



Mildura Rural City Council

# **Review of Planning Controls for the Mildura Older Irrigated Areas**

October 2014

Following changes to the Farming Zone by the Minister for Planning in September of 2013 and directions developed by the Mildura Housing and Settlement Strategy, Council proposed changes to the way the **Mildura Planning Scheme** affects the local irrigated areas and sought public comment.

The published Discussion Paper has now been modified in accordance with the feedback received and forms the basis of this Review.

## Contents

---

1	Introduction	4
2	Legislative/Policy Context	6
3	Background	8
4	Statistical Update	21
5	Exemplars	24
6	Principles	26
7	Option for Discussion [July 2014]	26
8	Basis for Change	27
9	Initial Benefit/Risk Assessment	30
10	Exhibited Option	32
11	Consultation	33
12	Submissions	35
13	Conclusion	44
14	Final Proposed Incorporated Document Summary	47
	APPENDIX 1 MOIA Map	48
	APPENDIX 2 Existing <i>MOIA Incorporated Document: December 2013</i>	49
	APPENDIX 3 Proposed <i>MOIA Incorporated Document: September 2014</i>	55

## 1 Introduction

---

The Mildura Older Irrigation Area (MOIA) comprises the older pumped districts of Mildura, Merbein and Red Cliffs [Appendix 1]. These districts have a strong farming history particularly in the production of table grapes, dried grapes, wine grapes and citrus.

Horticulture underpins the Mildura Rural City's economy directly with products for the local, national and international markets. It also supports a significant agricultural services industry and food processing, packaging and manufacturing sector that accepts products grown within the City and from the wider region.

It is estimated that agriculture from the MOIA generates about \$200m per annum to the local economy.

This clearly underlines the importance of the irrigation system and related water holdings in the Mildura area, with not only primary industries being directly reliant on it, but having flow on effects to secondary industries.

While much of the employment in Mildura is associated with horticultural servicing and processing of horticultural produce, increasingly the MOIA is valued for the landscape amenity it provides, in particular for rural residential living which is a fundamental part of the character and identity of Mildura.

The MOIA also has a significant population of residents that are not directly involved in horticulture. The amenity of the MOIA and its close proximity to Mildura makes it very attractive for those seeking a rural lifestyle.

Reductions in the amount of land used for horticulture or the introduction of dwellings on land which is irrigated and used for horticulture however, would have a negative impact on the local economy and the structure of employment.

Mildura Rural City Council is aware of concerns from people regarding dwellings in the Farming Zone areas of the Mildura Older Irrigation Area. Many of these concerns were raised during the community consultation for the Mildura Housing and Settlement Strategy [MHSS] which was undertaken in conjunction with this review of MOIA.

Mildura Rural City Council has grappled with the issues surrounding the future of the MOIA and particularly with respect to the impact of the development of dwellings over many years since prior to the replacement of the former Rural Zone with the Farming Zone in the Mildura Planning Scheme in 2006.

Strategic work undertaken over this time, including changes made specifically by the Minister for Planning with the introduction of the MOIA Incorporated Document, has still left

outstanding issues within the MOIA. These remain identified as a high priority of Council, particularly the continued restriction on development of dwellings together with operational issues associated with the MOIA incorporated document.

In August 2013 the Minister for Planning released a final reformed Farming Zone and indicated a willingness to consider an amendment to the Mildura Planning Scheme to provide a specific local response to the reforms following completion of the Mildura Housing and Settlement Strategy [MHSS].

Nevertheless, as the MOIA Incorporated Document overrides the provisions of the Farming Zone, the Minister's reforms will have no effect locally regarding the opportunities for the establishment of dwellings or subdivision in the MOIA unless the MOIA Incorporated Document is modified.

The MHSS was adopted by Council in December 2013. In addition to the findings of the MHSS, further consideration became necessary in light of the Sunraysia Modernisation Project which is underway.

Given this, in July 2014 Council released the *Discussion Paper: Proposed planning changes to the Mildura Older Irrigated Areas July 2014* to outline the background analysis and to document adopted strategic work so as to suggest a way forward to amend the Mildura Planning Scheme.

The exhibited document proposed changes to the Mildura Planning Scheme which sought to address the following key issues:

1. Implementation of the MHSS strategic directions especially in relation to new Rural Living and Low Density Residential rezonings; and the identification of the 'MOIA Relaxation Area'.
2. Criteria for establishment of dwellings in the Farming Zone within the MOIA including associated subdivision outcomes;
3. Operational issues identified with the existing *MOIA Incorporated Document December 2013* including subdivision provisions.

These issues have been further considered and assessed in light of the consultation undertaken, leading the conclusion and recommendations of this Review for a further modified MOIA Incorporated Document, consistent with the recommendations of the MHSS.

## 2 Legislative/Policy Context

---

### ***Planning & Environment Act – Mildura Planning Scheme***

In the current Mildura Planning Scheme the vast majority of rural land is contained within the Farming Zone

The Mildura Planning Scheme includes the *Mildura Older Irrigated Areas Incorporated Document December 2013* which applies to Farming Zone land located within the gazetted irrigation districts of Mildura, Merbein and Red Cliffs, generally known as the Mildura older irrigation area and states:

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.

The Minister for Planning introduced the MOIA Incorporated Document [Appendix 2] to the Mildura Planning Scheme (and subsequently revised it) to protect the area for horticulture and to provide certainty regarding protection of farming land within the MOIA from fragmentation of land and development of dwellings.

The specific provisions of the Incorporated Document relate to subdivision and the development of dwellings. The specific provisions do not affect the use of the land (other than of 'dwellings')

### ***Future Farms 2010***

The Minister for Planning in the former Government commissioned an investigation into a wide ranging suite of reforms to the Planning Zones across Victoria in 2010 titled *Future Farms*.

The issue of dwellings in the Farming Zone featured as a significant issue.

The Final Report was not endorsed by either the then or current Minister for Planning.

### ***Zone Reforms 2013***

The current Minister for Planning has introduced a wide ranging suite of reforms to the Planning Zones across Victoria in 2013 including the Farming Zone.

