

# **MILDURA RURAL CITY COUNCIL MILDURA OLDER IRRIGATION AREA INCORPORATED DOCUMENT, MAY 2020**

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## **Introduction**

This document is an incorporated document in the schedule to clause 81.01 of the Mildura Planning Scheme.

Pursuant to clause 45.12 of the Mildura Planning Scheme, the land identified in this incorporated document may be developed and used in accordance with the specific controls contained in this document.

If there is any inconsistency between the specific controls in this document and the general provisions of the Mildura Planning Scheme, the specific controls in this document will prevail.

## **Purpose**

To implement the Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

To protect land for horticulture within the Mildura older irrigation area.

To provide for the growth and expansion of the horticultural industry within the Mildura older irrigation area.

To implement, as appropriate, the recommendations of the Mildura Planning Taskforce, Final Report, December 2009 and the Mildura Housing and Settlement Strategy, December 2013.

To implement, as appropriate, the Review of Planning Controls for the Mildura Older Irrigated Areas, October 2014.

## **The Land**

The land that is the subject of the specific controls in this document is the land zoned Farming Zone and affected by the Specific Controls Overlay located within the gazetted irrigation districts of Mildura, Merbein and Red Cliffs, generally known as the Mildura Older Irrigation Area (MOIA).

## **Glossary of terms**

For the purpose of this incorporated document, a term has its meaning as defined below:

### **Boundary re-alignment**

*A re-subdivision of existing lots where the number of lots is not increased.*

### **Battle-axe lot**

*A lot that relies on a long narrow access way to a road.*

### **Excision**

*A two lot subdivision that creates a lot for an existing dwelling (the 'dwelling' lot) and a second lot (the 'balance' lot).*

### **Row of dwellings**

Three dwellings within 300 metres along a single frontage, with each dwelling set back no more than 50 metres from the frontage.

### **What does this document provide for?**

#### **Subdivision**

##### **Application requirements for all subdivisions**

Any application for subdivision must be accompanied by a written statement which demonstrates, to the satisfaction of the responsible authority:

- How the proposed subdivision responds to the requirements of Clauses 35.07-2 and 35.07-3 and the decision guidelines in Clause 35.07-6; and
- Whether the new boundaries are positioned to protect the balance of the land for horticulture; and
- Whether any existing dwelling has an appropriate landscape buffer to any agricultural land so as to minimise potential land use conflict; and
- Whether any existing dwelling (not including outbuildings) is set back a minimum of 5 metres from any new boundary to minimise amenity and environmental impacts to or from adjoining land uses.

Within the Mildura East Growth Area, the Mildura South Growth Area and the Mildura South By-Pass Corridor (Map 1), applications must also demonstrate, to the satisfaction of the responsible authority:

- That the subdivision does not compromise the future urban development of the land; and
- That the subdivision includes, where necessary, the provision of easements to allow for longer term servicing connections.

##### **Permit requirements for all subdivisions**

A permit must not be granted to create a smaller lot (including an excision or boundary realignment as referred to in this incorporated document) under Clause 35.07-3 unless all of the following requirements are met:

- The subdivision must meet the requirements of Clause 35.07-2 and Clause 63; and
- The subdivision must not rely on lots that are disused channel reserves, other utility lots, or lots which are separated (except lots which are abutting and directly aligned on opposite sides of a road or channel reserve) in order to meet the minimum requirements of this incorporated document; and
- The dwelling lot and balance lot created must not be battle-axe lots resulting in fragmentation of farming land, or lots where access is via a carriageway easement or common property driveway; and
- The new boundaries must be positioned to protect the balance of the land for horticulture; and
- Within the Mildura East Growth Area, the Mildura South Growth Area and the Mildura South By-Pass Corridor (Map 1), the subdivision must not compromise the future urban development of the land; and
- An existing dwelling (not including outbuildings) must be set back a minimum of 5 metres from any new boundary, to minimise amenity and environmental impacts to or from adjoining land uses.

### **Permit requirements for excisions**

In addition to the permit requirements for all subdivisions, a permit must not be granted to create a smaller lot for an existing dwelling under Clause 35.07-3 unless all of the following requirements are met:

- The subdivision must be a two lot subdivision; and
- The existing lot must be at least 3 hectares; and
- The existing dwelling must:
  - have existed on 29 May 2009; and
  - be a Class 1A building as defined by the current Building Code of Australia and be able to be issued with a certificate of occupancy (this may be required to be confirmed in writing by a building surveyor); and
- The lot created for an existing dwelling must be at least 0.4 hectares in area and must be no more than 1.0 hectare in area (unless the applicant can demonstrate that a larger lot size is necessary to enable new boundaries to be positioned to better protect the balance of the land for horticulture); and
- An agreement under section 173 of the *Planning and Environment Act 1987* ('the Act') must be entered into with the owner of each lot created which ensures that:
  - the land may not be further subdivided (other than for a boundary re-alignment which is in accordance with the provisions of this incorporated document); and
  - no further dwellings will be constructed on either lot (unless the balance of the lot is 10 hectares or greater and the existing lot is not encumbered by a section 173 agreement stating no that no further dwelling is allowed).

