Glenburnie,
- Specifically, the premises of the J Kelly Pavilion (betting area) and carpark on the Land, as shown in Figure 3.



Figure 3 – Excerpt from Deed of Consent for Non Council-Owned Land – Kilmore Racecourse and Recreation Reserve J Kelly Pavilion and Carpark.

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- 6.15 The proposed rezoning of the subject site will not impact on the operation of the NSP at the Kilmore Racecourse.
- 6.16 Kilmore Infrastructure Framework and Contributions
- 6.17 The Kilmore Infrastructure Framework (KIF) is a reference document to the *Mitchell Planning Scheme* that provides a strategic basis for seeking contributions for planned infrastructure within Kilmore.
- 6.18 This enables the opportunity for collection of contributions and / or works in-kind for delivery of developer funded infrastructure. Prior to any future development commencing, an agreement in accordance with section 173 of the *Planning and Environment Act 1987* will be entered into between Council and the developer. This will relate to (but may not be exclusive to) the delivery or apportionment of contributions toward the following infrastructure projects identified in the KIF (Section 5.5, 5.6 and 5.7):

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Project number	Project description	Delivery responsibility	Category
CF03c	Kilmore Library Upgrade (infill)	Council	Community
CF06b	Indoor Multipurpose Facility	Council/ Developers	Community
OS01a	Clancy Reserve Upgrade	Council	Active Rec and Open Space
OS02c	Kilmore Leisure Centre Expansion	Council	Active Rec and Open Space
SH02b	Construction of missing path links within existing Kilmore Creek corridor (P1) (Infill)	Council	Active Rec and Open Space
SH03b	Construction of missing path links within other open space (P1) (Infill)	Council	Active Rec and Open Space
SH04b	Construction of missing path links within existing road reserves (P1) (Infill)	Council	Active Rec and Open Space
DRO1	Drainage associated with Precinct 1A	Council	Utilities and Drainage

7. SUSTAINABILITY IMPLICATIONS (SOCIAL AND ENVIRONMENTAL)

- 7.1 The proposed Planning Scheme Amendment would enable future residential infill development within the established residential area. It will provide land for housing in an area with existing services and good access to the Kilmore Town Centre and the open space network.
- 7.2 The protection of existing vegetation on the subject site is a matter that will need to be considered by any future Development Plan application, subject to the rezoning of the subject site.

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8. 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?
Perception of proper process not being adhered to.	Low	The rezoning is intended to be processed through the conventional Planning Scheme Amendment process to ensure transparency and procedural fairness.	Yes.
Community expectations not managed or obtained.	Low	The proposed rezoning will entail a formal exhibition period and notices will be distributed to ensure there is an opportunity for wide community engagement. Any matters that cannot be resolved will likely proceed to an Independent Planning Panel hearing for consideration.	Yes.
The nature of unknown submissions from other agencies/stakeholders that may alter Council's position on a specific matter.	Low	Attempt to resolve as many issues prior to an Independent Planning Panel hearing.	Yes – there may be a need to engage specialists depending on the nature of issues raised.

9. COMMUNICATION PLAN

9.1 Subject to Ministerial Authorisation, a Communication Plan can be prepared before the formal exhibition process of the Planning Scheme Amendment.

10. NEXT STEPS

10.1 The Ministerial Authorisation request to prepare Planning Scheme Amendment C154 will be lodged with to the Minister for Planning. This will formally commence the Planning Scheme Amendment process.

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11. CONSULTATION

- 11.1 The rezoning request was forwarded to the Environment Protection Agency for initial comment. No concern was raised by this agency at the time of writing.
- 11.2 If Ministerial Authorisation is received for the preparation of a proposed Planning Scheme Amendment, public exhibition would be required in accordance with the provisions of Section 19 of the *Planning and Environment Act 1987*.
- 11.3 Public exhibition will include sending notices to the owners/occupiers for surrounding land, advertising within the North Central Review and both Council and DELWP's website. If Covid-19 restrictions are lifted, hard copies of the Amendment will be made available for public inspection during opening hours at the Kilmore Library and the Broadford Customer Service Centre. Otherwise, hard copies of the Amendment will be available upon request should people have difficulty accessing the information online. Following completion of the exhibition period, a report will be provided to Council which outlines the exhibition process and any submissions received.

