

Planning and Environment Act 1987

Panel Report

Mitchell Planning Scheme Amendment C130

Rezone 40 Butlers Road, Kilmore

23 May 2019

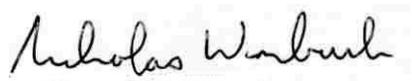
Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

Mitchell Planning Scheme Amendment C130

Rezoning 40 Butlers Road, Kilmore

23 May 2019

A handwritten signature in black ink that reads "Nicholas Wimbush". The signature is written in a cursive style with a large initial 'N'.

Nick Wimbush, Chair

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Overview

Amendment summary

The Amendment	Mitchell Planning Scheme Amendment C130
Common name	Rezone Rezone 40 Butlers Road, Kilmore
Brief description	The Amendment will rezone the land from the Farming Zone to the General Residential Zone Schedule 1 as shown in Figure 1 to allow for future development as shown in Figure 2.
Subject land	40 Butlers Road, Kilmore
The Proponent	RW Developments Pty Ltd
Planning Authority	Mitchell Shire Council
Exhibition	Between 27 September and 29 October 2018
Submissions	Number of Submissions: 13 No objections or support: 5 Resolved and withdrawn: 2 Unresolved objections: 6

Panel process

The Panel	Nick Wimbush appointed 8 April 2019
Directions Hearing	Kilmore Trackside, 17 April 2019
Panel Hearing	Matter considered on the papers
Site inspections	Unaccompanied on 17 April 2019
Citation	Mitchell PSA C130 [2019] PPV
Date of this Report	23 May 2019

