AGENDA

Ordinary Meeting of Council

5:30pm Wednesday 25 September 2019

VENUE:
Committee & Council Room
76 Deakin Ave, Mildura

NEXT ORDINARY COUNCIL MEETING
5:30pm Wednesday 23 October 2019

Copies of Mildura Rural City Council's Agendas & Minutes can be obtained online at www.mildura.vic.gov.au
Prayer

Almighty God,
We who are gathered together in Council,
pledge ourselves to work in harmony for
the welfare and development of our Rural City.

Guide us, we pray, in our deliberations,
help us to be fair in our judgement and
wise in our actions,
so that prosperity and happiness
shall be the lot of our people.

Amen.

Acknowledgement of Country

“I would like to acknowledge the traditional custodians of
the land on which we are meeting, and pay my respects to
Elders both past and present”.

Note to Councillors

Declaration of Interest

Councillors should note that in accordance with Section 77A of the *Local Government Act 1989*, there is an obligation to declare a conflict of interest in a matter before Council.

A conflict of interest can be a direct or indirect interest in a matter.

A person has a direct interest if:

1. There is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way;

2. There is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms if the matter is decided in a particular way;

3. There is a reasonable likelihood that the residential amenity of the person will be directly affected if the matter is decided in a particular way.

A person has an indirect interest if the person has:

1. A close association whereby a “family member” of the person has a direct or indirect interest or a "relative" has a direct interest, or a member of the person’s household has a direct interest in a matter;

2. An indirect financial interest in the matter;

3. A conflicting duty;

4. Received an “applicable” gift;

5. Become an interested party in the matter by initiating civil proceedings or becoming a party to civil proceedings in relation to the matter; or

6. A residential amenity affect.

Disclosure of Interest

A Councillor must make full disclosure of a conflict of interest by advising the class and nature of the interest immediately before the matter is considered at the meeting. While the matter is being considered or any vote taken, the Councillor with the conflict of interest must leave the room and notify the Chairperson that he or she is doing so.
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SARAH PHILPOTT

CHIEF EXECUTIVE OFFICER
1 PRAYER AND ACKNOWLEDGEMENT OF COUNTRY

2 OPENING AND WELCOME

3 PRESENT

4 APOLOGIES

5 CONFIRMATION OF MINUTES

Ordinary Council Meeting held on 28 August 2019
That Council confirm the minutes of the Ordinary Council Meeting of 28 August 2019 as a correct record

Confidential Council Meeting held on 28 August 2019
That Council confirm the minutes of the Confidential Council Meeting of 28 August 2019 as a correct record

Special Council Meeting held on 16 September 2019
That Council confirm the minutes of the Special Council Meeting of 16 September 2019 as a correct record
6 CONFIRMATION OF ASSEMBLY OF COUNCILLORS

In accordance with Section 80A of the Local Government Act 1989 (the Act), records of Assemblies of Councillors must be reported at the next practicable Council meeting and recorded in the minutes.

An Assembly of Councillors is defined in Section 76AA of the Act as a meeting at which matters are considered that are intended or likely to be the subject of a Council decision or the exercise of a delegated authority and which is either of the following:

- A meeting of an advisory committee where at least one Councillor is present; or
- A planned or scheduled meeting that includes at least half the Councillors and at least one Council officer.

The record is therefore presented for Council's noting.

Recommendation

That Council note the Assembly of Councillors records for the following meetings:

- Planning Forum – 26 August 2019
- Council Forum – 11 September 2019
- Finance Advisory Committee – 11 September 2019
# RECORD OF ASSEMBLIES OF COUNCILLORS

<table>
<thead>
<tr>
<th>Assembly Details</th>
<th>Councillor Attendees</th>
<th>All Other Attendees</th>
<th>Matters Discussed</th>
<th>Conflict of Interest Disclosures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planning Forum – 26 August 2019</td>
<td>Cr Clemence</td>
<td>Sarah Philpott, Chief Executive Officer Mandy Whelan, General Manager Development</td>
<td>1. 005.2019.00000076.001 at 23 Petrucci Way Mildura – 2 Lot Subdivision, Two</td>
<td>Nil</td>
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<td></td>
<td>Cr Cirillo</td>
<td>Andrew Millen, Manager Development Services Damien Sutton, Statutory Planning</td>
<td>Dwellings and Removal of a Restrictive Covenant</td>
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<td>Cr Sedgmen</td>
<td>Coordinator Daniel Gebert, Town Planner Tim Berger, Senior Statutory Planner</td>
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<td>Cr Milne</td>
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<td>Cr Eckel</td>
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<tr>
<td>Council Forum - 11 September 2019</td>
<td>Cr Clemence</td>
<td>Sarah Philpott, Chief Executive Officer Mandy Whelan, General Manager Development</td>
<td>1. Murray Regional Tourism Board Update</td>
<td>Nil</td>
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<tr>
<td></td>
<td>Cr Modica</td>
<td>Martin Hawson, General Manager Community Chris Parham, General Manager Corporate</td>
<td>2. Mildura Arts Centre Master Plan Review</td>
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<td></td>
<td>Cr Brown</td>
<td>Richard Sexton, Manager Corporate Administration Ben Piscioneri, Public Relations</td>
<td>3. Mildura Riverfront Boating Precinct Master Plan</td>
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<tr>
<td></td>
<td>Cr Cirillo</td>
<td>Officer</td>
<td>4. Mildura Riverfront Precinct Master Plan</td>
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<td>Cr Eckel</td>
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<td>5. Monthly Management Report</td>
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<td></td>
<td>Cr Milne</td>
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<td>7. Presentation of Draft Performance Statement and Governance and Management</td>
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<td></td>
<td>Cr Sedgmen</td>
<td></td>
<td>9. Mildura South Regional Sporting Precinct Project Update</td>
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<td>10. Councillor Issues &amp; Questions</td>
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<td>11. CEO Issues</td>
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</tbody>
</table>
## Assembly Details

<table>
<thead>
<tr>
<th>Finance Advisory Committee - 11 September 2019</th>
<th>Councillor Attendees</th>
<th>All Other Attendees</th>
<th>Matters Discussed</th>
<th>Conflict of Interest Disclosures</th>
</tr>
</thead>
</table>
| Cr Clemence                                  | Cr Modica            | David Folvig, Manager Financial Services | 1. Tender Award  
2. Tender Award  
3. Tender Award | Cr Glen Milne disclosed an indirect conflict of interest by close association on matter 7.1 |
| Cr Cirillo                                   | Cr Milne             |                     |                   |                                  |

**Matters Discussed**

1. Tender Award  
2. Tender Award  
3. Tender Award
7 NOTIFICATION OF ABSENCE
8 MAYORAL REPORT

8.1 MAYORAL REPORT - AUGUST 2019

File Number: 02/01/06

1. Summary

The following is a report on the activities and functions attended by the Mayor Cr Simon Clemence during the month of August 2019.

2. Recommendation

That Council note the contents of this Mayoral Report for the month of August 2019.

3. Comments

- Northern Mallee Leaders Business Breakfast
- Meeting with Member for Macedon, Mary-Anne Thomas, MP
- Councillors Strategic Planning Workshop
- Presentation to OLSC Students - Roles and Responsibilities of Local Government
- Meeting with Pilot Training School Executive
- Meeting with Minister for Health, The Honourable Jenny Mikakos, MP
- Presentation to St Paul’s Primary School Students - Roles and Responsibilities of Local Government
- Meeting with Member for Mallee, Dr Anne Webster MP
- Meeting with Country Music Festival Management
- Finance Portfolio Meeting
- Mildura Future Ready Steering Committee Meeting
- Finance Advisory Committee Meeting
- Council Forum
- Royal Australian Air Force Centenary Engagement Tour Presentation
- Regional Cities Victoria Annual Forum
- Meeting with Member for Mildura, Ali Cupper MP
- 2019 International Indigenous Basketball and Cultural Showcase
- Inland Rail National Conference
- Meeting with Mayor of Toowoomba Regional Council
- 2019 Australian Senior Track Championships Opening
- Meeting with Wentworth Shire Mayor, Cr Melissa Hederics and Cross Border Commissioner, Luke Wilson
- Planning Forum
- Meeting with Chair, Mildura Regional Development
- Meetings with MRCC Management
- Ordinary Council Meeting
- Mildura FA18 Classic Hornet Proposal Meeting
- Mildura Police Morning Tea
- 2019 Sunraysia Agribusiness Conference
- MRCC Employee Recognition Awards Panel Meeting
9 COUNCILLOR REPORTS

9.1 COUNCILLOR REPORTS - AUGUST 2019

File Number: 02/01/06

1. Summary

The following is a report on the activities and functions attended by Councillors during the month of August 2019.

2. Recommendation

That Council note the contents of this Councillors report for the month of August 2019.

3. Comments

Cr Greg Brown
- Sunraysia Highway Improvement Committee Meeting

Cr Anthony Cirillo
- Loddon Mallee Local Government Waste Forum Meeting
- Environmental Sustainability Portfolio Meeting

Cr Mark Eckel
- Climate Change Masterclass
- Mallee Family Violence Executive Meeting
- Meetings with Rate Payers
- Media Interview – Mildura Homestead and Wharf Refurbishment
- Chaffey Trail Group Meetings
- Meeting with Northern Mallee Leaders
- Tourism Meeting with Mildura Regional Development
- Economic Development and Tourism Portfolio Meeting
- Media Interview – Heritage Strategy (ABC Horsham)

Cr Helen Healy
- Disability Access Advisory Committee Meeting
- Visualising Mildura Exhibition Opening
- Dad’s Day Out Event Planning Meetings
- Events Strategy Feedback Discussion
- Hands Up Mallee Building Understanding Workshop
- Great Vanilla Slice Triumph Planning Meeting
- Aboriginal Action Committee
- Community Development Portfolio Meeting
- Murrayville and District Liaison Committee Annual General Meeting
- Women Empowering Women Event
- Local Aboriginal Justice Advisory Committee Meeting
- Meeting with Rate Payer
- Mallee Pride Wear It Purple Picnic
- MRCC Employee Recognition Awards Panel Meeting
Cr Glenn Milne
- Rail Freight Alliance Industry Meeting
- Media Interview – Kenny Park Change Facilities
- Recreation and Sport Portfolio Meeting
- Farm Protectors Breakfast
- Red Cliffs Centenary Meeting

Cr Jason Modica
- Panel discussion – Mildura Zine Fair
- Cullulleraine Music Festival Annual General Meeting
- Regional Australia Institute launch of Regional Population Growth National Report
- Meeting with Dad’s Day Out Event Organisers
- Finance Portfolio Meeting
- Australian Inland Botanic Gardens Board Meeting
- Royal Australian Air Force Centenary Engagement Tour Presentation
- Meetings with Rate Payers
- Mildura Region School Breakfast Partnership
- Primary Health Network (Murray) Suicide Prevention Community Forum
- Slow Walk for Parkinson’s Disease
- Meeting with Deputy Vice Chair, Murray Darling Association
- Media Interview – ABC
- Media Interview – Vision Australia
- 2019 Debutante Ball with a Difference

Cr Min Poole
- Ouyen Inc. Community Planning Meeting
- Presentation to Ouyen Year 7 students
- Murrayville Community College Biodiversity Garden Opening

Cr Gavin Sedgmen
- Refer to table of attendance by two or more Councillors
This table represents attendances by two or more Councillors at the following functions, as advised by Councillor acceptances for such functions:

<table>
<thead>
<tr>
<th>Function Attended</th>
<th>Brown</th>
<th>Cirillo</th>
<th>Eckel</th>
<th>Healy</th>
<th>Milne</th>
<th>Modica</th>
<th>Poole</th>
<th>Sedgmen</th>
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<tbody>
<tr>
<td>Northern Mallee Leaders Business Breakfast</td>
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<td>Mildura Regional Industry Conversation</td>
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<td>Councillors Strategic Planning Workshop</td>
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<td>Small Works Prize Exhibition</td>
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<td>Events Strategy Meeting</td>
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<td>Tourism Portfolio Meeting</td>
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<td>Mildura Future Ready Steering Committee Meeting</td>
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<td>La Trobe Campus Open Day</td>
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<td>Welcome Dali Sister School Teachers</td>
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<td>Great Australian Vanilla Slice Triumph</td>
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<td>Pitch the Producers 2019</td>
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<td>Meeting with Wendy Lovell MP and Cindy McLeish MP</td>
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<td>2019 MRCC Youth Art Prize</td>
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<td>Merbein Country Women’s Association 80 Year Celebration</td>
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<td>Meeting with Local Government Rating Review Panel</td>
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<td>Planning Forum</td>
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<td>Mildura Cemetery Trust Meeting</td>
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<td>Community Wellbeing and Services Portfolio Meeting</td>
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<td>Ordinary Council Meeting</td>
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<td>Sunraysia Agribusiness Conference Virtual Reality Dome Tour</td>
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<td>2019 Sunraysia Agribusiness Conference</td>
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<td>Community Department Staff Quality Improvement Forum</td>
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**Attachments**

There are no attachments for this report.
10 RESPONSES TO COUNCILLOR QUESTIONS

10.1 CR GLENN MILNE - RED CLIFFS TOURISM SIGNAGE

Record Number: 14/02/01

“There is no official signage directing tourists to the red cliffs at Red Cliffs. Can this matter be addressed in the near future?”

This matter was addressed by Mandy Whelan, General Manager Development in a memorandum provided to Councillors dated 17 September 2019.