12. FINANCIAL, RESOURCE AND ASSET MANAGEMENT IMPLICATIONS

- 12.1 As this is a proponent-led Planning Scheme Amendment, the applicant will bear the costs associated with its processing such as fees and costs associated with public exhibition or an Independent Planning Panel, and minimise the financial implications for Council.

13. OFFICER DECLARATION OF CONFLICT OF INTEREST

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

14. CONCLUSION

- 14.1 Proposed Planning Scheme Amendment C154 is supported by relevant planning policies. The proposed rezoning would correct an existing zoning anomaly and apply an appropriate zone to the subject site even if there is a level of departure from the outcome envisaged by the Kilmore Structure Plan.
- 14.2 The proposed rezoning will allow for orderly residential infill development that delivers housing outcomes within an existing urban area that is in close proximity to existing services and facilities.
- 14.3 This report recommends that a Planning Scheme Amendment be prepared and exhibited in accordance with the relevant provisions of the *Planning and Environment Act 1987*.

Planning and Environment Act 1987

MITCHELL PLANNING SCHEME

AMENDMENT C154

EXPLANATORY REPORT

Who is the planning authority?

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

The Amendment has been made at the request of Ethos Urban on behalf of the Kilmore Racing Club.

Land affected by the amendment

The Amendment applies to the land known as 15-35 East Street, Kilmore (formally referred to as Lot 1 on TP002368D and Lot 1 on TP002403E) and the south adjoining parcel (formally referred to as Reserve 1 on LP114048).

A mapping reference table is attached at Attachment 1 to this Explanatory Report.]

What the amendment does

The Amendment corrects a zone map anomaly and will rezone the land at 15-35 East Street, Kilmore and the south adjoining land (Reserve 1 on LP114048) from the Public Use Zone – Schedule 6 (PUZ6) to General Residential Zone – Schedule 1 (GRZ1) and apply the Development Plan Overlay – Schedule 10 (DPO10).

Specifically, the Amendment proposes to:

- Amend Planning Scheme Map No 16 to rezone 15-35 East Street, Kilmore and Reserve 1 on LP114048 to the General Residential Zone – Schedule 1 (GRZ1) and amend Planning Scheme Map No 16DPO.

Strategic assessment of the amendment

Why is the amendment required?

The Amendment proposes to correct a zone anomaly for land that is currently within the Public Use Zone Schedule 6 (PUZ6 – Local Government) despite being privately owned.

The land is located in an existing residential area opposite the Kilmore Racing Club and west of East Street. It is vacant and is not used for any predominant purpose. The surrounding underlying zone is considered to be the General Residential Zone – Schedule 1 (GRZ1).

The rezoning of the land to GRZ1 will reflect its private ownership and to ensure that the future land use is complementary to the existing use of the adjoining land. The rezoning of this site is identified within the *Kilmore Structure Plan 2016* (Action A47), however, the proposed zoning differs from the outcome envisaged by the Structure Plan as the Kilmore Racing Club have deemed the land to be surplus to their requirements.

The application of DPO10 will facilitate the orderly future development of the site in line with the surrounding area's existing residential character and results in the site being treated as a strategic infill development site.

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

The objectives of planning in Victoria, contained in Section 4(1) of the *Planning and Environment Act 1987*, include:

- (a) To provide for the fair, orderly, economic and sustainable use and development of land;

(c) To secure a pleasant, efficient and safe working, living and recreational environmental for all Victorians and visitors to Victoria;

(g) To balance the present and future interest of all Victorians.

The Amendment will implement and will enable residential use of the land which represents an efficient and orderly planning outcome.

