

Planning and Environment Act 1987

Panel Report

**Mitchell Planning Scheme Amendment C151mth
Kilmore South East Growth Precinct**

19 November 2020

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 Amendemnt C151

Kilmore South East Growth Precinct

19 November 2020



David Merrett, Chair



Ian Gibson, Member

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Glossary and abbreviations

the Amendment	Mitchell Planning Scheme Amendment C151mith
BEAM	BEAM Mitchell Environment Group
Council	Mitchell Shire Council
DPO5	Schedule 5 to the Development Plan Overlay
GBCMA	Goulburn Broken Catchment Management Authority
KADRRA	Kilmore and District Residents and Ratepayers Association
KSP	Kilmore Structure Plan 2016
PPF	Planning Policy Framework
the precinct	Kilmore South East Growth Precinct
the Proponent	Kilmore Wandong Pty Ltd
VPO1	Schedule 1 to the Vegetation Protection Overlay

Overview

Amendment summary	
The Amendment	Mitchell Planning Scheme Amendment C151mith
Common name	Kilmore South East Growth Precinct
Brief description	The Amendment rezones 171 hectares of land to facilitate its residential development and amends the boundaries of the Vegetation Protection Overlay to protect existing vegetation and delete it from cleared areas
Subject land	The land is bound by Wandong Road to the south, the Northern Highway to the west, The Elms and Manna Gum residential estates and Anderson Road to the north and Quinns Road to the east, Kilmore
The Proponent	Kilmore Wandong Pty Ltd
Planning Authority	Mitchell Shire Council
Authorisation	30 March 2020
Exhibition	15 May to 26 June 2020
Submissions	Number of Submissions: 20 Opposed: 6

Panel process	
The Panel	David Merrett (Chair) and Ian Gibson
Directions Hearing	Video conference via MS Teams, 14 September 2020
Panel Hearing	Video conference via MS Teams, 13 and 14 October 2020
Site inspections	Nil
Parties to the Hearing	Kilmore Wandong Pty Ltd Kilmore and District Residents and Ratepayers Association BEAM Mitchell Environment Group Simon and Kerrie Halman
Citation	Mitchell Planning Scheme PSA C151mith [2020] PPV
Date of this Report	19 November 2020

Executive summary

Mitchell Planning Scheme Amendment C151mith (the Amendment) proposes to rezone 171 hectares of land in Kilmore known as the South East Growth Precinct. It seeks to:

- rezone it to the General Residential Zone from the Farming Zone, Rural Living Zone and Public Use Zone
- amend the extent of the Schedule 1 to the Vegetation Protection Overlay (VPO1) to extend it to cover all roadside vegetation on the Quinns Road and Anderson Road site frontages, the Tootle Street road reserve and delete it from cleared land.

The Amendment was exhibited from 15 May to 26 June 2020 and received 20 submissions.

Key issues raised in submissions included:

- the protection of vegetation on the land and the Quinns Road and Tootle Street road reserves
- the protection of waterways on the land.

Some submitters sought to retain the land in its current state as a green and open landscape entry to Kilmore. The Panel did not consider this was a key issue as Amendment C123 had already approved the *Kilmore Structure Plan 2016* that identified several growth precincts, including the South East Growth Precinct. Amendment C123 also applied Schedule 5 to the Development Plan Overlay (DPO5) that requires an approved development plan informed by several technical assessments prior to its urban development. The Panel therefore considers there is strong strategic and policy support for the Amendment.

At this stage, Council intends to vary from the concept plan for the precinct contained in DPO5 by retaining Waterway A in its current alignment with a resultant shift in the location of the active public open space and, similar to how Quinns Road is to be treated, retain the Tootle Street extension in its current condition to protect vegetation and internalise an east/west road on the land near Tootle Street. The Panel does not consider there needs to be an update to the DPO5 to reflect these changes as they can still be generally in accordance with DPO5.

The Panel considers the vegetation north of Tootle Street should be retained in the VPO1. Council and the proponent considered there were other planning scheme provisions that would manage this vegetation. This may be the case, however, as land that currently has the overlay applied, the Panel did not receive any submissions that substantiated the deletion of the VPO1 based on the quality of vegetation. Council acknowledged that if it had access to the land during the preparation of the Amendment, it would have retained the VPO1.

The Panel concludes:

Vegetation

- VPO1 should be retained on land where there is vegetation that warrants it
- deletion of the VPO1 from the land west of Quinns Road where there is no vegetation is appropriate
- VPO1 should be retained on land north of the Tootle Street extension that contains vegetation.

Waterways

- the retention of Waterway A in its current alignment is appropriate.

- the definition of Waterway A and Waterway B as “encumbered” will assist in the protection of their riparian environments.
- the revised version of the “encumbered” section of Waterway A provides a more accurate definition of the waterway that extends to Tootle Street.
- the drainage function of the site will be addressed in next steps of the Development Plan.
- further informal community engagement in the Development Plan process will help to produce the best outcomes for the waterways.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Mitchell Planning Scheme Amendment C151mith be adopted as exhibited subject to the following:

- 1. Amend Planning Scheme Maps 15VPO and 16VPO to retain the stand of vegetation north of the Tootle Street extension in Schedule 1 to the Vegetation Protection Overlay.**