The VicRoads Tourist Signing Guidelines (2009) provide guidance on the application and assessment process for the installation of tourist signs on roads throughout Victoria.

In accordance with that guideline, the current white on brown tourist signage entering Red Cliffs, and 300m to the North and South of Indi Avenue, alerts drivers to the entry points to the Red Cliffs Tourist Drive. The guideline suggests summarising interest categories rather than listing individual sites and points of interest to reduce signage clutter and avoid too much information being provided to be safely read while driving.

As the cliffs are at the Lookout, that is one of many points of interest on Tourist Drive 3. The sign on Woomera Avenue directing traffic to the Lookout is only visible when driving north. An additional sign will be arranged for visibility of south bound traffic.

Attachments
There are no attachments for this report.
10.2 CR GLENN MILNE - GOVERNMENT HUB

Record Number:  02/01/06

"Can we ask the State Government where is Mildura’s Government Hub?"

This matter was addressed by Sarah Philpott, Chief Executive Officer in a memorandum provided to Councillors dated 10 September 2019.

The CEO advised letters have been sent to the Premier, the Hon Daniel Andrew MP, and the Minister for Regional Development, the Hon Jaclyn Symes MP, discussing the merits of a Government Hub for Mildura and requesting the opportunity to discuss further.

Attachments
There are no attachments for this report.
10.3 CR GREG BROWN - MILLEWA GROWERS

Record Number: 17/04/14

“Can Council contact the State Government on behalf of the Millewa growers and ask for drought relief in the form of possibly water and shire rates payments or any form of help at all?”

This matter was addressed by Sarah Philpott, Chief Executive Officer, in a memorandum provided to Councillors dated 10 September 2019.

The CEO advised a letter has been sent to the Hon Jaclyn Symes MP, Minister for Regional Development and Minister for Agriculture. In addition a letter was also sent to Ali Cupper MP, Member for Mildura.

Attachments
There are no attachments for this report.

11 QUESTIONS FROM COUNCILLORS
12 NOTICES OF MOTION

12.1 NOTICE OF MOTION - NORTH WEST RAIL ALLIANCE

Councillor: Mark Eckel
File No: 02/01/06
Date: 17/09/2019

Summary

North West Rail Alliance (NWRA) is an incorporated entity comprising volunteer members who have been advocating for the return of passenger rail along the Mildura line since that service was decommissioned, 26 years ago.

In order to present a strong, cohesive case for improved connectivity and better transport options between the regions and the capital, NWRA are seeking the support of councils along the existing rail catchment area. These councils are, and not limited to:

- Broken Hill City Council;
- Central Darling Shire Council;
- Wentworth Shire Council;
- Mildura Rural City Council;
- Buloke Shire Council;
- Northern Grampians Shire;
- Central Goldfields Shire; and
- Yarriambiack Shire Council.

The following Notice of Motion is hereby tabled for the Ordinary Meeting of Council on 25 September 2019.

Motion

That Council:

1. Endorse North West Rail Alliance Inc. in its efforts to have passenger rail re-introduced along the Mildura line;

2. Provide a letter of support and permission to use Council's logo in promotional material intended to present our case to the State Government;

3. Agree to nominate the mayor or Deputy Mayor as a delegate to attend quarterly meetings; and

4. Secure membership of North West Rail Alliance Inc. by paying a nominal annual fee of $150.

Yours sincerely

Councillor Jason Modica
Councillor Mark Eckel
12.2 NOTICE OF MOTION - MOTOR SPORTS PRECINCT SUBCOMMITTEE

Councillor: Gavin Sedgmen
File No: 02/01/06
Date: 19 September 2019

Summary

It is proposed that a subcommittee for the Motorsports precinct be established to improve communication between the interested parties, look at the project and see what can be done to have the site ready for if and when the opportunity comes to do something on H block. Also to look at opportunities for H block until the Motorsport park is ready.

It is proposed that the subcommittee will be made up of representatives from the various interested Motorsport groups who have submitted expressions of interest in the project and will be chaired by a councillor with a representative from council staff on the committee.

The subcommittee will give the groups a platform to bring ideas to the table, information and developments from their various disciplines and enable them to report back to their groups on the progress and developments.

If the conversation is regular and continuous there may be opportunities and ideas come forward that could develop the project or take it down a new path to something that might be good for the community and the region.

The following Notice of Motion is hereby tabled for the Ordinary Meeting of Council on 25 September 2019.

Motion

That Council establishes a subcommittee for the Motor Sports Precinct, chaired by a nominated Councillor and including a staff representative and representatives from various interested Motorsports groups that have submitted interest in the project.

Yours sincerely

..........................................................
..........................................................
Councillor Gavin Sedgmen Councillor Glenn Milne
13 PETITIONS

Nil
14 MANAGEMENT REPORTS

14.1 ADOPTION OF AMENDMENT C102MILD - WAKEFIELD TRANSPORT REZONING

File Number: 13/01/20
Officer: General Manager Community

1. Summary

Mildura Rural City Council (Council) has prepared Amendment C102mild to the Mildura Planning Scheme at the request of Wakefield Transport Group, who are the intended purchaser of the land subject to this amendment.

The amendment proposes the rezoning of the land located in Main Avenue, Merbein immediately south of the railway line and east of Main Avenue (Calder Highway), from the Public Use Zone 4 – Transport (PUZ4) to the Industrial 1 Zone (IN1Z), to facilitate the sale of the Victrack owned subject land.

The notice period expired on 2 September 2019 with no objecting submissions received.

On the basis of the assessment included in this report, it is therefore recommended that Council adopt Amendment C102mild and forward for approval by the Minister for Planning.

2. Recommendation

That Council adopts Amendment C102mild, as presented and submits the documentation to the Minister for Planning, requesting approval of the amendment.

3. Background

The land affected by the amendment is at Main Avenue Merbein, being part of CA 9 Section 7 Township of Merbein. The land is immediately south of the railway line and east of Main Avenue (Calder Highway).
The amendment proposes to:

- rezone part of the subject land from Public Use Zone 4 – Transport (PUZ4) to the Industrial 1 Zone (IN1Z);
- rezone part of the subject land from Public Use Zone 4 – Transport (PUZ4) to the Public Use Zone 1 – Service and Utility (PUZ1); and
- include the Industrial 1 land in the Design and Development Overlay (DDO4).

The amendment does not propose to change the use of the land but rather to include the land within a suitable zone matching its current use, future private ownership and the prevailing zone surrounding the land.

The proposed rezoning therefore reflects a change in the type of ownership of the land, being from a public entity (VicTrack) to a private business (Wakefield).

This will facilitate and protect future development of the existing multimodal freight transport hub.

4. Consultation Proposed/Undertaken

Victrack was consulted in relation to the amendment and the operations of the railway line. Victrack supported the amendment and its inclusion in the Industrial 1 Zone.

Lower Murray Water (LMW) was consulted and are supportive of the amendment and inclusion of its asset in the PUZ1.

The amendment does not propose to change the use of the land but rather to include the land within a suitable zone matching its current use, future private ownership and the prevailing zone surrounding the land. It is therefore considered that the potential impact on nearby landowners is minimal considering the land has been subject to the current use since 2009. The immediately adjoining landowners are all parties to the amendment.

Amendment C102mild documents were exhibited from 26 July 2019 to 2 September 2019 and all relevant stakeholders were provided with an opportunity to respond to the proposed amendment during the formal exhibition stage of the amendment.
The amendment exhibition notice appeared in the Victorian Government Gazette (gazetted) on 1 August 2019 and was advertised in the local newspaper on 26 July 2019, 9 August 2019 and 23 August 2019.

Council notified affected stakeholders by direct mail on 26 July 2019 as follows:

<table>
<thead>
<tr>
<th>Stakeholder Notified</th>
<th>Number of Letters Sent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prescribed Ministers</td>
<td>3</td>
</tr>
<tr>
<td>Landowners and Managers</td>
<td>3</td>
</tr>
<tr>
<td>External Government Authorities and Agencies</td>
<td>13</td>
</tr>
</tbody>
</table>

Amendment C102mild documents were available for viewing, free of charge, at the following locations:
- Council’s Madden Avenue and Deakin Avenue Service Centres;
- Mildura Library, Deakin Avenue, Mildura;
- Council’s website www.mildura.vic.gov.au/haveyoursay; and

Council received two submissions in response to the exhibition of the amendment documents. One from the Environment Protection Authority (EPA) and another from the Department of Transport. Both responses were supportive of the amendment and neither submission raised any concerns or objection to the amendment.

5. Discussion

The amendment is required because the subject land proposed to be rezoned IN1Z (subject of the amendment) has historically been used for transport related activities associated with the adjoining railway line. Whilst under the same ownership and operation, land immediately to the south is already included in the Industrial 1 Zone.

All of the land is surplus to the requirements of VicTrack and is therefore to be transferred from its ownership. Accordingly, the land cannot remain in the Public Use Zone 4 (PUZ4) and must be rezoned to enable the transfer to occur.

Department of Transport has supported the amendment advising that they wrote to VicTrack confirming that this land is surplus to transport needs and therefore can be made available for sale.

The land being included in the PUZ1 contains a sewage pump station under the control and operation of LMW The inclusion of the land in such zone reflects the public utility nature of the use.

The adjoining land is used for the assembly, loading and unloading of freight. The land affected by the amendment will continue a strong association with the land.
6. **Time Frame**

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preliminary request for amendment received</td>
<td>19 October 2019</td>
</tr>
<tr>
<td>Amendment documents finalised and authorisation sought from the Minister for Planning to Prepare the Amendment</td>
<td>15 July 2019</td>
</tr>
<tr>
<td>Authorisation received from Minister for Planning to Prepare the Amendment</td>
<td>28 May 2019</td>
</tr>
<tr>
<td>Amendment documents exhibited</td>
<td>26 July 2019 to 2 September 2019</td>
</tr>
<tr>
<td>Recommended for Adoption of Amendment</td>
<td>September Council Meeting</td>
</tr>
<tr>
<td>Amendment forwarded to the Minister for Planning seeking Approval for the Amendment</td>
<td>Anticipated October 2019</td>
</tr>
<tr>
<td>Ministers decision notified via the Victorian Government Gazette</td>
<td>At the Minister’s discretion</td>
</tr>
</tbody>
</table>

7. **Strategic Plan Links**

This report relates to the Community and Council Plan in the Key Result Area:

*2.5 Strategic Land Use*

Goal to be achieved:

- a well-developed long-term land use vision.

8. **Asset Management Policy/Plan Alignment**

Amendment C102mild will have no impact on ongoing operational costs.

9. **Implications**

**Policy**

All policy implications associated with the amendment are contained within the documentation to Amendment C102mild to the Mildura Planning Scheme.

**Legal/Statutory**

In accordance with Section 29 of the *Planning and Environment Act 1987*, where no objecting submissions have been received, a planning authority can adopt an amendment, or part of it, with or without changes.

**Financial**

In accordance (and where applicable) prescribed fees will need to be paid by the proponent for progressing the amendment. Other resource and administrative costs of implementing the amendment are contained within Council’s 2019 - 2020 Operating Budget.
Environmental
All environmental implications associated with the amendment are contained within the documentation to Amendment C102mild to the Mildura Planning Scheme.

Social
All social implications associated with the amendment are contained within the documentation to Amendment C102mild to the Mildura Planning Scheme.

Economic
All economic implications associated with the amendment are contained within the documentation to Amendment C102mild to the Mildura Planning Scheme.

10. Risk Assessment

By adopting the recommendation, Council will not be exposed to any significant risk.

11. Conflicts of Interest

No conflicts of interest were declared during the preparation of this report.

Attachments
1  Mildura C102mild 001znMap23 Exhibition Gazetted
2  Mildura C102mild 002ddoMap23 Exhibition Gazetted
14.2 RAMSAR PROPOSAL FOR MENINDEE LAKES

File Number: 15/07/01
Officer: General Manager Community

Following the resolution to lay this matter on the table at the August Ordinary Meeting of Council, this report is now represented in accordance with Schedule 2, Local Law No 1 (Meeting Procedure) as part of the September Ordinary Council Meeting.

Council, in considering this item, should note the additional information now provided with Management Report 14.3 of this Agenda.

Moved: Cr Jason Modica
Seconded: Cr Gavin Sedgmen

That Council resolve to support a motion to be presented by Region 4 of the Murray Darling Association for the Menindee Lakes System to be recognised as a Ramsar location.

PROCEDURAL MOTION

2019/0163

Moved: Cr Mark Eckel

That this matter “lay on the table” and be the subject of a report to the next Ordinary Meeting of Council scheduled for 25 September 2019.

CARRIED

1. Summary

Region 4 of the Murray Darling Association (MDA) is looking to secure Council’s support for the Menindee Lakes System to be recognised as a Ramsar location.

Mildura Rural City Council, Wentworth Shire, Central Darling Shire and Broken Hill City Council are the Local Government Areas (LGA) that make up Region 4 of the MDA.

If support is received from these four LGAs, the Chair of Region 4 will take a motion to the MDA Annual General Meeting to be held in October 2019, for the Ramsar listing to be further endorsed.

2. Recommendation

That Council resolve to support a motion to be presented by Region 4 of the Murray Darling Association for the Menindee Lakes System to be recognised as a Ramsar location.
3. **Background**

The Convention on Wetlands of International Importance (the Ramsar Convention) was signed in Ramsar, Iran on 2 February 1971. The Ramsar Convention aims to halt the worldwide loss of wetlands and to conserve, through wise use and management, those that remain. The Convention encourages member countries to nominate sites containing representative, rare or unique wetlands, or that are important for conserving biological diversity, to the List of Wetlands of International Importance (Ramsar List).