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

The Amendment will not result in any adverse environmental, social or economic effects as it is considered to be minor in nature. The application of the DPO10 will ensure that existing environmental features on the site will be considered in future approvals prior to any development commencing.

Does the amendment address relevant bushfire risk?

The subject site is not nominated as a site of significant bushfire risk as it is not affected by the Bushfire Management Overlay or located in a Bushfire Prone Area while also being within the settlement boundaries as identified by the *Kilmore Structure Plan 2016*. The views of the Country Fire Authority will be obtained during formal exhibition of this amendment.

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

Ministerial Direction – The Form and Content of the Planning Scheme

The amendment is consistent with the Ministerial Direction on the Form and Content of Planning Schemes under section 7(5) of the Act by rezoning private owned land out of a public land zone.

Ministerial Direction 1 – Potentially Contaminated Land

The amendment is consistent with the Ministerial Direction relating to land contamination risk. An environmental assessment has been carried out on the site confirming there is no contamination present and the land is suitable for residential use.

Ministerial Direction No. 11 – Strategic Assessment of Amendments

The Amendment meets the requirements of Ministerial Direction No 11 Strategic Assessment of Amendments.

Ministerial Direction No. 91 – Using the Residential Zones

The proposed application of the GRZ1 is consistent with role and application set out in Ministerial Direction No 91.

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

The Amendment proposes to rezone land that is currently inappropriately zoned and under-utilised. The rezoning of the site will correct the anomaly and allow orderly future development of the site in a manner that reflects the preferred character set out in the *Kilmore Structure Plan* and the growth expectations of the *Hume Regional Growth Plan* and *Plan Melbourne 2017-2050*.

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

The application of the GRZ1 is consistent with the direction provided by the LPPF for the established areas of Kilmore. It will provide land for housing within the existing township boundary and in an area with good access to existing services and facilities.

The application of the DPO10 is consistent with the identification and treatment of strategic infill development sites by the *Kilmore Structure Plan 2016* and Clause 21.07.

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?

The Amendment will be referred to all relevant agencies as part of the exhibition process and comments will be included as necessary.

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

The Amendment is unlikely to have a significant impact on the transport network and further assessment under the *Transport Integration Act 2010* is not required.

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 a significant impact on the resource and administrative costs of the responsible authority.

Where you may inspect this amendment

The Amendment is available for public inspection, free of charge, during office hours at the following places:

- Wallan Planning and Building Services, 4A and 4B, 61 High Street, Wallan
- Kilmore Customer Service Centre and Library, 12 Sydney Street, Kilmore

The Amendment can also be inspected free of charge at the Mitchell Shire Council website at www.mitchellshire.vic.gov.au.

The Amendment can also be inspected free of charge at the Department of Environment, Land, Water and Planning website at www.planning.vic.gov.au/public-inspection.

Submissions

Any person who may be affected by the Amendment may make a submission to the planning authority. Submissions about the Amendment must be received by close of business by **TBC**.

A submission must be sent to:

Mitchell Shire Council
Submission to Planning Scheme Amendment C154
113 High Street BROADFORD VIC 3658