Any variation to an agreement prepared under section 173 of the Act, including amending or ending the agreement, requires approval from both the responsible authority and the Minister for Planning.

### **Permit requirements for boundary re-alignments**

In addition to the permit requirements for all subdivisions, a permit must not be granted for a boundary re-alignment under Clause 35.07-3 unless the subdivision is the re-subdivision of existing lots (which may or may not include an existing dwelling) and all of the following requirements are met:

- The number of lots is not increased; and
- Any lot created for an existing dwelling must be at least 0.4 hectares in area, unless the original lot containing the dwelling is less than 0.4 hectares in area, in which case the lot created must be at least of equal size; and
- An agreement under section 173 of the *Planning and Environment Act 1987* ('the Act') must be entered into with the owner of each lot created which ensures that:
  - the land may not be further subdivided, other than for a re-subdivision which is in accordance with the provisions of this incorporated document; and
  - no further dwellings will be constructed on any lot, except for new lots created which are in accordance with the following:
    - (a) the new lot is at least 0.2 hectares but not greater than 2 hectares in area, and the following requirements are met:
      - The new lot is located within the Mildura East Growth Area or the Mildura South Growth Area (Map 1); and

- the new lot is created from original lots which included an equivalent lot of at least 0.2 hectares but not greater than 2 hectares; and
  - the equivalent original lot was not encumbered by a section 173 agreement stating that no further dwelling is allowed;
  - the number of lots of at least 0.2 hectares but not greater than 2 hectares without an existing dwelling is not increased; and
  - The new lot is not located within the Mildura South By-Pass Corridor (Map 1).
- (b) the new lot is at least 10 hectares in area and all of the following requirements are met:
- the new lot is created from original lots which included an equivalent lot of at least 10 hectares; and
  - the equivalent original lot was not encumbered by a section 173 agreement stating that no further dwelling is allowed; and
  - the number of lots of at least 10 hectares without an existing dwelling is not increased.

Any variation to an agreement prepared under section 173 of the Act, including amending or ending the agreement, requires approval from both the responsible authority and the Minister for Planning.

#### **Permit requirements for subdivisions by a public authority**

Notwithstanding any other requirements of this incorporated document, a permit may be granted to create a smaller lot under Clause 35.07-3 if the subdivision is by a public authority or utility service provider to create a lot for a utility installation.

### **Dwellings**

#### **Application requirements for dwellings**

An application to use any lot for a dwelling must be accompanied by a written statement which demonstrates, to the satisfaction of the responsible authority:

- How the proposed dwelling responds to the requirements of Clause 35.07-2 and the decision guidelines in Clause 35.07-6; and
- That the dwelling location is not subject to inundation; and
- That the proposed dwelling has an appropriate landscape buffer to any agricultural land so as to minimise potential land use conflict; and
- That the dwelling (not including outbuildings) is set back a minimum of 5 metres from any boundary to minimise amenity and environmental impacts to or from adjoining land uses.

Within the Mildura East Growth Area, the Mildura South Growth Area and the Mildura South By-Pass Corridor (Map 1), applications must also demonstrate, to the satisfaction of the responsible authority:

- That the proposed dwelling will not compromise the future urban development of the land; and
- That the proposed dwelling includes, where necessary, the provision of setbacks to ensure longer term road access and servicing connections; and
- That the proposed dwelling will not compromise the continuation of an existing horticultural use; and

- That the proposed dwelling will not affect on-going agricultural use of adjoining land; and
- That the proposed dwelling will not compromise the ability to achieve preferred urban design outcomes.

#### **Permit requirements for all dwellings**

A permit must not be granted to use land for a dwelling under section 2 of the table of uses at Clause 35.07-1, unless all of the following requirements are met:

- The requirements of Clause 35.07-2; and
- The dwelling (not including outbuildings) must be set back a minimum of 5 metres from any boundary to minimise amenity and environmental impacts to or from adjoining land uses; and
- The lot must not be a disused channel reserve or other utility lot; and
- The lot must be in a single parcel, except where the parcels are abutting and directly aligned on opposite sides of a road or channel reserve.