1 Introduction

1.1 The Amendment

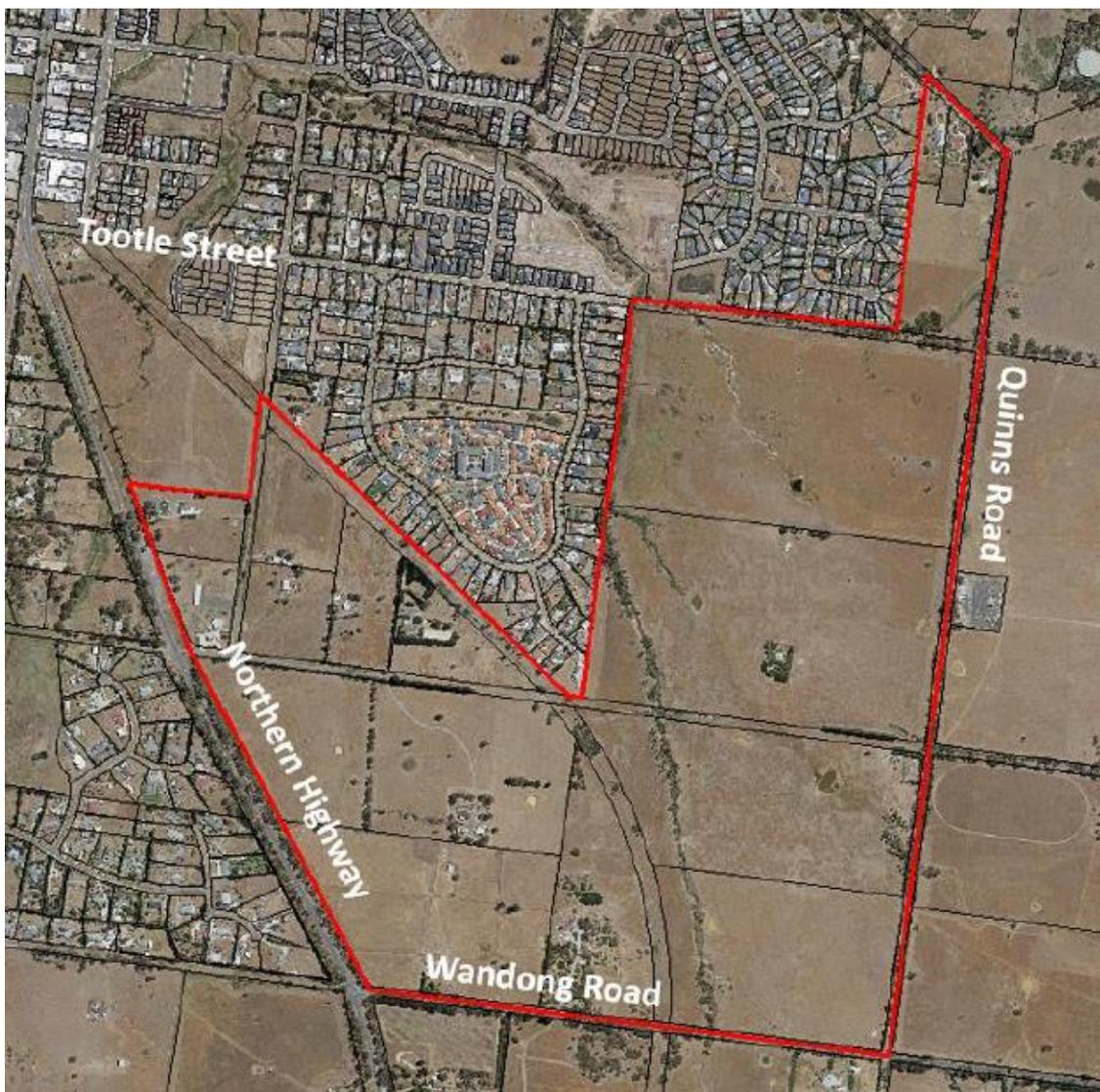
(i) The subject land

The Amendment applies to approximately 171 hectares of land identified in the *Kilmore Structure Plan 2016* (KSP) as the South-East Growth Precinct (the precinct). The precinct is bordered by the Northern Highway to the west, Wandong Road to the south and Quinns Road to the east. Anderson Street, the 2 Tootle Street residential development site and existing residential development border the north.

Wandong Road will ultimately form part of the Kilmore bypass of the Northern Highway (Sydney Street) through Kilmore and forms the southern extent of the settlement boundary. Quinns Road would form the eastern settlement boundary.

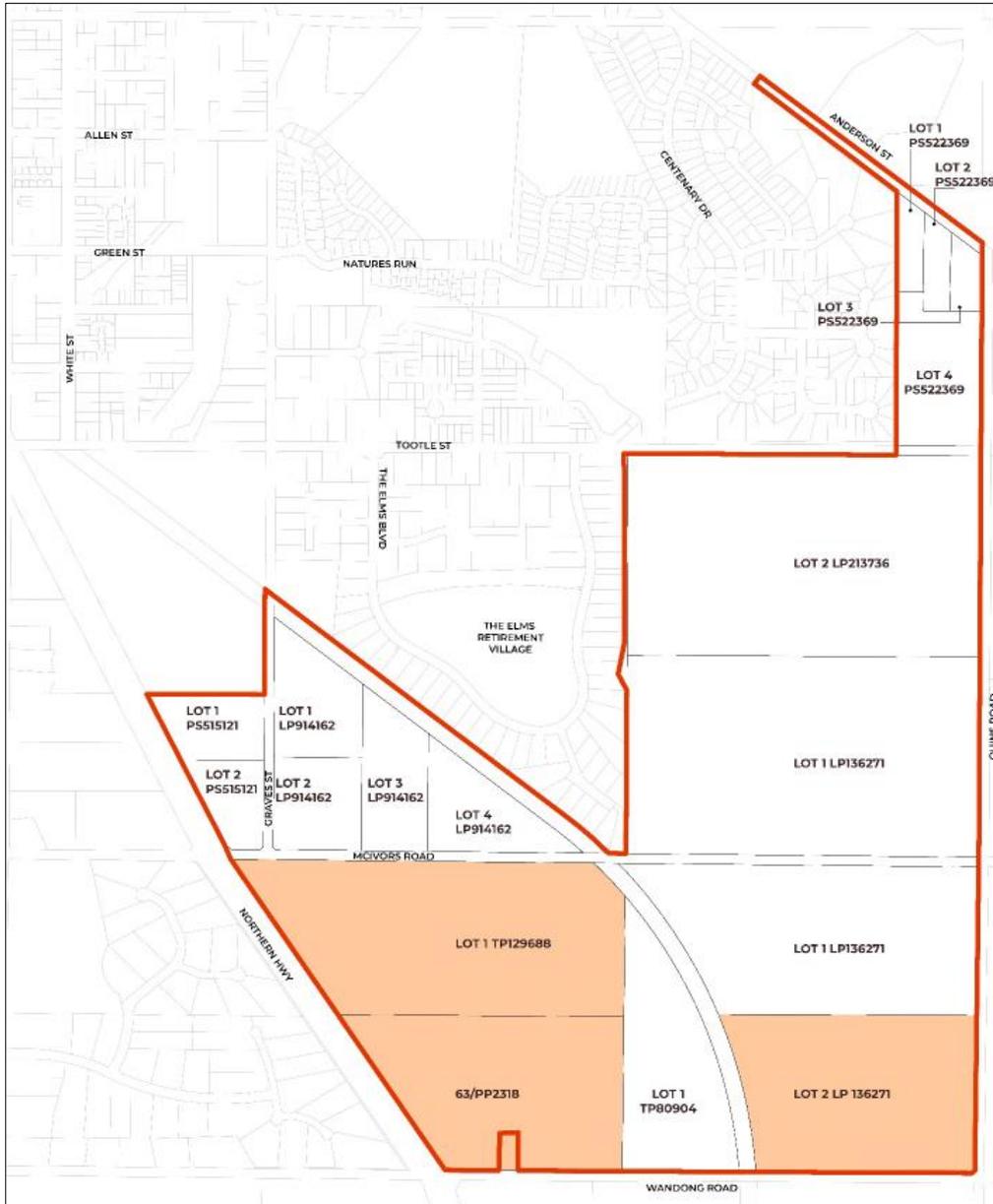
Figure 1 provides an outline of the precinct.