The final reformed Farming Zone (September 2013) now allows more liberal conditions for rural industry as well as more opportunities for general industrial and warehouse development along with the removal of some restrictions on subdivision of land.

As identified above, the reforms regarding subdivision and any additional development of dwellings in the MOIA, however, can have no effect while the current MOIA Incorporated Document remains in place. This discussion paper therefore specifically responds only to the issues surrounding dwellings and subdivision in the MOIA relevant to the reformed Farming Zone.

A more detailed impact assessment is required for the Mildura Planning Scheme regarding broader aspects of the reforms which may include significant and unintended consequences which may undermine existing policy and strategic work. This work, requiring a consequential updating to the policy framework in response, was undertaken as part of the review of the Mildura Planning Scheme 2013-2014.

### 3 Background

---

#### ***'Old Format' Planning Schemes***

Prior to Council amalgamations in 1995, the northern part of the new Rural City comprised the City of Mildura and the Shire of Mildura. Both of these Councils were responsible for administering a local Planning Scheme.

While the provisions of each scheme varied, a common theme was the potential to allow the development of dwellings and the creation of small lots in the rural areas, including the MOIA area.

For instance in the 1990's, the Mildura Shire Planning Scheme (at Clause 123-2.2) enabled a permit to be granted for a small lot between 3000m<sup>2</sup> and 4000m<sup>2</sup> for a house lot excision (subject to conditions). Earlier versions of the scheme had resulted in lots of 2000m<sup>2</sup>.

#### ***New Format' Planning Scheme under Planning & Environment Act***

In December 1999, the Mildura Planning Scheme was gazetted and it included all farm land in the irrigated areas of the MRCC within a Rural Zone.

The Rural zone was a standard state-wide zone which contained various provisions in relation to subdivision, excisions, boundary realignments and dwellings. The schedule to the Rural Zone specified that a permit was required for a dwelling on all land between 0.4ha and 10ha in the irrigation districts.

So as to provide guidance as to its attitude to applications which might be lodged for dwellings (as well as excisions and boundary realignments), Council inserted into the 1999 scheme a 'local policy' (at Clause 22.06) which provided as follows (in summary):

- Dwellings are discouraged from being built if they do not relate to the agricultural use of the land.
- Excisions are discouraged if the original lot size is less than 10ha.
- Any approval of an excision will be subject of a legal agreement prohibiting the further subdivision of the land.

The evidence from that time was that Council upheld its policy in relation to subdivisions and excisions, but that it took a more liberal attitude to the question of dwellings in the rural areas. As a consequence, on average, about 45 dwellings per year (2004/2009) were being permitted in the Rural zone, contrary to Council policy.

#### ***Mildura Rural Areas Strategy November 2005 (Maunsell/Aecom & Sunraysia Environmental)***

The strategy applied to all rural zoned land within the municipality and included an agricultural land capability assessment.

The strategy recommended differing policy framework objectives responding to the different agricultural characteristics in three distinct agricultural areas within MRCC as follows:

- Older Irrigated Areas (MOIA)
- Newer Irrigated Areas (private diverters)
- Dryland Farming

The strategy was adopted by Council in November 2005 and was to be implemented in the Mildura Planning Scheme by Amendment C30.

### **Amendment C30**

The background to C30 is best explained in the simple chronology as follows:

December 1999	The Mildura Planning Scheme was approved with rural area controls largely based on strategic work undertaken during 1990's
June 2004	Revised rural zones introduced to Victorian Planning Provisions
November 2005	MRCC adopted the Mildura Rural Areas Strategy (MRAS) following discussions with (the now) Department of Planning & Community Development regarding the correct interpretation of the new rural zones with respect to the older closely settled (4-8ha) irrigation districts
December 2005	Authorisation for C30 requested by MRCC. C30 comprised a revised Local Planning Policy and introduction of the Farming Zone in response to recommendations of the MRAS but made no changes to the scheduled 10ha minimum for the older closely settled irrigation districts
March 2006	Economic Sustainability Study (ESS) prepared by MRCC & adjoining Wentworth Shire (NSW) for the Sunraysia horticultural areas
June 2006	Horticultural Sustainability Planning Options (HSPO) report sent to Minister of Planning from MRCC requesting a Planning Scheme amendment to enable excision of dwellings from 4ha minimum arising from ESS
July 2006	Response from Minister for Planning advising insufficient strategic basis provided by HSPO and seeking MRCC agreement to suggested approach including all 3 actions as follows: <ul style="list-style-type: none"><li>• Direct translation of new Farming Zone via Ministerial amendment</li><li>• Authorisation to MRCC to exhibit C30 (local policy only)</li><li>• Study to be commenced by MRCC with financial assistance from DPI to investigate options for delivering outcomes MRCC has identified for Sunraysia horticultural areas [MOIA Rural Strategy]</li></ul>
August 2006	MRCC agrees to approach as above

August 2006	MRCC receives Authorisation to exhibit C30
September 2006	Amendment C37 introduced to Mildura Planning Scheme comprising Ministerial Translation of all MRCC Rural Zone land into Farming Zone
February 2007	Amendment C30 completed exhibition
June 2007	The Mildura Older Irrigated Areas (MOIA) Rural Strategy study commenced
July 2007	Amendment C30 was adopted by MRCC
April 2008	The MOIA Strategy Final Report completed recommending Option B
April 2008	Joint letter to MRCC from Ministers for Planning & Agriculture advising that the State Government “ <i>supported the recommendation of the steering committee that Council endorse an option that implements State policy and the visions and objectives of the draft strategy. Options 3, 4 or B are consistent with State Policy and implement the vision and objectives of the draft strategy</i> ” and also that “ <i>if Council wishes to pursue an option other than one recommended, then authorisation of the preparation of a planning scheme amendment will be unlikely given the strategic work prepared to date.</i> ”
April 2008	The MOIA Rural Strategy Final Report was laid on table by MRCC subject to additional land values investigation
July 2008	C30 was forwarded to the Minister for Planning requesting approval
October 2008	The MOIA Study into Land Values Final Report was adopted by MRCC and forwarded to Minister for Planning to assist deliberation of C30
December 2008	MRCC resolved to conduct a study into the social and economic impacts of ongoing low water allocation within the municipality, and resolved not to act on the MOIA Strategy until the outcomes of this study are known, which is not expected to be for at least 6 months
28 May 2009	Amendment C30 was lapsed by the Minister for Planning.