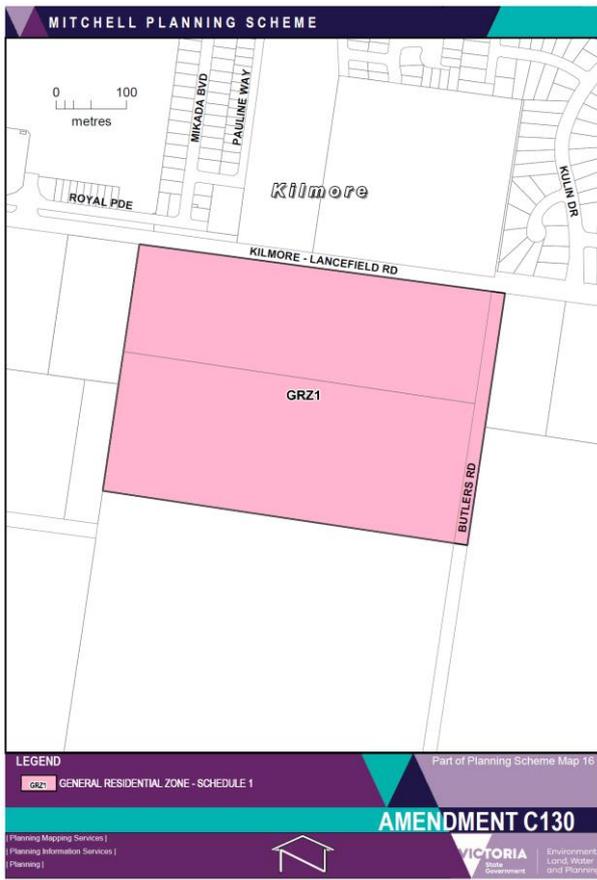


Figure 1: Proposed rezoning

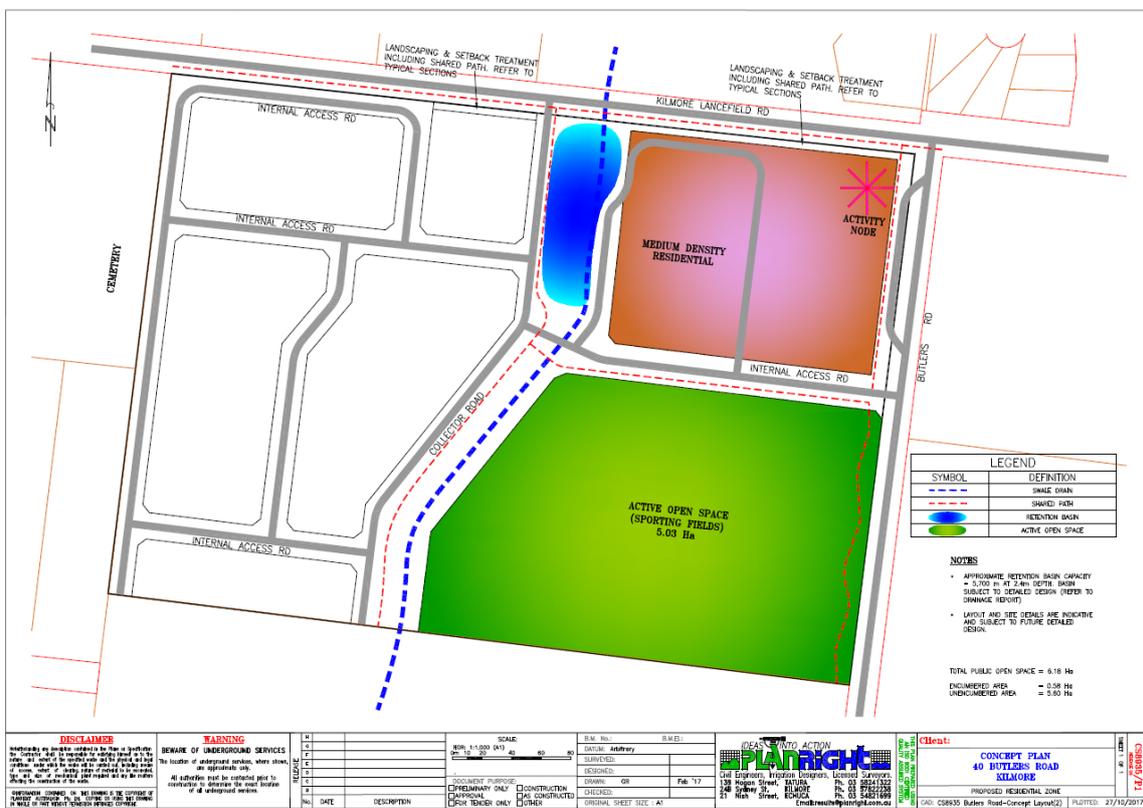


Figure 2: Concept plan for future development

Executive summary

The Amendment seeks to rezone 40 Butlers Road, Kilmore from the Farming Zone to the General Residential Zone Schedule 1 to facilitate future development. The Amendment is supported by state and local planning policy and particularly by the Kilmore Structure Plan which has recently been translated into the Mitchell Planning Scheme.

The Structure Plan identifies the site as suitable for future residential development, including some medium density, and a significant new active open space area which will benefit all of Kilmore.

There were a number of objections to the Amendment going to issues of traffic and infrastructure, change to the character and amenity of Kilmore, loss of agricultural land and resistance to two storey medium density development.

Whilst the Panel acknowledges these concerns, it considers there is a significant weight of planning policy which supports the rezoning including Kilmore being identified as a growth area and the need to provide housing diversity.

The Panel concludes the Amendment should be supported.

Recommendation

Based on the reasons set out in this Report, the Panel recommends:

- 1. Adopt Mitchell Planning Scheme Amendment C130 as exhibited.**

1 Introduction

1.1 Background

The Amendment will rezone 40 Butlers Road, Kilmore, from the Farming Zone to the General Residential Zone Schedule 1 (see Figure 1). The site is 18 hectares and should contribute an estimated 100-140 dwellings when developed in future.

The property is on the south-west corner of the intersection of Butlers Road and Kilmore-Lancefield Road. The land is currently vacant agricultural, and Ryans Creek runs through the centre of the site from north to south.

Mitchell Shire Council (the Council) signed a section 173 agreement under the *Planning and Environment Act 1987* with the landowner in 2010. This agreement requires 28 per cent of the property to be handed over as active open space provided the balance can be residential development.

