

**Mitchell Planning Scheme Amendment C154mith  
East Street, Kilmore**

**Panel Report**

*Planning and Environment Act 1987*

**6 May 2022**

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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 PE 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 PE 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 PE Act]

### *Planning and Environment Act 1987*

Panel Report pursuant to section 25 of the PE Act

Mitchell Planning Scheme Amendment C154mith

East Street, Kilmore

**6 May 2022**

A handwritten signature in black ink, appearing to read 'Tim Hellsten', written over a light grey horizontal line.

Tim Hellsten, Chair

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## Glossary and abbreviations

Council	Mitchell Shire Council
DELWP	Department of Environment, Land, Water and Planning
DPO10	Development Plan Overlay Schedule 10 (Kilmore Strategic Development Sites)
GRZ1	General Residential Zone Schedule 1
ICSIP	<i>Mitchell Shire Integrated Community Services and Infrastructure Plan, December 2013</i>
Issues Paper	<i>Horse Stables in Residential Areas in Kilmore Issues Paper, Maunsell AECOM for Council, 28 January 2009</i>
KADRRA	Kilmore and District Residents & Ratepayers Association
MSS	Municipal Strategic Statement
NSP	Neighbourhood Safe Place – Bushfire Place of Last Resort
PE Act	<i>Planning and Environment Act 1987</i>
Planning Scheme	Mitchell Planning Scheme
PPF	Planning Policy Framework
Proponent	Kilmore Racing Club Inc
PUZ6	Public Use Zone Schedule 6 (Local Government)
Structure Plan	<i>Kilmore Structure Plan 2016</i>

## Overview

### Amendment summary

The Amendment	Mitchell Planning Scheme Amendment C154mith
Common name	East Street, Kilmore
Brief description	Rezone the subject land from Public Use Zone Schedule 6 (Local Government) to General Residential Zone Schedule 1 (Mitchell Residential Areas) and apply the Development Plan Overlay Schedule 10 (Kilmore Strategic Development Sites)
Subject land	15-35 East Street, Kilmore and Reserve 1 on LP114048
The Proponent	Kilmore Racing Club Inc
Planning Authority	Mitchell Shire Council
Authorisation	18 May 2021 (unconditional)
Exhibition	11 June to 19 July 2021
Submissions	Number of Submissions: 15 Opposed: 11 (Refer Appendix A)

### Panel process

The Panel	Tim Hellsten (Chair)
Directions Hearing	1 February 2022, by videoconference
Panel Hearing	1 March and 4 and 5 April 2022, by videoconference
Site inspections	Unaccompanied, 10 January 2022
Parties to the Hearing	<p>Mitchell Shire Council represented by Charlie Wurm of Maddocks and Justin Harding, Senior Strategic Planner</p> <p>Kilmore Racing Club Inc. represented by Adele Patterson of Counsel instructed by Tim Peggie of Ethos Urban who called planning evidence from John Glossop of Glossop Town Planning. Ben Murphy Kilmore Racing Club CEO provided comments during closing</p> <p>Kilmore and District Resident &amp; Ratepayers Association Inc represented at the Directions Hearing by Graeme Peak of Counsel and at the Hearing by Kate Lyle of Counsel</p> <p>Anne Laver</p> <p>Vyvienne Whitehurst</p> <p>Anne Rose</p> <p>Kilmore Equine Clinic represented by Luke Wells-Smith</p> <p>Country Fire Authority represented by Tammy Garrett</p>
Citation	Mitchell PSA C154mith [2022] PPV
Date of this report	6 May 2022

## Executive summary

Kilmore, located in the Mitchell Shire, is a peri-urban township identified for moderate growth due to its proximity to Melbourne, availability of developable land and existing infrastructure. Its main economic drivers are agriculture, education, health services and equine industry. Future growth is guided by the *Kilmore Structure Plan 2016* (Structure Plan) and directed to designated infill and growth area precincts, with economic and employment activity focused on activity precincts.

Mitchell Planning Scheme Amendment C154mith (the Amendment) seeks to rezone approximately 2.2 hectares of land in East Street, Kilmore from Public Use Zone Schedule 6 (Local Government) (PUZ6) to General Residential Zone Schedule 1 (Mitchell Residential Areas) (GRZ1). The Amendment also applies the Development Plan Overlay Schedule 10 (Kilmore Strategic Development Sites) (DPO10) to the subject land.

The subject land comprises three parcels of land owned by the Kilmore Racing Club Inc (the Proponent) and is located opposite the Kilmore Racecourse (to the east). The subject land adjoins established residential areas to the north, south and west. There are a number of equine related uses located in George Street and adjoining the subject land's western boundary.

The subject land is vacant, contains no structures and is grassed without trees. It has been used by the Proponent for over 35 years for overflow parking associated with racing and trotting meetings and events, for access to properties along George Street and informally for recreation and parking of horse floats by recreational riders.

The Proponent no longer requires the subject land, intending to consolidate all activities and development within the racecourse, and proposes to dispose of the site.

The Mitchell Shire Council (Council) prepared the Amendment as the Planning Authority. It identified that it does not require the land for any public purpose and considers it a zoning anomaly given its private ownership. Rezoning the land is anticipated by the Structure Plan which identifies as an action – *“Rezone land owned by the Kilmore Racecourse currently zoned Public Use Zone to Special Use Zone to supports its development as part of the Kilmore Racecourse complex”*. While proposing a different zone than that identified in the Structure Plan, Council's Explanatory Report considered the Amendment would provide additional land for housing within the existing township boundary and in an area with existing services and good access to the Sydney Street Principal Activity Centre consistent with the Planning Policy Framework and Municipal Strategic Statement.

The key issues raised in submissions to the Amendment related to:

- legal issues relating to land ownership, the process of land transfers and potential agreements restricting the future sale of the land to a private owner
- loss of open space and a Bushfire Place of Last Resort
- loss of overflow parking for trotting and galloping and Agricultural Show events and local horse riders
- the subject land being returned to public ownership and use
- impact on future development on adjacent equine related uses including loss of rear access and noise impacts from residential development
- impacts of additional traffic, residential amenity and the rural character of the town
- lack of community benefit.

Council elected to take a neutral position on the Amendment at the Hearing.

### **Land ownership**

The Panel concluded:

- The context of the current ownership of the land is not a relevant consideration to this Amendment.
- The reservation status of the Reserve lot does not impact the consideration of the Amendment and is not a limitation to it proceeding, however in practice the reserve status should be resolved so that it does not create an impediment for any future use that might be considered appropriate for the site and while it remains in private ownership.

### **Loss of public land**

The Panel concluded:

- The Amendment does not result in the loss of the public use of the land as it is not used for a public purpose conducted on behalf of Council or other public agency.
- The land is in private ownership and Council has not identified that it requires the land for a public purpose.
- The Public Use Zone 6 is an inappropriate zone for the subject land and a more appropriate zone should be applied to it.

### **Traffic, amenity and character issues**

The Panel concluded:

- The Amendment will not result in additional traffic on the local road network or loss of privacy to George Street residents.
- The Amendment will not impact on the rural character of the town.
- The planning permit stage is the appropriate time to consider traffic, amenity impact, interface treatments and built form and bushfire management issues.

### **Strategic justification**

The Panel concluded:

- The application of the General Residential 1 Zone is inconsistent with objectives and strategies of the Municipal Strategic Statement and Kilmore Structure Plan to support the equine and horse racing industry and Equine Precinct.
- There is no strategic basis to apply DPO10 or to identify the subject land as a Strategic Infill Development Site.
- The Amendment is not strategically justified, is premature and should not proceed until further strategic work is undertaken to determine the role and directions for the equine and horse racing industry and Equine Precinct in Kilmore.
- The Kilmore Structure Plan should not be amended as sought by the Proponent to identify the subject land as a Strategic Infill Development Site or to remove it from the designated Equine Precinct without a more considered review of the Kilmore Structure Plan's directions for the Equine Precinct.

### **Recommendations**

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

- 1. Mitchell Planning Scheme Amendment C154mith be abandoned.**

- 2. Mitchell Shire Council undertake further strategic work to determine the role and directions for the equine and horse racing industry and Equine Precinct in Kilmore before preparing a further Amendment to rezone the subject land to an appropriate zone.**

# 1 Introduction

## 1.1 The Amendment

### (i) Amendment description

The purpose of the Amendment is to rezone three parcels of privately owned land located in East Street, Kilmore from Public Use Zone Schedule 6 (Local Government) (PUZ6) to General Residential Zone Schedule 1 (Mitchell Residential Areas) (GRZ1) to enable its sale and future use and development. The Amendment also applies the Development Plan Overlay Schedule 10 (Kilmore Strategic Development Sites) (DPO10) to the subject land in order to facilitate orderly future development.

### (ii) Subject land

The Amendment applies to 15-35 East Street, Kilmore (Lot 1 TP002368D and Lot 1 TP002403E) and Reserve No. 1 on LP114048 (collectively the subject land). The subject land (Figure 1) is owned by the Kilmore Racing Club Inc (the Proponent) and located opposite the Kilmore Racecourse (within the Special Use Zone Schedule 3 - Kilmore Racetrack (SUZ3)) to the east and approximately 560 metres east of the Sydney Street retail precinct.

Figure 1 Subject land



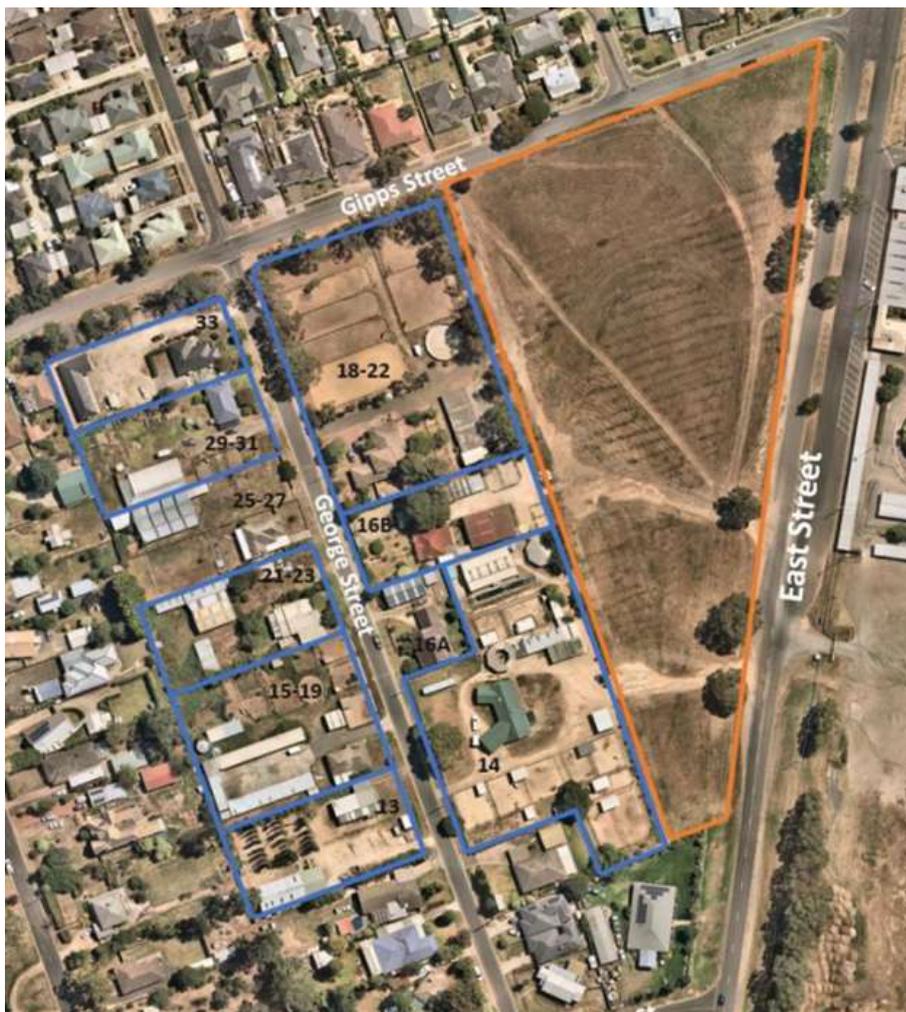
Source: Explanatory Report

Approximately 2.2 hectares in area, the subject land is triangular in shape, gently slopes to Gipps and East Street, and is grassed with no trees or shrubs present although there are established trees on adjoining properties and within the abutting East Street road reserve. Informal gravel access tracks off East Street and Gipps Street provide alternate access to two equine veterinarian and training facilities (Kilmore Equine Clinic at 16B and 18-22 George Street and another at 14 George Street).