#### **Amendment C37 (September 2006)**

Amendment C37 was introduced by the Minister for Planning in September 2006, and it rezoned all land from ‘Rural’ to the new Farming Zone. Under the new zone, dwellings were still subject to a permit on land between 0.4ha and 40ha. Discretion to approve a dwelling was again guided by a local policy at Clause 22.06.

The key difference between the new Farming Zone and the former Rural Zone centred on new inclusions in the purpose of the zone in the Farming Zone of the following:

*To encourage the retention of productive agricultural land.  
To ensure that non-agricultural uses, particularly dwellings, do not adversely affect the use of land for agriculture. (Emphasis added)*

#### **MOIA Rural Strategy April 2008 (RMCG/Parsons Brinkerhoff)**

Partly in response to the introduction of the new Farming Zone, the Mildura Older Irrigation Area Rural Strategy (MOIA) was commenced in 2007. The aim was to determine a strategy for the Mildura Older Irrigated Area comprising the older pumped districts of Mildura, Merbein and Red Cliffs. The Strategy includes the following 'vision' for the MOIA area:

- Seeks to protect the land for horticulture
- Accommodates growth in planned estates around existing towns and hamlets
- Acknowledges the existing rural residential development
- Contributes to the ongoing economic prosperity and quality lifestyle of Mildura.

The recommendations of the Strategy acknowledged three performance characteristics of farming business types within the MOIA as follows:

<b>Growing businesses</b> – large-scale, full-time businesses looking to grow and consolidate their operations in the MOIA.
<b>Transition businesses</b> – medium-scale, full-time businesses including some looking to grow and consolidate their operations in the MOIA and others seeking to exit the industry.
<b>Small businesses</b> – small, niche or part-time businesses, including farming for lifestyle and businesses growing specialty products. Many in this group will not be looking to grow or expand the business.

The strategy confirmed these business types were unable to be spatially represented due to the dispersal and interspersion of all farm unit sizes/areas and existing dwellings.

The Strategy was widely consulted on at the time but it was not adopted by Council, despite it being considered by subsequent works and projects.

#### **MOIA Study Into Land Values October 2008 (SGS)**

In response to recommendations of the Mildura Older Irrigation Area Rural Strategy in April 2008, Council determined that consideration of the *Mildura Older Irrigation Areas (MOIA) Rural Strategy Final Report* be deferred until an independent report into the possible effects on the land values of affected properties under a number of options was known.

The study endorsed the recommendations of the *MOIA Rural Areas Strategy Final Report*.

The study was adopted by Council in October 2008 together with the resolution to give further consideration to the MOIA following the Minister's decision regarding Amendment C30.

### ***Amendment C58 (May 2009)***

Instead of making a decision on Amendment C30, Amendment C58 was introduced by the Minister for Planning (without notice) on 28 May 2009. At the same time, the Minister 'lapsed' Amendment C30. Amendment C58 amended the schedule to the Farming Zone and amended the schedules to clauses 52.03 and 81.01 to include a new incorporated document titled 'Mildura Older Irrigation Area Incorporated Document, May 2009' containing the following provisions:

- A permit may be granted to excise a dwelling on land of at least 4ha.
- A permit may not be granted for a dwelling on any lot less than 40ha
- The minimum lot size for a dwelling increased from 10ha to 40ha.
- The minimum lot size for a subdivision increased from 10ha to 40ha.
- A permit may not be granted for a re-subdivision of existing lots (unless both lots are greater than 40ha);

The Minister for Planning stated that he introduced the MOIA Incorporated Document to the Mildura Planning Scheme (and subsequently revised it) to provide certainty regarding protection of farming land within the MOIA from fragmentation of land and development of dwellings.

### ***Mildura Social and Economic Impact of Drought Draft July 2009 (AEC group)***

Partly in response to the introduction of Amendment C58, the Social and Economic Study was commissioned by Council to provide MRCC with a clear and accurate understanding of the economic and social impacts of the drought (and reduced water allocations) on the Mildura LGA and its surrounding service areas, as well as potential future impacts under a range of recovery scenarios.

Based on the findings of this assessment, the report developed a number of recommended actions for Council, in collaboration with other government departments, to ameliorate the social and economic impacts of the current drought, assist in the recovery process when the drought breaks and insulate the region from the worst effects of future drought episodes. The recommendations included as follows:

- *Improve farm viability by facilitating a restructure in the horticulture industry including in terms of collaboration and amalgamation of smaller farms to achieve economy of scale.*

The Draft Report, completed in July 2009, was not adopted by Council but was considered by subsequent work including the *Mildura Planning Task Force Final Report*.

### ***Amendment C59 (September 2009)***

Amendment C59 was introduced by the Minister for Planning (without notice) on 24 September 2009 containing the following changes:

- Amended the schedules to clauses 52.03 and 81.01 to include a revised 'Mildura Older Irrigation Area Incorporated Document, September 2009' containing transitional provisions; and
- Included 'Table 1' in the Incorporated Document with the Title details of thirty two (32) 'hardship' transitional lots; and
- Amended the schedule to clause 66.04 to make the Department of Planning and Community Development a referral authority under clause 52.03.

The amendment provided transitional arrangements in the interests of fairness, equity and natural justice for the owners of specific sites whose reasonable expectations were directly affected by the implementation of Amendment C58 through the inclusion of a list of specific sites for which an application for permit for a dwelling could still be approved.

#### ***Mildura Planning Task Force (2009)***

Following the introduction of Amendment C58 to the Mildura Planning Scheme in May 2009, the then Minister Madden indicated a willingness to consider a further amendment to implement necessary changes to the Local Planning Policy Framework in line with the MOIA Rural Strategy.

Council immediately commissioned a review to investigate and confirm the existing strategic basis for a further amendment, and to facilitate confirmation of Council's preferred way forward.

Council consulted with the following groups in formulating its modified position:

- MRCC staff and MRCC Councillors
- MOIA consultants
- DPCD staff including task force officers and the local and regional office
- Sunrise 21
- Local Bank
- Regional Rural Finance
- Rural Counselling Services.