Australia was one of the first countries to become a Contracting Party to the Convention and currently has 65 Ramsar sites covering more than 8.3 million hectares.

4. **Consultation Proposed/Undertaken**

In 2010, Regional Development Australia (RDA) Far West NSW embarked upon initial public consultation to measure support for the listing of some or all of the Menindee Lakes system under the Ramsar Convention.

It is proposed to revitalise and update this proposal and re-submit the application to have the Menindee Lakes System recognised as a Ramsar location.

Following the recently documented fish kills in the Darling River, further discussions with Menindee community representatives have occurred regarding the formation of a working party to progress water saving projects. This has the support of the Far West RDA and other recognised bodies to ensure water security for the Menindee Lakes, as well as for moderate flows above and below the lake system.

5. **Discussion**

While there are a number of Ramsar sites on the Murray River system, the Australian Government has an implementation plan which recognises its obligations under the Ramsar Convention to provide environmental water to sites.

The Menindee Lakes system sits on the Darling River in the middle of far western NSW and constitutes a significant part of the Murray-Darling Basin. The Lakes have unique ecological character and are already listed as significant wetlands through their contributions to biodiversity and other social and cultural values.

Region 4 of the MDA is seeking support from Council to take to the Annual General Meeting of the combined Regions of the Association for the Ramsar Listing to be further endorsed.

6. **Time Frame**

The MDA Annual General Meeting and National Conference is being held in October 2019, with the closing dates for submissions being requested by 21 August.

A letter of intention has been sent to Region 4 providing in-principle support for the motion and informing of the intention to seek formal endorsement of this support from Council at its August 2019 Ordinary Meeting.
7. Strategic Plan Links

This report relates to the Community and Council Plan in the Key Result Area:

2.1 Environmental Sustainability

Goal to be achieved:

- a healthy and sustainable environment.

8. Asset Management Policy/Plan Alignment

There are no Asset Management implications associated with this report.

9. Implications

Policy
This report aligns with Council’s Environmental Sustainability Policy CP041. By protecting and enhancing the natural environment, taking due care to avoid serious or irreversible environmental harm. Also by encouraging participation and collaboration between Council and the broader community.

Legal/Statutory
There are no legal/statutory obligations associated with this report.

Financial
Financial costs are contained within Council’s 2019/2020 Operational Budget.

Environmental
The wetlands site will receive specific attention under a management plan, offering protection and restoration of the ecological communities, within a legal framework. There will be improved wetlands functions.

Social
Cultural values will be recognised, given the area’s contemporary Indigenous significance, European and Indigenous historical sites, archaeological material and other significant geological features.

Economic
The region is geographically close to the Willandra Lakes region, which has World Heritage listing, and other Ramsar sites in the broader Murray-Darling region. Increased tourism and business opportunities could see jobs created in ecotourism services, arts and creative industries transport, retail and education.

10. Risk Assessment

By adopting the recommendation, Council will not be exposed to any significant risk.

11. Conflicts of Interest

No conflicts of interest were declared during the preparation of this report.

Attachments
1. Draft Letter to Region 4 Murray Darling Association - Confirmation of MRCC support for Ramsar proposal for Menindee Lakes
Dear Cr MacAllister,

**SUPPORT OF MOTION – MENINDEE LAKES SYSTEM**

The purpose of this letter is to confirm Mildura Rural City Council’s (Council) support for Region 4 of the Murray Darling Authority (MDA) to present a motion at the MDA’s October 2019 Annual General Meeting for the Menindee Lakes System to be recognised as a Ramsar location.

A recommendation to support the motion was endorsed by Council at its Ordinary meeting held 28 August 2019. A copy of the associated report is attached.

In 2010, Regional Development Australia (RDA) Far West NSW embarked upon initial public consultation to measure support for the listing of some or all of the Menindee Lakes system under the Ramsar Convention. We understand that the purpose of the motion to be presented is for this work to be revitalised, updated and an application to have the Menindee Lakes System recognised as a Ramsar location re-submitted.

With the Menindee Lakes System constituting a significant part of the Murray-Darling Basin Council recognises that this piece of work is critical to conserving the system’s unique ecological character, minimising water mis-management and increasing water security for surrounding communities.

We look forward to the outcome of the presented motion and in the meantime should you require any further information, please contact Sarah Philpott, Chief Executive Officer, on (03) 5018 8152.

Yours sincerely

**CR SIMON CLEMENCE MAYOR**

Copy to: All Councillors
14.3 RAMSAR PROPOSAL FOR MENINDEE LAKES

File Number: 15/07/01
Officer: General Manager Community

1. Summary

This subsequent report on the Ramsar proposal for Menindee Lakes provides Council with additional information sought following Council’s August Ordinary Council Meeting resolution to lay this matter on the table.

Region 4 of the Murray Darling Association (MDA) is looking to secure Council’s support for the Menindee Lakes System to be recognised as a Ramsar location.

Mildura Rural City Council, Wentworth Shire, Central Darling Shire and Broken Hill City Council are the Local Government Areas (LGA) that make up Region 4 of the MDA.

If support is received from these four LGAs, the Chair of Region 4 will take a motion to the MDA Annual General Meeting to be held in October 2019, for the Ramsar listing to be further endorsed.

2. Recommendation

That Council;

(i) notes the additional information provided within this report and that it relates to the September Ordinary Council Meeting Agenda Management Report Item 14.2, which was left lie on the table at the August Ordinary 2019 Council Meeting; and,

(ii) notes that the intended motion to be presented by Region 4 of the Murray Darling Association is:

That the Western Division of Councils endorse the Menindee Lakes, or a portion of the Lakes system to be listed as a Ramsar site, in further consultation with the community

3. Background

The Convention on Wetlands of International Importance (the Ramsar Convention) was signed in Ramsar, Iran on 2 February 1971. The Ramsar Convention aims to halt the worldwide loss of wetlands and to conserve, through wise use and management, those that remain. The Convention encourages member countries to nominate sites containing representative, rare or unique wetlands, or that are important for conserving biological diversity, to the List of Wetlands of International Importance (Ramsar List).

Australia was one of the first countries to become a Contracting Party to the Convention and currently has 65 Ramsar sites covering more than 8.3 million hectares.
4. **Consultation Proposed/ Undertaken**

In 2010, Regional Development Australia (RDA) Far West NSW embarked upon initial public consultation to measure support for the listing of some or all of the Menindee Lakes system under the Ramsar Convention.

It is proposed to revitalise and update this proposal and re-submit the application to have the Menindee Lakes System recognised as a Ramsar location.

Following the recently documented fish kills in the Darling River, further discussions with Menindee community representatives have occurred regarding the formation of a working party to progress water saving projects. This has the support of the Far West RDA and other recognised bodies to ensure water security for the Menindee Lakes, as well as for moderate flows above and below the lake system.

5. **Discussion**

While there are a number of Ramsar sites on the Murray River system, the Australian Government has an implementation plan which recognises its obligations under the Ramsar Convention to provide environmental water to sites.

The Menindee Lakes system sits on the Darling River in the middle of far western NSW and constitutes a significant part of the Murray-Darling Basin. The Lakes have unique ecological character and are already listed as significant wetlands through their contributions to biodiversity and other social and cultural values.

Region 4 of the MDA is seeking support from Council to take to the Annual General Meeting of the combined Regions of the Association for the Ramsar Listing to be further endorsed.

6. **Time Frame**

The MDA Annual General Meeting and National Conference is being held in October 2019, with the closing dates for submissions being requested by 21 August.

A letter of intention has been sent to Region 4 providing in-principle support for the motion and informing of the intention to seek formal endorsement of this support from Council at its August 2019 Ordinary Meeting.

7. **Strategic Plan Links**

This report relates to the Community and Council Plan in the Key Result Area:

2.1 Environmental Sustainability

Goal to be achieved:

- a healthy and sustainable environment.
8. Asset Management Policy/Plan Alignment

There are no Asset Management implications associated with this report.

9. Implications

Policy
This report aligns with Council’s Environmental Sustainability Policy CP041. By protecting and enhancing the natural environment, taking due care to avoid serious or irreversible environmental harm. Also by encouraging participation and collaboration between Council and the broader community.

Legal/Statutory
There are no legal/statutory obligations associated with this report.

Financial
Financial costs are contained within Council’s 2019 - 2020 Operational Budget.

Environmental
The wetlands site will receive specific attention under a management plan, offering protection and restoration of the ecological communities, within a legal framework. There will be improved wetlands functions.

Social
Cultural values will be recognised, given the area’s contemporary Indigenous significance, European and Indigenous historical sites, archaeological material and other significant geological features.

Economic
The region is geographically close to the Willandra Lakes region, which has World Heritage listing, and other Ramsar sites in the broader Murray-Darling region. Increased tourism and business opportunities could see jobs created in ecotourism services, arts and creative industries transport, retail and education.

10. Risk Assessment

By adopting the recommendation, Council will not be exposed to any significant risk.

11. Conflicts of Interest

No conflicts of interest were declared during the preparation of this report.

Attachments

1 Draft Letter to Region 4 Murray Darling Association - Confirmation of MRCC support for Ramsar proposal for Menindee Lakes
File: 15/07/01
29 August 2019

Cr Jane MacAllister
Region 4 Delegate – Murray Darling Association
Wentworth Shire Council
PO Box 81
WENTWORTH NSW 2648
CrMacAllister@wentworth.nsw.gov.au

Dear Cr MacAllister,

**SUPPORT OF MOTION – MENINDEE LAKES SYSTEM**

The purpose of this letter is to confirm Mildura Rural City Council’s (Council) support for Region 4 of the Murray Darling Authority (MDA) to present a motion at the MDA’s October 2019 Annual General Meeting for the Menindee Lakes System to be recognised as a Ramsar location.

A recommendation to support the motion was endorsed by Council at its Ordinary meeting held 28 August 2019. A copy of the associated report is attached.

In 2010, Regional Development Australia (RDA) Far West NSW embarked upon initial public consultation to measure support for the listing of some or all of the Menindee Lakes system under the Ramsar Convention. We understand that the purpose of the motion to be presented is for this work to be revitalised, updated and an application to have the Menindee Lakes System recognised as a Ramsar location re-submitted.

With the Menindee Lakes System constituting a significant part of the Murray-Darling Basin Council recognises that this piece of work is critical to conserving the system’s unique ecological character, minimising water mis-management and increasing water security for surrounding communities.

We look forward to the outcome of the presented motion and in the meantime should you require any further information, please contact Sarah Philpott, Chief Executive Officer, on (03) 5018 8152.

Yours sincerely

CR SIMON CLEMENCE
MAYOR

Copy to: All Councillors
14.4 ADOPTION OF ACTING CHIEF EXECUTIVE OFFICER APPOINTMENT POLICY CP098

File Number: 18/02/01  
Officer: General Manager Corporate

1. Summary

The purpose of this report is to present the Acting Chief Executive Officer Appointment Policy CP098 and seek Council’s resolution to adopt the updated policy.

2. Recommendation

That Council adopt the updated Acting Chief Executive Officer Appointment Policy CP098 as presented.

3. Background

The purpose of this policy is to provide clear guidance on the provisions that apply to the appointment of a person as Acting Chief Executive Officer (A/CEO) and allows for the approval of the Chief Executive Officer (CEO) on sick leave, long service leave, annual leave or other extended absences.

4. Consultation Proposed/Undertaken

Consultation has been undertaken with Council’s Strategic Management Team.

5. Discussion

Council polices are developed and approved by Council to help govern how the organisation operates. They outline organisational decision-making processes and protocols for service delivery and civic administration.

In accordance with the review schedule, this policy and its principles have been comprehensively reviewed. Minor changes have been made and these are presented in the attachment.

6. Time Frame

The updated policy will come into force if adopted by Council and will be reviewed every three years.

7. Strategic Plan Links

This report relates to the Community and Council Plan in the Key Result Area:  
4.1 Leadership and Representation

Goal to be achieved:

- elected members engage effectively with the community.
8. **Asset Management Policy/Plan Alignment**

There are no asset management implications associated with this report.

9. **Implications**

**Policy**
This report updates the current Acting Chief Executive Officer Appointment Policy.

**Legal/Statutory**
This policy complies with all requirements under the *Local Government Act 1989*.

**Financial**
There are no financial implications associated with this report.

**Environmental**
There are no environmental implications associated with this report.

**Social**
There are no social implications associated with this report.

**Economic**
There are no economic implications associated with this report.

10. **Risk Assessment**

By adopting the recommendation, Council will not be exposed to any significant risk.

11. **Conflicts of Interest**

No conflicts of interest were declared during the preparation of this report.

**Attachments**
1. Acting Chief Executive Officer Appointment Policy
Acting Chief Executive Officer Appointment Policy

Policy – CP098

1. The purpose of this policy is

To provide clear guidance on the provisions that apply to the appointment of a person as Acting Chief Executive Officer (A/CEO) and allows for the approval of the Chief Executive Officer (CEO) on sick leave, long service leave, annual leave or other extended absences.

2. Policy Statement

This policy represents the formal policy and expected standards of the Mildura Rural City Council. Appropriate approvals need to be obtained prior to any deviation from the policy. Elected members and employees are reminded of their obligations under the Council’s Code of Conduct to give full effect to the lawful policies, decisions and practices of the Council.

3. Principles

Section 94 of the Local Government Act 1989 (the Act). Section 94 requires that a local government is to employ a Council to appoint a natural person to be the Acting Chief Executive Officer of the local government.