The subject land adjoins established residential areas (within the GRZ1) to the west (George Street) and south (Short Street) and located opposite the site to the north (Gipps Street). The prevailing character and form of the adjacent residential areas is of single storey detached dwellings on generous sized lots. A number of larger lots on the west side of George Street (13, 15-19, 21-23, 29-31 and 33 George Street) are also used for ancillary equine facilities (stabling and day yards) associated with the keeping of horses and the Kilmore Equine Clinic (refer Figure 2). There are two live planning permit applications for properties in George Street:

- 14 George Street – Application PLP419/21 for 20 dwellings (not yet determined by Council)
- 21-27 George Street - Application PLP339/20 for 16 dwellings and subdivision (refused by Council and currently before VCAT).

**Figure 2** George Street equine related activities



Source: Council information report (Document 21)

The subject land has been owned by the Kilmore Racing Club Inc (Proponent) and its former entities since 1985 and primarily used for racecourse overflow carparking.

The Mitchell Shire Council (Council) is the Planning Authority and has prepared the Amendment. The Explanatory Report identified that Council does not use the land, the current zoning is inappropriate and that the rezoning “*would enable the proponent to dispose of the site and ensure that any future land use is complementary to the existing residential use of adjoining land*” generating 30-40 lots. It identified that applying the DPO10 would facilitate orderly development compatible with surrounding residential character.

## 1.2 Kilmore context

Clause 21.11-3 (Kilmore) of the Mitchell Planning Scheme (Planning Scheme) identifies that Kilmore has a population in excess of 8,400 persons<sup>1</sup> and is situated on the Northern Highway, approximately 75 kilometres from Melbourne’s Central Business District and 10 kilometres from the Metropolitan Urban Growth Boundary at Wallan. It also identifies that:

Kilmore is a growing township with significant heritage values that provides a gateway to Metropolitan Melbourne and regional Victoria.

Kilmore has regular thoroughbred and harness race meetings at the Kilmore Racing Complex and its main economic drivers are agriculture, equine industry, education and health services. Kilmore has significant public reserves, including Hudson Park, Monument Hill and Kilmore Creek.

Kilmore has been identified as a peri-urban township with growth potential by *Plan Melbourne 2017-2050, March 2017* and the *Hume Regional Growth Plan, May 2014* due to its proximity to Melbourne, availability of developable land and existing infrastructure.

Future growth of Kilmore will be delivered in a planned, coordinated and careful sequence of development. Growth will be directed to designated infill and growth (greenfield) precincts that will unlock opportunities to improve Kilmore’s infrastructure, open space network and community facilities that will benefit both existing and new residents, over time.

The growth of Kilmore will strengthen its role as a regional hub for high quality education and health facilities, supported by a variety of local employment opportunities and diverse housing options.

Development of Kilmore will be informed by its strong heritage and natural landscape ties reflected by its historical buildings, predominately gridded road network and scenic vistas.

## 1.3 Background to Amendment

Council’s Part A submission identified that the Proponent submitted a rezoning request to it on 20 May 2020.

Council was unable to ascertain much about the subject land’s zoning history given limited records but identified:

In 1978, the subject site was zoned ‘Proposed Public Purposes – Carpark’ under the provisions of the former Kilmore Planning Scheme. Surrounding land was zoned ‘Rural B Zone’ and ‘Residential Zone’. Directly north of the subject site was Existing Public Purposes – Carpark. The racecourse was zoned Existing Public Open Spaces – D Racecourse.

Council has been unable to locate any other pre-‘new format’ planning scheme maps on record. With reference to the material provided to maps dated after 1978 and before 1999 for the former Kilmore Shire area.

<sup>1</sup> Current 2022 population estimate is 9,927 (Council’s Part A submission paragraph 25.)

Upon the introduction of the 'new format' Scheme in March 1999, the Subject Site was within the Public Use Zone – Schedule 6 (Local Government) and is still within this zone today. Surrounding land is within the Residential 1 Zone (now General Residential Zone) and the racecourse is within the Special Use Zone 3.

Council's Part A submission identified that it supported the preparation of the Amendment on the basis that:

- the Kilmore Structure Plan 2016 (Structure Plan) recognised the inappropriate application of the Public Use Zone to the subject site and envisaged a rezoning to reflect the importance of the land to racecourse activities
- the Proponent advised that the subject land was unsuitable and not required for its future needs which could be accommodated at its site on the east side of East Street
- the PUZ6 was anomalous and inconsistent with the Structure Plan and could instead provide additional land for housing within the existing township boundary and in an area with existing services and good access to the Sydney Street Principal Activity Centre consistent with planning policy.

## 1.4 Summary of issues raised in submissions

Fifteen submissions were received following the exhibition of the Amendment.

Goulburn Broken Catchment Management Authority, Goulburn Valley Water, Department of Environment, Land, Water and Planning (Environment) and Country Fire Authority (CFA) supported the Amendment. Goulburn Valley Water advised that the subject land could be serviced with water and sewerage infrastructure. The CFA submission identified that it did not object and advised that any changes to the site's identification as a Neighbourhood Safe Place – Bushfire Place of Last Resort (NSP) (in addition to the Racecourse) should follow further community engagement. The CFA identified that future site development should consider access arrangements to the Racecourse NSP and provision for appropriate water supply for emergency purposes.

The opposing submissions raised the following issues:

- legal issues relating to land ownership, the process of land transfers and potential agreements restricting the future sale of the land to a private owner
- loss of open space and a NSP
- loss of overflow parking for trotting and galloping and Agricultural Show events and local horse riders
- the subject land being returned to public ownership and use
- impact on future development on adjacent equine related uses including loss of rear access and noise impacts from residential development
- impacts of additional traffic, residential amenity and the rural character of the town
- lack of community benefit.

## 1.5 Procedural issues

### (i) Historical issues relating to the creation and transfer of subject land parcels

At the Directions Hearing both Council and the Proponent sought a direction from the Panel to the effect that issues relating to the historical transfer of land ownership (including any conditions and any questions of lawfulness of process) not form part of the Hearing proceedings. The request was

opposed by other parties on the basis of some coverage of them being needed to contextualise the submissions and that the Panel could regulate proceedings to ensure this issue was not a focus of submissions.

While the Panel did not issue such a direction, the issue has been extensively examined by Council through legal advice and the position of submitters is clearly understood by the Panel. The Panel was of the view that it would not be particularly assisted by extensive and detailed submissions on this issue. Based on the requests to be heard, the Panel considered there was little risk of the proceedings being focused or dominated by this issue. However, the Panel advised parties that it was its expectation that the submissions of parties at the Hearing would focus on planning issues related to the Amendment and that any commentary on land title issues should be limited to brief context to any of the identified planning issues.

The issue is further discussed at Chapter 3.1.

**(ii) Request for documents**

At the Directions Hearing the Kilmore and District Residents & Ratepayers Association (KADRRA) sought the provision of several documents including copies of Council's legal advice including advice from Maddocks dated 5 October 2021 and referred to in the 13 December 2021 Council Report and included as a confidential Appendix to that Report. While Council was prepared to provide a number of documents sought (copy of submissions, Kilmore Racing Club Trust Deed, historical zoning information and the Council Report legal advice Appendix)<sup>2</sup> it requested the further opportunity to respond to the request pending the Panel's consideration of its direction request regarding land ownership and transfer issues.

On the basis that the Maddock's legal advice was provided to the Panel as part of its request for the appointment of a Panel, Council considered this advice was no longer privileged, and agreed to its distribution in a redacted form (Document 3). KADRRA did not identify further legal advice material it sought in writing (in addition to the Maddocks advice of October 2021) by 7 February 2022 as set out in the Panel's Directions of 2 February 2022.

**(iii) Additional submission issues**

KADRRA advised the Panel and Council on the 28 January 2022 that it wished to add a new issue to its submission relating to the strategic justification of the Amendment, particularly that the Amendment was premature in relation to the rezoning of the Reserve portion of the subject land. KADRRA's advocate further articulated this request at the Directions Hearing. After hearing from the other parties at the Directions Hearing, the Panel formed the view that it would allow the original submission issues to be expanded as set out by KADRRA. Council did not oppose the alteration and agreed with the Panel that these issues were matters both it and the Panel would need to consider in any case, and that they were not new issues that Council had not previously considered.

**(iv) Hearing adjournment and costs application**

At the commencement of the scheduled Hearing for this matter on 1 March 2022 Council:

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<sup>2</sup> Documents 3, 4, 5 and 6

- sought to withdraw its original Part B submission which identified the basis for its support of the Amendment
- provided an updated Part B submission (Document 15) which identified that following a Councillor Strategy Briefing on the 28 February 2022 it had *“become apparent that the position of Council in relation to its stance concerning the Amendment before this Panel is likely to be modified”* and that *“Council no longer wishes to advance any submissions to the Panel in relation to the Amendment”*
- advised it would not be presenting at the Hearing but would be in attendance and assist the Panel as required.

In response to Council’s position the Proponent sought an adjournment of the Hearing and flagged they would be making a request for costs pursuant to Section 165 of the Planning and Environment Act 1987 (PE Act).

The Panel was of the view that given the timing of the Council advising the parties of its revised position on the morning of the scheduled Hearing it was not procedurally fair to the Proponent or other parties for the Hearing to proceed as scheduled. The Hearing was adjourned to the 4 and 5 April 2022 based on the availability of parties and to following a future Council meeting. An updated set of Directions, Distribution List and Timetable was circulated by the Panel.<sup>3</sup> The Proponent subsequently elected to call the planning evidence of Mr Glossop of Glossop Town Planning.

Council on 23 March 2022 confirmed that it had resolved to *“advance a neutral position to the Independent Planning Panel.”* At the Hearing Council’s role was limited to responding to Panel questions arising from submissions made at the Hearing. It did not participate in cross examination or provide a closing submission.

A costs application was received on 31 March 2022 and a separate Directions Hearing conducted for that application on 5 April 2022. The Panel’s consideration of the application is set out in a separate report.

#### **(v) Council information report**

On the basis that Council elected to provide a neutral stance on the Amendment at the Hearing and the Panel no longer had the benefit of a Part B submission, the Panel on 7 March 2022<sup>4</sup> advised Council:

... it would be useful for the Panel if Council could document some of the Part B submission elements and respond to more general questions the Panel has about key documents so that the Panel could potentially refer to this material in its Report. This document would be considered an information document rather than a submission.

The Panel directed Council to provide the information document to respond to specific questions relating to the content of the Structure Plan, adjoining land uses, the application of DPO10 and DDO3.<sup>5</sup> Council provided this document (Council information report) on the 23 March 2022.<sup>6</sup>

<sup>3</sup> Document 17

<sup>4</sup> Document 18

<sup>5</sup> Document 18

<sup>6</sup> Document 21

## 1.6 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, observations from site visits, and submissions, evidence and other material presented to it during the Hearing. It has reviewed a range of material and has had to be selective in referring to the more relevant or determinative material in the Report. 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
- Common issues
- Other issues
- Strategic justification.

## 2 Planning context

### 2.1 Planning policy framework

Council and the Proponent submitted that the following clauses in the Planning Policy Framework (PPF) and the Municipal Strategic Statement (MSS) were relevant to the assessment of the Amendment. The Panel agrees that these are the key policy considerations.