Council analysis with assistance from data from Sunrise 21 provided estimated potential dwelling numbers in the MOIA based on the number of vacant lots as follows:

<b>Lots Size (ha)</b>	<b>Number of Lots</b>	<b>Number of Dwellings</b>	<b>Vacant Lots</b>
0.00 – 0.39	2133	1637	496

0.40 – 0.99	1012	737	275
1.00 – 2.00	359	234	125
2.00 – 4.00	610	290	320
4.00 – 10.0	1947	941	1006
Above 10	240	135	105

*Note:*

*Lots between 0.3 and .039 without a dwelling - 154*

*Lots between 1.0 and 1.2ha without a dwelling - 53*

Council then developed a 'preferred' position and principles on changes to Amendment C58 comprising the following:

#### Excisions

- Support the lowering of the excision size from 4ha to 1ha.

#### Boundary re-alignments

- Support transfer and consolidation of land subject to no further dwellings (rather than the blanket prohibition of Amendment C58)

#### Dwellings

- Support the need for flexibility to apply for permits at the 'small' end (0.3 to 1.2ha)
- Support the need for flexibility to apply for permits at the larger end (10ha+)
- Endorse the prohibition on dwellings in the middle lot size bracket (1.2ha to 10ha).

The 'preferred' option was forwarded to a Ministerial Task Force in August 2009 which was set up by the Minister for Planning as a follow-up to Amendment C58 comprising members of DPCD, LMW, DPI, DSE, Mallee CMA, and MRCC.

The Task Force noted that there was evidence that despite Council's policy and zone guidelines, every application for a dwelling and generally all applications for subdivision in the Farming Zone had obtained a planning permit.

The report of the Task Force (December 2009) supported Council's preferred position and also confirmed support for the Vision and Strategic Objectives outlined in the *MOIA Rural Strategy April 2008* as follows:

#### Vision

- Seeks to protect the land for horticulture.
- Accommodates growth in planned estates around existing towns and hamlets.

- Acknowledges the existing rural residential development.
- Contributes to the ongoing economic prosperity and quality lifestyle of Mildura.

#### Strategic objectives

- Protect and enhance the horticultural values of the area.
- Provide for the growth and expansion of existing horticultural businesses or the introduction of new horticultural activities.
- Provide for a diversity of horticultural businesses.
- Protect the viability of the irrigation network by encouraging and supporting a vibrant horticultural industry.
- Protect existing horticultural operations from urban encroachment and rural lifestyle development.
- Have regard to the 2030 growth boundary and discourage fragmentation of land for future potential residential development.
- Have regard to the existing rural residential development.
- Protect the amenity of the area afforded by horticulture.
- Provide for horticultural-based tourism.

The recommendations of the Task Force led to the approval of Amendment C65 in March 2010.

#### ***Amendment C65 (March 2010)***

Amendment C65 was introduced by the Minister for Planning (without notice) on 9 March 2010 directly responding to the recommendations of the Task Force and containing the following changes:

- Amended Clause 21.06 and the schedules to Clauses 35.07, 52.03 and 81.01 to implement the recommendations of the Mildura Planning Taskforce, Final Report, December 2009, including a revised 'Mildura Older Irrigation Area Incorporated Document, February 2010'.
- Amended the schedule to Clause 66.04 to remove the Department of Planning and Community Development as a referral authority under Clause 52.03.

The purpose of the revised MOIA Incorporated Document was as follows:

*To implement the recommendations of the Mildura Planning Taskforce, Final Report, December 2009.*

*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.*

Following the introduction of Amendment C65 to the Mildura Planning Scheme in March 2010 (and as a result of a change of government) Minister Guy indicated a willingness to consider a further amendment to implement necessary changes to Amendment C65 in line with matters raised by Council and local surveying firms.

A key issue raised by local surveyors was that of hardship pertaining to small lots within the MOIA Farming Zone arising from an anomaly where a permit allowing for the creation of a small lot had already been issued, but the legal title had not been issued prior to the gazettal of Amendment C65. Amendment C65 introduced a provision which prohibits establishment of a dwelling on lots between 0.3ha and 1.2ha without a legal title existing at the date of gazettal of Amendment C65.

Following a review and briefing to Councillors on 12 July 2011, Council's modified 'preferred' option was forwarded to the new Minister in September 2011 as follows:

#### Principles

1. Clarification of the minimum/maximum lot size provisions for an excised lot to allow lots up to 1.0ha;
2. Expanded option for dwelling permit to include lots 0.3 – 4.0ha;
3. Removal of sunset clause for dwelling permit;
4. Clarification regarding issue of title date to include unencumbered lots to accommodate titles registered since;
5. Inclusion of provisions for dwelling permit for lots 4.0 – 10ha subject to conditions relating to continued use of the land for horticulture;
6. Inclusion of provisions to ensure dwellings are not constructed on land subject to inundation.

Further clarification to improve the workability of the provisions of the Incorporated Document was also proposed.

#### ***Amendment C72 (February 2012)***

Amendment C72 was introduced by the Minister for Planning (without notice) on 9 February 2012 containing the following minor changes to the Mildura Older Irrigation Area Incorporated Document:

- o Deletion of the requirement that a permit must not be granted to use land for a dwelling on a lot of between 0.3 hectares and 1.2 hectares unless the lot had a legal title at the date of gazettal of Amendment C65 to the Mildura Planning Scheme (9 March 2010) ; and

- Extended the date by which an application must be made to use and/or develop land for a dwelling on a lot of between 0.3 hectares and 1.2 hectares from 31 December 2012 to 10 January 2014.

Importantly, all other issues raised by MRCC in its 'preferred' option of September 2011 were not included in Amendment C72.

The Minister confirmed however, that further consideration of the dwelling issues was necessary to be undertaken following guidance received from work completed for the Mildura Housing & Settlement Strategy as recommended by the *Mildura Planning Task Force Final Report*.

### **Revised Farming Zone 15 August 2013**

The final revised Farming Zone was released by the Minister for Planning on the 15 August 2013 containing the following key addition to the purpose of the zone:

*To encourage the retention of employment and population to support rural communities.*

The final revised zone also included the removal of S173 requirement for an excision or small lot re-subdivision restricting further subdivision.

