



Urban Synergistics
'collaborative land use planning solutions'

28/05/2020

Sarah Philpott
CEO
Mildura Rural City Council
P.O. Box 105
Mildura Victoria 3502

Dear Ms Philpott

Attention: Martin Hawson/ Peter Douglas

Submission

Mildura Rural City Council (MRCC)

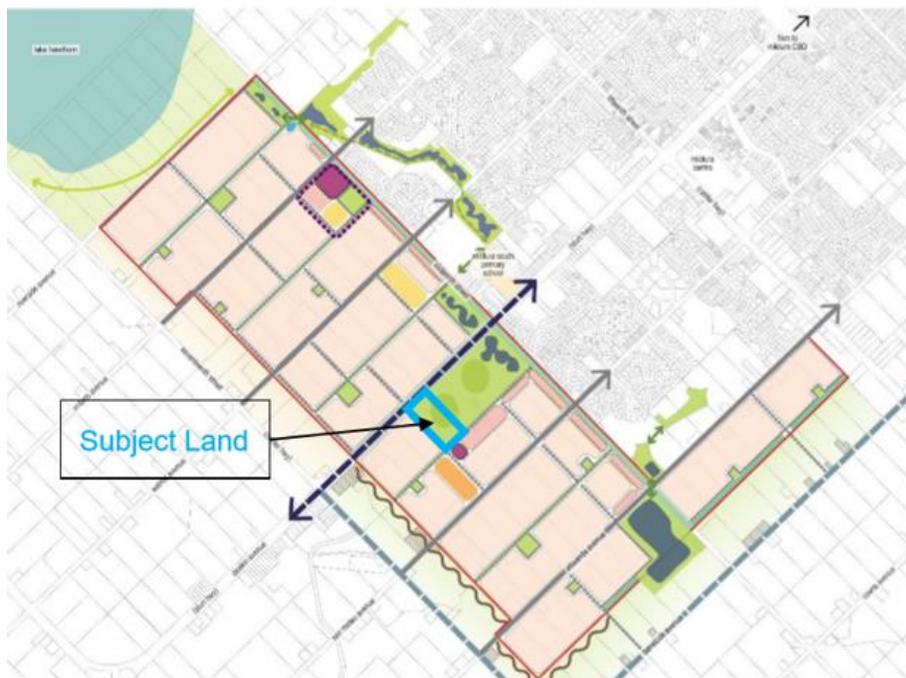
Mildura Planning Scheme Amendment C109 mild – Exhibition

Public Acquisition Overlay (PAO4)

Mildura South Regional Sporting Facility

I refer to your letter dated 8 May 2020, wherein you refer to the above proposal advising of the ability to make a submission to MRCC.

I act on the behalf of Christopher Terence Dick proprietor of Lot 1 LP 86190, 704 Deakin Avenue, Mildura, and William Terence Dick proprietor of Lot 1 TP 673504, 706 Deakin Avenue Mildura.





Background

On 25 September 2019, Maloney Anderson wrote to MRCC regarding the MRCC's desire to privately purchase the abovementioned properties, and if not compulsorily acquiring properties then serve notice under Section 7 of the Land Acquisition and Compensation Act 1986.

On 22 November 2019, Maddocks Lawyers acting on behalf of MRCC wrote to Maloney Anderson acting on behalf of proprietors regarding the purchase of 704 and 706 Deakin Avenue, Mildura stating that MRCC was prepared to negotiate the sale of both properties to MRCC and pay reasonable legal and valuation costs. The proprietors were left confused why MRCC had not move forward with negotiations on the sale of properties to achieve a mutually agreeable, timely and cost-effective outcome.

On 8 May 2020, MRCC wrote to the proprietors regarding the abovementioned Mildura Planning Scheme Amendment C109 mild, currently on exhibition and advice that the closing date for submissions is Monday 15 June 2020.

Land Compensation and Acquisition Act 1986

MRCC opting to pursue the Mildura Planning Scheme Amendment C109 significantly prolongs the timeframe to purchase properties; and raises doubt on the part of proprietors' inability to improve and invest in properties.