The Kilmore Structure Plan was recently introduced via Amendment C123 gazetted on 28 March 2019. The Amendment introduced, amongst other things, changes to local policy and the Development Plan Overlay Schedule 5 (Kilmore North, West and South-East Growth Precinct). These provisions of the planning scheme clearly identify that the site is strategically planned for residential development and active open space.

1.2 Procedural issues

At the time of the Directions Hearing the Panel had only received requests to be heard from the Council and the Proponent. The Directions Hearing was attended by submitters Rosemary Payne and Francis Payne (who are not related). The Panel asked if they wished to be heard at a future hearing. Both declined but Ms Payne provided additional background to her written submission. The issues raised are addressed in Chapter 3.

The Panel directed that the matter would be heard on the papers and no further hearing was held.

1.3 Summary of issues raised in submissions

The Panel has reviewed the submissions and the submission summary in the Council meeting agenda of 18 March 2019. The Panel is satisfied that the summary accurately reflects the key issues raised in submissions being:

- loss of general amenity and agricultural land
- appropriateness of medium density housing in Kilmore
- lack of infrastructure and increased traffic.

These issues are addressed in Chapter 3.

2 Planning context and strategic justification

2.1 Planning policy framework

The explanatory report for the Amendment provides an outline of the policy support for the Amendment. In summary this includes the following policies.

Clause 11.01 (Victoria)

The Amendment:

- facilitates appropriate development
- responds to the Hume Regional Growth Plan and Plan Melbourne that identify Kilmore as a designated location for growth.

Clause 11.02 (Managing Growth)

The Amendment responds to this clause as follows.

- **Clause 11.02-1S (Supply of urban land)** – the Amendment helps to provide a sufficient supply of land for residential, recreational, institutional and other community uses.
- **Clause 11.02-3S (Sequencing of development)** – the site is the next logical growth area to the west of town and is well serviced by infrastructure.
- **Clause 11.03-3S (Peri-urban areas)** – the Amendment provides for growth in an established growth area within the Kilmore settlement boundary.

Clause 13.02 (Bushfire)

The subject site is cleared agricultural land with further cleared land to the west and no significant landscape scale vegetation in near proximity. The site is within the designated Bushfire Prone Area but is not covered by the Bushfire Management Overlay.

Council considers the subject site a low risk location for residential growth in relation to Bushfire.

Clause 16 (Housing)

The Amendment site is well located near the town centre and major employers providing a high degree of access to services, schools and open space.

Clause 18 (Transport)

The site is located on the Kilmore - Lancefield Road which has traffic capacity for future development.

Clause 19 (Infrastructure)

The Amendment and future development will result in the provision of a large recreational area for Kilmore.

Clause 21.01-1 (Municipal Profile)

Kilmore is identified as a growth area in the south of the Shire in text and in the Strategic Framework Plan.

Clause 21.10 (Infrastructure) – The Amendment will facilitate the provision of active open space for the Kilmore community.

Clause 21.11-3 (Local Areas/Kilmore) – The clause now includes the Kilmore Framework Plan which identifies the Amendment site as suitable for residential development and active open space.

2.2 Planning scheme provisions

The Amendment rezones the land from the Farming Zone to the General Residential Zone Schedule 1 to allow residential development. Amendment C123 introduced Development Plan Overlay Schedule 5 at Clause 43.04 to ensure development is consistent with the Kilmore Structure Plan.

The Schedule requires a development plan be prepared to coordinate development on the Amendment site and land to the south to integrate detailed development planning for different landholdings. The Schedule outlines the further studies that will need to be undertaken as part of the development plan including planning, traffic, local streets, flora and fauna, servicing and drainage, heritage and infrastructure delivery.

2.3 Discussion and conclusion

The Panel has reviewed the planning context and finds there is a high level of strategic justification for the Amendment. Kilmore as a growth area is supported in Plan Melbourne and the Hume Region Growth Plan and this support has been translated into policy in the Mitchell Planning Scheme.