As identified above however, the removal of the S173 requirement has no effect while the current MOIA Incorporated Document remains in place,

### **Mildura Housing & Settlement Strategy (December 2013)**

As recommended by the Mildura Planning Task Force Report (2009) the Mildura Housing and Settlement Strategy (MHSS) has now been undertaken to review the current housing supply and demand situation, identify those factors affecting the development of sustainable housing and plan for orderly growth and development over the next 30 years.

The final strategy (along with recommendations regarding Low Density and Rural Living Zone areas and support for hamlets) recommends some relaxation of the MOIA Incorporated Document controls regarding dwellings in the *Mildura East Relaxation Area*, which includes the main area of future urban growth between Mildura, Nichols Point and Irymple and towards Kings Billabong.

The strategy includes key recommendations as follows:

- Restrict dwellings in MOIA outside Mildura East Relaxation Area.
- Dwellings be considered in a row of at least 5 existing dwellings within 400m within Mildura East Relaxation Area
- Dwellings be considered adjacent an existing school or similar sensitive land use within Mildura East Relaxation Area
- Low Density Residential rezonings at Cabarita and Irymple.
- Rural Living rezonings at Koorlong, Cabarita, Cardross and Merbein.

Council had confirmed that the focus of the MHSS was to be on providing recommendations in relation to where housing should be located rather than to specifically address the operation of the MOIA document.

The Mildura Housing & Settlement Strategy was adopted by Council in December 2013.

### ***Sunraysia Modernisation Project (December 2013)***

The funding agreement for Lower Murray Water's *Sunraysia Modernisation Project* (SMP) providing \$103M for irrigation infrastructure upgrades was signed on Thursday 19th December 2013.

The project officially commenced from that date and is programmed to be completed in mid to late 2016.

The SMP is the biggest ever upgrade to Sunraysia's Irrigation Infrastructure and in addition to major upgrade works at the main pump stations, the SMP will replace pipelines and open channels in several areas providing improved quality, efficiency and reliability of supply for irrigation customers in the MOIA, cut operational costs and reduce water losses.

The project involves :

- Targeted pipeline projects in Merbein, Red Cliffs and Mildura that will improve supply to 59% of the irrigation districts ;
- Upgrading the key irrigation pump stations in Sunraysia. This will improve reliability, energy efficiency and better match customer demand;
- Installing a new pump station at Benetook K West area and installing approximately 2.7km of low pressure pipeline;
- Replacing approximately 8km of main open channels with low pressure pipeline (including approximately 3.2km of open channels that run through urban areas of Merbein);
- Decommissioning redundant pipeline in the Mildura area;
- Upgrading over 2000 irrigation meters and over 2000 domestic and stock outlets;
- Installing channel automation in the remaining open channel network via regulating structures.

### ***Amendment C87 (January 2014)***

Amendment C87 was introduced by the Minister for Planning following a request from Council on 23 January 2014 containing the following minor change to the Mildura Older Irrigation Area Incorporated Document (December 2013) [Appendix 2]:

- Extended the date by which an application must be made to use and/or develop land for a dwelling on a lot of between 0.3 hectares and 1.2 hectares from 10 January 2014 to 9 January 2015.

### ***Mallee Irrigation Status Report 2013-14: Mallee CMA (June 2014)***

The Mallee Irrigation Status Report 2013-14 prepared by Mallee Catchment Management Authority, maps areas that are being irrigated and those not being irrigated in the pumped irrigating districts as of the summer of 2013-14 and is a continuation of irrigation status reports that record changes to irrigation within the Mallee Region.

The report provides details from the year 2005-6 before large areas became dried off and it identifies the year 2009-10 as the peak year when the 'dried-off' irrigation areas were at their highest level in recent times.

The previous data identified is the year 2011-12 and the changes to the current 2013-14 season are summarised below:

#### Merbein irrigation district

- The non-irrigated area decreased by 111 hectares, (decreased from 38% of irrigable area to 35%);
- Grapevines remained the dominant crop type;
- Grapevines show the most significant change increasing by 95 ha (table grapes 63ha; wine grapes 35ha) of new plantings;
- Drip irrigation remained the majority irrigation method.

#### Mildura irrigation district

- The non-irrigated area decreased by 166 hectares (decreased from 30% of irrigable area to 27%);
- Grapevines remained the dominant crop type;
- Grapevines show the most significant change increasing by 121 ha (table grapes 99ha; wine grapes 27ha) of new plantings;
- Drip irrigation remained the majority irrigation method.

#### Red Cliffs irrigation district

- The non-irrigated area decreased by 212 hectares (decreased from 29% of irrigable area to 24%);
- Grapevines remained the dominant crop type;
- Grapevines show the most significant change increasing by 125 ha (table grapes 62ha; wine grapes 41ha; dried fruit 27ha) of new plantings;
- Drip irrigation remained the dominant irrigation method.

***Mildura Planning Scheme Review Report 2013-14: (June 2014)***

The review was conducted in line with the *Council Plan 2013-2017*, which was adopted by Council on 27 June 2013. *The Mildura Planning Scheme Review Final Report* was adopted by Council on 26 June 2014.

The key outcomes arising from the report include the need for the following:

- Reinstatement of sections of the former Agricultural Land Local Policy that refer to the preferred uses in the Farming Zone
- Add reference to the role of Fifteenth Street in Irymple
- Include policy discouraging supermarket applications in the Commercial 2 Zone along Fifteenth Street
- Update Clause 22.01 Budget Accommodation to reflect the reformed residential zones
- Carry out further strategic work including:
  - Update profile to highlight Mildura's emerging industries coming out of the Loddon Mallee North Regional Growth Plan
  - Review controls in SUZ8, SUZ9, DDO10 & DDO11 that apply to the Mildura Irymple Urban Transition area
  - Review the Mildura Retail Strategy in light of the reforms to the commercial, industrial and residential zones

## 4 Statistical Update

---

### **Original Data**

As already noted, the MOIA Task Force Final report (December 2009) relied on data from Sunrise 21 to estimate the lot and dwelling numbers in the MOIA area.