It is acknowledged the Land Compensation and Acquisition Act (LAC Act) legislated requirements provide for before the commencement of the acquisition process, the land must first be reserved under a planning scheme. Generally, this will involve a planning scheme amendment to apply a Public Acquisition Overlay to the land. In this instance, PAO4. There are exceptions to this requirement and includes an ordinary market-place purchase. MRCC has, without explanation, not opted for this course of action.

The reason to not opt for an ordinary market-place purchase is probably founded in the exhibited Public Acquisition Overlay, in that, it is '*to reserve land for a public purpose and to ensure that changes to the use and development of land do not prejudice the purpose for which the land is to be acquired*', such as the possibility of a second oval to the Mildura South Regional Sporting Facility. If indeed the land is as expressly stated "*for the purpose for which is to be acquired*" it then reasonably follows MRCC has committed to purchase the land. In that circumstance, why does MRCC not make an ordinary market-place purchase?

The Public Acquisition Overlay (PAO4) indicates that, for the purpose of the LAC Act, any land included in the overlay is reserved for a public purpose. This satisfies the requirement in section 5 of that Act that an authority cannot commence to acquire the land 'unless the land has been first reserved by or under a planning instrument for a public purpose' well-in-advance of its proposed acquisition.



The Public Acquisition Overlay (PAO4) is of significant concern to the proprietors as there is often a period of many years between the recognition that an area will be needed for a public purpose and the actual acquisition of that land. This, places proprietors are at a significant disadvantage, in that, early reservation enables MRCC control of the use and development of land that, might one day, be required. This advantages MRCC as it is not faced with the need to compensate owners of buildings and works constructed on land once the need for its acquisition has been committed to. Obviously, landowners are at significant disadvantage.

Where land is subject to a Public Acquisition Overlay, all further use, development, or subdivision of the land will generally require a planning permit, but there is no certainty that a permit will issue as the grant of a permit is likely to involve significant capital expenditure and value that MRCC would likely not want to compensate landowners for.

Matters of Material Affect - General

Proprietors raise various matters of 'material affect' that must be considered by MRCC and for it to provide a reasoned response(s) on each matter. Should MRCC agree to an amendment, the Minister for Planning will consider those matters and the reasonableness of MRCC's response.

MRCC having opted to proceed with an amendment suggests that it is not prepared to offer to purchase properties in an ordinary marketplace environment.

MRCC having opted for approval of the Minister for Planning for an amendment, and on the assumption it is granted, would trigger formal land acquisition and compensation process under the *Land Compensation and Acquisition Act*, to be initiated by MRCC, at some point in time - presumably when there may be a proven need for a second oval, if at all.

It is contended that an amendment from FZ to PAO4, will have the affect to cause 'blight' on both properties, in that the PAO4 potentially prevents any further permit to allow any improvement(s) to properties.

To quote the proprietors own words, the amendment represents:

"... disappointment...no use to me...no future for me or my son as improvements to the property to maintain an income would likely be prohibited", by MRCC.

As a consequence, the focus of the submission is to establish clarity and certainty from MRCC because the amendment represents many years of uncertainty for proprietors.

Accordingly, the submission does not support the exhibited amendment.