3.1 Appointment of a person as Acting CEO

Only Senior Officers as defined in the Act will be appointed to the position of A/CEO under the terms of this policy.

There are special constraints under S 94 of the Act which apply to the employment of a person as CEO. These are that a person is not to be employed in the position of CEO unless the Council believes that the person is suitably qualified for the position and is satisfied with the provisions of the proposed employment contract.

Whilst not explicit within the Act, it is considered these provisions under section 94 of the Act also apply to the appointment of a person as Acting A/CEO. It is intended that a senior officer will only be appointed as Acting CEO under the terms of this Policy.
The policy provides for the employment appointment of a person who is not an existing employee of the local government Council as acting or interim CEO directly must be by resolution of the Council.

If the appointment of a current senior officer as A/CEO is for a continuous period not exceeding four weeks, this can be made by the CEO under the S5 Instrument of Delegation to the Chief Executive Officer.

If the appointment of a current senior officer as A/CEO is proposed to exceed four weeks, this must be made by resolution of the Council.

If an existing employee of the local government is required to perform the role of A/CEO, then this can be achieved by the CEO appointing an employee under delegated authority from the Council, or by resolution of Council.

Council through Instrument of Delegation S5 has approved delegated authority to the Chief Executive Officer to appoint an officer in the role of Acting Chief Executive Officer for a continuous period not exceeding four weeks.

3.2 Periords of Leave

If the period of leave is five days or less, then the CEO is able authorised to make the appointment under delegation.

If the period of leave is more than five days and less than four weeks, then the CEO is expected to liaise with the Mayor prior to making the appointment under delegation.

If the period of leave is to exceed four weeks in a continuous period, then Council should appoint the Acting CEO by resolution. Council could appoint either to the position of Acting CEO: -

- One of the General Managers of Council;
- Or offer the position to a suitably qualified individual as a short term contract during extended periods of absence of the CEO.

3.3 Leave approval Chief Executive Officer

An application for annual leave, long service leave, personal leave or an extended absence is to be approved by the Mayor on behalf of Council.

4. Who is responsible for implementing this policy?

Chief Executive Officer Manager Corporate Administration.

5. Definitions

Nil
6. Legislation and other references

6.1 Legislation

For further information related to this policy see:

- *Local Government Act (1989)*
6.2 Documents

This Policy is implemented in conjunction with the following documents:

- S5 Instrument of delegation to the Chief Executive Officer

6.3 Risk Assessment Reference

Please tick the corporate risk(s) that this policy is addressing.

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<thead>
<tr>
<th>Risk Category</th>
<th>✓ Risk Category</th>
<th>✓</th>
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</thead>
<tbody>
<tr>
<td>Asset Management Committees</td>
<td>Financial Sustainability</td>
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<tr>
<td>Compliance – Legal &amp; Regulatory</td>
<td>Human Resource Management</td>
<td>✓</td>
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<tr>
<td>Contract Management</td>
<td>Leadership &amp; Organisational Culture</td>
<td>✓</td>
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<tr>
<td>Contract Tendering &amp; Procurement</td>
<td>Occupational Health &amp; Safety</td>
<td>✓</td>
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<td>Corporate Governance</td>
<td>Organisational Risk Management</td>
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<tr>
<td>Environmental Sustainability</td>
<td>Project Management</td>
<td>✓</td>
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<tr>
<td></td>
<td>Public Image and Reputation</td>
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</table>
14.5 DEVELOPMENT OF BUILDINGS AND WORKS TO CREATE A ‘DRIVE-THROUGH’ FACILITY AND ALTERATION OF ACCESS TO A ROAD IN A ROAD ZONE, CATEGORY 1

File Number: 005.2018.0000385.001
Officer: General Manager Development

1. Summary

<table>
<thead>
<tr>
<th>Date Received:</th>
<th>23 November 2018 (amended 9 August 2019)</th>
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<tbody>
<tr>
<td>Subject Property:</td>
<td>303-305 Deakin Avenue, Mildura</td>
</tr>
<tr>
<td></td>
<td>Lot 1 TP738757L, Lot 1 TP 217576W Parish of Mildura</td>
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<tr>
<td>Proposed Use/Development:</td>
<td>Development of buildings and works to create a ‘drive-through’ facility and alteration of access to a road in a Road Zone, Category 1</td>
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<tr>
<td>Zone:</td>
<td>Commercial 1 Zone (C1Z)</td>
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<tr>
<td>Overlays:</td>
<td>Design and Development Overlay – Schedule 1 (DDO1)</td>
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<tr>
<td>Applicant:</td>
<td>Roy Costa Planning and Development</td>
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<tr>
<td>Application Triggers:</td>
<td>Clause 34.01-4 – A permit is required to construct a building or construct or carry out works.</td>
</tr>
<tr>
<td></td>
<td>Clause 43.02-2 – A permit is required to construct a building or construct or carry out works.</td>
</tr>
<tr>
<td></td>
<td>Clause 52.29-2 – A permit is required to create or alter access to a road in a Road Zone, Category 1.</td>
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<tr>
<td>Relevant Provisions:</td>
<td>Clause 15.01-1S – Urban design</td>
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<tr>
<td></td>
<td>Clause 15.01-2S – Building design</td>
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<td></td>
<td>Clause 17.02-1S – Business</td>
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<td>Clause 18.02-4S – Car parking</td>
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<td></td>
<td>Clause 21.08-3 – Retail/commercial</td>
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<td>Clause 34.01 – Commercial 1 Zone</td>
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<td></td>
<td>Clause 43.02 – Design and Development Overlay</td>
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<tr>
<td></td>
<td>Clause 52.06 – Car parking</td>
</tr>
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<td></td>
<td>Clause 52.29 – Land Adjacent to a Road Zone, Category 1, or a Public Acquisition Overlay for a Category 1 Road</td>
</tr>
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<td></td>
<td>Clause 65.01 – Approval of An Application or Plan</td>
</tr>
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<td></td>
<td>Clause 71.02-3 – Operation of the Planning Policy Framework</td>
</tr>
</tbody>
</table>

Objections Received 19
The application seeks Council approval for the development of buildings and works to create a ‘drive-through’ facility and alteration of access to a road in a Road Zone, Category 1 at 303-305 Deakin Avenue Mildura (corner of Deakin Avenue and Fourteenth Street).

The site is currently improved by three (3) retail tenancies; being Subway, Pinno’s Pizza and Coral Sea Fish and Chips. The proposal would create a drive through facility for the existing subway tenancy along the northern wall of the subway building, reconfigure the car parking arrangements on the site and widen the access to Deakin Avenue. A copy of the proposed site plan is attached.

The application was received by Council on 23 November 2018, and subsequently placed on public notice pursuant to Section 52 of the Planning and Environment Act 1987 from 31 January – 18 February 2019. Nineteen (19) objections to the application have been received as a result.

Key issues raised in the objections include:
- On site safety issues for pedestrians and shop customers;
- Loss of car parking spaces;
- Road safety impacts from queuing and turning traffic;
- Inability for commercial garbage collection trucks to empty waste; and
- Closure of exit to Fourteenth Street would create difficulties for customers and delivery drivers.

The application progressed to a mediation on 5 March 2019. While a number of matters were discussed, no resolution of the matters in dispute were achieved.

The application was referred to the Roads Corporation (VicRoads), as the proposal would alter access to Deakin Avenue. VicRoads requested further information in the form of a Road Safety Audit on 22 February 2019. This information was duly provided by the permit applicant, and as a result VicRoads consented to the application, subject to the imposition of conditions.

The application was referred to the Planning Referral Committee (PRC) on 8 July 2019 and on 9 September 2019. At the first meeting, the Committee requested further information of the permit applicant, which was subsequently provided. At the second meeting, having considered the further information, the Committee resolved to recommend that the application be refused by Council. It is noted that the assessing planner has recommended that the application be approved, subject to conditions.

The assessing planner’s assessment of the application is attached. In terms of the PRC assessment, the committee considers that the application is not supported by relevant State Planning Policy relating to car parking, as well as the respective decision guidelines of the Commercial 1 Zone, Clause 52.29 and Clause 65.01. This is in light of the proposed internal access arrangements, delivery arrangements for the other tenancies on the site, the inability for waste collection and delivery vehicles to safely manoeuvre around the site and safety risks to vehicles and pedestrians at the Deakin Avenue and Fourteenth Street.

Based on the above, the application is presented to Council for decision, with a recommendation for refusal by Officers on the grounds listed below.
2. Recommendation

That Council, having caused notice of Planning Application No. 005.2018.00000385.001 to be given under Section 52 of the Planning and Environment Act 1987, and having considered all the relevant matters under Section 60 of the Planning and Environment Act 1987, determines to issue a Notice of Decision to Refuse to Grant a Permit in respect of the land known and described as 303-305 Deakin Avenue, Mildura; being Lot 1 TP738757L and Lot 1 TP217576W Parish of Mildura, for the development of buildings and works to create a ‘drive-through’ facility and alteration of access to a road in a Road Zone, Category 1, for the following reasons:

1) The proposal is contrary to Clause 18.02-4S of the Planning Policy Framework, as the proposal fails to enable easy, efficient use of car parking spaces and fails to satisfactorily enable the movement and delivery of goods on the site.

2) The proposal is inconsistent with the decision guidelines of the Commercial 1 Zone, which seek to ensure that new development is responsive to the movement of pedestrians, cyclists, waste services, delivery vehicles and provision of car parking. The proposed layout would result in disorderly internal vehicular movements, reduce available car parking and increase the risk of accidents occurring at the site.

3) The proposal would have an unacceptable impact on the operation and safety of Deakin Avenue and Fourteenth Street, contrary to Clause 52.29 of the Mildura Planning Scheme.

4) The proposed site layout fails to allow for safe ingress and egress of waste collection vehicles or delivery vehicles to the various tenancies on site, contrary to Clause 65.01 of the Mildura Planning Scheme.

3. Time Frame

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application Received</td>
<td>23 November 2018</td>
</tr>
<tr>
<td>Further Information Request</td>
<td>4 December 2018</td>
</tr>
<tr>
<td>Application Referred</td>
<td>25 January 2019</td>
</tr>
<tr>
<td>Application Notified</td>
<td>31 January – 18 February 2019</td>
</tr>
<tr>
<td>Further Information Request (VicRoads)</td>
<td>22 February 2019</td>
</tr>
<tr>
<td>Mediation Meeting</td>
<td>5 March 2019</td>
</tr>
<tr>
<td>Planning Referral Committee Meeting</td>
<td>8 July 2019</td>
</tr>
<tr>
<td>Application Amended</td>
<td>7 August 2019</td>
</tr>
<tr>
<td>Amended Plans Notified</td>
<td>8 August 2019</td>
</tr>
<tr>
<td>Planning Referral Committee Meeting (to consider amended application)</td>
<td>9 September 2019</td>
</tr>
</tbody>
</table>
4. **Strategic Plan Links**

This report relates to the Community and Council Plan in the Key Result Area:

2.5 Strategic Land Use

Goal to be achieved:

- a well-developed long-term land use vision.

5. **Asset Management Policy/Plan Alignment**

This is not relevant to the subject application.

6. **Implications - Assessment of the Application**

**Policy**
The Planning Policy Framework (PPF), Local Planning Policy Framework (LPPF) and the Planning Scheme Revisions are discussed in the attached report.

**Legal/Statutory**
Council is required to determine the application pursuant to Section 61 of the Planning and Environment Act 1987. Council’s decision is subject to possible review by the Victorian Civil and Administrative Tribunal (VCAT).

**Financial**
All relevant fees have been paid. In the event of an application for review by VCAT, each party will be required to bear their own costs.

**Environmental**
As detailed in the Assessment of the Application

**Social**
As detailed in the Assessment of the Application

**Economic**
As detailed in the Assessment of the Application.

7. **Risk Assessment**

Council’s decision is subject to possible review by the Victorian Civil and Administrative Tribunal. In the event of an application for review by VCAT, each party will be required to bear their own costs.

8. **Conflicts of Interest**

No conflicts of interest were declared during the preparation of this report.

**Attachments**

1. Planning Delegation Report
2. Plans
3. Site Photos
Application Number
005.2018.00000385.001

Received Date
7 January 2019

Applicant
Roy Costa Planning & Development

Subject property (Parcel No/s 1496, 1500)
303 Deakin Avenue MILDURA, 305 Deakin Avenue MILDURA
(Lot: 1 Sec: 17 Blk: E TP: 738757L, Lot: 1 Sec: 17 Blk: E TP: 217576W)

Proposal
Building & works (drive-thru associated with a convenience restaurant) and alter access to
Road Zone Category 1

Zones/Overlays
<table>
<thead>
<tr>
<th>Commercial 1 Zone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Road Zone Category 1</td>
</tr>
<tr>
<td>Design &amp; Development Overlay Schedule 1</td>
</tr>
</tbody>
</table>

Relevant Provisions
Clause 15.01-1S Urban design
Clause 15.01-2S Building design
Clause 17.02-1S Business
Clause 21.08-3 Retail/Commercial
Clause 34.01 Commercial 1 zone
Clause 34.01-4 Buildings and Works
Clause 34.01-8 Decision Guidelines
Clause 43.02 Design and Development Overlay
Clause 43.02-1 Design Objectives
Clause 43.02-2 Buildings and Works
Clause 43.02-6 Decision Guidelines
Clause 52.06 Car Parking
Clause 52.06-1 Scope
Clause 52.06-2 Provision of car parking spaces
Clause 52.06-5 Number of car parking spaces required under Table 1
Clause 52.06-8 Requirement for a car parking plan
Clause 52.06-9 Design standards for car parking
Clause 52.06-10 Decision guidelines
Clause 52.06-11 Construction of car parking
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Clause 52.29  Land adjacent to a Road Zone Category 1, or a public acquisition overlay for a category 1 road.
Clause 52.29-1 Application
Clause 52.29-2 Permit required
Clause 52.29-6 Decision guidelines
Clause 65  Decision Guidelines
Clause 65.01 Approval of an Application or Plan
Clause 66  Referral and Notice Provisions

Permit Triggers
Clause 34.01-4 A permit is required to construct a building or construct or carry out works.
Clause 43.02-2 A permit is required to construct a building or construct or carry out works.
Clause 52.29-2 A permit is required to Create or alter access to a road in a Road Zone, Category 1.