The Task Force Report found that prior to the implementation of **Amendment C58**, land within the MOIA had been in high demand for dwellings for a rural residential purpose and this resulted in fragmentation from subdivision to create rural residential lots. The Task Force Report quoted the MOIA Rural Strategy (RMCG 2008) which concluded that there were approximately 3550 dwellings in the MOIA on a range of lots sizes.

The Task Force report Table identifying the number of vacant lots (with no dwelling) has been modified to align with the lot size outcomes of **Amendment C65** as follows:

<b>Lots Size (ha)</b>	<b>Vacant Lots (no dwelling)</b>
0.00 – 0.30	342
0.30 – 0.39	154
0.40 – 0.99	275
1.00 – 1.20	53
1.20 – 2.00	72
2.00 – 4.00	320
4.00 – 10.0	1006
Above 10	105

The Task Force supported Council's preferred option (as approved in **Amendment C65**) for every lot between 0.3 and 1.2 hectares (approximately 482 lots but with a sunset clause) and every lot greater than 10 hectares (approximately 105 lots) to have an entitlement to apply for a permit for a dwelling.

This preferred option would result in the potential for an additional 587 dwellings in the Farming Zone. The Task Force concluded that based on building permit data, dwelling entitlements of this order would provide a supply of lots for rural residential purposes for '*...up to 10 years*'.

Further analysis undertaken by Council of the same MOIA data from 2009 reveals that at the 'small' end of the lot size pool, the following characteristics are evident:

Lots Size (ha)	Vacant Lots (no dwelling)
0.00 – 0.20	237
0.20 – 0.29	105

### 2014 Data

#### Dwellings

An analysis of Council records since the gazettal of **Amendment C65** reveals that 138 of these identified 587 possible dwellings have been approved (23%); and only about 44 of these (7%) have been built.

Lots Size Category	Number of Permits Issued	Number of Dwellings Built	Percentage Built
Table 1 of the MOIA Incorporated Document.	28 (of possible 32)	11	34%
0.30 – 1.2ha	104	30	28%
10.00 – 20.00ha	6	3	50%

#### Excisions

In addition, analysis of Council records since the gazettal of **Amendment C65** reveals that approximately 85 two-lot subdivisions have been approved.

## 5 Exemplars

---

The unique nature of the MOIA means no exemplars are able to be identified to guide consideration of an appropriate policy framework for the future of the area.

### ***Shepparton Campaspe Moira October 2008 (Parsons Brinkerhoff)***

In 2013 the Minister approved an amendment for the *Campaspe, Greater Shepparton and Moira Regional Rural Land Use Strategy Final Report October 2008* implementation.

The report examined similar irrigated agricultural outcomes to the MOIA, but has relied on proposed spatially defined outcomes including defined agricultural, rural living, and rural amenity precincts not equally applicable in the MOIA.

The report also acknowledged similar business enterprise models to the MOIA which have guided definition of three Farming Zone areas as follows:

- Farming 1 Zone (Agricultural Growth Areas)
- Farming 2 Zone (Consolidation)
- Farming 3 Zone (Niche Farming).

As identified by the MOIA Rural Strategy 2008 at Section 3.0 above, similar outcomes in the MOIA are unable to be effectively spatially represented due to the dispersal and interspersion of all farm unit sizes/areas and existing dwellings (“pizza” analogy).

## 6 Principles

---

### ***Confirmed Principles for Housing in the MOIA***

Following the release of the final reformed Farming Zone in 2013 and the adoption of the MHSS, the Minister for Planning indicated a continued willingness to consider a further planning scheme amendment to introduce a local response to the new zone on the basis of the existing strategic work and Council's further deliberations.

Council has now prepared an updated suite of principles consistent with this work and the Vision and Strategic Objectives described above.

The following principles are to guide decision making regarding delivery of housing options within the MOIA in accordance with the established vision as follows:

#### Vision: Seeks to protect the land for horticulture.

- On-going protection of MOIA land for horticulture and from fragmentation;
- Acknowledgement that lot size provisions for an excised lot are to ensure that land lost to horticulture is minimised;
- Acknowledgement that farm consolidation is assisted if land is priced at its agricultural value rather than being distorted by its potential housing value.
- Support for development potential on lots so small that they are unlikely to ever make any meaningful contribution to horticultural outcomes.
- Boundary realignments could only be considered if there is no prospect for an additional dwelling and if farm expansion is the outcome.
- Agreement not to take account of very small and unusable lots (channel reserves; old roads etc) in house entitlement considerations.
- Excisions must deliver a better agricultural outcome on at least one of the new lots.
- Excisions must not create a house entitlement where none presently exists.
- Excisions should only be allowed once off any lot.

#### Vision: Accommodates growth in planned estates around existing towns and hamlets.

- Support for the outcomes of MHSS including future urban areas and existing urban infill;
- Support for low density clusters in and around existing rural hamlets;
- Agreement that there is no point in creating further new vacant house lots.

#### Vision: Acknowledges the existing rural residential development.

- Support for expanded options for dwelling permits on 'small' lots to take account of hardship, flexibility, and existing conditions;
- Support for development potential on small 'domestic sized' lots that were approved under a local planning scheme in recent times.
- Support for clarity regarding permits for replacement dwelling;
- Acknowledgement that there is a local tradition and expectation that farming families will live and retire in the family home and pass on the land and home to family members.
- Acknowledgement that excisions should only be from dwellings that existed on the approval date of Amendment C58 (28 May 2009).
- Support for exemptions to enable discretion to be exercised for genuine hardship cases caught by the introduction of Amendment C58

Vision: Contributes to the ongoing economic prosperity and quality lifestyle of Mildura.

- Support for the outcomes of Sunraysia Modernisation Project (SMP);
- Acknowledgement that there is no support for dwellings to be constructed on land subject to inundation.

## 7 Option for Discussion [July 2014]

---

Council considered the way forward for potential changes to the MOIA Incorporated Document arising from the above principles and put them forward for discussion.