#### Victorian planning objectives

The State policy objectives set out in section 4 of the PE Act including:

- (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 environment for all Victorians and visitors to Victoria;
- ...
- (g) To balance the present and future interest of all Victorians. The amendment will enable residential use of the land which represents an efficient and orderly planning outcome

#### Planning Policy Framework

##### Clause 11 (Settlement)

Clause 11.01-1S (Settlement):

- Promote and capitalise on opportunities for urban renewal and infill redevelopment.
- Develop compact urban areas that are based around existing or planned activity centres to maximise accessibility to facilities and services.

##### Clause 15 (Built Environment and Heritage)

Clause 15.01-1S (Urban design):

- Require development to respond to its context in terms of character, cultural identity, natural features, surrounding landscape and climate.
- Ensure development contributes to community and cultural life by improving the quality of living and working environments, facilitating accessibility and providing for inclusiveness.
- Ensure the interface between the private and public realm protects and enhances personal safety.
- Ensure that development provides landscaping that supports the amenity, attractiveness and safety of the public realm.

##### Clause 16 (Housing)

Clause 16.01-1S Housing supply

- Increase the proportion of housing in designated locations in established urban areas (including under-utilised urban land) and reduce the share of new dwellings in greenfield, fringe and dispersed development areas.
- Encourage higher density housing development on sites that are well located in relation to jobs, services and public transport.
- Identify opportunities for increased residential densities to help consolidate urban area.

Clause 16.01-2S Housing affordability

- Ensure land supply continues to be sufficient to meet demand.
- Increasing choice in housing type, tenure and cost to meet the needs of households as they move through life cycle changes and to support diverse communities.

- Promoting good housing and urban design to minimise negative environmental impacts and keep costs down for residents and the wider community.

## **Clause 21 (Municipal Strategic Statement)**

### **Clause 21.02 (Settlement)**

Clause 21.02-1 Urban growth:

- Implement town structure plans and establish growth boundaries around primary settlements.
- Minimise the impact of urban development on the historic, environmental and rural settings of settlements and on the productive capacity of surrounding agricultural land.
- Ensure that sufficient suitably zoned land is provided to support the economic well-being of settlements.
- Encourage infill development where this can make use of existing infrastructure capacity.

### **Clause 21.07 (Housing)**

Clause 21.07-1 Residential development:

To provide variety and choice in housing styles and densities.

- Identify preferred areas for increased residential densities in Structure Plans.
- Support housing and accommodation for the ageing population.

### **Clause 21.08 (Economic Development)**

Clause 21.08-1 (Economic growth):

To facilitate new development and employment opportunities in business, industry and tourism.

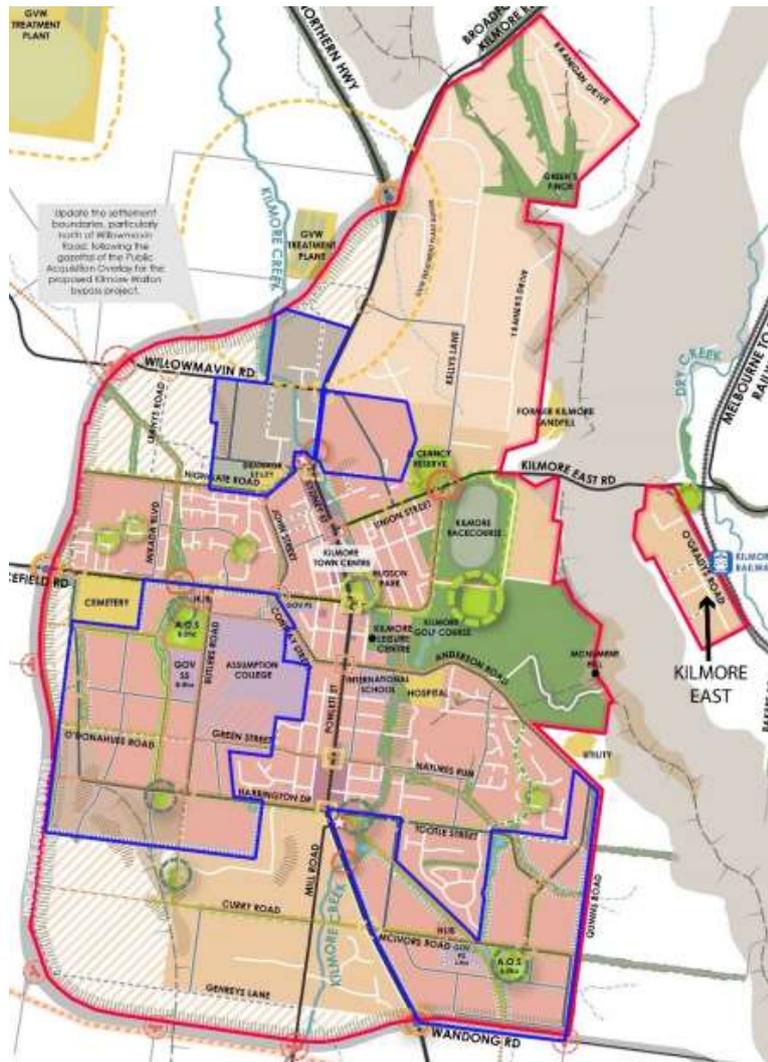
- Support potential growth industries including the equine industry, health and education sectors, transport, logistics, warehousing, value-added agriculture, viticulture, organic farming and new technologies.

### **Clause 21.11 (Local Areas)**

Clause 21.11-3 (Kilmore)

- Ensure that any proposed use or development within Kilmore is generally consistent with the Kilmore Structure Plan, August 2016 and the Kilmore Infrastructure Framework, August 2017 which guides preferred growth and development outcomes and prioritises delivery of infrastructure for the town.
- Facilitate planning and delivery of Kilmore's infill precinct and growth precincts that will provide balanced and diverse housing opportunities to cater for the needs of current and future residents in locations as shown on the Kilmore Framework Plan. [Figure 3]
- Support well designed growth precincts that represent 'complete neighbourhoods' and are connected to the established areas of Kilmore including the Sydney Street town centre and existing facilities via establishment of an integrated open space and movement network.
- Encourage diverse housing opportunities and densities, particularly within walkable proximity to the Sydney Street town centre.
- Support infill development that improves connectivity and gaps in infrastructure such as pedestrian/shared paths, roads and drainage.
- ...
- Support Kilmore's equine industry and equine related industry.
- Support co-location of land uses within the equine precinct which will contribute to strengthening the horse racing industry in Kilmore.

Figure 3 Kilmore Framework Plan



**Clause 21.12 (Implementation)**

The application of zones and overlays:

- A range of zones has been applied in the major towns of Seymour, Kilmore, Broadford, Wandong-Heathcote Junction and Wallan including the General Residential Zone, Neighbourhood Residential Zone, Low Density Residential Zone, Rural Living Zone, Mixed Use Zone, Industrial 1 and 3 Zones and Commercial 1 and 2 Zones.
- The Development Plan Overlay has been applied to Kilmore’s residential growth areas and key infill development sites across the municipality.

**2.2 Other relevant planning strategies and policies**

**(i) Hume Regional Growth Plan**

The Hume Regional Growth Plan provides broad direction for land use and development across the Hume region. It establishes four key directions for regional settlement planning:

- Directing future population growth to settlements with the greatest capacity to accommodate it.
- Maximising the use of existing infrastructure and services and facilitating strategic investment in future infrastructure and services.

- Retaining productive rural land for agriculture and other compatible rural uses.
- Ensuring efficient use of land use planning resources in the region.

Kilmore is located in the Lower Hume Sub-region where population growth is expected to be highest. Population growth is expected to be focused on the townships of Wallan and Beveridge. Peri-urban centres including Kilmore are also expected to experience significant growth.

**(ii) Kilmore Structure Plan**

The Structure Plan provides a strategic framework for the future growth of Kilmore. It is referred to in Clauses 21.07-1 Residential Development and Clause 21.11-3 Kilmore and identified as a reference document at Clause 21.12-4 (Reference documents) giving it the same effect as a background document as described in *Planning Practice Note 13 Incorporated and Background Documents, March 2020*.

The subject land is located within 'Precinct 1A – Established Areas' of the Structure Plan. The Structure Plan Map for Precinct 1A (refer Figure 4) includes the following relevant notations:

- for the subject land:  
Support rezoning to Special Use Zone to reflect importance of the Kilmore Racecourse activities.
- for the racecourse:  
Maintain and support Kilmore Racecourse and related equine industries/uses.

The precinct includes a rural living node to the north providing for lifestyle living.

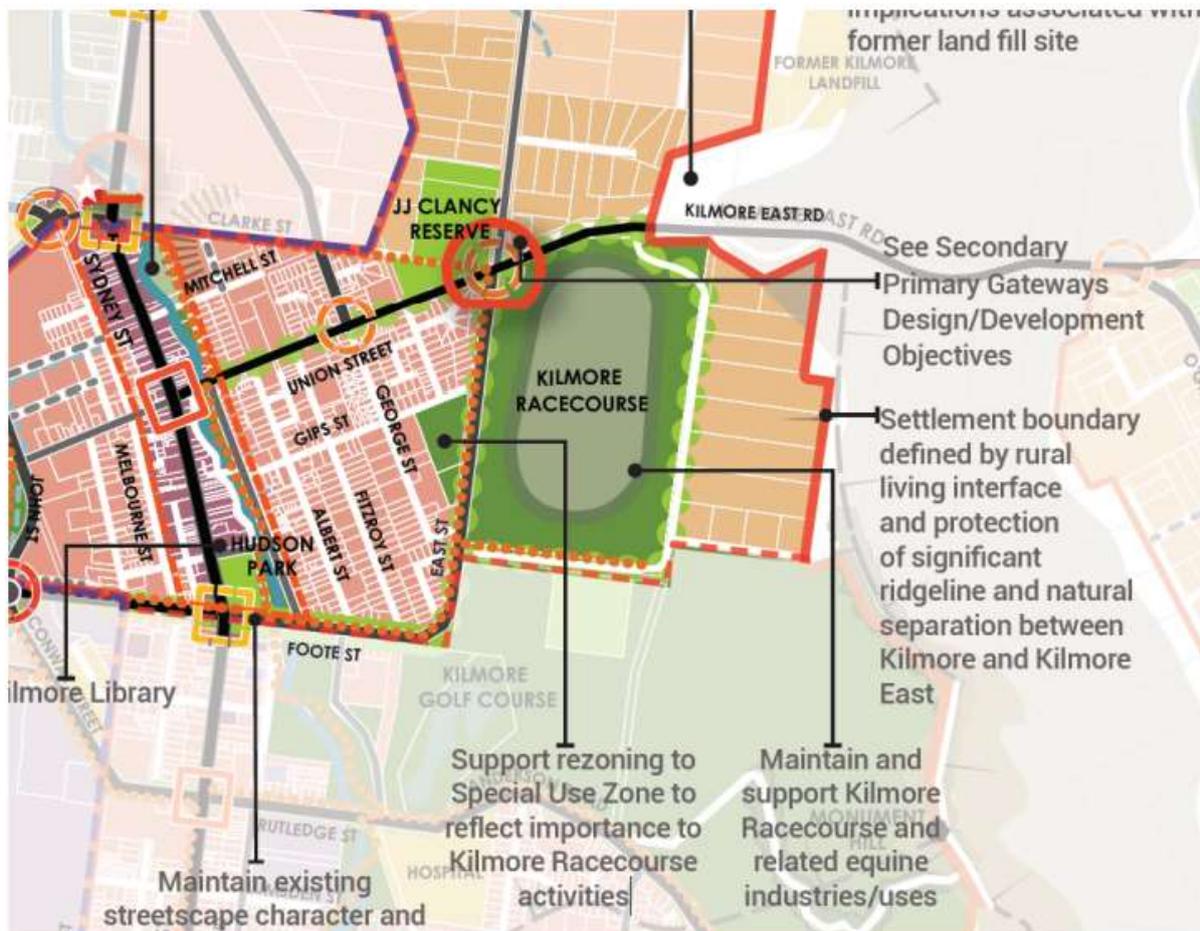
The identified land use outcomes for Precinct 1A include:

- Within the established areas of Kilmore and particularly within proximity to the town centre, residential development in the form of standard and medium density will be the primary land use.
- Ongoing operation of horse training facilities within rural living areas in close proximity to the Kilmore racecourse.