Figure 1 Kilmore South East Growth Precinct



Kilmore Wandong Pty Ltd (the Proponent) owns some of the land in the precinct. Its land ownership is shown in Figure 3.

Figure 2 Kilmore Wandong Pty Ltd land ownership



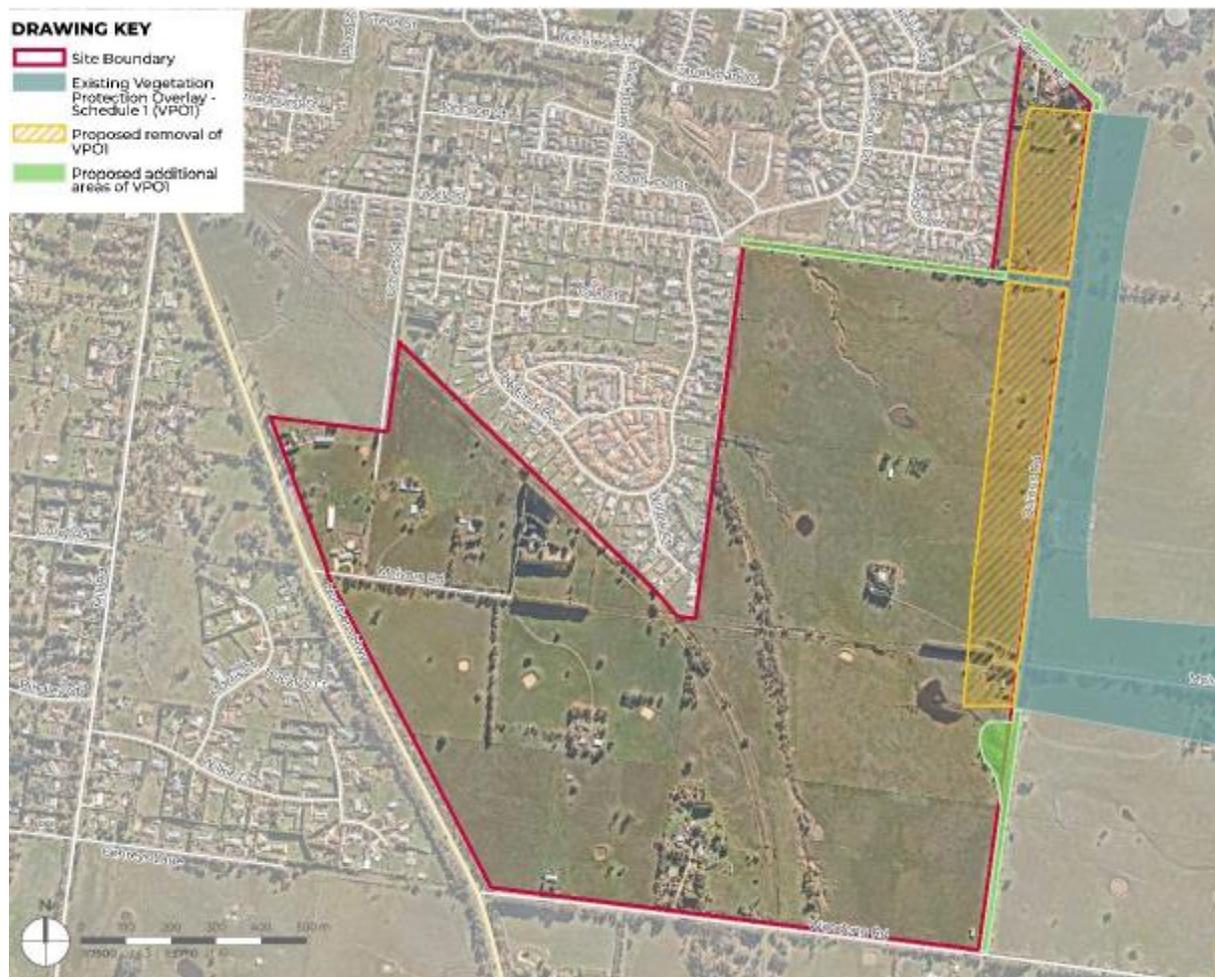
(ii) Amendment description

The purpose of the Amendment is to:

- rezone it to the General Residential Zone from the Farming Zone, Rural Living Zone and Public Use Zone
- amend the extent of the Schedule 1 to the Vegetation Protection Overlay (VPO1) to extend it to cover all roadside vegetation on the Quinns Road and Anderson Road site frontages, the Tootle Street road reserve and delete it from cleared land.

Figure 3 indicates how VPO1 will be amended. There are no changes to the VPO1 east of Quinns Road.

Figure 3 Changes to the VPO1



1.2 Summary of issues raised in submissions

(i) Mitchell Shire Council (planning authority)

The key issues for Council were:

- the rezoning of the land is consistent with the KSP
- detailed planning for the precinct will occur with the preparation of the development plan
- the DPO5 will guide the preparation of the development plan
- the reduction in the application of the VPO1 is appropriate as it mostly applies to land without significant vegetation.

(ii) Kilmore Wandong Pty Ltd (the Proponent)

The key issues for the Proponent were:

- the rezoning of the land is consistent with the KSP
- the reduction in the application of the VPO1 is appropriate as it mostly applies to land without vegetation
- detailed development issues would be considered and resolved through the preparation of a development plan for the precinct and planning applications to subdivide the land.

Both Council and the proponent considered there was sufficient protection for the vegetation north of the Tootle Street extension and there was no need to retain the VPO1 on it.