**In framing the option for discussion, Council confirmed its primary commitment is to the long term maintenance and primacy of horticulture in the MOIA.**

So as to maintain horticulture and to be consistent with the potential to be provided by the MHSS (especially for rural hamlets), the most attractive option for Council is to adopt a more flexible approach for dwellings at the 'small lot' end of the market, especially between 0.2ha and 2ha.

This option is consistent with the principles described in Section 6 in that it:

- addresses the hardship issues evident from consultations where small lots approved under a local planning scheme in relatively recent times allowed for the potential for a dwelling to be developed;
- involves lots of such a small size that they are unlikely to ever have made a realistic horticulture contribution to the MOIA;
- does not involve large numbers of lots (estimated at another 177 lots – being 105 lots between 0.2ha and 0.29ha; and 72 lots between 1.2ha and 2ha);
- results in a total pool of 764 lots in MOIA as having potential for a dwelling compared to the existing pool of 587 lots (an increase of about 30%);
- is a reasonably small pool compared to the 500+ lots contemplated for RLZ or LDRZ in the MHSS;
- maintains the largest 'pool' of undeveloped lots between 2ha and 10ha (approximately 1326 lots) as only having long term potential to make a contribution to the horticultural objectives of MOIA;
- provides support for the SMP by maintaining the largest 'pool' of horticultural size lots free of additional dwellings.

## 8 Basis for Change

---

Many of the principles outlined above are already supported by existing provisions contained within the MOIA Incorporated Document.

Outcomes requiring change have been identified below in accordance with the Vision and Principles as follows:

Vision: \_\_\_\_\_ Seeks to protect the land for horticulture.

**Outcome 1: Support for development potential on lots so small that they are unlikely to ever make any meaningful contribution to horticultural outcomes**

**Objective:** Changes to MOIA Incorporated Document regarding dwellings to include expanded option for dwelling permits restricted to lots below 2ha

**Change:** *Inclusion of specific provisions to allow dwellings on lots 1.2ha or greater but less than 2.0ha subject to conditions*

**Support for exemptions to enable discretion to be exercised for genuine hardship cases caught by the introduction of Amendment C58**

**Objective:** Changes to MOIA Incorporated Document regarding dwellings to include expanded option for dwellings

**Change:** *Removal of Sunset Clause applying to permit option for dwellings on lots 0.3ha or greater but less than 1.2ha*

**Support for development potential on small 'domestic sized' lots that were approved under a local planning scheme in recent times**

**Objective:** Changes to MOIA Incorporated Document regarding dwellings to include expanded option for dwelling permits based on original expectations regarding permits for lots to a minimum of 0.2ha

**Change:** *Inclusion of specific provisions to allow dwellings on lots 0.2ha or greater but less than 0.3ha subject to conditions*

**Outcome 2: Excisions must deliver a better agricultural outcome on at least one of the new lots**

**Objective:** Changes to MOIA Incorporated Document regarding excision providing certainty regarding desired outcome to prevent additional small non-horticultural lots being created

**Change:** *Inclusion of specific provisions to include requirement for lot to be excised from a parent lot min 3ha.*

**Outcome 3: Acknowledgement that lot size provisions for an excised lot are to ensure that land lost to horticulture is minimised**

**Objective:** Changes to MOIA Incorporated Document regarding excision providing certainty regarding desired outcome.

**Change:** *Inclusion of specific provisions to include requirement for lot to be 0.4ha subject to conditions which allow exemption of an increase to a maximum 1ha.*

**Outcome 4: On-going protection of MOIA land for horticulture and from fragmentation**

**Objective:** Changes to MOIA Incorporated Document regarding excision to include definition of battle-axe lot.

**Change:** *Inclusion of specific provisions to include definition of battle-axe lot as follows: 'a lot configuration relying on a long narrow access and resulting in fragmentation of farming land'.*

**Outcome 5: Agreement not to take account of very small and unusable lots (channel reserves; old roads etc) in house entitlement considerations**

**Objective:** Changes to MOIA Incorporated Document provisions regarding subdivision and dwellings to revise definition to preclude unintended outcomes.

**Change:** *Inclusion of specific provisions to confirm subdivision must not rely on lots that are disused channel reserves, other small utility lots and lots created via a vinculum (except a vinculum involving lots abutting and directly aligned on opposite sides of a road or channel reserve) to be counted as existing lots or to meet minimum area requirements.*

**Outcome 6: Infill development that doesn't fragment Farming Zone areas**

**Objective:** Changes to MOIA document consistent with recommendations of MHSS by allowing a planning permit for use of the land for a dwelling in restricted locations consolidated within existing rural living development

**Change:** *Inclusion of specific provisions to allow dwellings within the Mildura East Relaxation Area on lots 2ha or greater but less than 10ha subject to conditions including siting controls*

**Outcome 7: Boundary realignments could only be considered if there is no prospect for an additional dwelling and if farm expansion is the outcome**

**Objective:** Changes to MOIA Incorporated Document regarding re-subdivision to confirm existing dwelling option protected.

**Change:** *Inclusion of specific provisions to allow new lots created which are 10ha or greater to be unencumbered by a section 173 agreement stating no further dwelling if the number of lots 10ha or greater is not increased and the original lots are similarly unencumbered).*

**Outcome 8: On-going protection of MOIA land for horticulture**

**Objective:** Changes to MOIA Incorporated Document regarding new dwellings to include requirement for landscape buffer.

**Change:** *Inclusion of specific provisions for new dwellings to include requirement for provision of landscape buffer to minimise potential conflicts.*

Vision: Accommodates growth in planned estates around existing towns and hamlets.

**Outcome 9: Support for the outcomes of MHSS including future urban areas and existing urban infill**

**Objective:** Changes to MOIA document consistent with recommendations of MHSS to minimise compromise to successful urban development arising from inappropriately located rural residential development and subdivision

**Change:** *Inclusion of specific provisions in MOIA Incorporated Document regarding dwellings or subdivision within the Mildura East Growth Area to include restriction for permit regarding siting controls*

Vision: Acknowledges the existing rural residential development.

**Outcome 10: Support for clarity regarding permits for replacement dwelling**

**Objective:** Changes to MOIA Incorporated Document regarding dwelling to include provision confirming opportunity for replacement.