Statutory Days
The application has been in progress 62 days (in Council’s hands)

Benchmark
Level 1

Subject site & locality
A site inspection was conducted on 3 December 2018.

The site contains:
- Two lots, 303A and 305 Deakin Avenue Mildura.
- Two existing buildings with multiple business owners, including a Subway franchise, pizza shop, and fish and chip shop.
- Angle parking on site for Subway (305 Deakin Avenue), where drive through is proposed.
- Parallel parking on-site parking for pizza and fish and chip shop, with informal parking to the rear.
- Skip bins located at the rear of the site along north-west boundary.
- Double-car width access from Deakin Avenue.
- Single-car width access from Fourteenth Street.

The locality contains:
- Deakin Avenue adjoining the south-east boundary of the site, a boulevard with two lanes of north-east bound traffic adjoining the access and several short-term 15 minute parallel car parking spaces.
- Fourteenth Street adjoining the south-west boundary of the site, a dual carriageway with a broken up median strip containing fencing. A bus zone runs from the north-west, boundary line to Havilah Court (approximately 50 metres long).
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- A traffic-light road intersection adjoining the south of the site, corner of Deakin Avenue and Fourteenth Street.
- A Seventh-Day Adventist church adjoining the north-east of the site.
- A Secondary School adjoining the south-east of the site, across Fourteenth Street.
- Dwellings to the north-west and South-east approximately 65 metres from the site.

DELWP aerial photographs 2018.

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Permit/Site History
There are no previous planning permits relating to this site.

Public Notification

The application has been advertised pursuant to Section 52 of the Planning and Environment Act 1987, by:

- Sending notices to the owners and occupiers of adjoining land.
- Placing a sign on site.

Council has received nine objections to date.
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Cultural Heritage Management Plan
A Cultural Heritage Management Plan was not required to be undertaken as the activity was exempt pursuant to Division 2 of the *Aboriginal Heritage Regulations 2018 No. 59.*

Consultation
Mediation was held on 5 March 2019. The following was raised at the mediation:

- Bins were being emptied during the day at busy times, new location of bins would increase risk of accident when loading/unloading. Cars will have to wait near bins.

- Coke order truck semi-truck cannot fit on site. Cannot empty oil with 5m car parking, hose is too short.

- Is the owner aware? They asked to see the plans when talking with one of the leases on site one day.

- Ten car parks will be lost, the rear is used for staff parking. 12-15 car parks being used per night, customers park on neighbouring church land.

- Safety of the adjoining roads, lots of school children and cars parked and moving through the area, bus routes, bicycle lanes. Child behaviour is unpredictable, regardless of right of way on crossover, increasing risk of accident. Traffic will bank up on Fourteenth Street, resulting in U-turns at Havilah Crescent, increasing risk of accident.

- Applicant agreed to complete a traffic safety audit as requested by VicRoads. Cleanaway are happy with the location of the bin enclosure, they have changed their mind about their objection. Signs will be placed on site to control vehicle behaviour and protect pedestrian right of way. No car parks are being lost and the access way through the site will be wider to allow two vehicles to pass each other going either direction.

No agreement was reached between the applicant and the objectors.

Planning Referral Committee was held on 8 July 2019 and the following questions were asked by the Panel on 15 July 2019:

- Is the Subway franchise expanding to utilise the entire building?

- How is access to the on-site carpark from the current shop at the rear of the Subway franchise going to be safely maintained for pedestrian traffic?
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- Given the proposed development is over two lots and all car parking is to be retained only on one lot, how will the two lots maintain access to car parking spaces should the lots no longer be in a single ownership?  
- Given the proposed car parking spaces are located in an area where the waste skips are stored, where are the waste skips to be relocated and will this location be affected should the sites no longer be in a single ownership?

- A plan demonstrating turning circles that any vehicle leaving the drive through can stand at the exit of the property without impeding traffic from entering the property.

Amended plans were received as part of the applicant’s response to the questions with an Application to Amend an Application for a Planning Permit received by Council on 7 August 2019. These plans were re-notified to all objectors on 8 August 2019. Planning Referral Committee letters for 9 September 2019 were sent out on 28 August 2019.

Conflict of Interest

No conflicts of interest were declared during the preparation of this report.

Referrals

External Referrals/Notices Required by the Planning Scheme:

<table>
<thead>
<tr>
<th>Referrals/Notice</th>
<th>Advice/Response/Conditions</th>
</tr>
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</table>
| Section 55 Referrals | VicRoads  
22 February 2019:  
An initial assessment has been made and pursuant to Section 55 (2) of the Planning and Environment Act 1987, further information is requested before the proposal can be properly considered and assessed by VicRoads.  
Accordingly, please request that the permit applicant provide the following additional information:  
Required Information under Section 55 of the Planning and Environment Act 1987  
1. The developer shall provide a road safety audit from a qualified audit team.  
The assessment will demonstrate how the intended vehicular movements to and from the Sturt highway and Fourteenth Street will not adversely impact on the current level of safety at the Sturt Highway and Fourteenth Street intersection.  
2. The RSA will consider mitigating road works to be undertaken by the developer prior to the commencement of any use.  
3. Council to provide VicRoads with a lapse date.  
Initial concerns regarding the proposal  
In addition, VicRoads wish to advise that an initial assessment of the proposal |
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<table>
<thead>
<tr>
<th>Issue</th>
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<tbody>
<tr>
<td>1. It is unclear what alterations are intended by the developer at the point of entrance to the Sturt Highway.</td>
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<tr>
<td>2. The impact to the existing level of safety at the signalised intersection are unknown by the expected increased turning movements into the subject land off Fourteenth Street.</td>
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<tr>
<td>3. It is unknown how traffic leaving the drive-thru will safely interact with other traffic entering off Sturt Highway and operating within the site.</td>
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</table>

In advising the permit applicant of the additional information, VicRoads would ask that Council include the issues raised above which, if not addressed, may compromise VicRoads ability to support the application.

Please advise the permit applicant that the application cannot proceed until this additional information is received.

VicRoads would ask Council to include a lapse date for the application in the request for additional information and provide a copy of that request for our file.

On receipt of the additional information, VicRoads will advise Council if it is acceptable and if so will respond to the referral within 28 days. If the information is not acceptable VicRoads will advise Council so that the application can be lapsed in accordance with section 54B.

If Council decides to determine the application without this additional information, this letter should be regarded as an objection to the issue of a planning permit in accordance with section 56(1)(c) for the reasons outlined above.

3 June 2019:  
(Superseded by June 4 2019 response)

4 June 2019:  
VicRoads has considered the application and in principle has no objection to the proposal, but would require that the following conditions be included in any Notice of Decision to issue a Planning Permit or Planning Permit:

1. No new point of access to the Sturt Highway from the subject land.

2. Prior to the development coming into use, amended plans must be submitted to and approved the Roads Corporation. When approved by the Roads Corporation, the plans may be endorsed by the Responsible Authority and will then form part of the permit. The plans must be drawn to scale with dimensions and copies must be provided. The plans must be annotated but not restricted to show:
   a. The existing Sturt Highway (Deakin Ave) vehicular crossover must be widened to minimum of 6.0 metres at the boundary of the subject land, and the edges shall be angled at 60 degrees to the road reserve boundary to facilitate the ingress and egress vehicles.
   b. Replacement of the taped edge line across the Subway frontage with a parallel edge line and install a turn arrow to create a left turn lane at the departure from the intersection into the subject site.
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| c. | Installation of a speed hump and Give Way sign at the departure from the drive-thru |
| d. | Install KEEP CLEAR markings in Fourteenth Street across the south east bound traffic lane, at the site driveway. |

3. Prior to the development coming into use, the developer must undertake the following mitigating road works to the satisfaction of the Responsible Authority, and at no cost to VicRoads:
    a. Widen the existing Sturt Highway (Deakin Ave) vehicular crossover to minimum width of 6.0 metres at the boundary of the subject land, and the edges shall be angled at 60 degrees to the road reserve boundary to facilitate the ingress and egress vehicles.
    b. Undertake line marking changes access the Sturt Highway frontage to replace the taped edge line with a parallel edge line and install a turn arrow to create a left turn lane at the departure from the intersection into the subject site.
    c. Install a speed hump and Give Way sign at the departure from the drive-thru
    d. Install KEEP CLEAR markings in Fourteenth Street across the south east bound traffic lane, at the site driveway to the satisfaction of, and at no cost to the Responsible Authority.

Section 52 Notices
Adjoining land owners and occupiers were notified and a sign was placed on site. Nine objections were received.

<table>
<thead>
<tr>
<th>Internal Council Referrals</th>
<th>Advice/Response/Conditions</th>
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<tbody>
<tr>
<td>Engineering</td>
<td>Requirements:</td>
</tr>
<tr>
<td></td>
<td>1. Prior to plans being endorsed, the following items must be addressed:</td>
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<tr>
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<td>- Deakin Avenue driveway must be widened to 6.00m</td>
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<td>- Fourteenth Street driveway must have a 1.50m splay constructed on the western side at the kerb to allow for easier left turn access to the site.</td>
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<td></td>
<td>- Fourteenth Street driveway must be shown as Entry Only. Sign and line marking must be shown to clearly demonstrate this.</td>
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<td></td>
<td>- Keep Clear area must be shown at the Fourteenth Street driveway from the boundary for 11.00m into the site to prevent drive through traffic queuing across the driveway access area.</td>
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<td>- Swept turning paths must be shown on all entry and exit points, including vehicles exiting from the drive through.</td>
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</tbody>
</table>
Assessment

34.01 Commercial 1 Zone

Purpose

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.

To provide for residential uses at densities complementary to the role and scale of the commercial centre.

Operation

A schedule may apply under this zone to a planning scheme outside of metropolitan Melbourne. That schedule may:
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- specify the maximum leasable floor area for office
- specify the maximum leasable floor area for shop (other than restricted retail premises).

34.01-4 Buildings and works

A permit is required to construct a building or construct or carry out works.

This does not apply to:

- The installation of an automatic teller machine.
- An alteration to an existing building façade provided:
  - The alteration does not include the installation of an external roller shutter.
  - At least 80 per cent of the building facade at ground floor level is maintained as an entry or window with clear glazing.
- An awning that projects over a road if it is authorised by the relevant public land manager.

An apartment development must meet the requirements of Clause 58.

34.01-8 Decision guidelines

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

General


The interface with adjoining zones, especially the relationship with residential areas.

Building and works

The movement of pedestrians and cyclists, and vehicles providing for supplies, waste removal, emergency services and public transport.

The provision of car parking.

The streetscape, including the conservation of buildings, the design of verandahs, access from the street front, protecting active frontages to pedestrian areas, the treatment of the fronts and
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backs of buildings and their appurtenances, illumination of buildings or their immediate spaces and the landscaping of land adjoining a road.

The storage of rubbish and materials for recycling.

Defining the responsibility for the maintenance of buildings, landscaping and paved areas.

Consideration of the overlooking and overshadowing as a result of building or works affecting adjoining land in a General Residential Zone, Neighbourhood Residential Zone, Residential Growth Zone or Township Zone.

The impact of overshadowing on existing rooftop solar energy facilities on dwellings on adjoining lots in a General Residential Zone, Mixed Use Zone, Neighbourhood Residential Zone, Residential Growth Zone or Township Zone.

The availability of and connection to services.

The design of buildings to provide for solar access.

The objectives, standards and decision guidelines of Clause 54 and Clause 55. This does not apply to an apartment development.

For an apartment development, the objectives, standards and decision guidelines of Clause 58.

Comment:

The site has an existing convenience restaurant use and the development of a drive-thru is seen to compliment the convenience of customers. The movement of pedestrians and cyclists will not be affected. Concern for loading the waste truck was raised including increased exposure to traffic moving through the site and possible blocking the clear movement of vehicle through the site. Due to the small scale of the site, vehicles currently traverse the site at very low speeds preventing any risk of accident. The drive-thru will be narrower than the current 45 degree line markings which cars use to park on site, providing space for two vehicles to pass by in opposite directions.

If the truck was to block this area, clear access is still possible from the Fourteenth Street Access to the rear car park. Concern was raised for a coke truck delivery, which would not fit on site if the proposal went ahead. This delivery truck can currently access the site and will not be restricted considering the additional widening of the access way by removing the ability for cars to park at a 45 degree angle along Subway’s north-eastern wall. Larger trucks entering the site will not be able to manoeuvre onsite to exit at a chosen access point but they are able to enter at one point and continue through the site to exit at the other point. 13 Car parks have been proposed as part of the application which will be discussed later in this report.
The location of rubbish bins along Subway's north-western wall will entail additional manual labour when unloading the bins to ensure efficient and clear vehicle movement onsite. The effect of the bins on the streetscape of Fourteenth Street will be minimised to one bin width but passing pedestrians and vehicles using the access point will be exposed to the foul odour. The pong will be endured for a short time as the space is transient.