Matters of Material Affect - Specific

1. MRCC appears to be disinclined for an ordinary market-place purchase, that would otherwise likely achieve long-term business and operational cost savings.
2. In 1929, the father of William Terence Dick purchased property known as 706, 704 and 702 Deakin Avenue. The family home was built upon 706 Deakin Avenue where a family was raised. In 1968 a brick house was built on 704 Deakin Avenue, which the family moved into. Significant emotional value is attached to both houses. The son Christopher Terence Dick now resides in the house at 704 Deakin Avenue with plans to build two storage buildings for hobby vehicle restoration.
3. MRCC recently approved a permit for a galvanised steel shed (estimated cost of \$25,000 on 706 Deakin Avenue in close proximity to the original family house built 100 years earlier, and which has recently been refurbished at an estimated cost of \$100,000.
4. The family house is currently occupied by tenants that draws an income of \$16,600 per annum and supplements the proprietor's income. The proprietor of 706 Deakin Avenue is in in good health despite senior years and could conceivably receive ongoing income to the amount of \$250,000 over the next 15 years.
5. The proprietor of 706 Deakin Avenue also farms 723 San Mateo Avenue where he resides. Both properties have an established and productive Sultana and Cabernet Sauvignon vineyard that generates considerable annual monetary return to the proprietor. Property acquisition in the manner proposed represents landowners being dispossessed of their rights of such an extent that would have a disastrous adverse impact on income; and contrary to the Farming Zone and MOIA objectives to maintain sustainable farming practices by retaining larger farm holdings.
6. Business plans are advanced on the construction of an agricultural building 16 metres by 30 metres (at considerable cost) at the rear of 706 Deakin Avenue to securely store vehicles, machinery, fertiliser and associated farming equipment.
7. Adjacent to the rear boundary of 706 Deakin Avenue is an existing LMW irrigation pipe, and private irrigation infrastructure required to be relocated on 723 San Mateo Avenue.
8. 704 Deakin Avenue - existing 2000 square metre lot incorporating the existing brick house has considerable monetary value, as well as, emotional value with the material loss of inheritance, a consideration that had been overlooked.