The Preferred Character statement for the precinct includes:

Incremental infill development including medium-density development will be encouraged and provide for a diversity of housing types and styles in keeping with the regional character of Kilmore and within proximity to the established services and facilities within the Town Centre.

Figure 4 Precinct 1A Map excerpt, Kilmore Structure Plan 2016



'Chapter 3.2.3 Strategic Infill Development Sites' identifies that there are larger, vacant landholdings within the established areas of Kilmore that are suitable for infill development with medium density development encouraged. The Structure Plan supports the holistic planning of these sites in some cases through the preparation of a Development Plan. It identifies the following Actions:

- A72 Require proponents to apply the General Residential Zone and Rural Living Zone and as identified in Figure 33.<sup>7</sup>
- A73 Apply the Development Plan Overlay to key sites marked in accordance with Figure 33 to ensure delivery of the Design Objectives and to ensure achievement of coordinated development outcomes.
- For sites requiring the preparation of a Development Plan, the Development Plan should include the following information:
  - Local street level concept plan
  - Drainage strategy
  - Flora and fauna assessment and response
  - Heritage assessments (post-contact and Aboriginal) including Cultural Heritage Management Plan
  - Traffic impact assessment
  - Servicing strategy
  - Infrastructure delivery strategy'

<sup>7</sup> Council confirmed that the Structure Plan reference to Figure 33 was in fact incorrect and should be Figure 59 (Document 21 paragraph 8)

The subject land is not identified as a Strategic Infill Development Site.

'Chapter 3.7 Local Employment' identifies the importance of strengthening and diversifying existing employment nodes and industries such as education, health and equine and to balance long term growth with protecting farming and other rural industries as important employment and economic contributors to Kilmore. It identifies a series of employment precincts including an Education, Health and Equine Precincts (refer Figure 5) and specifically reinforces the role of Kilmore Racecourse as an important and long term industry and employment generating asset. The subject land, racecourse and the west side of George Street is identified within the Equine Precinct. Related Local Employment objectives and strategies include:

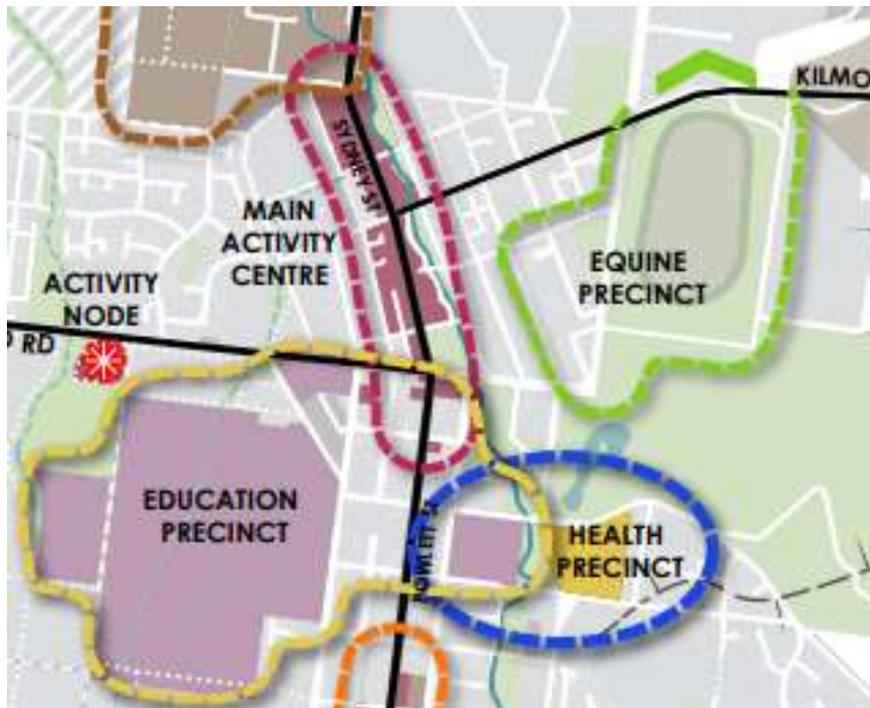
LE 4 To maintain and strengthen Kilmore's equine industry as an important employment generator.

- LE 4.1 Support the continued use and development of land for equine and equine related purposes within Kilmore Equine Precinct as shown in Figure 43
- LE 4.2 Support upgrade to key roads to facilitate the safe passage for horse floats and vehicles in and around the Kilmore equine precinct.
- LE 4.3 Support co-location of land uses within the Equine Precinct which will contribute to strengthening the horse racing industry in Kilmore.

The Structure Plan identifies as a related Action:

A48 Rezone land owned by Kilmore Racecourse currently zoned PUZ to SUZ to support its development as part of the Kilmore Racecourse complex.

**Figure 5** Excerpt of Figure 43 Local Employment from Kilmore Structure Plan



## 2.3 Planning scheme provisions

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

**(i) Zones**

The subject land is in the PUZ. The purposes of the Zone are:

- To recognise public land use for public utility and community services and facilities.
- To provide for associated uses that are consistent with the intent of the public land reservation or purpose.

The PUZ identifies seven categories of public land use, with PUZ6 being ‘Local Government’.

The Amendment proposes to apply the GRZ1 which also applies to the adjacent residential area.

The purposes of the Zone are:

- To encourage development that respects the neighbourhood character of the area.
- To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.
- To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

Schedule 1 (Mitchell Residential Areas) to Clause 32.08 General Residential Zone (GRZ1) does not identify particular neighbourhood character objectives or variations to the requirements of Clause 54 (One Dwelling on a Lot) or Clause 55 (Two or more Dwellings on a lot and Residential Buildings) or other provisions of Clause 32.08.

The Kilmore Racetrack is located within the SUZ3 the purpose of which includes:

- To provide for the use and development of the Kilmore Racetrack for non-racing activities including entertainment, cultural and recreational activities.
- To ensure that the use and development of the Kilmore Racetrack does not adversely impact the amenity of surrounding areas.

SUZ3 allows a range of uses on the site without a permit, some with conditions limiting hours of operation or their location with areas designated ‘A’ and ‘B’, and a range of other non-prohibited uses with a planning permit. Clause ‘2.0 Use of land’ limits the use of the site for more than 30 non-racecourse outdoor events each year and requires an Event Management Plan to be prepared for events over 2,500 people.

**(ii) Overlays**

The subject land has no overlays applying to it. The Amendment proposes to apply DPO10 to the subject land. The purposes of the Overlay are:

- To identify areas which require the form and conditions of future use and development to be shown on a development plan before a permit can be granted to use or develop the land.
- To exempt an application from notice and review if a development plan has been prepared to the satisfaction of the responsible authority.

The DPO enables a schedule to identify particular requirements before a permit is granted, notice exemptions and the requirements for a development plan.

Schedule 10 (Kilmore Strategic Development Sites) to Clause 43.04 Development Plan Overlay (DPO10) which applies to a number of strategic infill development sites located in and around Kilmore, and includes:

- a permit condition requirement for development contributions
- development plan requirements including:
  - being generally in accordance with the Kilmore Structure Plan 2016
  - a Planning Assessment and Design Response Report

- a Traffic Impact Assessment Report
- a Local Street Level Concept Plan
- a Flora and Fauna Assessment and Response
- a Service and Drainage Strategy
- a Heritage Strategy
- an Infrastructure Delivery Strategy.

## 2.4 Ministerial Directions and Practice Notes

### Ministerial Directions

Council identified that the Amendment had been prepared consistent with or cognisant of the following relevant Ministerial Directions:

- *Ministerial Direction – The Form and Content of the Planning Scheme under section 7(5) of the Act*, by rezoning private owned land out of a public land zone
- *Ministerial Direction No. 1 – Potentially Contaminated Land*, with the preparation of a Preliminary Site Investigation by Environmental Health Services which found that the overall risk to human health and ecological health associated with potential land contamination at the site was considered low to negligible and that a Certificate or Statement of Environmental Audit was not required to support the rezoning
- *Ministerial Direction No. 11 – Strategic Assessment of Amendments*
- *Ministerial Direction No. 19 – Preparation and Content of Amendments That May Significantly Impact the Environment, Amenity and Human Health* which requires planning authorities to seek the views of the Environment Protection Authority. EPA did not object to the proposed Amendment.

### Planning Practice Notes

Council identified that the Amendment had been prepared consistent with or cognisant of the following Planning practice Notes:

- *Planning Practice Note 46: Strategic Assessment Guidelines*, August 2018
- *Planning Practice Note No. 91 – Using the Residential Zones (PPN91)*.

## 3 Common issues

The following issues were central to most submissions.

### 3.1 Land tenure

#### (i) The issues

The issue is whether the context of the current ownership of the land is a relevant consideration.

#### (ii) Council's legal advice

Council provided a copy of the advice received from Maddocks in October 2021 on the land title and transfer of the subject land and the process of disposing the Reserve lot (Document 3). The advice identified that the subject land has been subject to several transfers of ownership:

- the northern Lot 1 (fronting Gipps Street) and central Lot 1 (fronting East Street):
  - were originally contained in a general law title
  - were transferred to Council in 1984 by a private owner
  - were converted to Torrens title land in 1994 and certificates of title with the owners of the land at the time being several persons, referred to as the Trustees
  - ownership was subsequently transferred ownership to Kilmore Turf Club Incorporated and Kilmore Harness Racing Club Incorporated on 28 May 1999
  - the Kilmore Racing Club Incorporated became the registered proprietor after the Kilmore Turf Club Incorporated and Kilmore Harness Racing Club Incorporated amalgamated on 20 June 2018.
- Reserve 1:
  - was created following subdivision of land into 3 lots in April 1974
  - the then owner transferred reserve ownership in 1983 to the Shire of Kilmore who then transferred it to the Trustees in 1984 as a 'gift' for one dollar in consideration.

It identified, in summary that:

- Council validly and lawfully transferred the Subject Land to the Trustees of the Kilmore Racecourse. The principle of indefeasibility of title was likely to apply.
- having assessed the various instruments of transfer, it had been unable to locate any evidence of a restriction of, or condition of, the transfer of the Subject Land to Council that prohibited its subsequent sale to the Trustees of the Kilmore Racecourse.
- there was insufficient evidence that Council entered into a formal agreement with any previous or subsequent owners that the Subject Land be returned to Council if it was no longer required.
- Council validly and lawfully transferred the Subject Land to the Trustees of the Kilmore Racecourse.
- Reserve No. 1 on Plan of Subdivision 114048 (Reserve) is still marked as a reserve 'For Municipal Purposes' and Council should be aware of this aspect in assessing and responding to the Amendment.

### (iii) Submissions

The tenure, historical disposal and current ownership of the three parcels making up the subject land is complex and the focus of seven submissions (submissions 6 – 12).

Submissions 6, 8 and 11 identified the following issues:

- concern with the validity of the various transfers of ownership since Council transferred ownership to the persons identified collectively as Trustees
- the owners of the land at the time of subdivision creating the Reserve intended that the Reserve only be used for public purposes (including for carparking for race meetings and Agricultural Show) when it transferred the Reserve to the then Shire of Kilmore in 1983
- the then Shire of Kilmore intended to transfer the Reserve to the Trustees provided that *“the land so designated is to remain as one and at any time can be returned to the Shire, but at no time can the land be sold privately”*
- the inclusion of the Reserve in the PUZ6 prevented the valid purchase of the land by a private entity from the Trustees.
- that the subject land was transferred from the Trustees (as a public body responsible for the management of the Kilmore Racecourse) to the Kilmore Racing Club in 2004 without any consultation with the community and in contravention of the understood condition prohibiting the sale of the subject land to a private owner and the intent of the original transfer of the Reserve to Council

Submissions invariably considered that the private sale of land was not in the spirit of what were understood to be agreements in place for its public use and its disposal not in the community interest.