The site does not adjoin a residential zone or any dwellings and will not cause overshadowing. The existing outside area will be re-sealed as part of the proposal with no landscaping proposed as part of this plan. Maintenance of the site will not be defined as the site has one owner with three businesses leasing part of the land. An arrangement between the landowner and the tenants regarding maintenance as part of their agreement is considered to respect any existing agreements the tenants may have and better provide for any future maintenance issues that may arise.

43.02 Design and Development Overlay

Purpose

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To identify areas which are affected by specific requirements relating to the design and built form of new development.

43.02-1 Design objectives

A schedule to this overlay must contain a statement of the design objectives to be achieved for the area affected by the schedule.

43.02-2 Buildings and works

Permit requirement

A permit is required to:

- Construct a building or construct or carry out works. This does not apply:
  - If a schedule to this overlay specifically states that a permit is not required.
  - To the construction of an outdoor swimming pool associated with a dwelling unless a specific requirement for this matter is specified in a schedule to this overlay.
  - Construct a fence if specified in a schedule to this overlay.
Buildings and works must be constructed in accordance with any requirements in a schedule to this overlay. A schedule may include requirements relating to:

- Building setbacks.
- Building height.
- Plot ratio.
- Landscaping.
- Any other requirements relating to the design or built form of new development.

A permit may be granted to construct a building or construct or carry out works which are not in accordance with any requirement in a schedule to this overlay, unless the schedule specifies otherwise.

43.02-6 Decision guidelines

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- The design objectives of the relevant schedule to this overlay.
- The provisions of any relevant policies and urban design guidelines
- Whether the bulk, location and appearance of any proposed buildings and works will be in keeping with the character and appearance of adjacent buildings, the streetscape or the area.
- Whether the design, form, layout, proportion and scale of any proposed buildings and works is compatible with the period, style, form, proportion, and scale of any identified heritage places surrounding the site.
- Whether any proposed landscaping or removal of vegetation will be in keeping with the character and appearance of adjacent buildings, the streetscape or the area.
- The layout and appearance of areas set aside for car parking, access and egress, loading and unloading and the location of any proposed off street car parking
- Whether subdivision will result in development which is not in keeping with the character and appearance of adjacent buildings, the streetscape or the area.
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- Any other matters specified in a schedule to this overlay.

Schedule 1 to the Design and Development Overlay
Deakin Avenue

1.0 Design objectives

To protect and enhance the high landscape quality and visual amenity of this major treelined boulevard.

To ensure that new development and extensions to existing development, improve the built form and character of the streetscape by the implementation of appropriate design and siting controls.

To maintain a strong planted landscaped form and appearance within the front setback areas of development abutting the avenue.

To protect and enhance those features of historic, architectural, cultural, natural or scientific interest given that they contribute significantly to the overall quality and amenity of Deakin Avenue.

To consolidate the planting along Deakin Avenue, and within the median strip, by appropriate new planting and replacement of existing trees, as required.

To guide appropriate development into each of the functional precincts along the avenue based on the role of each precinct.

To encourage appropriate forms of outdoor advertising signage which relate directly to the nature of the business carried on within the site and as part of an overall theme for Deakin Avenue.

To facilitate safe and easy pedestrian, cyclist and vehicular movements along and across Deakin Avenue.

2.0 Buildings and works

Permit requirement

A permit is not required for:

- Any buildings and works not visible from Deakin Avenue.
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- A single storey extension or alteration to an existing dwelling that does not increase the height of the dwelling.

- A subdivision that does not increase the number of lots.

A permit is required for:

- A fence of any height within three (3) metres of the front boundary.

The preferred maximum building height is 2 storeys, excepting on land included in a Commercial 1 Zone.

4.0 Decision guidelines

Before deciding on an application, the responsible authority must consider, as appropriate:

- whether the proposal meets the stated design objectives;

- the heritage qualities of the boulevard;

- whether there is likely to be any adverse overshadowing impacts on the landscaped median from any development;

- the access and safety requirements of pedestrians and cyclists.

Comment:

Schedule 1 to the Design and Development Overlay relate to the landscape of Deakin Avenue. The proposal does not increase or decrease the aesthetic appeal of the Deakin Avenue landscape; replacing an area that is currently used for parking cars with an area for idling cars yields a like appearance.

A road safety audit was provided by the applicant at the request of VicRoads. The report recommends widening of the Deakin Avenue Crossover and providing a dedicated left-turning lane from Deakin Avenue onto the site to provide for safer movement of vehicles. Cyclists and pedestrians passing the site along Deakin Avenue will be further protected by the ‘Give Way’ sign proposed onsite at the exit onto Deakin Avenue, reinforcing the need for vehicles to provide right of way.

The proposed buildings and works are minor when considering the scale of the development in comparison to the existing buildings on the site. The location of the proposed car parks are largely located at the rear of both Deakin Avenue and Fourteenth Street frontages, reducing an unsightly element from the road and highlighting the building frontages and site access instead.
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The State Planning Policy Framework (SPPF)

15.01-1S Urban design

Objective

To create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity.

Strategies

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 development supports public realm amenity and safe access to walking and cycling environments and public transport.

Ensure that the design and location of publicly accessible private spaces, including car parking areas, forecourts and walkways, is of a high standard, creates a safe environment for users and enables easy and efficient use.

Ensure that development provides landscaping that supports the amenity, attractiveness and safety of the public realm.

Ensure that development, including signs, minimises detrimental impacts on amenity, on the natural and built environment and on the safety and efficiency of roads.

Promote good urban design along and abutting transport corridors.

Comment:

The proposed drive-thru facilitates accessibility and inclusiveness by providing an option to purchase fast food from the comfort of their vehicles. The presence of customers in their vehicle with a forward view to Deakin Avenue increases passive surveillance of the boulevard in addition to the rear carpark. The location of the car parking at the rear corner of the site allow for safe entering and exiting of vehicle, out of the way of any through traffic on site or trucks.
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The site has two options for entering and exiting which provides greater flexibility for vehicle movement, especially when considering the wider access way afforded by the proposal. Landscaping has not been proposed as part of the application and is not considered necessary as the existing shopfront buildings are located right on the boundary line with the remaining area sealed to facilitate safe vehicle movement and clear views of passing pedestrians.

15.01-2S Building design

Objective

To achieve building design outcomes that contribute positively to the local context and enhance the public realm.

Strategies

Require a comprehensive site analysis as the starting point of the design process.

Ensure the site analysis provides the basis for the consideration of height, scale and massing of new development.

Ensure development responds and contributes to the strategic and cultural context of its location.

Minimise the detrimental impact of development on neighbouring properties, the public realm and the natural environment.

Ensure the form, scale, and appearance of development enhances the function and amenity of the public realm.

Ensure buildings and their interface with the public realm support personal safety, perceptions of safety and property security.

Ensure development is designed to protect and enhance valued landmarks, views and vistas.

Ensure development provides safe access and egress for pedestrians, cyclists and vehicles.

Ensure development provides landscaping that responds to its site context, enhances the built form and creates safe and attractive spaces.

Encourage development to retain existing vegetation.

Comment:
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The proposal will include a re-sealing of the outside surface and traffic control measures, increasing the perception of personal safety along with the passive surveillance of vehicles using the drive-thru. Other measures specified in the road safety audit will add to site access safety, including cyclists and pedestrians. No landscaping is proposed as the only space along the front boundaries are occupied by buildings or the vehicle access way.

The Local Planning Policy Framework (LPPF) - including the Municipal Strategic Statement (MSS) and local planning policies

21.08-3 Retail/Commercial

Overview

There is an established retail hierarchy in the municipality. Residents and visitors are served by three existing major retail concentrations, namely the Mildura CBD, City Gate Activity Centre and the Fifteenth Street Precinct. The Mildura CBD is the primary activity centre, encompassing retail, commercial, financial, community service, recreation and entertainment uses. City Gate Activity Centre is an important sub regional retail centre. The Fifteenth Street Precinct provides or bulky goods restricted retailing and trade supplies use.

In addition to these major retail concentrations, retailing needs of the population are served by small town centres at Irymple, Merbein, Red Cliffs, Ouyen and a range of small neighbourhood centres and local shops.

The Review of the Mildura Retail Strategy 2000 identified that by 2021 it is anticipated that an amount of 35,280 – 58,070 square metres of additional retail floorspace could be sustained in Mildura.

The Mildura Retail Strategy 2010 states that within the Study Area (the urban area of Mildura and the nearby towns of Merbein, Irymple and Red Cliffs), there was a total of approximately 151,200 square metres of retail floorspace at February 2010. The retail strategy states that to 2025, potential exists for in the order of 46,000 to 67,000 square metres of additional retail development in the study area. This development potential provides support for the following:

- Redevelopment of key CBD sites containing anchor tenants, with the potential to increase retail floorspace as part of these redevelopments.
- Consolidation of the sub-regional role currently being performed in the City Gate Activity Centre.
- Consolidation of the homemaker precinct in Fifteenth Street.
- Potential development of a town centre in Irymple.
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- Potential future development of neighbourhood centre facilities in the Mildura South growth area.

The 2006 Mildura-lyrmele Interface Study final report identifies land abutting Fifteenth Street between Benetook Avenue and Cowra Avenue as the preferred location for restricted retail expansion. This recommendation is supported by the 2006 Industrial Land Strategy Update.

**Objective 3**

To achieve balanced and sustainable retailing facilities that serve the needs of, and are accessible to, residents and visitors.

**Strategies**

**Strategy 3.1** Provide adequate retail capacity in anticipation for future growth in accordance with the Mildura Retail Strategy 2010.

**Strategy 3.2** Sustain the Mildura CBD as the primary activity centre, encompassing strong retail, commercial, financial, community service, recreation and entertainment components.

**Strategy 3.3** Support the sub-regional retailing role of the existing and proposed expanded retail concentration in the vicinity of the City Gate Activity Centre, which complements the function of the Mildura CBD, and its development in accordance with the Fifteenth & Deakin Structure Plan (July 2012), including urban design guidelines.

**Strategy 3.4** Discourage expansion of the Mildura Centre Plaza beyond 21,000sq. m. leasable floor area for shop.

**Strategy 3.5** Support the Fifteenth Street Precinct as a bulky goods location in accordance with the Fifteenth & Deakin Structure Plan (July 2012).

**Strategy 3.6** Manage the use and development of land along Fifteenth Street in accordance with the Fifteenth & Deakin Structure Plan (July 2012).

**Strategy 3.7** Ensure that commercial development along Fifteenth Street between Benetook Avenue and Cowra Avenue is consistent with adopted urban design guidelines for the area.

**Strategy 3.8** Ensure that commercial development in Iyrmple is consistent with the Iyrmple Structure Plan (July 2012), including site specific urban design guidelines for key sites.
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Strategy 3.9 Support further commercial development within the existing commercial areas in Irymple, Merbein, Red Cliffs and Ouyen.

Strategy 3.10 Support the development of local neighbourhood stores rather than new centres to serve the local retail needs of future residential development areas in Mildura.

Comment:
There is no local direction for commercial developments at the proposed site.

Relevant Particular Provisions

52.06 Car Parking

Purpose

To ensure that car parking is provided in accordance with the Municipal Planning Strategy and the Planning Policy Framework.

To ensure the provision of an appropriate number of car parking spaces having regard to the demand likely to be generated, the activities on the land and the nature of the locality.

To support sustainable transport alternatives to the motor car.

To promote the efficient use of car parking spaces through the consolidation of car parking facilities.

To ensure that car parking does not adversely affect the amenity of the locality.

To ensure that the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use.

52.06-1 Scope

Clause 52.06 applies to:

- a new use; or

- an increase in the floor area or site area of an existing use; or
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- an increase to an existing use by the measure specified in Column C of Table 1 in Clause 52.06-5 for that use.

Clause 52.06 does not apply to:

- the extension of one dwelling on a lot in the Neighbourhood Residential Zone, General Residential Zone, Residential Growth Zone, Mixed Use Zone or Township Zone; or

- the construction and use of one dwelling on a lot in the Neighbourhood Residential Zone, General Residential Zone, Residential Growth Zone, Mixed Use Zone or Township Zone unless the zone or a schedule to the zone specifies that a permit is required to construct or extend one dwelling on a lot.

52.06-2 Provision of car parking spaces

Before:

- a new use commences; or

- the floor area or site area of an existing use is increased; or

- an existing use is increased by the measure specified in Column C of Table 1 in Clause 52.06-5 for that use, the number of car parking spaces required under Clause 52.06-5 or in a schedule to the Parking Overlay must be provided to the satisfaction of the responsible authority in one or more of the following ways:

  - on the land; or

  - in accordance with a permit issued under Clause 52.06-3; or

  - in accordance with a financial contribution requirement specified in a schedule to the Parking Overlay.

If a schedule to the Parking Overlay specifies a maximum parking provision, the maximum provision must not be exceeded except in accordance with a permit issued under Clause 52.06-3.

52.06-5 Number of car parking spaces required under Table 1

Table 1 of this clause sets out the car parking requirement that applies to a use listed in the Table.

A car parking requirement in Table 1 may be calculated as either:
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- a number of car parking spaces; or

- a percentage of the total site area that must be set aside for car parking.