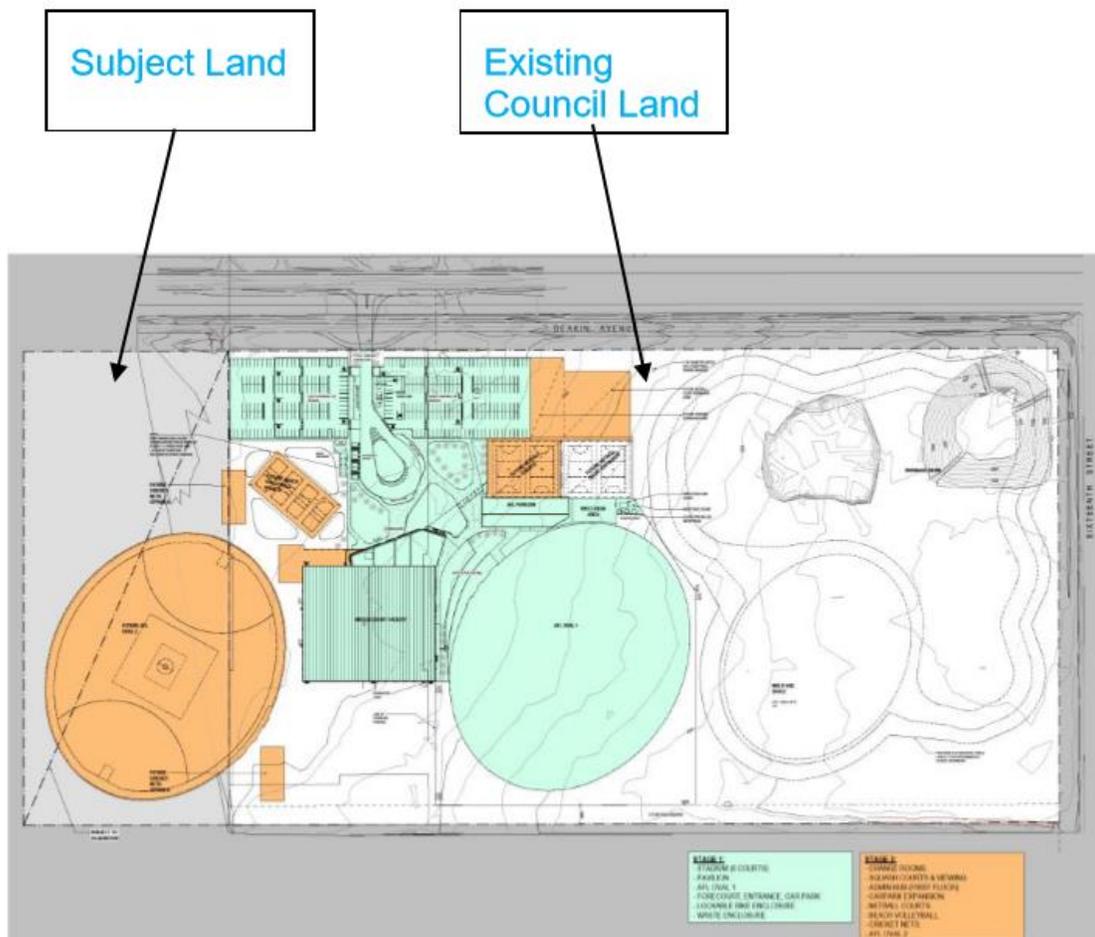


9. In relinquishing the title to 704 Deakin Avenue, a more modest area of land should be surveyed and transferred to a location with frontage to San Mateo Avenue adjacent to 723 San Mateo Avenue. This, to accommodate the original family home currently let to a young family. Whereas, relinquishing title to 706 Deakin Avenue a separate surveyed and established for the existing house at 723 San Mateo Avenue - MOIA allows for re-adjustment of property boundaries. The effect of which would be relatively consistent with the intended future residential zoning of the land.





10. To apply the PAO4 on properties represents 'land-banking' by MRCC on the strength that a second oval might be needed in the future; this action represents a grossly unfair and unjustifiable imposition on property owners and their families aspirations, and tenants - best described as an imposition of economic 'blight' on properties, by MRCC, particularly as alternative option of an ordinary market-place purchase exists.



11. This is of particular importance because the LAC Act places strict obligations on an acquiring authority (MRCC) in relation to the process for acquisition. Particular care needs to be taken as failure to comply with legislation can result in penalties against the acquiring authority or an acquisition process having to be abandoned or recommenced.

Hence, an ordinary market-place purchase, is preferred as it would immediately provide clarity and certainty for the proprietors, leading institutions and prospective purchasers and an enabler for proprietors to plan for investment in the productive farm, and loan borrowings not be possible should the amendment be imposed on properties.



12. The LAC Act at ss. 41 – 45 prescribe the principles for measuring the compensation payable on the acquisition of an interest takes into account the following:

- the market value of the land acquired;
- any losses attributable to severance or as a result of disturbance;
- any enhancement or depreciation in value of the interest of the claimant and in other land adjoining or severed from the acquired land;
- legal, valuation or other professional expenses incurred;
- any special value to the claimant;
- any previous payment for loss on sale compensation or other forms of financial loss compensation payments;
- the use to which the property was put at the date it was compulsorily acquired; and
- the payment of compensation for any intangible and non-pecuniary disadvantages resulting from the acquisition, known as 'solatium';
- the length of time you have occupied the land;
- the inconvenience being removed from the land;
- the period of time you were likely to have continued to occupy the land if it weren't for the acquisition; and
- your age and circumstances and that of those who live with you.

It is contended that proprietors have adequately demonstrated compliance with those considerations.

Public Acquisition Overlay is not always required. Section 7(1)(a) or (b) of the LAC Act exempts the need in circumstances, for example, an ordinary market purchase.

13. Apart from compensation payable because of the actual acquisition of land, Part 5 of the Act creates a right to interim compensation (known as 'planning compensation'). These circumstances arise where the owner (proprietor) or occupier (tenant) of land has suffered financial loss as the natural, direct and reasonable consequence of:

- the land being reserved for a public purpose under a planning scheme (it has been included in a Public Acquisition Overlay)
- a proposed amendment to a planning scheme to include the land in a Public Acquisition Overlay
- a declaration by the minister that the land is proposed to be reserved for a public purpose
- a refusal by MRCC to grant a permit to use or develop the land on the ground that the land is or will be needed for a public purpose



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Why would MRCC place itself at risk by proceeding with the exhibited amendment rather than an ordinary market purchase?

14. Strategic sporting facilities planning should be based on thorough and irrefutable business planning for particular facilities within a staged timeframe, not on a per chance basis that a second oval might be required, in future????

Conclusion

- A. Exhibited Amendment C109, is not supported.
- B. MRCC to abandon exhibited amendment C109.
- C. MRCC reapproach proprietors for an ordinary market purchase.
- D. Following acquisition, MRCC approach the Minister for Planning with an (unencumbered) amendment.

Should you require any additional information please contact the undersigned.

Yours faithfully

Bob Karaszekwych
Director