(iii) Relevant agencies

The Country Fire Authority, Goulburn Broken Catchment Management Authority (GBCMA), AusNet, Department of Education and Training, Department of Transport and Department of Environment, Land, Water and Planning provided submissions in support of the Amendment.

There are no unresolved issues from these agencies.

(iv) Individual submitters or groups of submitters

The key issues by submitters were:

- the land should not be rezoned for residential purposes (Submissions 1 and 2)
- the width of the VPO1 along Quinns Road can be reduced from 130 metres wide, but not less than 30 metres wide (Submissions 8, 9, 11 and 20)
- all waterways on the land should be protected (Submissions 8, 11 and 20)
- vegetation north of Tootle Street extension should not be removed from the VPO1.

These issues are still outstanding.

1.3 The Panel's approach

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, 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.

This Report deals with the issues under the following headings:

- Planning context and strategic justification
- Vegetation
- Waterways.

2 Planning context and strategic justification

2.1 Planning policy framework

Council submitted that the Amendment is supported by various clauses in the Planning Policy Framework (PPF), which the Panel has summarised below.

Victorian planning objectives

The Amendment will assist in implementing State policy objectives set out in section 4 of the Act by providing for residential growth where it is anticipated and planned for.

Clause 11 (Settlement)

The Amendment supports Clause 11 by ensuring that Kilmore has a 15-year supply of residential land.

Clause 16 (Housing)

The Amendment supports Clause 16 by locating housing development close to transport, retail and community infrastructure where it is anticipated.

2.2 Other relevant planning strategies and policies

(i) Plan Melbourne and Hume Regional Growth Plan

Both Plan Melbourne and the Hume Regional Growth Plan nominate Kilmore as a peri-urban growth town.

Council submitted that the Amendment supports these documents because it proposes residential growth in an area that is expected by the Kilmore Structure Plan.

(ii) Municipal Planning Strategy

Council submitted that the Amendment supports the Municipal Planning Strategy because it:

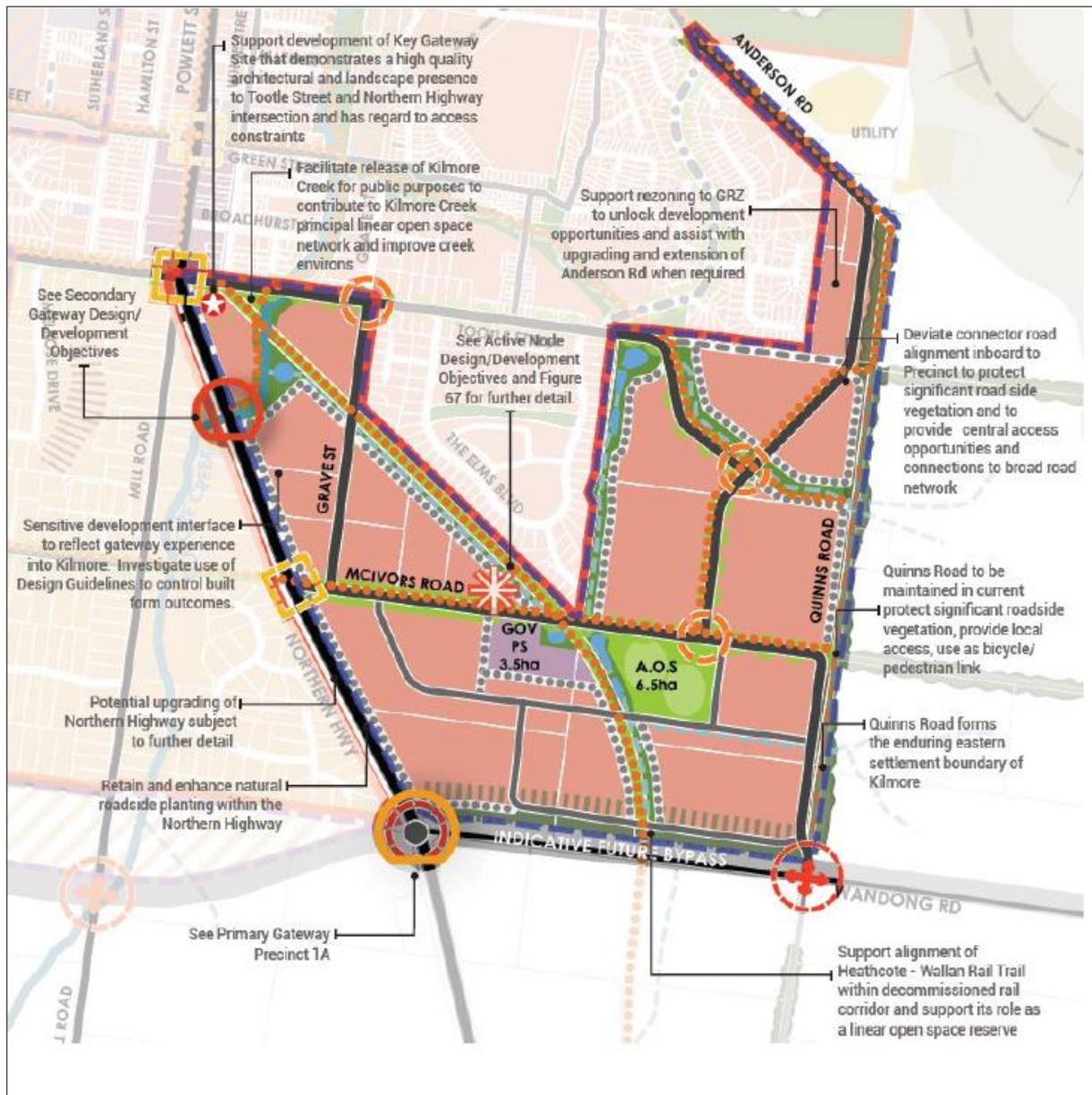
- facilitates residential development in a logical growth front that is consistent with an approved structure plan (Clause 21.02 – Settlement)
- is consistent with the Structure Plan at Clause 21.11-3 which nominates the subject land as a residential growth area. The subject land is covered by Development Plan Overlay Schedule 5 which will ensure future development is consistent with the notion of a ‘complete neighbourhood’ through future preparation of a Development Plan guiding development outcomes (Clause 21.11-3 Local areas - Kilmore).