#### **Permit requirements for dwellings on lots between 0.2 hectares and 2 hectares**

In addition to the permit requirements for all dwellings, a permit must not be granted to use land for a dwelling under section 2 of the table of uses to Clause 35.07-1, unless the size of the lot is at least 0.2 hectares but not greater than 2 hectares and all of the following requirements are met:

- The dwelling is located within the Mildura East Growth Area or the Mildura South Growth Area (Map 1); and
- The lot is not encumbered by a section 173 agreement ensuring no further dwellings will be constructed; and
- The lot was not created via a consolidation of lots which would otherwise have increased the opportunity for a dwelling; and
- The dwelling is not located within the Mildura South By-Pass Corridor (Map 1).

#### **Permit requirements for dwellings on lots between 2 hectares and 10 hectares**

In addition to the permit requirements for all dwellings, a permit must not be granted to use land for a dwelling under section 2 of the table of uses to Clause 35.07-1, unless the size of the lot is greater than 2 hectares but less than 10 hectares and all of the following requirements are met:

- The dwelling is located within the Mildura East Growth Area or the Mildura South Growth Area (Map 1); and
- The lot is not encumbered by a section 173 agreement ensuring no further dwellings will be constructed; and
- The lot was not created via a consolidation of lots which would otherwise have increased the opportunity for a dwelling.

#### **Permit requirements for dwellings on lots between 10 hectares and 20 hectares**

In addition to the permit requirements for all dwellings, a permit must not be granted to use land for a dwelling under section 2 of the table of uses to Clause 35.07-1, unless the size of the lot is at least 10 hectares but less than 20 hectares and all of the following requirements are met:

- The lot is not encumbered by a section 173 agreement ensuring no further dwellings will be constructed; and
- If the lot was created via a consolidation of lots, all of the following requirements must be met:
  - The original lots were not encumbered by a section 173 agreement ensuring no further dwellings will be constructed; and
  - An agreement under section 173 of the Act must be entered into with the owner of the lot which ensures that the land may not be further subdivided (other than for a re-subdivision which is in accordance with the provisions of this incorporated document).

Any variation to an agreement prepared under section 173 of the Act, including amending or ending the agreement, requires approval from both the responsible authority and the Minister for Planning.

#### **Permit requirements for replacement dwellings on any lot**

Notwithstanding any other requirements of this incorporated document, a permit may be granted to use land for a dwelling under section 2 of the table of uses to Clause 35.07-1, if the dwelling is a replacement dwelling and all of the following requirements are met:

- The permit includes a condition requiring that an agreement under section 173 of the Act must be entered into with the owner of the lot which ensures that the original dwelling is to be removed within 3 months of the issue of the Occupancy Permit for the new dwelling; and
- An existing use right can be established in relation to the original dwelling in accordance with Clause 63; and
- The original dwelling is a Class 1A building as defined by the current Building Code of Australia and is able to be issued with a certificate of occupancy (the responsible authority may require this to be confirmed in writing by a building surveyor).

#### **Permit requirements for dwellings abutting existing development**

Notwithstanding any other requirements of this incorporated document, a permit may be granted to use land for a dwelling abutting existing development under section 2 of the table of uses to Clause 35.07-1, if all of the following requirements are met:

- The dwelling is to be constructed wholly within 50 metres of the frontage and is on a lot of between 0.2 and 1.2 hectares and:
  - Within an existing row of dwellings; or
  - At the edge of an existing row of dwellings; or
  - On a lot which directly abuts land used and developed for a Camping and caravan park or Primary school.
- The lot must have existed on 30 June 2020; and
- The lot is not encumbered by a section 173 agreement ensuring no further dwellings will be constructed; and
- The dwelling is not located within the Mildura South By-Pass Corridor (Map 1); and
- The dwelling is not located within a designated bushfire prone area or subject to the Bushfire Management Overlay; and
- No part of the dwelling is subject to a flooding overlay; and

- If located within the Mildura East Growth Area or Mildura South Growth Area (Map 1), sufficient clearance of 50 metres in width is provided to allow future access to the rear of the lot, if required by the responsible authority.

**Site specific provisions**

Notwithstanding any other requirements of this incorporated document, a permit may be granted to use land for a dwelling under section 2 of the table of uses to Clause 35.07-1, if the land is identified in the following Table 1 (Site Specific Provisions).