Ms Rose (submission 12) provided a further written submission to the Hearing. The submission considered that the Racing Club Trustees had a wider duty to the beneficiaries which included other groups who used the trackside facilities.

The KARRA Hearing submission considered that the land’s reservation status meant that any rezoning was premature until the questions as to whether the reservation status should be removed was resolved. It submitted that such a process was not a simple administrative step as suggested by Council but required proper consideration under the test of Section 24(A) of the *Subdivision Act 1988* that the land *“Need no longer be used for the purpose for which it is currently reserved or used”*. It said there was currently no evidence to suggest that this was the case, particularly where the Structure Plan clearly designated the subject land including the reserve as ‘open space (encumbered)’.

At the Directions Hearing and in its Part A submission, Council submitted that land ownership is not a planning issue and is not relevant to the Amendment. This position was shared by the Proponent.

In relation to the status of the Reserve lot, Council’s Part A submission identified that this could be removed under Section 24(A) of the *Subdivision Act 1988* via a planning scheme amendment or planning permit. Council identified that while this option was open for it to pursue under the current Amendment, it considered this unnecessary at this stage and preferable to be facilitated through the planning permit process. In part this was because future development may seek to integrate all or part of the Reserve. Regardless, it indicated while the land remained in private ownership it was *“unlikely that Council would seek to object to the removal of the reserve status of the Reserve”*.

The Proponent's Part A submission included a further overview of land title acquisition as well as a history of the Kilmore Racing Club since its establishment as the Kilmore Turf Club in 1861. Its position on managing the Reserve status (including in its Part B submission) was the same as Council's Part A submission.

#### **(iv) Discussion**

One of the central issues raised by submitters is the manner in which the subject land came to be owned by the Proponent (including the southern Reserve 1 parcel which continues to be identified as a 'Reserve for municipal purposes' on title), and that it was understood by many in the community to be conditionally returned (in part or full) to Council for community use if it was no longer required by the Kilmore Racing Club (and its predecessor entities). The Panel was provided with Council's October 2021 legal advice and detailed submissions which set out the history of the creation of the lots, details of their subsequent transfer and whether they contained any encumbrances or agreements.

It is not the Panel's role to make enquiries into or comment on the legalities of previous land transfers, potential agreements or conditions or to make legal findings in this regard – that is the role of other legal jurisdictions if that avenue is to be pursued by any of the parties.

The Panel therefore does not address this specific issue further, although it does note, consistent with Council's legal advice, that the Reserve status of the southern parcel may need to be resolved through a separate process as set out under the *Subdivision Act 1988* to avoid any legal impediment to its future use.

It is not in dispute that the subject land is privately owned by the Kilmore Racing Club Inc. On this basis alone it is unusual that it has remained in the PUZ6 for so long and it is not surprising that the Structure Plan noted and responded to this zoning anomaly given no public use or future public use for the site, including as open space, was specifically identified in the Structure Plan.

The Panel sees no particular reason why the 'Reserve for municipal purposes' status of the Reserve lot prevents it from being in a different zone. While it is common for such land (including public open space) to be located within a public land zone such as the Park and Recreation Zone, Public Conservation and Resource Zone (where it has particular values) or the Public Use Zone (usually for a particular public use), it is not uncommon or unusual for reserves, particularly public open space, to be within a residential zone given the uses that typically take place on them. While the public land zones offer the benefit of reducing the need for permits for certain uses and works, other zones including residential zones do not generally inhibit the use of land for public purposes.

A separate future process to remove the current Reserve lot designation should ideally be pursued as soon as practicable to provide greater certainty to both the community and potential future purchasers/developers.

The Panel has accordingly focused its considerations on whether the Amendment is strategically justified, and discusses the appropriateness of applying the GRZ1 and DPO10 in Chapter 4 in the context of the Structure Plan, Ministerial Directions and the PPF and MSS.

#### **(v) Conclusions**

The Panel concludes:

- The context of the current ownership of the land is not a relevant consideration to this Amendment.

- The reservation status of the Reserve lot does not impact on the consideration of the Amendment as is not a limitation to it proceeding. The reservation status should be resolved quickly so that it does not create an impediment for any future use that might be considered appropriate for the site while it remains in private ownership.

## 3.2 Loss of public use of the land

### (i) The issue

The issues are:

- whether the loss of public use of the land is a relevant consideration
- whether the Neighbourhood Safe Place – Bushfire Place of Last Resort (NSP) designation of the subject land impacts the Amendment.

### (ii) Submissions

The Proponent's submission provided details of the racecourse operations and the number of race and harness meetings and other events. In relation to the future use of the site and Racing Club's ongoing activities at the racecourse:

- it had undertaken a review of the assets of the Club and the land at 15-35 East Street had been identified as surplus and no longer required for any purpose associated with the Club
- the Club's operations are based entirely on the east side of East Street including all ancillary uses associated with the racecourse including carparking and race day float and truck parking
- the racecourse site was the focus of its future upgrades including trackside facilities, function area upgrade and extension to existing carpark areas which could be funded by the sale of the land.

A number of submissions supported the land reverting to public ownership or being used for a range of public uses or its continued informal use for parking and recreation.

Submitters were concerned that the disposal of the site by the Proponent and its residential development would result in:

- the loss of overflow parking for race days and local horse riders accessing Monument Hill or for casual resting and exercising of horses (submissions 1, 6, 9 and 11)
- the loss of open space and use of the land for passive recreation or other community use (submissions 7, 8, 9, 10, 11 and 12)
- an impact on the role of the site as a NSP (submissions 6, 8 and 9).

Ms Whitehurst (submission 8) provided a further submission to the Hearing. She submitted that the land was gifted by the then Shire of Kilmore to the Trustees to address parking and traffic congestion during race days and other major events. The submission identified that the land was used by the other key tenants of the racecourse in addition to the Proponent and by the local community and was still required to meet carparking needs of racecourse events. The submission included photographs of cars parked on the subject land during the Kilmore Racing Cup and other race meetings. It identified that when the racetrack was closed for turf and harness meetings the subject land was used regularly for the training of racehorses and Pony Club members or pleasure riders accessing Monument Hill. The submission considered that the land's flat nature made it ideal for general community and informal use unlike other nearby more regulated and restricted

open space. Its open space status was consistent with Figure 6 of the Structure Plan identified the subject land as 'Open Space Network (Encumbered)'.

Ms Whitehurst raised concerns about the loss of the subject land as a NSP considering there were few other suitable locations in the Kilmore particularly as the town grows. She considered that in fire situations the site would provide an appropriate location for horses.

Ms Rose considered that the subject land was ideal for future community use (including its use by Pony Club members for horse float parking and horse menage or training area, as or for overflow event parking) given its central location and relatively unconstrained nature. The submission supported the application of the SUZ3 to the site noting that the zone supported leisure and recreation activities and the land's role as a NSP. The submission considered overflow parking options at the JJ Clancy Reserve were not practical and called for Council to purchase the land or that Proponent allow Council to lease the land for a range of uses. This would enable Council to meet the open space needs of a growing town including its use for a playground, football training area, relocation of the Kilmore Bowling Club, indoor sports venue future to benefit the community. The submission considered that the site's NSP could be preserved under a SUZ but not a GRZ1.

Ms Laver (submission 9) provided a further submission at the Hearing. The submission considered that the rezoning of the Reserve to GRZ1 and its subsequent development would be unusual and should not be included as part of the Amendment. It was submitted as an area of existing open space the land should be protected and enhanced to meet future growth needs for open space consistent with Council's MSS and Structure Plan. The submission further considered the Amendment premature while issues of the NSP remained unresolved and the proposed alternative parking areas provided by the Racing Club delivered. Along with the loss of public open space, the Amendment would not result in a net community benefit. The submission proposed that Council purchase the Reserve portion of the subject land and that it could be enhanced as open space through development contributions.

CFA's submission identified that the subject land was not within a Bushfire Management Overlay or Bushfire Prone Area and noted that changes to its identification as a NSP (in addition to the Racecourse) as a result of future development should follow community engagement. The CFA attended the final day of the Hearing and advised the Panel of the role and characteristics of NSPs. This included that they were a last resort option, typically in an open space location away from the impacts of radiant heat and with good access and egress and did not cater for animals.

The Proponent submitted that there were significant areas of open space in close proximity to the subject land and that the Structure Plan only identified the need for additional open space in the west and south-east growth areas. It identified that the *Michell Shire Open Space Strategy 2013-2023* (referred to in Clause 21.02-3) and mentioned in KADRRA's submission did not include open space recommendations for the subject land or nearby land.

Council's Part A submission acknowledged that the subject land along with the Kilmore racecourse carpark and J Kelly Pavilion on the racecourse are NSPs consistent with the submission of the CFA. Council advised that it was currently reviewing the NSP status of the subject land and racecourse including whether both should be relocated to the nearby JJ Clancy Reserve which offered the advantage of Council ownership and control. Council expected that the subject land's NSP designation would be removed prior to the commencement of any site development and addressed through future development plan and planning permit processes.

Council's information report confirmed that subject land is not identified in the Structure Plan as accommodating public open space or other public purpose such as utilities or drainage. It identified that the Structure Plan only nominates land for open space or community facilities within Kilmore's West and South-East growth precincts.

Council's information report confirmed the *Mitchell Shire Integrated Community Services and Infrastructure Plan*, December 2013 (ICSIP), which was currently under review, contains findings and recommendations relevant to Kilmore. The ICSIP does not nominate the subject land as providing for future community infrastructure.

### (iii) Discussion

The Panel acknowledges that the community utilises the subject land for a range of purposes beyond those associated with the operations of the Proponent and other users of the racecourse. This use is enjoyed because the site is not fenced, its ownership or use is not identified or restricted by signage, it is easily accessible, and its access and use appear to be tolerated by the Proponent or permitted through an informal agreement.

Given the ability for the community to utilise the site over several decades and its relatively flat and undeveloped state, it is understandable that the community has reached the conclusion that the site is effectively public open space used periodically by the Proponent or racecourse users for carparking during events.

However, the Panel agrees with the submission of the Proponent regarding the lack of any identified strategic planning need for the use of the land for public open space in either the Structure Plan, MSS or the Mitchell Shire Open Space Strategy 2013-2023.

While noting that the subject land's designation as 'Open Space Network (Encumbered)' in the Structure Plan at 'Figure 5- Kilmore Structure Plan' (which is replicated in the Clause 21.11-03 Kilmore Framework Plan) and inclusion in 'Figure 40 Open Space Systems' and other figures throughout the Structure Plan this must also be read in the context of other directions and actions in the Structure Plan and wider local policy including:

- specific annotation on Figure 52 Precinct 1A Established Areas: North of Kilmore-Lancefield Road' to "Support rezoning to Special Use Zone to reflect importance to Racecourse activities" and applying to the subject land
- the subject lands relationship with the identified Equine Precinct
- the need for the land to provide for community infrastructure including active recreation and open space or community facilities is not identified in Figure 55 setting out infrastructure requirements including open space.

The need for the land for community infrastructure is not identified in the ICSIP. While the ICSIP may be out of date having passed its review date there is not an alternative infrastructure plan in place. It is not for the Panel to speculate on what it might say in future. There is no proposal in place to apply a Public Acquisition Overlay.

While no parties referred to it, the *Kilmore Infrastructure Framework*, August 2017 is a reference document in the Planning Scheme and sets out the infrastructure requirements necessary to support growth in Kilmore consistent with the Structure Plan. It includes the basis for development contributions for identified growth precincts and infill precinct (including Precinct 1A). While it identifies the upgrading of East Street, the subject land is not a site required for or to accommodate identified 'Community Projects' or 'Active Recreation and Open Space Projects'.

While it is unclear if Council has undertaken any extensive assessment on whether there is a need to use the land for a public purpose, in reality it no longer owns it (despite the Reserve status of one parcel). It would need to acquire the land to enable its use for a community purpose. The subject land contains no improvements that support its use for open space or other public purposes aside from the fact that it is grassed and easily accessed from East Street and Gipps Street and is used in an informal manner for overflow parking associated with the racecourse and casual recreation.