(iii) Kilmore Structure Plan and Kilmore Infrastructure Framework

The KSP was introduced into the Planning Scheme by Amendment C123 in March 2019. Its aim was to provide for the coordinated development of Kilmore for the next 20 years. It identified several residential growth fronts, including this precinct. This is shown in Figure 4.

The KSP forecast a population growth rate of 54 per cent between 2015 (8,245) and 2036 (12,649). Council advised at the Hearing that *forecastID* predicted the 2041 population would be 21,012 and 8,383 dwellings would be required to accommodate this growth.

Figure 4 South East Growth Precinct



The precinct will provide a government primary school, 4.5 hectares of active open space, various drainage basins and walking trails and upgraded intersections. Of importance to this Amendment, the KSP proposed:

- the relocation of what is known as Waterway A to run along property boundaries and the former railway reserve
- to maintain Quinns Road in its current unsealed state with a major north/south connector road to be constructed internally within the precinct to protect the significant roadside vegetation
- to extend Tootle Street to provide an east west vehicle connection to the land.

Amendment C123 applied Schedule 5 to the Development Plan Overlay (DPO5 - Kilmore North, West and South East Growth Precincts) to the three residential growth precincts.

The Kilmore Infrastructure Framework was also introduced as part of the Amendment C123. Development contributions for this precinct would be the subject of a negotiated outcome

and implemented under section 173 Agreement unless a regional Infrastructure Contribution Plan is available.

2.3 Other relevant local amendments

Since the approval of the KSP, 29.5 hectares of land in Kilmore's residential growth precincts has been rezoned. Amendment C120 rezoned 11.5 hectares at 2 (part) Tootle Street in the south east growth precinct and Amendment C130 rezoned 18 hectares at 40 Butlers Road in the west growth precinct.

2.4 Planning scheme provisions

A common zone and overlay purpose are to implement the Municipal Planning Strategy and the PPF.

(i) Zones

The land is in the Farming Zone. The land is to be rezoned to the General Residential Zone. The loss of agricultural land was considered in the KSP. No submissions raised the loss of agricultural land as an issue.

(ii) Overlays

The land is subject to the DPO5 that requires a variety of technical assessments to be completed to inform an overall development plan for the Kilmore growth precincts.

Part of the land is affected by the VPO1. This is to be retained in a modified form as part of this Amendment.

2.5 Ministerial Directions and Practice Notes

Ministerial Directions

The Explanatory Report discusses how the Amendment meets the relevant requirements of Ministerial Direction 11 (Strategic Assessment of Amendments) and *Planning Practice Note 46: Strategic Assessment Guidelines*, August 2018. That discussion is not repeated here.

Council submitted it had satisfied itself that the land was suitable for a sensitive use, as required under Ministerial Direction 1 – Potentially Contaminated Land and the General Practice Note – Potentially Contaminated Land. It prepared a report in February 2020 (Document 7) that reviewed the use and development history of the land. This report concluded the land was suitable for its intended purpose.

The EPA provided a pre-exhibition response (Document 7) to Council that it did not object to the proposed rezoning as Council had satisfied itself that the land was suitable for its intended use.

Planning Practice Notes

The land is not affected by a Bushfire Management Overlay but is in a Bushfire Prone Area. Planning Practice Note 64: *Local planning for bushfire protection* addresses bushfire risk. The Country Fire Authority (Submitter 14) noted:

- Kilmore is predominantly more impacted by grassfires, and this factor needs to be considered in the preparation of documentation, including development plans for this land. This includes before, during and after any development.
- At a strategic scale, the subject land area being considered as a growth area within Kilmore, is in a grassland environment and the associated risk is from grassfires. CFA are satisfied that this location represents a location where growth can be directed, i.e. support the rezoning from Farming Zone to General Residential Zone.
- The subject land is adjacent to residential assets rated High and Very High using CFA's VFRR process to the North and West. The land would fall within 'Landscape Type Two' of the range of landscape types (and risk) presented in the BMO Technical Guide. For this landscape type, a bushfire is likely to arise from one side of a development and evacuation to a place of absolute safety can be provided by walking 2-3 streets back from the urban edge.

The CFA supported the rezoning.

2.6 Discussion and conclusion

Submitters 1 and 2 objected to the rezoning and were concerned with the loss of open, green landscaped entry to Kilmore. Strategically, whether the land was suitable for urban development was considered by the KSP and Amendment C123. The precinct is identified as a key growth node for Kilmore that complements its peri-urban growth role contained in Plan Melbourne and the Hume Regional Growth Plan. The Panel cannot re-visit whether this land should be identified for residential growth as it is not a matter before it.

Council prepared the Kilmore Residential Land Supply Assessment in 2020 to determine how many years of residential land supply there was. This found that *"Kilmore has five to eight years residential land supply as of June 2020, based on historical population growth, lot and dwelling construction trends and population projections which predict an increase in population growth in Kilmore."* The Panel is comfortable that the rezoning of this precinct will accommodate a projected population increase over at least a 15 year period as required by Clause 11.02-1S. This was not a matter in dispute.

The Panel considers the Amendment is consistent with the direction provided for the precinct in the KSP. The community would have a good understanding of the development future of this land as it is underpinned by the KSP. How this precinct develops in detail will be finalised by the preparation of a development plan, and then the consideration of planning applications to subdivide the land.

The Panel agrees with the Proponent that it is part way through the realisation of the vision for the land. The preparation of the development plan will be the next key phase. While not before the Panel, the proponent referred the Panel to a draft development plan that required further input on a range of technical issues, such as vegetation, stormwater and drainage, traffic etc. Council indicated that it would informally seek the input of the community into the development plan before it is approved; something the community submitters appreciated and welcomed. The Panel supports the further involvement of the community in the development plan phase. In relation to vegetation and waterway issues, the role of the further technical assessment at the development plan stage is a matter that is addressed further in Chapters 3 and 4.

For the reasons set out in the following chapters, the Panel concludes that the Amendment is supported by, and implements, the relevant sections of the PPF, and is consistent with the relevant Ministerial Directions and Practice Notes. The Amendment is well founded and

strategically justified, and the Amendment should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

3 Vegetation

3.1 The issues

The Amendment proposes to remove the VPO1 from cleared land to the Quinns Road reserve boundary, extend it along the Quinns Road reserve to Wandong Road, extend it along Anderson Road and extend it along the unmade Tootle Street road reserve, which has significant native vegetation. The issue is whether the amended VPO1 provides adequate protection for existing vegetation.