A car parking requirement in Table 1 is calculated by multiplying the figure in Column A or Column B (whichever applies) by the measure (for example square metres, number of patrons or number of bedrooms) in Column C.

Column A applies unless Column B applies.

Column B applies if:

- any part of the land is identified as being within the Principal Public Transport Network Area as shown on the Principal Public Transport Network Area Maps (State Government of Victoria, 2018); or

- a schedule to the Parking Overlay or another provision of the planning scheme specifies that Column B applies.

Where an existing use is increased by the measure specified in Column C of Table 1 for that use, the car parking requirement only applies to the increase, provided the existing number of car parking spaces currently being provided in connection with the existing use is not reduced.

If in calculating the number of car parking spaces the result is not a whole number, the required number of car parking spaces is to be rounded down to the nearest whole number.

Where the car parking requirement specified in Table 1 is calculated as a percentage of the total site area, the area to be provided for car parking includes an accessway that directly abuts any car parking spaces, but does not include any accessway or portion of an accessway that does not directly abut any car parking spaces.

The car parking requirement specified in Table 1 includes disabled car parking spaces. The proportion of spaces to be allocated as disabled spaces must be in accordance with Australian Standard AS2890.6-2009 (disabled) and the Building Code of Australia.

The car parking requirement specified for a use listed in Table 1 does not apply if:

- a car parking requirement for the use is specified under another provision of the planning scheme; or

- a schedule to the Parking Overlay specifies the number of car parking spaces required for the use.
Table 1: Car parking requirement

<table>
<thead>
<tr>
<th>Use</th>
<th>Rate Column A</th>
<th>Rate Column B</th>
<th>Car Parking Measure Column C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convenience restaurant</td>
<td>0.3</td>
<td>3.5</td>
<td>To each patron permitted</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>To each 100 sq m of leasable floor area</td>
</tr>
</tbody>
</table>

52.06-8 Requirement for a car parking plan

Plans must be prepared to the satisfaction of the responsible authority before any of the following occurs:

- a new use commences; or
- the floor area or site area of an existing use is increased; or
- an existing use is increased by the measure specified in Column C of Table 1 in Clause 52.06-5 for that use.

The plans must show, as appropriate:

- All car parking spaces that are proposed to be provided (whether on the land or on other land).
- Access lanes, driveways and associated works.
- Allocation of car parking spaces to different uses or tenancies, if applicable.
- Any landscaping and water sensitive urban design treatments.
- Finished levels, if required by the responsible authority.
- Any other matter specified in a schedule to the Parking Overlay. Plans must be provided to the responsible authority under Clause 52.06-8 wherever Clause 52.06 applies, whether or not a permit application is being made under Clause 52.06-3 or any other provision of the planning scheme.

Where an application is being made for a permit under Clause 52.06-3 or another provision of the planning scheme, the information required under Clause 52.06-8 may be included in other plans submitted with the application.

Clause 52.06-8 does not apply where no car parking spaces are proposed to be provided.
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52.06-9 Design standards for car parking

Plans prepared in accordance with Clause 52.06-8 must meet the design standards of Clause 52.06-9, unless the responsible authority agrees otherwise. Design standards 1, 3, 6 and 7 do not apply to an application to construct one dwelling on a lot.

Design standard 1 – Accessways

Accessways must:

- Be at least 3 metres wide.

- Have an internal radius of at least 4 metres at changes of direction or intersection or be at least 4.2 metres wide.

- Allow vehicles parked in the last space of a dead-end accessway in public car parks to exit in a forward direction with one manoeuvre.

- Provide at least 2.1 metres headroom beneath overhead obstructions, calculated for a vehicle with a wheel base of 2.8 metres.

- If the accessway serves four or more car spaces or connects to a road in a Road Zone, the accessway must be designed so that cars can exit the site in a forward direction.

- Provide a passing area at the entrance at least 6.1 metres wide and 7 metres long if the accessway serves ten or more car parking spaces and is either more than 50 metres long or connects to a road in a Road Zone.

- Have a corner splay or area at least 50 per cent clear of visual obstructions extending at least 2 metres along the frontage road from the edge of an exit lane and 2.5 metres along the exit lane from the frontage, to provide a clear view of pedestrians on the footpath of the frontage road. The area clear of visual obstructions may include an adjacent entry or exit lane where more than one lane is provided, or adjacent landscaped areas, provided the landscaping in those areas is less than 900mm in height.

If an accessway to four or more car parking spaces is from land in a Road Zone, the access to the car spaces must be at least 6 metres from the road carriageway.

If entry to the car space is from a road, the width of the accessway may include the road.

Design standard 2 – Car parking spaces

Car parking spaces and accessways must have the minimum dimensions as outlined in Table 2.
Table 2: Minimum dimensions of car parking spaces and accessways

<table>
<thead>
<tr>
<th>Angle of car parking spaces to accessway</th>
<th>Accessway width</th>
<th>Car space width</th>
<th>Car space length</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parallel</td>
<td>3.6m</td>
<td>2.3m</td>
<td>6.7m</td>
</tr>
<tr>
<td>45°</td>
<td>3.5m</td>
<td>2.6m</td>
<td>4.9m</td>
</tr>
<tr>
<td>60°</td>
<td>4.9m</td>
<td>2.6</td>
<td>4.9m</td>
</tr>
<tr>
<td>90°</td>
<td>6.4m 5.8m 5.2m 4.8m</td>
<td>2.6m 2.8m 3.0m 3.2m</td>
<td>4.9m 4.9m 4.9m 4.9m</td>
</tr>
</tbody>
</table>

Note to Table 2: Some dimensions in Table 2 vary from those shown in the Australian Standard AS2890.1-2004 (off street). The dimensions shown in Table 2 allocate more space to aisle widths and less to marked spaces to provide improved operation and access. The dimensions in Table 2 are to be used in preference to the Australian Standard AS2890.1-2004 (off street) except for disabled spaces which must achieve Australian Standard AS2890.6-2009 (disabled).

A wall, fence, column, tree, tree guard or any other structure that abuts a car space must not encroach into the area marked ‘clearance required’ on Diagram 1, other than:

- A column, tree or tree guard, which may project into a space if it is within the area marked ‘tree or column permitted’ on Diagram 1.

- A structure, which may project into the space if it is at least 2.1 metres above the space.

Diagram 1 Clearance to car parking spaces
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Car spaces in garages or carports must be at least 6 metres long and 3.5 metres wide for a single space and 5.5 metres wide for a double space measured inside the garage or carport.

Where parking spaces are provided in tandem (one space behind the other) an additional 500 mm in length must be provided between each space.

Where two or more car parking spaces are provided for a dwelling, at least one space must be under cover.

Disabled car parking spaces must be designed in accordance with Australian Standard AS2890.6-2009 (disabled) and the Building Code of Australia. Disabled car parking spaces may encroach into an accessway width specified in Table 2 by 500mm.

Design standard 3: Gradients

Accessway grades must not be steeper than 1:10 (10 per cent) within 5 metres of the frontage to ensure safety for pedestrians and vehicles. The design must have regard to the wheelbase of the vehicle being designed for; pedestrian and vehicular traffic volumes; the nature of the car park; and the slope and configuration of the vehicle crossover at the site frontage. This does not apply to accessways serving three dwellings or less.

Ramps (except within 5 metres of the frontage) must have the maximum grades as outlined in Table 3 and be designed for vehicles travelling in a forward direction.

Table 3: Ramp gradients

<table>
<thead>
<tr>
<th>Type of car park</th>
<th>Length of ramp</th>
<th>Maximum grade</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public car parks</td>
<td>20 metres or less</td>
<td>1:5 (20%)</td>
</tr>
<tr>
<td></td>
<td>longer than 20 metres</td>
<td>1:6 (16.7%)</td>
</tr>
<tr>
<td>Private or residential car parks</td>
<td>20 metres or less</td>
<td>1:4 (25%)</td>
</tr>
<tr>
<td></td>
<td>longer than 20 metres</td>
<td>1:5 (20%)</td>
</tr>
</tbody>
</table>

Where the difference in grade between two sections of ramp or floor is greater that 1:8 (12.5 per cent) for a summit grade change, or greater than 1:6.7 (15 per cent) for a sag grade change, the ramp must include a transition section of at least 2 metres to prevent vehicles scraping or bottoming.

Plans must include an assessment of grade changes of greater than 1:5.6 (18 per cent) or less than 3 metres apart for clearances, to the satisfaction of the responsible authority.

Design standard 4: Mechanical parking

Mechanical parking may be used to meet the car parking requirement provided:
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- At least 25 per cent of the mechanical car parking spaces can accommodate a vehicle height of at least 1.8 metres.

- Car parking spaces that require the operation of the system are not allocated to visitors unless used in a valet parking situation.

- The design and operation is to the satisfaction of the responsible authority.

**Design standard 5: Urban design**

Ground level car parking, garage doors and accessways must not visually dominate public space.

Car parking within buildings (including visible portions of partly submerged basements) must be screened or obscured where possible, including through the use of occupied tenancies, landscaping, architectural treatments and artworks.

Design of car parks must take into account their use as entry points to the site.

Design of new internal streets in developments must maximise on street parking opportunities.

**Design standard 6: Safety**

Car parking must be well lit and clearly signed.

The design of car parks must maximise natural surveillance and pedestrian visibility from adjacent buildings.

Pedestrian access to car parking areas from the street must be convenient.

Pedestrian routes through car parking areas and building entries and other destination points must be clearly marked and separated from traffic in high activity parking areas.

**Design standard 7: Landscaping**

The layout of car parking areas must provide for water sensitive urban design treatment and landscaping.

Landscaping and trees must be planted to provide shade and shelter, soften the appearance of ground level car parking and aid in the clear identification of pedestrian paths.

Ground level car parking spaces must include trees planted with flush grilles. Spacing of trees must be determined having regard to the expected size of the selected species at maturity.
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52.06-10 Decision guidelines

Before deciding that a plan prepared under Clause 52.06-8 is satisfactory the responsible authority must consider, as appropriate:

- The role and function of nearby roads and the ease and safety with which vehicles gain access to the site.
- The ease and safety with which vehicles access and circulate within the parking area.
- The provision for pedestrian movement within and around the parking area.
- The provision of parking facilities for cyclists and disabled people.
- The protection and enhancement of the streetscape.
- The provisions of landscaping for screening and shade.
- The measures proposed to enhance the security of people using the parking area particularly at night.
- The amenity of the locality and any increased noise or disturbance to dwellings and the amenity of pedestrians.
- The workability and allocation of spaces of any mechanical parking arrangement.
- The design and construction standards proposed for paving, drainage, line marking, signage, lighting and other relevant matters.
- The type and size of vehicle likely to use the parking area.
- Whether the layout of car parking spaces and access lanes is consistent with the specific standards or an appropriate variation.
- The need for the required car parking spaces to adjoin the premises used by the occupier/s, if the land is used by more than one occupier.
- Whether the layout of car spaces and accessways are consistent with Australian Standards AS2890.1-2004 (off street) and AS2890.6-2009 (disabled).
- The relevant standards of Clauses 56.06-2, 56.06-4, 56.06-5, 56.06-7 and 56.06-8 for residential developments with accessways longer than 60 metres or serving 16 or more dwellings.
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• Any other matter specified in a schedule to the Parking Overlay.

52.06-11 Construction of car parking

Where a plan is required under Clause 52.06-8, the car parking spaces, access lanes, driveways and associated works and landscaping shown on the plan must be:

• constructed and available for use in accordance with the plan approved by the responsible authority; and

• formed to such levels and drained so that they can be used in accordance with the plan; and

• treated with an all-weather seal or some other durable surface; and

• line-marked or provided with some other adequate means of showing the car parking spaces,

before any of the following occurs:

• the new use commences; or

• the floor area or site area of the existing use is increased; or

• the existing use is increased by the measure specified in Column C of Table 1 in Clause 52.06-5 for that use.

Comment:

No car parks are required as the proposal does not increase the leasable floor area or number of patrons, however 13 car parks have been proposed. The drive-thru will provide a take-away service for existing customers rather than accommodating them to eat onsite with additional seating. The location of the proposed car parks are located at the rear northern corner and two along the south-western wall of the current fish and chip shop.

Cars can enter and exit the site via the Deakin Avenue access point although it is questionable as to whether two cars can easily pass each other at the existing somewhat narrow crossover. VicRoads requires conditions on any permit issued by Council widen the crossover and install a left-turning lane to provide safe and easy access for cars from Deakin Avenue.

Cars can also enter and exit from Fourteenth Street where the crossover is clearly too narrow to fit two vehicles passing each other. Widening this crossover is not possible due to the site boundary on one side and the power pole on the other side. Cars desiring to use the proposed drive-thru would prefer this access point as it is the closest to the start of the drive-thru, requiring minimal manoeuvring on site. If a car is idling at the Fourteenth Street crossover
looking for clear traffic to exit, cars cannot enter the site. The proposal would increase the use of this crossover and is likely to contribute to occasional traffic slowing and jams along Fourteenth Street. This will primarily be when a bus will be occupying the bus zone and there is no option to wait in this zone for left-turning onto the site or to overtake through the zone past vehicles right-turning onto the site. During these times many vehicles will be uncomfortable to hold up traffic and will opt to enter from Deakin Avenue or perform a U-turn on Fourteenth Street to prevent a traffic jam. Busy times will include when school ends and outside of regular works hours. Considering both cases, the highest demand for drive-thru vehicles and the presence of buses will not clash, minimising the potential for jams and preventing major jams that may spill onto the Deakin Avenue intersection.