It is apparent through the Proponent's submission that the Kilmore Racing Club does not require the land for its ongoing use and considers that it is able to accommodate its key functions and parking requirements within the racecourse site or through other arrangements managed through an Event Management Plan.

This Amendment is not the process to provide for the public use of the land. The key issue is whether the Amendment is strategically justified.

While the subject land is currently designated as a NSP (in addition to the racecourse), the CFA was not opposed to that designation being removed (subject to an appropriate alternative) and Council has set out a strategy to address what it considers to be a more appropriate NSP arrangement. While this would need to be resolved before future development occurs on the subject land, the proposed change in zoning does not impact the current NSP designation.

**(iv) Conclusion**

The Panel concludes:

- The Amendment does not result in the loss of the public use of the land as it is not used for a public purpose conducted on behalf of Council or other public agency, it is in private ownership and Council has not identified that it requires the land for a public purpose.

## 4 Other issues

### 4.1 The issues

The issues are whether the Amendment will:

- impact on the operations of adjoining equine related uses
- result in additional traffic
- impact on privacy
- impact on rural character of the town
- respond to bushfire management issues.

### 4.2 Submissions

Kilmore Equine Clinic (submission 4) has operated a veterinary practice focusing on horses at 16B George Street for over 20 years (in addition to business known as Motion Equine Centre at 18-22 George Street). Mr Wells-Smith, the current business operator, submitted that the business relied on rear access across the subject land for the transportation of horses to the site which was essential for business viability. He supported an indicative proposal from the Proponent to formalise access which had been in place for over 35 years for informal access across the subject land but preferred the certainty of a formal easement. The submission acknowledged that horse loading on the subject land was a risk and that a significant investment had been made to install automatic gates in September 2021 to enable vehicles to enter from the subject land, load and off load within the Clinic site and then exit via George Street. Mr Wells-Smith who intended to operate the business in its present location long term, identified that providing alternative access via Gipps Street was problematic and not financially feasible as a tenant.

It was submitted that the Amendment could adversely impact the Clinic's ongoing operations, by locating sensitive use and development immediately adjacent to it. In response to questions from the Panel, Mr Wells-Smith identified that reverse amenity impacts from development of the subject land included construction impacts (noise and dust) whereas other issues such as security, building setback distances, noise and privacy could be managed through appropriate design responses.

Submission 7 raised concerns about:

- the increase in traffic volumes in East Street and loss of privacy to the homes in George Street resulting from residential development of the subject land.
- residential development resulting in greater density and congestion impacting the rural character of Kilmore.

The CFA submission identified that future site development should consider access arrangements to the Racecourse NSP and provision for appropriate water supply for emergency purposes.

Ms Whitehurst raised concerns about the impacts of future development resulting in the loss of access to the existing veterinary practices which would displace access to George Street creating traffic issues, reduce capacity on those sites for training and other activities to accommodate horse float parking movements.

The Proponent submitted that:

- current use the subject land for parking and access to the veterinary clinics at 14 and 16B George Street was via an informal arrangement. This situation was considered unsafe because it required sick or injured horses in a frightened state to be loaded and unloaded in an open area which is unfenced
- access to the two clinics could be obtained from George or Gipps Street (for 16B George Street)
- both clinics were in a residential zone, surrounded to the north, south and west by residential development.

The Proponent's Part B submission included a plan (Figure 6) which retains access to the two veterinary clinics. It considered that the DPO10 would provide a comprehensive mechanism for access and other amenity issues to be addressed through the preparation of a development plan.

**Figure 6** Indicative subdivision concept for subject land



Indicative subdivision concept Proponent submission Fig 12

Council's Part A submission considered that the application of DPO10 would establish more comprehensive and prescriptive planning permit application requirements than those of the GRZ1 alone. This would enable development to respond to interfaces, consider traffic issues and amenity impacts on adjoining and nearby equine businesses and the racecourse.

The submission noted that the two veterinary clinics have primary road access to George Street and that rear access could be addressed at development plan stage through negotiation with the landowner.

### 4.3 Discussion and conclusions

The Panel acknowledges that any form of nearby intensive development has the potential to impact on the operations of established veterinary clinics or horse stables by nature of risks to the health and safety of horses from noise in particular. Similarly, establishing uses sensitive to odour, flies, water spray, noise from early morning activity and regularly movement of horse floats can create amenity issues. The subject land is however located within a residential setting and adjoins land in the GRZ1. The planning regime recognises existing use rights and provides mechanisms for

assessing and managing potential land use conflicts and potential amenity impacts through appropriate design responses and permit conditions.

The Amendment in and of itself does no more than seek to change the zoning of the land and put in place controls to manage its future development whether that be for residential or some other use. The application of zones and overlays does not change traffic activity or create activity and built form. It does however provide for future use and development activity through a planning permit (or as proposed, through an approved development plan). The planning permit application or Development Plan (if the DPO10 were to apply) phase is the appropriate planning stage therefore to consider a range of issues including built form responses, interface management (including overlooking, noise, security) and traffic. This includes addressing the CFA's suggested future development requirements relating to access and water supply.

Kilmore is a settlement identified for moderate growth including infill housing. The subject land is able to be serviced, is located close to open space and the Sydney Road activity centre. The subject land is within the township boundary and Precinct 1A. It is located within an established residential area with conventional residential built form extending along East Street to the north and south of the subject land. No particular case has been made that any future residential development of the land should consist of larger lots to preserve rural character or that this is consistent with the general directions of the Structure Plan or Clause 21.11-3. No information was provided to the Panel to suggest that rezoning the land would impact on the privacy of adjoining residents to any greater degree than the current use of the land including its current use for informal parking and recreation.

The Panel concludes:

- The Amendment will not result in additional traffic on the local road network or loss of privacy to George Street residents.
- The Amendment will not impact on the rural character of the town.
- The planning permit stage is the appropriate time to consider traffic, amenity impact, interface treatments and built form and bushfire management issues.

## 5 Strategic justification

### 5.1 The issues

The issues are:

- whether the Amendment is consistent with the Kilmore Structure Plan
- whether the application of the GRZ1 and DPO10 to the subject land is appropriate
- whether the subject land should instead be zoned SUZ3
- whether the Amendment is strategically justified and will result in a net community benefit and a sustainable development outcome.

### 5.2 Evidence and submissions

Ms Laver considered the Amendment inconsistent with policy supporting an Equine Precinct. She submitted the Structure Plan did not identify the site as a Strategic Infill Development Site nor a new Equine Precinct to the north of Kilmore. At the Hearing she supported the subject land being zoned SUZ, considering that the inappropriateness of the PUZ6 did not justify the GRZ1.

The submission considered that the application of the GRZ1 would not provide an employment benefit consistent with the Structure Plan Action 48. The application of the DPO10 was not supported as it reinforced the intention for the site to be developed for housing and exempted notice and review where development was consistent with an approved development plan. It was submitted that issues of access could be managed within the existing provisions of Clause 55 (Two or more Dwellings on a lot) and Clause 56 (Residential Subdivision).

Ms Whitehurst submitted that the Structure Plan clearly identifies the subject land:

- within the identified Equine Precinct
- as open space in the Framework Plan.

The submission considered that the subject land should remain available for equine related uses or other public use consistent with the Structure Plan. The fact that the land was adjoined by GRZ1 did not justify in itself the proposed rezoning. The submission supported the retention of the PUZ or application of the SUZ3. It considered the DPO10 was inappropriate as the site had not been identified as an infill site.

Ms Whitehurst submitted that the Equine Precinct was where horses were being trained and stabled close to the racecourse, whereas the areas around Willowmavin were predominantly used for horse breeding and agistment. It was submitted that the loss of horse training and stabling in the precinct would impact the town's economy. There was a need to review the Structure Plan to provide greater direction about the Equine Precinct to provide more certainty for the industry.

KARRA submitted that the application of the GRZ1 had no strategic support. It identified that the Structure Plan was a deliberative approach to long term planning and involved a comprehensive community engagement process. The Structure Plan makes appropriate provision for longer term residential land supply had been implemented following a robust Panel hearing process (Mitchell Planning Scheme Amendment C123). KARRA submitted that the directions of the Structure Plan should not so easily be set aside because the land was simply surplus to the Proponent's needs. This it said was irrelevant to the question of appropriate zoning. It considered that the GRZ1 was

inappropriate as there was no need for the site to provide for further housing supply. It was submitted the SUZ3 should be applied to the subject land reflecting:

- its identification in the Structure Plan as 'Open Space Network (Encumbered)'
- its location within the Equine Precinct and specific directions in the Structure Plan about the precinct
- local policy which targeted and supported equine industry (including Clause 17, 21.08 and 21.11-3)
- the ability to accommodate a range of other activities that were supportive of or ancillary to equine related uses including the racecourse but were excluded from the GRZ1 (equestrian supplies, gambling premises, primary produce sales).

KADRRA identified that applying the GRZ1 would sever the spatial link between the racecourse and existing stables and veterinary practices to the west impacting the viability of the Equine Precinct. It considered losing the opportunity to apply the SUZ without undertaking proper strategic analysis represented a significant community disbenefit compared to the loss of potential housing that was not required. The submission did not support the application of DPO10, considering it lacked any justification and put *"the cart well and truly before the horse"*.

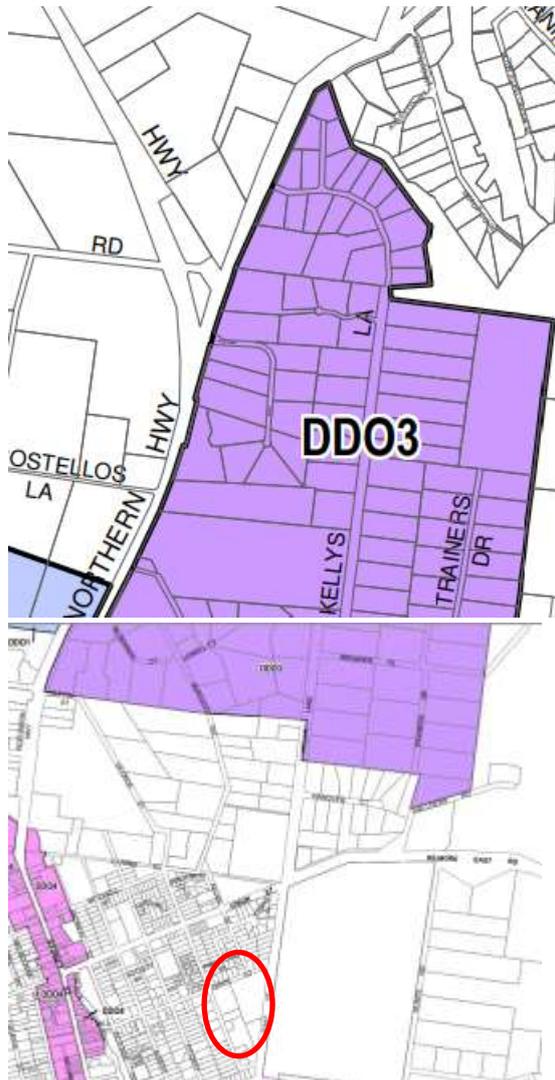
Council's Part A submission acknowledged that the Structure Plan reinforced and supported the role of the Kilmore Racecourse as an important and long term industry and employment generating asset. This included the designation of the Equine Precinct which Council considered was the racecourse and immediate areas.

Council's Part A submission identified that the Structure Plan, through the application of the SUZ, envisaged a commercial or ancillary use to the racecourse occurring on the subject land that would support the Equine Precinct and activate both sides of East Street. However, since implementation of the Structure Plan into the Kilmore Planning Scheme, the Kilmore Racing Club no longer required the land for its needs instead opting to consolidate its activities and future improvements (including carpark area expansion) to the racecourse site.