3.2 Relevant policies, strategies and studies

Council advised vegetation issues are considered in the following policy and strategies:

- Clause 12.01-2S (Native vegetation management)
- Clause 52.17 (Native vegetation)
- Kilmore Structure Plan – Chapter 4.7 South East Growth Precinct – *“to encourage subdivision design to plan for the protection of significant native vegetation and scattered trees which contribute to biodiversity and character values.”*
- DPO5 – need for a site analysis and design response and flora and fauna assessment.

3.3 Submissions

Council described the changes to the VPO1 was *“purely a mapping exercise that seeks to ground-truth and rationalise the extent of the existing VPO-1 coverage.”* The VPO1 currently extends 130 metres west of Quinns Road into the land. Council submitted the purpose of the VPO1 is to protect roadside vegetation and it does not apply it to residential land, unless there is a contiguous extent of vegetation that extends into private land. It was based on surveys conducted in the mid-1990’s and formed the basis for the VPO in the new format planning scheme.

Council considered¹:

Existing vegetation along Quinns Road is well protected by planning controls, DPO-5 and Council’s ability to impose planning permit conditions which will protect the vegetation, including root systems, during development. DPO-5 requires any application to include a Flora and Fauna Assessment or Arboriculture Assessment. Reducing the extent of the VPO-1 to 30 metres into the subject land from the Quinns Road boundary is unnecessary.

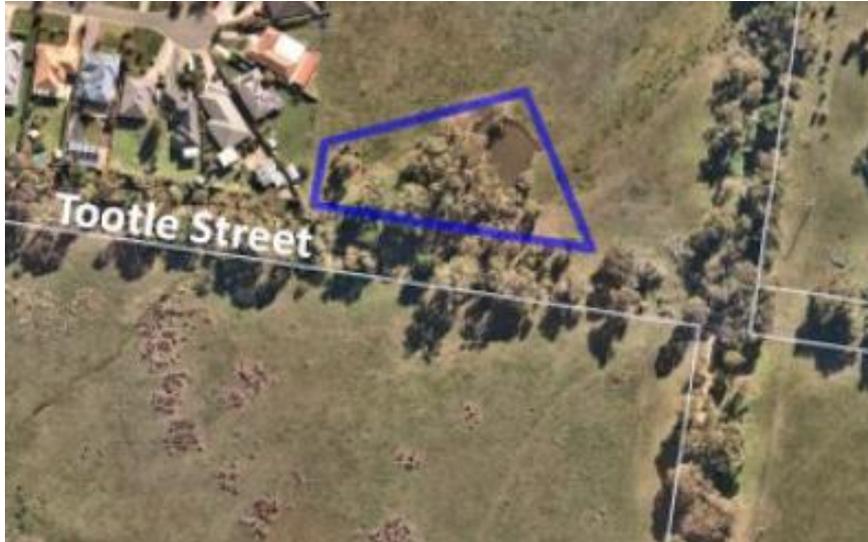
Submitters 8 (KARRA – Kilmore and District Residents and Ratepayers Association), 9 and 20 (BEAM Mitchell Environment Group to be referred to as BEAM) were concerned with the reduction in the VPO1. Both KARRA and BEAM accepted the VPO1 can be reduced in width along Quinns Road, but only to 30 metres to provide an adequate buffer to the roadside vegetation. BEAM considered this *“would prohibit roads and other damaging infrastructure development in the VPO area.”* KARRA supported this submission.

Submitter 9 confirmed at the Hearing that the stand of vegetation east of his land and north of Tootle Street (Figure 5) should be retained in the VPO1. Council accepted that it would

¹ Council Part B submission, paragraph 45

have retained this vegetation in the VPO1 if it had access to the site prior to the exhibition of the Amendment.

Figure 5 Vegetation north of Tootle Street extension



Mesh, on behalf of the proponent, submitted:

When the current extent of the VPO is viewed, particularly the area which extends west of Quinns Road (approximately 130m into the Amendment area), it becomes evident that the VPO was not applied based on site specific conditions, but rather a blanket, somewhat crude basis. This Amendment is simply attempting to refine this based on a site-specific evaluation of what vegetation is actually present, and to align the VPO coverage accordingly.

Mesh provided a 'without prejudice' indication of how a buffer to vegetation may be used along Quinns Road. Attachment 6 to the Mesh submission shows a 7 metre buffer to protect tree roots and limb fall areas, details of which would need to be confirmed.

Regarding the vegetation north of Tootle Street, Mesh advised it did not represent the landowner and it was not a party to the Hearing. It advised:

In that context we do not see a need for the Panel to make a specific recommendation about the VPO extent in that area, in absence of definitive information. We would invite the Panel to make a recommendation about the specific investigations that may be undertaken for those trees within the development plan process. If their significance warrants protection, the Development Plan can identify for that land to be set aside as a smaller reserve for vegetation protection.

3.4 Discussion

The Panel broadly supports attempts to retain significant vegetation in growth areas, where this can be achieved. For Quinns Road and the Tootle Street extension this will be achieved by internalising roads within the land, thus retaining the vegetation in these road reserves while providing for local access (if required) and a pedestrian and cycling function. The Panel expects that any approved development plan for the land will incorporate these important measures.

The Panel agrees with Council and the Proponent that the VPO1 should be applied to land where the vegetation is. Its role is not to provide a buffer to vegetation; and certainly not to the extent that currently applies. How the environs of the vegetation are addressed will be

determined by the development plan, and in particular the vegetation assessment that will inform it. The Panel agrees with Council and the Proponent the 130 metre width was an arbitrary figure not based on science and to reduce this to 30 metres would also be arbitrary. There was no evidence or technical assessments that concluded this should be the width of the VPO. The vegetation assessment will be informed by Australian Standard AS 4970-2009 (Protection of trees on development sites) to determine how the tree protection zones should be addressed. This and the development plan process will confirm how the Quinns Road environs of the land are addressed.

The vegetation north of Tootle Street is currently affected by the VPO1. The Panel agrees that the application of the VPO1 should be based upon sound information. The Panel accepts that where there is no vegetation then the VPO1 should not be applied. However, in the case of the vegetation north of Tootle Street this is not the key consideration. The inverse applies where there needs to be some demonstration that the vegetation currently covered by the VPO1 is not of a sufficient standard to warrant the removal of the VPO. In this instance the proponent did not provide this information and sought to rely on the development plan process to address this issue. Council also accepted that it would have retained the VPO1 on this vegetation. Figure 6 generally shows the vegetation circled. The Panel considers this is a substantial area of vegetation on the land and in the absence of evidence to the contrary, considers the VPO1 should be retained. The Panel does not consider this changes the Amendment to any significant degree as the change retains an existing overlay control; it does not introduce one.