Directing growth within Kilmore has now been given a high degree of certainty through the development of the Kilmore Structure Plan and its implementation into the planning scheme through Amendment C123. The Amendment site is clearly identified as a strategic development site and the next logical site for residential consideration in this part of Kilmore. The provision of a significant contribution of active open space is a further contributing factor to the Amendment.

Objectors to the Amendment have raised a number of detailed issues which are considered in Chapter 3. In the Panel's view these do not significantly question the strategic and planning merit of the rezoning, and the Amendment should proceed as exhibited.

3 Issues raised in submissions

3.1 Loss of general amenity and agricultural land

(i) The issues

The issues are:

- the loss of agricultural land
- impacts on amenity.

(ii) Evidence and submissions

A number of submitters raised the issue of impact on amenity and loss of agricultural land. For example Rosemary Payne in her written submission stated that the area should remain rural and that the agricultural land should be protected as there will be a shortage of such land in future. Ms Payne also submitted that the area should be maintained as a green belt and its tranquil nature maintained.

Submitters Francis Payne and Rose King also submitted on the loss of amenity, submitting:

Kilmore is a small rural town, and its rural character constitutes a general amenity appreciated by its current residents.

They went on to submit that this essential character will be badly affected by excessive development.

Other submitters such as Adrian Payne also raised the issue of amenity.

In response¹ the Council submitted that the land is identified in strategic planning such as the Kilmore Structure Plan as a priority development site, and that this suggests that the agricultural use will change over time.

The Council also submitted that Kilmore is generally expanding into smaller rural lot areas not large enough for extensive agriculture and that the Amendment site was not identified in the Council's 1996 land capability study as being in the higher quality categories.

(iii) Discussion

The concerns expressed by the submitters are common where a significant change in land use is proposed such as for this Amendment. However, there are few places that 'stand still' with no change and planning must seek to plan for and direct such change when it occurs. Kilmore today would be very different to the people who lived there 50 years ago, and will be very different again 50 years hence.

Kilmore is recognised as a growth area from the highest state strategic planning document (Plan Melbourne) down; the conversation must therefore move to how to accommodate that growth in a way that provides for the existing and future community.

¹ Reference to Council submissions are references to the Council agenda of 18 March 2019.

The Council has undertaken a sound strategic planning exercise in preparing the Kilmore Structure Plan and implementing it in the planning scheme. With that major exercise undertaken, this Amendment is bringing forward a small part of that plan for implementation; providing for much needed open space and housing in doing so.

The Panel does not consider the loss of agricultural land significant for the Amendment. Whilst the protection of prime agricultural land is an important consideration, and Plan Melbourne acknowledges such for other areas, this part of Kilmore is not in that 'prime' category. The Amendment site represents a relatively small amount of agricultural land.

The loss of rural amenity and character and change to an urban environment in the Amendment area is a predictable consequence of the Amendment and will have at least local impact. However the Amendment must be considered in the much wider picture of balancing the relevant policies in the Mitchell Planning Scheme. In this case, the Panel considers that the benefits of providing housing diversity and other community facilities for a growing population clearly outweigh the local amenity concerns.

(iv) Conclusion

The Panel concludes that the change to amenity and loss of agricultural land is outweighed by strategic planning designating the Amendment site as a residential growth area in a town similarly identified. No change to the Amendment is recommended.

3.2 Medium density housing

(i) The issue

The issue is whether medium density housing, in the form of two storey townhouses, is appropriate in Kilmore.

(ii) Evidence and submissions

A number of submitters suggested that two storey townhouses do not fit the character and ambience of Kilmore. For example Margaret Perrott submitted:

It would be very concerning if there were plans for medium or high density housing – in particular two storey town houses as these are completely out of place along the fringe of our rural town.

Another submitter Douglas Payne submitted that the '2 level housing concept' considered on the corner of Butlers Road does not have any justification and would increase density with no benefit; as well as setting an inappropriate precedent.