Due to the physical constraints of the site, it is not practicable to locate additional car parks on site; the maximum number of car parks possible have been proposed to accommodate on-site car parking. The proposal is considered orderly as it makes use of existing access points to provide a clear access way through the site without the need to reverse, whilst adding additional space to the access way to allow two-way internal traffic.

52.29 Land adjacent to a Road Zone Category 1, or a public acquisition overlay for a category 1 road.

Purpose

To ensure appropriate access to identified roads.

To ensure appropriate subdivision of land adjacent to identified roads.

52.29-1 Application

This clause applies to land adjacent to a Road Zone, Category 1, or a Public Acquisition Overlay if the purpose of acquisition is for a Category 1 road.

52.29-2 Permit requirement

A permit is required to:

- Create or alter access to:
  - A road in a Road Zone, Category 1.
  - Land in a Public Acquisition Overlay if the purpose of acquisition is for a Category 1 road.

- Subdivide land adjacent to:
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- A road in a Road Zone, Category 1.
- Land in a Public Acquisition Overlay if the purpose of acquisition is for a Category 1 road.

52.29-6 Decision guidelines

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider:

- The views of the relevant road authority.
- The effect of the proposal on the operation of the road and on public safety.
- Any policy made by the relevant road authority pursuant to Schedule 2, Clause 3 of the Road Management Act 2004 regarding access between a controlled access road and adjacent land.

Comment:

VicRoads were referred to under Section 55 of the Planning and Environment Act 1987. They requested a road safety audit which was provided by the applicant and forwarded to VicRoads for comment. VicRoads did not object subject to conditions, which will be placed on any permit issued by Council. Concern was raised regarding the narrow length of the Deakin Avenue crossover and the likelihood of vehicle exiting the site diagonally to block the access point to the site. VicRoads have required this crossover to be widened and a left-turning lane to be installed to facilitate safe access from Deakin Avenue onto the site.

65 Decision Guidelines

Because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this clause.

65.01 Approval of an Application or Plan

Before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate:

- The matters set out in section 60 of the Act.
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- The purpose of the zone, overlay or other provision.
- Any matter required to be considered in the zone, overlay or other provision.
- The orderly planning of the area.
- The effect on the amenity of the area.
- The proximity of the land to any public land.
- Factors likely to cause or contribute to land degradation, salinity or reduce water quality.
- Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.
- The extent and character of native vegetation and the likelihood of its destruction.
- Whether native vegetation is to be or can be protected, planted or allowed to regenerate.
- The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.
- The adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts.

Comment:

The proposal is considered to create a vibrant transaction option for fast food customers of the community by providing a drive-thru on a re-sealed surface which increases the activity and appearance of the outside space. The proposal is considered orderly as it makes use of existing access points to provide a clear access way through the site without the need to reverse, whilst adding additional space to the access way to allow two-way internal traffic. The proposal will not significantly affect the amenity of the area, due to their small-scale compared with the existing buildings.

Road safety impacts that have not already been addressed include 'KEEP CLEAR' road painting on the road at the Fourteenth Street crossover to prevent traffic stopped at the red lights from queuing over the access point. Additional onsite traffic control measure such as 'NO STANDING' at the Fourteenth Street access point may be considered to prevent the drive-thru queue from blocking vehicle movement through the site.
Other relevant adopted State policies/strategies – (e.g. Melbourne 2030.)
There are no relevant State policies or strategies relating to this site.

Relevant incorporated or reference documents
There are no relevant incorporated or reference documents relating to this proposal.

Relevant Planning Scheme amendments
There are no Planning Scheme amendments relating to this site.

Summary of Key Issues
- Fourteenth Street Access point
- Onsite truck movement

Conclusion
To grant a Planning Permit.

Increased use of the Fourteenth Street access point will be accompanied by line marking of prevent the blocking of the access point. The use of the drive-thru will not cause a significant decrease in the safety of Fourteenth Street traffic. Trucks can safely move through and unload onsite without blocking access despite being more inconvenient.

Recommendation

Notice of Decision to Grant a Permit
That Council having caused notice of Planning Application No. 005.2018.00000385.001 to be given under Section 52 of the Planning and Environment Act 1987 and having considered all the matters required under Section 60 of the Planning and Environment Act 1987 decides to Grant a Notice of Decision to Grant a Permit under the provisions of Clause 34.01-4, Clause 43.02-2 and Clause 52.29-2 of the Mildura Planning Scheme in respect of the land known and described as 303-305 Deakin Avenue Mildura, for the Building & works (drive-thru associated with a convenience restaurant) and alter access to Road Zone Category 1 in accordance with the endorsed plans, with the application dated 23 November 2018, subject to the following conditions:
Addendum to Delegation Report
Planning Referral Committee Recommendation and Assessment

The Planning Referral Committee (Committee) have considered the application at two meetings; being 8 July and 9 September 2019. At the 8 July meeting, the Committee requested further information from the applicant with regard to vehicular movements, pedestrian safety, confirmation that the whole of the building would be used for the subway tenancy and potential conflicts if the existing lots were in separate ownership. This information was provided by the applicant on 30 July 2019.

At the Committee meeting of 9 September, the Committee unanimously voted to recommend refusal of the application to Council. While there is overlap between the Committee’s considerations and the matters assessed within the delegation report, the Committee has weighed the required matters differently and concluded that the proposal does not achieve an acceptable outcome, as required by Clause 71.02-3 of the Mildura Planning Scheme.

These considerations are discussed below.

Clause 34.01 - Commercial 1 Zone

Purpose

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.

To provide for residential uses at densities complementary to the role and scale of the commercial centre.

34.01-8 Decision guidelines

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

General


- The interface with adjoining zones, especially the relationship with residential areas.

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- The movement of pedestrians and cyclists, and vehicles providing for supplies, waste removal, emergency services and public transport.

- The provision of car parking.

- The streetscape, including the conservation of buildings, the design of verandahs, access from the street front, protecting active frontages to pedestrian areas, the treatment of the fronts and backs of buildings and their appurtenances, illumination of buildings or their immediate spaces and the landscaping of land adjoining a road.

- The storage of rubbish and materials for recycling.

- Defining the responsibility for the maintenance of buildings, landscaping and paved areas.

Comment:

The subject land is currently improved by multiple buildings, containing Subway, Pinno’s Pizza and Coral Sea Fish and Chips. The current site layout contains a number of shared services between the tenancies; such as car parking, internal access lanes and provision of waste receptacles.

The proposal would result in the removal of the row of angle car parking abutting the subway tenancy and installation of a drive-through facility, with vehicular traffic traversing in a north west-south east direction towards Deakin Avenue. A copy of the existing and proposed site plan is below:

![Existing site plan. Source: Application documents](image_url)
It is evident from the existing site plan that, while facilities are shared, car parking facilities are easy to use and access, minimal risk of traffic conflict exists and ample space is provided to the rear of the Pizza and Fish and Chip shop for waste collection and deliveries.

The proposed site plan however significantly increases the potential for conflict on a number of fronts; largely stemming from the orientation of the drive-through facility (i.e. entry to the drive through from the north-west of the site). This layout poses real difficulties for vehicles entering from Deakin Avenue.
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A vehicle entering the site from this direction intending to use the drive through would be required to negotiate oncoming traffic exiting the drive through and the parked vehicles in space 1 and 2. The vehicle would then need to proceed to the wrong side of the access lane in order to manoeuvre into the drive through lane, or attempt a multi-point turn against traffic flowing in the other direction to enter. In the event of the drive through lane being full, there is no prospect of the vehicle safely standing on the access lane or elsewhere to wait for traffic to clear. Similarly, there are no waiting bays for vehicles in the drive through lane to park while waiting for their order to be prepared. With a maximum capacity of only 4 vehicles, the likely waiting time for a Subway meal to be prepared (optimistically in the realm of 3-4 minutes for an order) and no prospect of a vehicle safely queuing behind the vehicle ordering, it is highly probable that the drive through lane would experience queuing issues internally and potentially onto Deakin Avenue and Fourteenth Street.

Notwithstanding the above, the proposed site layout poses significant challenges for delivery vehicles, including waste collection vehicles to service the site safely. As the site currently stands, such vehicles can enter the site, unload or collect waste safely while allowing traffic to pass, and exit the site in a forward direction. As proposed, a waste collection vehicle would need to park in the aisle labelled ‘car parking’ and manually handle a number of commercial bins, blocking access to almost all car parking spaces for a period of time. Such vehicle would need to reverse into the access lane and try to exit in a forward direction; most likely via Deakin Avenue, as the swing of the truck required to exit via Fourteenth Street would pose a safety hazard. A similar situation would eventuate with delivery trucks to the respective tenancies.

Clause 18.02.4S of the Planning Policy Framework provides that car parking areas should Enable easy and efficient use and enable the movement and delivery of goods. For the reasons discussed above, the proposal inhibits the ability of vehicles and delivery vehicles to safely move around the site and deliver goods, contrary to this Clause. Similarly, the proposed access arrangements do not achieve an orderly planning outcome and do not meet the relevant purpose and decision guidelines of the Commercial 1 Zone.

Clause 52.29 - Land adjacent to a Road Zone Category 1, or a public acquisitionoverlay for a category 1 road.

Purpose

- To ensure appropriate access to identified roads.
- To ensure appropriate subdivision of land adjacent to identified roads.

52.29-6 Decision guidelines

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider:
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- The views of the relevant road authority.

- The effect of the proposal on the operation of the road and on public safety.

- Any policy made by the relevant road authority pursuant to Schedule 2, Clause 3 of the Road Management Act 2004 regarding access between a controlled access road and adjacent land.

Comment:

While it is noted that VicRoads have not objected to the proposed access arrangements, Council must be independently satisfied that the access arrangements to the road network are acceptable. Due to the potential for queuing and traffic conflicts within the site, there is a real risk that vehicles could bank up from the site into Deakin Avenue and Fourteenth Street. The site is located at a busy intersection, proximate to a number of schools with associated vehicular and pedestrian traffic. Particular concentration is required at the intersection as it stands. The proposed access arrangements would exacerbate the risk to road users, including pedestrians that are not considered to be offset by the proposed crossover works.

Further, it is observed that the Road Safety Audit provided by the applicant fails to take into account any traffic counts of Deakin Avenue or Fourteenth Street, or assess the current or future volume and location of vehicle movements into and out of the site. Such information should reasonably be expected to support an application where there are real concerns regarding traffic arrangements on the site.

65 Decision Guidelines

Because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this clause.

65.01 Approval of an Application or Plan

Before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate:

- The matters set out in section 60 of the Act.


- The purpose of the zone, overlay or other provision.

- Any matter required to be considered in the zone, overlay or other provision.
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- The orderly planning of the area.
- The effect on the amenity of the area.
- The proximity of the land to any public land.
- Factors likely to cause or contribute to land degradation, salinity or reduce water quality.
- Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.
- The extent and character of native vegetation and the likelihood of its destruction.
- Whether native vegetation is to be or can be protected, planted or allowed to regenerate.
- The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.
- The adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts.

Comment:

While the proposal is not without merit, the Committee considers that there are unresolved problems with the proposed layout which are fatal to the grant of a Permit. All users of the site should reasonably expect to have safe, efficient access to the various shops on the land. For the reasons discussed, the Committee considers that the application would result in an unsafe and disorderly planning outcome, and therefore should not be supported in its current form.

Recommendation

Notice of Decision to Refuse to Grant a Permit

That Council, having caused notice of Planning Application 005.2016.00000385.001 to be given under Section 52 of the Planning and Environment Act 1987, and having considered all the relevant matters under Section 60 of the Planning and Environment Act 1987, determines to issue a Notice of Decision to Refuse to Grant a Permit in respect of the land known and described as 303-305 Deakin Avenue, Mildura; being Lot 1 TP738757L and Lot 1 TP217576W Parish of Mildura, for the development of buildings and works to create a ‘drive-through’ facility and alteration of access to a road in a Road Zone, Category 1, for the following reasons:

1) The proposal is contrary to Clause 18.02-4S of the Planning Policy Framework, as the proposal fails to enable easy, efficient use of car parking spaces and fails to satisfactorily enable the movement and delivery of goods on the site.
2) The proposal is inconsistent with the decision guidelines of the Commercial 1 Zone, which seek to ensure that new development is responsive to the movement of pedestrians, cyclists, waste services, delivery vehicles and provision of car parking. The proposed layout would result in disorderly internal vehicular movements, reduce available car parking and increase the risk of accidents occurring at the site.

3) The proposal would have an unacceptable impact on the operation and safety of Deakin Avenue and Fourteenth Street, contrary to Clause 52.29 of the Mildura Planning Scheme.

4) The proposed site layout fails to allow for safe ingress and egress of waste collection vehicles or delivery vehicles to the various tenancies on site, contrary to Clause 65.01 of the Mildura Planning Scheme.
15 URGENT BUSINESS

Nil

16 PUBLIC QUESTIONS

CONFIDENTIAL BUSINESS

Pursuant to Section 89(2) of the Local Government Act 1989, Council will resolve to move into confidential business to deal with:

17 CONFIDENTIAL REPORTS

17.1 SECTION 89(2)(H) - (ANY OTHER MATTER WHICH THE COUNCIL OR SPECIAL COMMITTEE CONSIDERS WOULD PREJUDICE THE COUNCIL OR ANY PERSON)

- APPOINTMENT OF MILDURA REGIONAL DEVELOPMENT CHAIRPERSON

18 CLOSURE