Figure 6 **Vegetation north of Tootle Street**



3.5 Conclusions and recommendations

The Panel concludes:

- VPO1 should be retained on land where there is vegetation that warrants it.
- It is appropriate to delete VPO1 from the land west of Quinns Road where there is no vegetation.
- VPO1 should be retained on land north of the Tootle Street extension that contains vegetation.

The Panel recommends:

- 1. Amend Planning Scheme Maps 15VPO and 16VPO to retain the stand of vegetation north of the Tootle Street extension in Schedule 1 to the Vegetation Protection Overlay.**

4 Waterways

4.1 The issues

Several submitters identified the waterways that cross the Amendment area and expressed concern about their protection. The issues are whether:

- the environmental benefits alongside key waterways can be adequately protected.
- the drainage function carried out by the waterways will be compromised by future residential development.

4.2 Relevant policies, strategies and studies

In its Part B submission, Council cited the following policy provisions as supporting the protection of waterways:

- Clause 12.01-1S (Protection of biodiversity) which aims to assist the protection and conservation of Victoria's biodiversity
- Clause 12.03-1S (River corridors, waterways, lakes and wetlands) which seeks to protect and enhance river corridors, waterways, lakes and wetlands, with strategies that include:
 - Protect the environmental, cultural and landscape values of all water bodies and wetlands
 - Ensure development responds to and respects the significant environmental, conservation, cultural, aesthetic, open space, recreation and tourism assets of water bodies and wetlands
 - Ensure development is sensitively designed and sited to maintain and enhance environmental assets, significant views and landscapes along river corridors and waterways and adjacent to lakes and wetlands
 - Ensure development does not compromise bank stability, increase erosion or impact on a water body or wetland's natural capacity to manage flood flow
- Clause 52.17 (Native Vegetation), which aims to ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation.

Other policy provisions address the drainage function:

- Clause 13.03-1S 31 Floodplain management, which aims to assist the protection of:
 - Life, property and community infrastructure from flood hazard
 - The natural flood carrying capacity of rivers, streams and floodways
 - The flood storage function of floodplains and waterways
 - Floodplain areas of environmental significance or of importance to river health
- Clause 19.03-3S (Integrated water management) aims to sustainably manage water supply, water resources, wastewater, drainage and stormwater through an integrated water management approach.

In addition, the provisions of the *Water Act 1989* require the assessment of proposed Works on Waterways, and the issue of permits to construct works or undertake activities on a waterway. In the case of Kilmore, these policies are administered by the GBCMA, which relies on Melbourne Water's *Guidelines for Greenfield Development Areas* (2013) for development fronting rivers, creeks and waterways.

The GBCMA website shows a number of waterways crossing the site as requiring Works on Waterways permits. The major waterways have clear channels, while several were described in the Hearing as “swales”. In this case, the key waterways will require a 30-metre development setback from the top of the bank, providing the opportunity for open space and protection of remnant vegetation. Other waterways will require permits to encourage water sensitive urban design and ensure the drainage function is not compromised.

KADRRA cited Mitchell Shire’s *Environmental Strategy 2008* as a key policy document. This has been updated in the *Mitchell Shire Environment Strategy 2014-24*. Regarding waterways and wetlands, the 2014-24 strategy identifies four desired outcomes:

1. Areas of remnant native vegetation identified in riparian zones and wetlands within the Shire are protected and enhanced in alignment with CMA and Melbourne Water Waterway Strategies
2. Inappropriate development and/or land use on or adjacent to waterways and wetlands is avoided
3. Implementation of sustainable land management practices on private land to improve river health is encouraged and supported
4. The quality of stormwater run-off is improved.

4.3 Submissions

The submissions from KADRRA and BEAM presented similar views on the protection of waterways through the subject land. Both stressed the importance of protecting and enhancing the riparian environment beside major waterways for their natural, environmental and recreational value, and noted the importance of addressing the drainage capacity of the whole site.

Both groups supported the protection of the creek verges in two of the waterways – referred to as Waterway A and Waterway B in Council’s submission – and recommended that more waterways should be protected in this way.

On behalf of BEAM, Dr Mitchell identified two additional drainage lines crossing Quinns Road “*that need to be recognised for their landscape and environmental values and their role in retaining water in the landscape*”:

- Drainage line between Wandong Road and Mclvors Road. This meanders through a group of trees (an extension of the VPO into private land). This should be allowed to continue to provide water for these trees by holding water at this site rather than just draining it away.
- Drainage line crossing Quinns Road north of Tootle Street. This is a significant line that crosses south-westerly into a dam surrounded by old trees (not marked on the maps) then joins the proposed “drain” along or parallel to Tootle Street. This could also be maintained as an open swale upstream from the dam and the trees around the dam protected by a small extension of the VPO around the dam.

On behalf of KADRRA, Ms Rose referred to the number of creeks flowing across the farmland, many of which are intermittent. She sought to encourage the replanting of native species to help to stop erosion and flash flooding in proposed housing blocks and proposed that VPOs should be placed along more of the creeks including their 30 metre setbacks.

KADRRA and BEAM also noted that the waterways crossing Quinns Road and across the site periodically flood, and that the drainage function should be addressed to manage future flood events.

GBCMA provided in-principle support for the Amendment subject to additional information being provided in the next steps of the planning process.

Council outlined its position on the protection of waterways in its Part A and B submissions. It cited the provisions of DPO5 that required detailed investigations and site studies to be prepared to inform a development plan for the land, such as a servicing and drainage strategy. Further, it referred to the advice from GBCMA (Document 1) that identified two waterways as “encumbered” (Figure 7), so that they cannot be piped or built over and would require a 30 metre setback from the top of the creek banks.

Figure 7 Encumbered waterways – original



Council submitted that the extent of Waterway B addressed some of the concerns expressed by submitters, by recognising the contribution it makes to drainage from Quinns Road to the east.