The Council submitted that the Kilmore Structure Plan supports opportunities for smaller lot sizes to encourage housing diversity. This includes part of 40 Butlers Road in proximity to the activity node, the education precinct and active open space. The Council noted that following rezoning, the detail of any medium density housing will be considered through a planning permit.

(iii) Discussion

The concept plan for the site (shown in Figure 2 in this report) supports medium density (two level) housing on the corner of the Kilmore - Lancefield Road and Butlers Road. The provision of diverse housing is strongly supported in the planning scheme at, for example, Clause 16.01-3S and in the local area policy at Clause 21.11-3 which includes:

Encourage diverse housing opportunities and densities, particularly within walkable proximity to the Sydney Street town centre.

Whilst the Panel understands the concerns of submitters, the future provision of the relatively small medium density area on the site is consistent with, and supported by, planning policy. Not everyone wants to live in a detached dwelling, and providing a range of densities and housing types provides the opportunity for new residents to have that choice.

It is also important to note that this Amendment does not 'approve' such development; that will need to be considered via a future planning permit. The rezoning is however a prerequisite for the consideration of the permit application.

(iv) Conclusion

The Panel concludes the rezoning to the General Residential Zone Schedule 1 is an appropriate mechanism to facilitate future housing diversity and no change is required to the Amendment.

3.3 Lack of Infrastructure and increased traffic**(i) The issues**

The issues are:

- the proposal will result in increased traffic
- lack of infrastructure to accommodate population growth.

(ii) Evidence and submissions

A number of submissions raised the issue of whether Kilmore can cope with increased development traffic and whether there is sufficient infrastructure to cater for the increased population.

For example Rosemary Payne was concerned that the Lancefield Road could not cope with development in the area and future development should wait for the construction of the bypass.

Francis Payne and Rose King submitted that population growth has been significant in the town and expressed concern at the 'dramatic' and 'expensive' increases in infrastructure that will be required.

Adrian Payne expressed concern regarding the increase in traffic on Butlers Road and the Kilmore – Lancefield Road from this and other development in the area. Margaret Perrott expressed similar concerns.

Another submitter Jennifer King submitted that there is significant increased traffic flow from earlier developments and traffic from side roads may be affected unless there is investment in traffic measures such as roundabouts or traffic lights.

The Council submitted that current traffic volumes are in the order 1400 vehicles per day along the Kilmore – Lancefield Road and residential traffic generated will be an additional 1390 vehicles per day.

The Council noted that infrastructure contributions will be required when the land is developed which will be used to fund (among other things) upgrading the Kilmore - Lancefield Road/Butlers Road Intersection and the Kilmore - Lancefield Road.

The servicing authority for development, Goulburn Valley Water, submitted that future development can be serviced with water and sewer.

(iii) Discussion

The Panel notes the submission of Goulburn Valley Water in relation to infrastructure servicing.

There is no doubt that traffic will increase when the Amendment site is developed; this is an obvious outcome of the increased population resident in the area, and the quantum is provided in the Transport Impact Assessment from October 2017. The question is whether such increases have been adequately planned for and whether the local road network has sufficient capacity or can be improved to provide the needed capacity. The Transport Impact Assessment from October 2017 identifies a number of improvements needed to ensure that capacity and safety are maintained.

The Panel considers the development approval pathway provides sufficient surety that traffic capacity can be safely provided. In particular the Panel notes that the Development Plan requires preparation of a detailed Traffic Impact Assessment.

(iv) Conclusions and recommendations

The Panel concludes that traffic increases will occur through future development but that the capacity of the local road network, with appropriate upgrades, is adequate.

Appendix A Submitters to the Amendment

No.	Submitter
1	Goulburn Broken CMA
2	Rosemary Payne
3	Department of Education and Training
4	Goulburn Valley Water
5	Francis Payne and Rose King
6	Adrian Payne
7	Margaret Perrott
8	Kilmore and District Multi Function Facility Incorporated
9	Douglas Payne
10	Jennifer King
11	Kilmore and District Residents & Ratepayers Association Inc.
12	EPA Victoria
13	Department of Environment, Land, Water and Planning
14	CFA North East Region