**Table 1: Site Specific Provisions**

Address of Land	Site Specific Provisions Applying to the Land
Lot 2 PS 63286	The responsible authority may grant a permit for the use of land for the purpose of a dwelling
Lot 2 PS444390	
CA 652B 652C Sec B	
Lot 2 PS 408734E Sec 49 Blk E	
Lot 2 PS 208742L Sec 55 Blk F	
Lot 1 TP 675016E Sec 22 Blk F	
Lot 1 TP 849989T Sec 48 Blk E	
Lot 1 TP 674839M Sec 22 Blk F	
Lot 2 TP 674810N Sec 130 Blk F	
CA 383A Sec B Parish of Mildura	
Lot 1 and 2 TP 675099W Sec 97 Blk F	
Lot 2 PS 48497 Sec A	
Lot 3 PS 147497J Sec 9 Blk F	
Lot 2 PS 306580Y Sec G Parish of Merbein	
Lot 2 PS 313839S Sec 9 Blk F	
Lot 2 PS 437898H Sec B	
Lot 1 TP 673647C	
Lot 2 PS 324033D Sec F Parish of Merbein	
Lot 2 PS 416458G Sec B	
Lot 2 PS 602011Q Sec 139 Blk F	
Lot 2 PS 111114 Sec B	
CA135 Sec B	
Lot 2 PS 529821J Sec 115 Blk F	
Lot 2 PS 440734W Sec B	
Lot 2 PS609046G	
Lot 1 TP802102J Section 73 Block E	
Lot 2 PS347069B	
Lot 1, PS219003M	
Lot 2, PS500956V	
Lot 1, PS316479F	
CA 9B, Sec B, Barnetts Road, Red Cliffs	
Lot 2 TP 848589R Sec 11 Blk F	

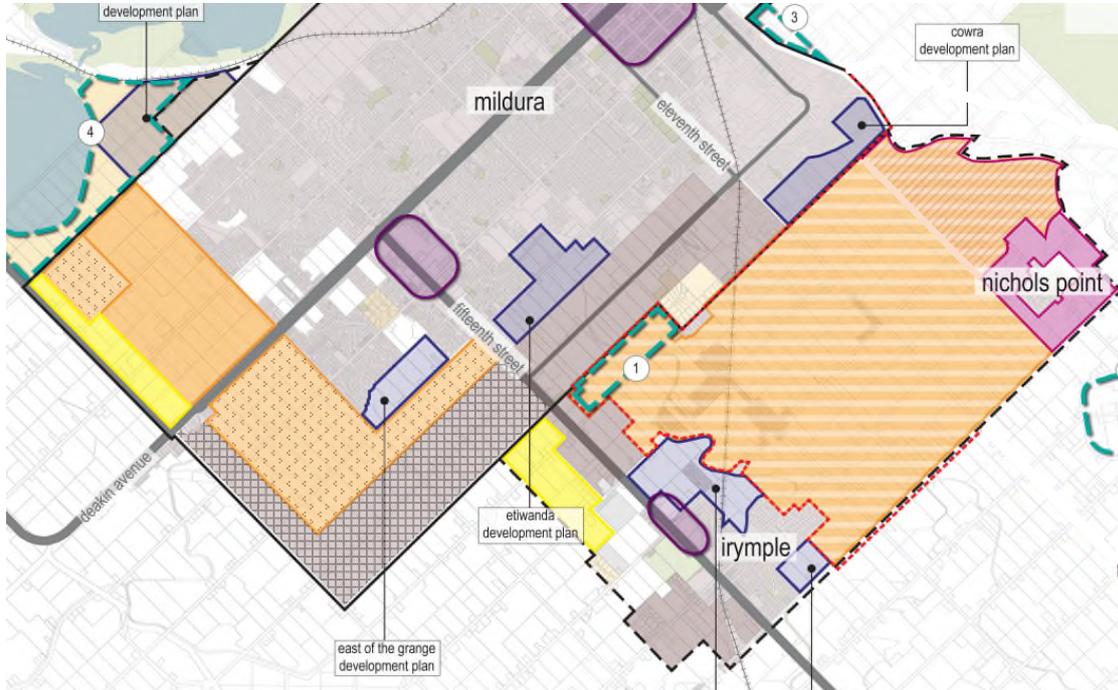
**Decision guidelines**

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

- Whether the environmental conditions of the land are or will be suitable for a sensitive use, in the event that potentially contaminated land is to be used for a residential or other sensitive use.

**Map 1:**

**Mildura East Growth Area/Mildura South Growth Area/Mildura South By-Pass Corridor**



Mildura South Growth Area



Mildura East Growth Area



Mildura South By-Pass  
Corridor