In the case of Waterway A, the KSP and DPO5 proposed the realignment of Waterway A to run along the Elms Estate existing rear development boundary and the former railway alignment. However, Council submitted that GBCMA would not support realignment of the waterway. Further:

This position is supported by Council as the environmental features of Waterway A, such as remnant vegetation, are of greater value than identified during preparation of the Kilmore Structure Plan. Council’s position on retaining Waterway A is in accordance DELWP’s advice in their submission noted earlier. Mesh also support retaining Waterway A.

Mesh reiterated the Council position.

4.4 Discussion

During the Hearing, Council confirmed that Waterways A and B were to be protected for 30 metres on either side of the banks. This resulted from meetings in 2019 between Council, GBCMA and the Proponent. Whether other waterways referred to by KADRRA and BEAM would be protected for their drainage role would be considered in the drainage strategy for the land required by DPO5. This strategy requires the following issues to be addressed:

- The capacity of infrastructure to service the development including upgrades required to trunk and reticulated services.
- Regard to the holistic drainage outcomes to support development.
- The treatment and retardation of stormwater.
- Improved environmental and waterway health outcomes, where feasible.
- The policies and guidelines of servicing authorities and an appropriate response to the principles of water sensitive urban design. (Panel emphasis)

The Panel accepts that Waterways A and B are the most significant on the subject land, in terms of the need to protect and enhance the creek environments, and their drainage functions. It also supports the retention of Waterway A in its current alignment as this avoids major civil works and retains established vegetation.

The Panel questioned the treatment of the channel to the north of Waterway A, which is an incised waterway parallel to the rear fences of properties in the Elms Estate, joining Waterway B at Tootle Street. Council confirmed that this section of waterway should be included in the “encumbered” section and prepared a revised version of its map (Document 7) of key waterways as shown in Figure 8.

The Panel supports this addition. It reflects the current extent of the waterway and provides greater certainty for all parties as the development planning process proceeds.

The Panel supports the objective of KADRRA and BEAM to protect and enhance waterways. It considers however that the use of the VPO would be an ineffective planning tool to achieve this result. The VPO largely aims to protect existing vegetation, while the intent in this case is to encourage appropriate revegetation and ensure that drainage is designed and constructed effectively. The Panel considers the requirements of DPO5 will adequately address the outcomes for the waterways. The usual planning mechanism to recognise the significance of waterways is the Environmental Significance Overlay, which was not proposed in this Amendment. The focus of this Amendment is the rezoning of the land and modification to VPO1. Appropriate consideration of drainage will occur in the drainage strategy. The Panel considers this addresses the concerns raised by submitters.

The Panel is aware that there is no statutory requirement for the Proponent or Council to consult further with the community on the details of the Development Plan. However, both Council and the proponent expressed strong support for further community engagement, prior to the completion and approval of the Development Plan. The Panel supports and encourages this.

Figure 8 Encumbered waterways – amended



4.5 Conclusions

The Panel concludes:

- The retention of Waterway A in its current alignment is appropriate.
- The definition of Waterway A and Waterway B as encumbered will assist in the protection of their riparian environments.
- The amended version of the encumbered section of Waterway A provides a more accurate definition of the waterway that extends to Tootle Street.
- Further informal community engagement in the Development Plan process will help to produce the best outcomes for the waterways.

Appendix A Submitters to the Amendment

No.	Submitter
1	Sheila Thomas
2	Glenda and Phillip White
3	Goulburn Broken Catchment Management Authority
4	Paul and Karen Gates
5	Anthony Caruana
6	Anthony Johnson
7	AusNet Services
8	Kilmore and District Residents and Ratepayers Association
9	Simon and Kerrie Halman
10	Department of Environment, Land, Water and Planning
11	Craig Gifford
12	Goulburn Valley Water
13	Allequip Pty Ltd
14	Country Fire Authority
15	Department of Transport
16	Arcare Pty Ltd
17	Emily Bannister-Elgin
18	Department of Education and Training
19	Margaret and Rudolf Fleischmann
20	BEAM Mitchell Environment Group Inc.

Appendix B Parties to the Panel Hearing

Submitter	Represented by
Mitchell Shire Council	Mr Justin Harding and Mr Travis Conway
Kilmore Wandong Pty Ltd	Ms Laura Caccomo and Mr Chris De Silva of Mesh
Kilmore and District Residents and Ratepayers Association	Ms Anne Radden Rose and Mr Lawrence Boyd
BEAM Mitchell Environment Group	Dr Peter Mitchell and Mr Peter Lockyer
Simon Halman	

Appendix C Document list

No.	Date	Description	Presented by
1	6/10/2020	Mitchell Shire Council Part A submission	Mitchell Shire Council
2	9/10/2020	Mitchell Shire Council Part B submission	Mitchell Shire Council
3	12/10/2020	Kilmore and District Residents & Ratepayers Association Inc. (KADRRA) Panel Submission	KADRRA
4	12/10/2020	Background statement to the BEAM Submission of 13 August 2020	BEAM
5	12/10/2020	Kilmore Wandong Pty Ltd Submission	Mesh on behalf of Kilmore Wandong Pty Ltd
6	13/10/2020	Kilmore and District Residents & Ratepayers Association Inc. (KADRRA) Panel Submission from Lawrie Boyd, including six images	KADRRA
7	13/10/2020	Email from Mitchell Shire including the following attachments: <ul style="list-style-type: none"> - Contaminated Land Assessment, provided to EPA on 6 March 2020 - Email from EPA dated 24 March 2020 providing consent to proceeding with Amendment C151 and confirming requirements of Ministerial Directions 1 and 19 have been met - Updated map identifying Waterway A as running north to Tootle Street - Email from GBCMA dated 22 July 2020 confirming support for Amendment C151. This includes GBCMA correspondence from 7 February 2020. 	Mitchell Shire Council
8	13/10/2020	24 images supplied by BEAM from Dr Peter Mitchell including images of vegetation and waterways	BEAM
9	13/10/2020	Four images from Kilmore and District Residents & Ratepayers Association Inc. (KADRRA) supplied by Lawrie Boyd, including images of Quinns Road from the corner of Anderson Road driving south	KADRRA
10	13/10/2020	Kilmore and District Residents and Ratepayers Association Inc. (KADRRA) supplied by Lawrie Boyd, including eight images of Quinns Road looking north	KADRRA
11	14/10/2020	Mitchell Shire Council Amendment C151: Right of Reply	Mitchell Shire Council

No.	Date	Description	Presented by
12	14/10/2020	Proponent closing submission – Amendment C151	Mesh on behalf of Kilmore Wandong Pty Ltd