Council's Part A submission identified that that the application of the SUZ to the subject land was no longer required to achieve the objectives of the Structure Plan. This was because:

- the GRZ1 supported a range of land uses consistent with its objectives - including accommodation, convenience shop, food and drink premises and place of assembly (function centre), and equine training-based activities associated with the racecourse.
- equine related uses (training and stabling) had slowly dispersed throughout the town including nearby rural living areas within Precinct 1A as well as Farming Zoned areas such as Willowmavin, a rural locality to the north-west of Kilmore which comprised smaller rural landholdings.
- the application of Design and Development Overlay Schedule 3 (Kilmore Equine Lifestyle Precinct) (DDO3) introduced in 2010 via Amendment C066 and applies to Rural Living Zone land north of the subject land (Figure 7) the design objective of which is to *"allow for the establishment of horse stables with minimal adverse amenity affect on surrounding residential use within the Kilmore Equine Lifestyle Precinct"*.

Figure 7 Extent of DDO3 – Kilmore Equine Lifestyle Precinct



Source: Kilmore Planning Scheme Overlay Maps 15DDO and 16DDO. Site location identified by Panel.

Council's Part A submission identified that application of DPO10 would ensure that future development would be undertaken in a manner consistent with the objectives of the Structure Plan.

The Proponent submitted that following an asset review exercise it had determined that it has adequate area for all current and future activities within the racecourse land and that the subject land was surplus to its needs. It noted that the majority of regular users of the racecourse are already located in the area to the north of the racecourse. While a decision had not been made by the Proponent to sell the land, the Amendment provided the opportunity to invest in racecourse improvements including trackside facilities and the construction and formalisation of additional carparking areas.

The Proponent submitted that the Amendment was consistent with the Structure Plan in its support for housing supply and diversity, preferred character for Precinct 1A and would not undermine the role of the Equine Precinct. It was submitted that the Equine Precinct was focused on rural living land to the north of the racecourse, removed from GRZ1 land, consistent with the application of DDO3 which directed equine related development and industries to that location. The racecourse site would continue to be a focus for the equine industry while the subject land

could still accommodate ancillary uses including accommodation or conference facilities within a residential zone subject to planning approval, should those uses be viable. It advised that no approaches had been made to it by others to develop the land for equine uses and it doubted that any commercial enterprises would want to establish on the site remote from the town centre.

It was submitted that the PUZ6 was a zoning anomaly, erroneously applied to the land given its private ownership given:

- The Ministerial Direction on the Form and Content of Planning Schemes which identifies:
 

A planning scheme may only include land in a Public Use Zone, Public Park and Recreation Zone or 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.
- Section 5.1.1 of the Practitioner's Guide to Victorian Planning Schemes which provides:
 

Public land zones are not intended to identify the legal status of the land or indicate the existing land use. They are intended to set out appropriate statutory requirements that apply to the use and development of the land in addition to the relevant land management legislation.

Land should not be automatically included in a public land zone just because it is public land. There will be situations where a public land zone is not the most appropriate zone, such as a road or remnant parcel of public land in a rural area. In such cases the use of other zones and overlays can appropriately recognise the purpose for which the land is reserved.

By contrast it was submitted the GRZ1 reflected adjoining zoning and residential development and was consistent with the housing directions in the PPF and MSS for the established areas of Kilmore. It would provide land for housing within the existing township boundary and in an area with infrastructure capacity, existing services and good access to the Sydney Street Activity Centre and support the future investment in the racecourse facilities. The GRZ1 did not turn off the opportunity to allow other activities ancillary to the racecourse consistent with the purpose of the zone. No negative impacts associated with the establishment of housing close to the racecourse were anticipated. It was submitted that the Amendment would have a net overall community benefit by supporting the future operations of the racecourse, improving facilities at the racecourse and wider equine industry consistent with planning policy.

The Proponent referred to the *Horse Stables in Residential Areas in Kilmore Issues Paper* (Issues Paper), produced for Council in 2009<sup>8</sup> which explored land use planning options for managing conflicts between established horse stables and intensification of residential development. The Issues Paper study area included the subject land and adjoining extending to Union and Fitzroy Streets, which was zoned Residential 1 at that time. It identified that the study area was previously zoned SUZ7 (Equestrian Uses) under the former Kilmore Planning Scheme before being rezoned Residential 1 by Amendment L50. The Issues Paper identified a range of amenity issues arising from stabling operations including smell, water runoff and flies and the impact of uncertainty on existing equine businesses from residential development. The Issues Paper identified a series of options including applying the SUZ (noting this did not address the predominant use of the land for residential), developing a policy supporting the location of stabling facilities to the north of the racecourse. The Proponent argued that the Issues Paper along with recent multi dwelling proposals in George Street (14 and 21-27 George Street) pointed to transitioning of this area from

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<sup>8</sup> Document 24

a mix of housing and stables to a residential one and a strategic shift to encouraging stabling activities to the north of the racecourse through the application of the DDO3.

The Proponent submitted that the application of DPO10 was the most comprehensive way to control development of the site and its use consistent with its application to vacant strategic development sites throughout Kilmore. The subject land's private ownership, size and location closely reflected the characteristics of a Strategic Infill Development Site within Precinct 1A.

The application of the SUZ to the site was not supported because it would allow uses such as a cinema, market and a place of assembly up to 2500 patrons which were not appropriate in a residential setting.

The submission sought a recommendation from the Panel to amend the Structure Plan to:

- identify the subject land as a 'infill development site'
- remove the site from the Equine Precinct.

The Proponent called the planning evidence of John Glossop. His evidence supported the position that the PUZ was an inappropriate zone for the site and the two only real options were the GRZ1 as proposed, or the SUZ as identified in the Structure Plan. He considered:

- the use of the GRZ1 preferable because:
  - it was the appropriate residential zone to apply based on the provisions of PPN91 and reflected adjoining zoning (including zoning containing stables and related facilities to the west) and would assist broader urban consolidation objectives
  - the GRZ could accommodate equine related uses such as veterinary clinics
  - provided less potential for amenity conflict
  - it was strategically justified and would not undermine the Structure Plan
- by contrast, the SUZ was:
  - inconsistent with *Planning Practice Note 3: Applying the Special Use Zone*
  - there was no sound basis for applying it to reflect its development as part of the racecourse complex as there is no plan by the Kilmore Racing Club to develop the site as it is surplus to their needs
  - would need further changes to make Schedule 3 functional and appropriate – including changes to potential conditions of uses (scale and frequency) and allowing for a broader range of prohibited uses.

He considered the Structure Plan should be applied as a 'roadmap' rather than a 'blueprint' and that Structure Plans do not seek to lock in particular outcomes, rather they are dynamic and flexible so as to respond to broader circumstances and environmental changes.

Mr Glossop concluded that if the Amendment were approved, it would be appropriate for the Council to update the Kilmore Structure Plan to bring it into alignment with the Amendment. He considered the DPO10 an appropriate tool for larger vacant sites such as the subject land. If the DPO10 was to be applied, he encouraged Council to undertake consultation as part of the development plan making process. He did not support the use of a Design and Development Overlay to the subject land.

Council's information report identified that DDO3 was introduced in 2010 via Mitchell Planning Scheme Amendment C066 and predated the Structure Plan which does not specifically refer to the tool. It considered the DDO3 a tool to manage amenity impacts of horse stables within rural living areas, with the associated Amendment C066 Explanatory Report identifying Amendment C066:

...places a Design and Development Overlay on the land to govern the future development of future horse stables, buildings for accommodation and swimming pools on land included in a Rural Living Zone in the north eastern area of Kilmore. The intent of the amendment is to establish an area where the stabling of horses can coexist with dwelling use without adverse amenity impact. The amendment acknowledges the need to establish a designated area where investment in horse stabling can occur without being prejudiced by surrounding residential uses.

## 5.3 Discussion

### Public Use Zone

The parties agreed that PUZ was not an appropriate zone for the subject land given its private ownership and in light of Ministerial Direction on the Form and Content of Planning Schemes and the Practitioner's Guide to Victorian Planning Schemes. The Panel similarly agrees that the PUZ6 should not apply to the subject land and is now, anomalous. It is not possible however, based on the zoning history provided by Council, to conclude that its application was "*erroneously applied*" at the time, as suggested by the Proponent.

It is appropriate that the land be rezoned to an appropriate zone.

### General Residential Zone

For the Panel, the key factor in determining whether the GRZ1 should be applied or if the SUZ3 was the more appropriate zone, rests primarily with which zone best achieves the strategic planning vision and outcomes for Kilmore set out in the Structure Plan, and to a lesser extent the wider state and local planning policy framework. No submissions suggested that a third zoning option existed, and the Panel agrees that if the land were to be rezoned it should be to either a residential zone or the SUZ. There is no strategic basis for an additional zone(s) or scope for the Panel to suggest one.

The Panel agrees that if a residential zone was to be applied it should be the GRZ1. This is the residential zone that is widely applied in Kilmore and to adjoining residential areas. It is the zone that best reflects the housing objectives for standard and medium density housing outcomes identified in the Structure Plan for Precinct 1A.

The GRZ1 allows a limited range of other non-residential uses to serve local community needs in appropriate locations. Permitted uses (subject to a permit) include accommodation, convenience shop, food and drink premises, market, leisure and recreation, place of assembly (function centre), gambling premises and veterinary centre. Such uses have the potential to support and complement racecourse activity but are also uses that could potentially be accommodated within the racecourse itself or closer to the town centre. The GRZ1 however prohibits horse husbandry (including horse stables, horse riding school), animal training, equestrian supplies and rural industry. This is problematic if equine industry is to be encouraged within the Equine Precinct.

In applying the GRZ1, while non-residential uses might locate there, it is likely that the development outcome will be a residential one. Given the subject land is the largest land parcel in the precinct aside from the racecourse and that it is sited between the racecourse and equine activities in George Street, its residential use would disconnect those operations from the rest of the precinct and potentially render the concept of an Equine Precinct ineffectual.

While it is accepted that existing GRZ1 located equine industries (some of which are non-conforming uses) are under pressure from further residential development as the town grows, the

decision to apply a GRZ1 is to accept a residential future for the subject land and that it is not required to deliver the broader strategic directions for the Equine Precinct in the Structure Plan and Clause 21.11-3.

### **Special Use Zone**

The Panel notes that the Structure Plan refers to the application of the SUZ generally rather than the SUZ3. The Panel agrees with Mr Glossop that if the SUZ was to apply, it would be through the extension of the SUZ3 rather than having its own schedule. This would however require careful consideration as to the land use and development aspirations of the site (whether as part of the Kilmore Racetrack or a wider Equine Precinct) and structure of the schedule including management of amenity issues.

No submissions were put to the Panel that provided detail about what an amended schedule would look like or contain. This would require more strategic work and additional consultation. Regardless, the exhibited Amendment does not propose to apply the SUZ3. It is not possible for the Panel to recommend the application of the SUZ or SUZ3 to the subject land, because it would represent a major transformation of the Amendment and because the necessary strategic work to prepare an appropriate schedule has not been undertaken.

### **DPO10**

Council's information report identified that no development plans had as yet been approved for any of the DPO10 sites since introduction of the control in 2019 (Amendment C123) although two sites had plans under assessment:

- 100 Natures Run Development Plan, which proposes 62 lots with an average lot size of 613sqm on a 6.27ha site
- Union Street Development Plan, which proposes 33 lots with an average size of 410sqm on a 1.35ha site.

The Panel is not persuaded that the DPO10 should be applied to the site. There is no strategic basis for applying it to the subject land aside from it being a large holding in one ownership close to the centre of Kilmore. The subject land is not particularly constrained, highly fragmented or possessing other qualities that might be assisted by providing a mechanism for its future master planning. Nor are there any identified strategic aspirations for it that might be assisted by application of the tool, for example providing a strategic road or bike path connection, open space or habitat link or managing a localised flooding issue. As identified by Mr Glossop many of the requirements to be addressed by the DPO10 can be managed through the normal planning permit application and assessment process.

Clause 21.12 identifies that:

- The Development Plan Overlay has been applied to Kilmore's residential growth areas and key infill development sites across the municipality.