Or via email: mitchell@mitchellshire.vic.gov.au

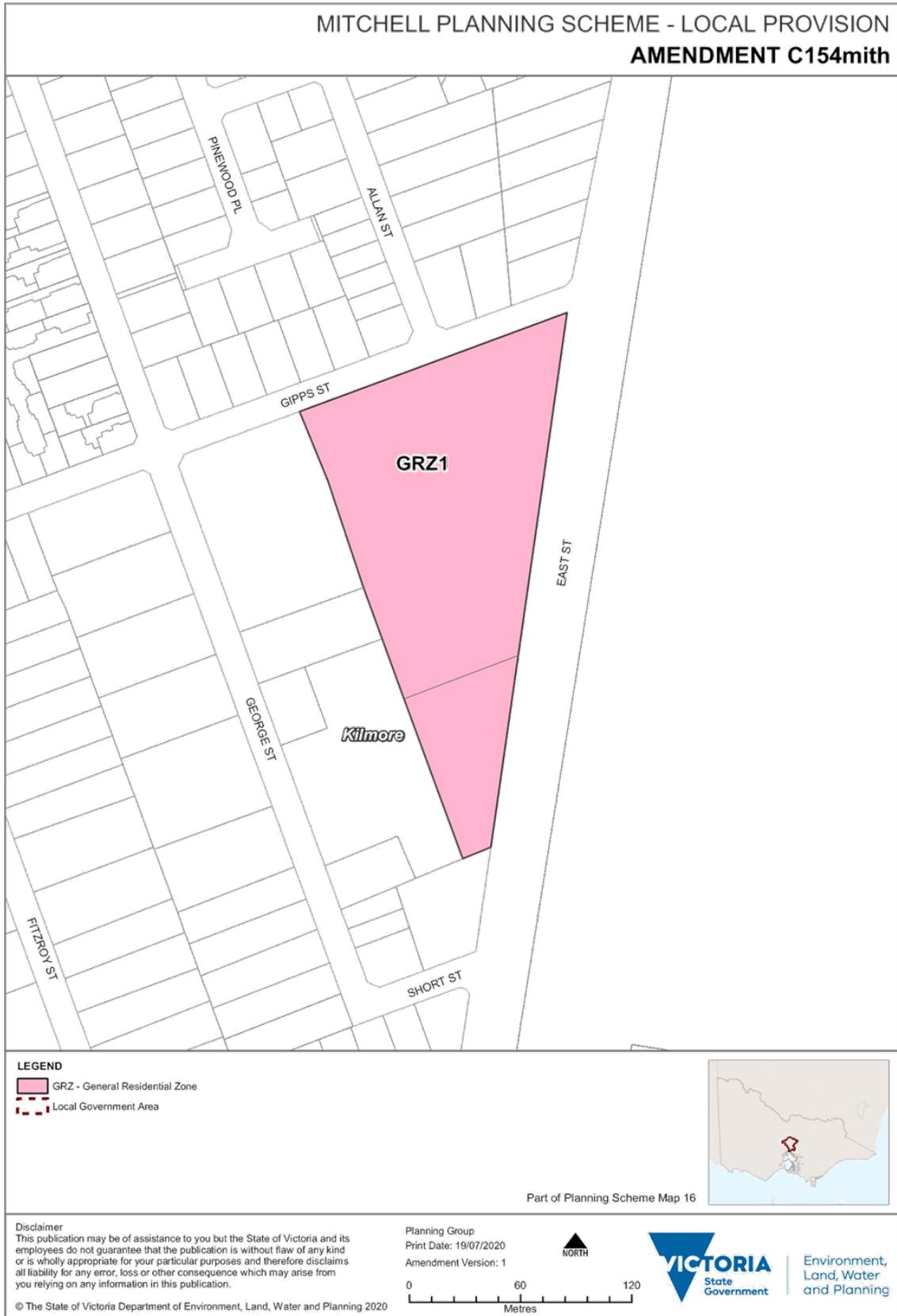
Panel hearing dates

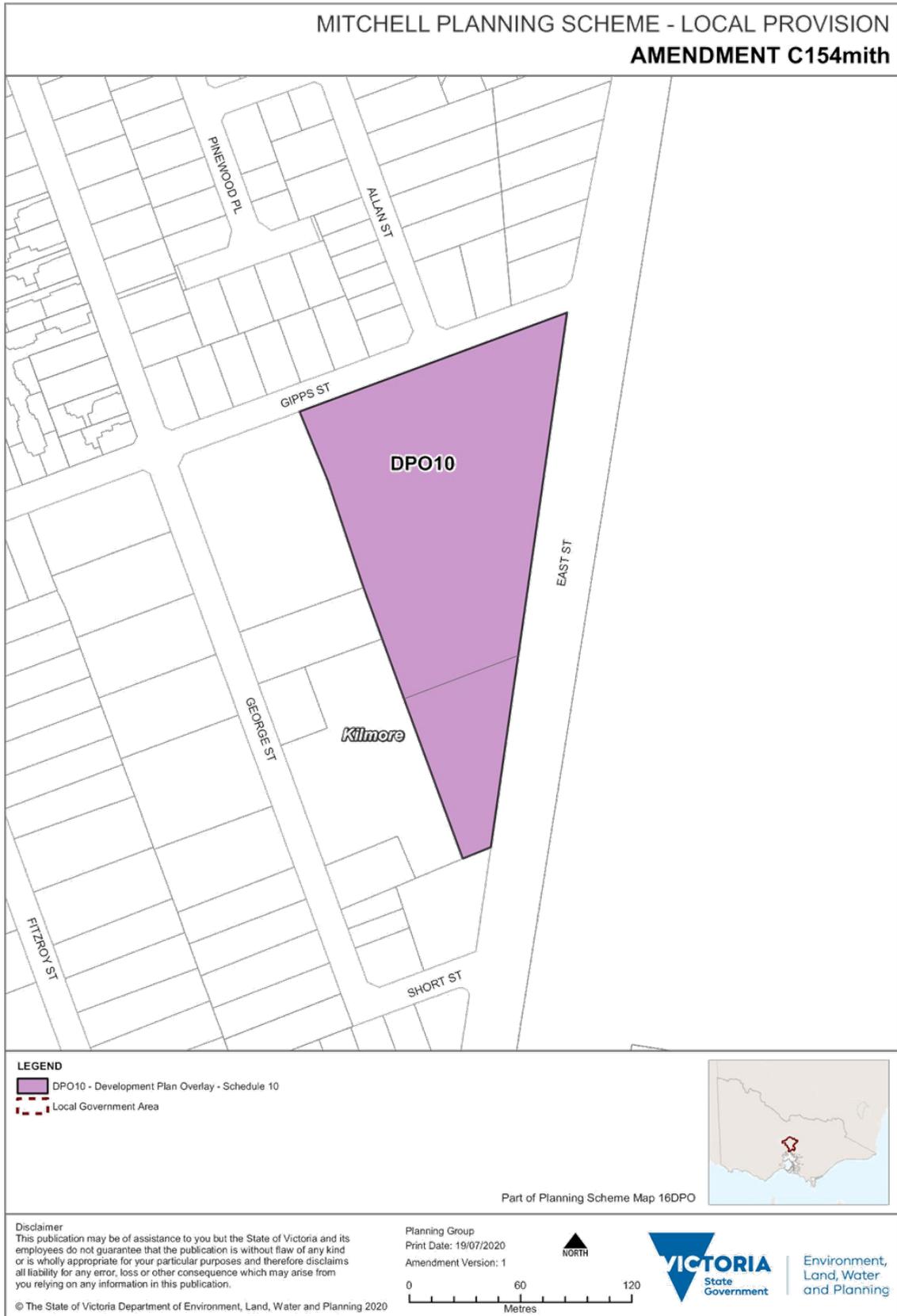
In accordance with clause 4(2) of Ministerial Direction No.15 the following panel hearing dates have been set for this amendment:

- directions hearing: [insert directions hearing date]
- panel hearing: [insert panel hearing date]

ATTACHMENT 1 - Mapping reference table

Location	Land /Area Affected	Mapping Reference
Kilmore	15-35 East Street, Kilmore Reserve 1 on LP114048	Mitchell C154 001znMap 16 Exhibition





Planning and Environment Act 1987

MITCHELL PLANNING SCHEME

AMENDMENT C154

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 2 attached map sheets.

Zoning Maps

Amend Planning Scheme Map No. 16 in the manner shown on the attached map marked "Mitchell Planning Scheme, Amendment C154".

Overlay Maps

Amend Planning Scheme Map No. 16DPO in the manner show on the attached map marked "Mitchell Planning Scheme, Amendment C154".