The subject land is not within an identified growth area as identified in the Structure Plan or identified by Council or the Proponent as a key infill development site. While the Explanatory Report suggested a potential yield of 30-40 dwellings, the Proponent's initial planning concept suggested a much lower yield (12 dwellings) comparable to existing lot sizes in the vicinity. While its potential yield as a residential site might be something in between, it is not of a scale requiring a special planning approach.

This is not to suggest that because a site is not identified in the Structure Plan as a Strategic Infill Development Site that no other sites could in future be nominated for the DPO10, rather that there should be a clear strategic basis for its application, particularly when it exempts notice and third party review.

### DDO3

Ms Rose considered the non-application of the DDO3 to the subject land an oversight during the Structure Plan process. The Panel does not agree. The DDO3 has a clear association with rural living locations and is not constructed to accommodate established residential locations.

### What is the strategic aspiration for the subject land?

A key challenge for the Panel in considering whether there is strategic justification for applying the GRZ1 is understanding what impact, if any, it would have on the identified Equine Precinct.

It is clear through the MSS that the wider equine and horse racing industry and the regular thoroughbred and harness race meetings at the Kilmore Racing Complex are important to both Mitchell Shire as a whole and to Kilmore as economic and tourism drivers. Clause 21.08 seeks to support and develop the tourism industry, while Clause 21.11-3 seeks to support Kilmore's equine and equine related industry and the *"co-location of land uses in the equine precinct which will contribute to the horse racing industry in Kilmore"*.

The Structure Plan plays a key role in understanding the vision and purpose of the Equine precinct. It is the only planning document that identifies the Equine Precinct which is referred to in Clause 21.11-3. The Precinct is mapped to include the racecourse, the subject land and extends west to the east side of Fitzroy Street. It includes an arrow suggesting continuation of the precinct north of the racecourse. There is little else in the Structure Plan that describes the precinct's purpose or associated planning outcomes or how it was identified. The Issues Paper provides one clue and suggests that its identification was based on a consolidation to existing equine related uses.

In the absence of detail, the reader is left to piece together the various references to the Equine Precinct in the Structure Plan to establish what it is seeking to do including:

- notations on Structure Plan Figure 52 Precinct 1A (Panel's emphasis)
  - for the subject land, to:
    - Support rezoning to Special Use Zone to reflect importance of the Kilmore Racecourse activities
  - for the racecourse, to:
    - Maintain and support Kilmore Racecourse and related equine industries/uses.
- The land use outcome for Precinct 1A
  - Ongoing operation of horse training facilities within rural living areas in close proximity to the Kilmore racecourse.
- the identification under 'Local Employment' at page 82 that:
  - Whilst the Equine Precinct is physically regarded as being the Kilmore Racecourse and immediate areas, complimentary uses have slowly dispersed throughout the town in places like Willowmavin.
- Local Employment objectives and strategies to strengthen and diversify existing employment nodes and:
  - LE4 To maintain and strengthen Kilmore's equine industry as an important employment generator.
  - LE 4.1 Support the continued use and development of land for equine and equine related purposes within Kilmore Equine Precinct as shown in Figure 43

- LE 4.3 Support co-location of land uses within the Equine Precinct which will contribute to strengthening the horse racing industry in Kilmore.
- Action 48 to (Panel's emphasis):  
Rezone land owned by Kilmore Racecourse currently zoned PUZ to SUZ to support its development as part of the Kilmore Racecourse complex.

The Panel considers that while the objectives and strategies for it are disjointed, the identification of the Equine Precinct was deliberate. The various Structure Plan map notations and colour coding must be read in conjunction with the objectives, strategies and actions. It is apparent to the Panel that the Equine Precinct is intended to support and complement operations of the racecourse complex as a whole and the horse racing and equine industry more generally. This suggests activities such as stables, training facilities, equine treatment clinics would be appropriate in this area (assuming amenity considerations can be managed). Further, it is apparent that support of the equine industry in Kilmore is also to be achieved outside the identified Equine Precinct, within the DDO3 areas to the north of the racecourse (largely limited to stabling facilities attached to dwellings) and other rural locations such as Willomavin which provide for breeding and agistment.

The Proponent suggested that because it did not require the site for its operations and that it had not been approached by anyone to use the land for an equine related use, that the SUZ3 was inappropriate. The Panel considers that it is largely irrelevant whether the Proponent no longer has a use for the land and wishes to dispose of it. The sale of the land would assist in further investment in the racecourse facilities including carparking and this would be a positive outcome for the community and equine industry generally. However, the Kilmore Racing Club's ownership is not critical to the achievement of other equine related outcomes for the site.

While recognising the current zone is inappropriate, rezoning the subject land GRZ1 would mean that there is little prospect of a viable Equine Precinct being established for the reasons set out above. It is possible that the idea of Equine Precinct may be obsolete as a result of nearby residential development activity, amenity challenges and the establishment of stabling facilities to the north of the racecourse or other rural locations. The Panel is not convinced that such an outcome has been fully explored by Council, particularly when the balance of policy support seems to fall on supporting the equine industry rather than housing supply in this location. The Proponent's submission has not convinced the Panel that the broader Equine Precinct is obsolete; or that it could properly function by applying the GRZ; or that it should be confined to the racecourse and land to the north. Indeed, it appears there is no strategic analysis or a Racecourse Complex Masterplan that seeks to support further equine uses at the racecourse to support any of these options.

During the Hearing parties provided various positions on the activities to be accommodated in the Equine Precinct, including:

- horse breeding and training
- stables
- welfare including veterinary services
- informal use by the wider equine community
- broader community leisure and recreation activities.

This confusion, including the concerns of existing equine businesses, is not surprising and is symptomatic of the difficulty in piecing together a clear role for the Equine Precinct. There is additional confusion because of the subject land's identification in the Structure Plan as unencumbered open space.

The Panel accepts the position of Mr Glossop and the Proponent that Structure Plans provide high level direction and should not be applied so rigorously as to ignore changing circumstances including policy or other environment changes. They are not static documents and in this instance the Structure Plan is not an incorporated document. Nonetheless it should be afforded some weight as a background document referenced in Clause 21.11-3. The Structure Plan is only 6 years old and the Panel rejects the notion that it is out of date. The Panel does not support the Proponent's requested changes to the Structure Plan without further strategic work being undertaken to support them.

The Panel considers that it would be premature to support the Amendment without further strategic work being undertaken by Council to confirm an appropriate approach to equine industry within the identified Equine Precinct and Kilmore generally. This could be done as a standalone piece of work rather than a review of the Structure Plan. If Council concludes that there is no strategic basis for the precinct or that the subject land is not relevant to it, then rezoning the subject land to GRZ1 (without DPO10) would be appropriate.

## 5.4 Conclusions and recommendations

The Panel concludes:

- The Public Use Zone 6 is an inappropriate zone for the subject land and a more appropriate zone should be applied to it.
- The application of the General Residential 1 Zone is inconsistent with objectives and strategies of the Municipal Strategic Statement and Kilmore Structure Plan to support the equine and horse racing industry and Equine Precinct.
- There is no strategic basis to apply DPO10 or to identify the subject land as a Strategic Infill Development Site.
- The Amendment is not strategically justified, is premature and should not proceed until further strategic work is undertaken to determine the role and directions for the equine and horse racing industry and Equine Precinct in Kilmore.
- The Kilmore Structure Plan should not be amended as sought by the Proponent to identify the subject land as a Strategic Infill Development Site or to remove it from the designated Equine Precinct without a more considered review of the Kilmore Structure Plan's directions for the Equine Precinct.

The Panel recommends:

- 1. Mitchell Planning Scheme Amendment C154mith be abandoned.**
- 2. Michell Shire Council undertake further strategic work to determine the role and directions for the equine and horse racing industry and Equine Precinct in Kilmore before preparing a further Amendment to rezone the subject land to an appropriate zone.**

## Appendix A Submitters to the Amendment

No.	Submitter
1	Lisa Hurley
2	Goulburn Broken Catchment Management Authority
3	John Le Quiniat
4	Kilmore Equine Clinic
5	Goulburn Valley Water
6	Ian Stewart
7	Robyn Pegler
8	Vyviene Whitehurst
9	Anne Laver
10	Angela Turner
11	Kilmore and District Residents & Ratepayers Association Inc.
12	Anne and Norman Rose
13	Department of Environment, Land, Water and Planning (Environment)
14	Country Fire Authority
15	Group submission/petition with 390 signatures

## Appendix B Document list

No.	Date	Description	Provided by
1	28 Jan 22	Advice from Kilmore and District Residents & Ratepayers Association (KADRRA) about its additional submission grounds	KADRRA
2	10 Feb 22	Email from Maddocks for Council setting out its response to the Panel's Directions for the Hearing the procedural issue regarding the provision of redacted legal advice	Council
3	"	Redacted legal advice from Maddocks to Council of 5 October 2021 and which comprised Attachment 2 to the Council Officer Report dated 13 December 2021	"
4	"	Copy of all submissions	"
5	"	Kilmore Racing Club Trust Deed, being contained in Title Plan 486390G	"
6	"	Council's summary of the zoning history of the Subject Land	"
7	17 Feb 22	Request to be heard	Kilmore Equine Clinic
8	21 Feb 22	Council's Part A submission	Council
9	"	Proponent's Part A submission	Kilmore Racing Club Inc
10	25 Feb 22	Council's Part B submission ( <i>Note: withdrawn on 1 March 2022</i> )	Council
11	"	Proponent's Part B submission	Kilmore Racing Club Inc
12	"	Advice that KADRRA's advocate had changed	KADRRA
13	28 Feb 22	Rose submission	Anne Rose
14	"	Laver submission	Anne Laver
15	1 Mar 22	New Council Part B submission (replacing withdrawn 25 February 2022 Part B submission)	Council
16	"	Whitehurst submission	Vyviene Whitehurst
17	"	Updated Directions, Distribution List and Timetable	Panel
18	7 Mar 22	Additional Directions for Council information	"
19	16 Mar 22	Corrected timetable (v4)	"
20	22 Mar 22	Advice that planning evidence to be called	Kilmore Racing Club Inc
21	23 Mar 22	Council Agenda of 21/3/2022 confirming Council position at Hearing and response to Panel's Directions for additional information of 7/3/2022	Council

No.	Date	Description	Provided by
22	28 Mar 22	Evidence statement of John Glossop	Ethos Urban for Kilmore Racing Club Inc
23	31 Mar 22	Application for Costs	Kilmore Racing Club Inc
24	"	<i>Horse Stables in Residential Areas in Kilmore – Issues Paper</i> , Maunsell AECOM for Mitchell Shire Council, 28 January 2009	Ethos Urban for Kilmore Racing Club Inc
25	1 April 22	Final submission of Anne Rose	Anne Rose
26	"	Final submission of Anne Laver	Anne Laver
27	"	Final submission of Vyvienne Whitehurst	Vyvienne Whitehurst
28	"	Submission of Kilmore Equine Clinic/Motion Equine Centre	Dr Luke Wells-Smith
29	"	Submission of KARRA	KARRA
30	"	Council email seeking until 18 April 2022 to respond to Costs Application	Council
31	4 April 22	Council Meeting minutes 21 March 2022	"
32	"	Drop box links to KARRA submission attachments	KARRA
33	"	Email from Justin Harding to Henry Wallis regarding status of <i>Horse Stables in Residential Areas in Kilmore – Issues Paper</i>	Council
34	"	Updated submission of Kilmore Equine Clinic/Motion Equine Centre	Dr Luke Wells-Smith
35	"	Location of horse stabling locations in relation to DDO3 pdf plan	Ethos Urban for Kilmore Racing Club Inc
36	"	Mitchell Shire Open Space Strategy 2013-2023	KARRA
37	"	Plan outlining the revised entry to the Kilmore Racecourse and Race Club	Ethos Urban for Kilmore Racing Club Inc
38	"	Index to KARRA submission appendices	KARRA
39	"	Email summarising details of Planning Permit application 339/20	Council
40	"	Annotated map showing racecourse entry points	Vyvienne Whitehurst