**Change:** *Inclusion of specific provisions to allow replacement dwellings subject to conditions.*

Vision: Contributes to the ongoing economic prosperity and quality lifestyle of Mildura.

**Outcome 11: Siting controls to avoid inundation or flooding**

**Objective:** Changes to MOIA Incorporated Document regarding dwellings to provide restriction and guidance for dwelling permits to avoid risks from inundation

**Change:** *Inclusion of specific provisions regarding dwellings to include siting controls to avoid inundation*

## 9 Initial Benefit/Risk Assessment

---

The key implications arising from the outcomes above are described below in terms of both benefits and risks.

### Benefits

The key benefits are as follows.

- MHSS outcomes are supported
- MOIA Vision and strategic objectives are supported
- Existing opportunities to protect land for horticulture balanced with maintained opportunities for rural living
- 'As of right' opportunities maintained similar to status quo
- Additional opportunities for very small lots with acknowledgement that these lots have no continued farming outcomes (ie already removed from farming)
- Continued restriction on establishment of dwellings unrelated to horticulture for majority of lots
- Common-sense opportunities for infill development that doesn't fragment Farming Zone areas in restricted locations
- Sunraysia modernisation project areas of benefit infrastructure is protected
- Inundation or flooding risks for dwellings are avoided
- Future urban expansion areas are not compromised
- Certainty and increased ease of use of the document

### Risks

Risks of implementing changes identified include the following:

- There is a potential increase of about 177 new dwellings in the study area (on top of the 587 potentially allowed by existing MOIA document)..
- Cumulative additional dwelling options may compromise achievement of strategic vision and objectives
- Consequential pressures and costs on Council to fund services to these new dwellings in terms of roads, garbage collection, infrastructure, etc.
- Possible increase in potential rural/urban conflict about rights to farm and rights to amenity protection.

- Additional dwelling development may compromise further rezonings to Rural Living or Low Density Residential including in those rural hamlets which need support in accordance with recommendations of the MHSS.
- Uncertainty about the financial impacts on the wider horticultural industry which generates over half a billion dollars a year into the local economy.

## 10 Exhibited Option

---

### ***Exhibited Option for Discussion***

Council's option regarding proposed changes was presented in the *Discussion Paper: Proposed Planning Changes to the Mildura Older Irrigated Areas July 2014*.

The Council 'Option for Discussion' is generally in accordance with the MHSS and with the previous strategic work and the established principles of the MOIA Incorporated Document.

This option seeks to strike a reasonable balance between limiting the dwelling potential in the MOIA area, encouraging expansion of horticulture in the region and equitably responding to the existing and long established settlement pattern.

The modification acknowledges the planning regime that existed up until May 2009 where all dwellings up to 40ha were subject to a permit. Unlike that regime however, for the largest pool of undeveloped lots (2ha to 10ha) it will still ensure that new dwellings are prohibited.

Council has taken into consideration the importance of horticulture in the municipality and have included requirements to protect land which is conducive to horticulture including protection for the Sunraysia Modernisation Project Model Areas of Benefit.

This work is being undertaken in conjunction with the Mildura Housing and Settlement Strategy to provide a framework for orderly housing growth in Mildura.

The Incorporated Document was revised accordingly with the draft comprising Council's option for discussion and the specific changes was included in the Discussion Paper.

## 11 Consultation

---

Council considers consultation is always an important part of the review process to enable an understanding of the community's expectations and how they perceive the planning scheme and where it may be improved.

Given the long history and cumulative impacts of both considerable strategic work and numerous changes implemented via Planning Scheme amendments to date regarding the MOIA issues, considerable engagement has occurred covering the main aims as follows:

### ***Aims achieved prior:***

- Understand what the community values about the MOIA, and what stakeholders see as its positive and negative features.
- Involve key stakeholders and landowners in identifying key issues that need to be addressed
- Engage key stakeholders and the wider community in generating ideas and recommendations that may influence the outcomes

### ***The key aims to be achieved via exhibition of Discussion Paper as follows:***

- Inform the community about proposed changes (manage expectations).
- Confirm issues and influences and demonstrate closure
- Generate understanding within the community for the future possibilities of the municipality to ensure long-term ownership of changes that may occur.

### ***Consultation Process***

Targeted consultation was therefore considered appropriate for the discussion as well as providing the opportunity for other interested persons to participate in the planning process.

To ensure the review reflects the priorities or urgent issues relevant to both key stakeholders and the wider community the Discussion Paper was advertised for public comment for a period of six weeks from 4 July 2014 to 15 August 2014.

To assist public awareness a media release was issued on 3 July 2014 with subsequent items in the local news and the Mayor's column in the Sunraysia Daily during the comment period.

The *Review* has included consultation with stakeholders using the following notification methods:

- Local newspapers
- Fact sheet prepared
- Frequently asked questions sheet prepared
- Council's website
- Local libraries Mildura, Merbein, Irymple and Red Cliffs.
- Via individual notification letters sent to key stakeholders

Additionally, hardcopy exhibition documents were made available in the Mildura Service Centres and local libraries in Mildura, Merbein, Irymple and Red Cliffs.

The following key stakeholders were invited to information sessions on 16 and 17 July:

- Department of Transport Planning and Local Infrastructure, Government and Infrastructure Agencies, including Referral Authorities (8 attendees);
- Community representatives/commercial & industry groups, including the local Developer Industry Group (SDIG) (16 attendees) and Farming Industry (3 attendees);
- General community drop-in session (92 attendees);

## 12 Submissions

### Overview

Overall 60 submissions were received as follows:

- Landowners/residents 50
- Consultants 5
- Agencies 4
- Horticultural Industry stakeholders 1

Key issues raised in the submissions are as follows:

- Believe proposed changes don't go far enough to meet individual circumstances
- Support for changes proposed
- Constructive suggestions regarding improvement to the wording of the MOIA Incorporated Document
- Acknowledgement of both sides of the equation with the need to protect farm land but allow appropriate construction
- MHSS issues regarding rural living and the 'relaxation area'

### Response to Submissions

The issues raised have been assessed and responses identified in Table 1 below:

**Table 1: Table of Responses**

DISCUSSION PAPER			
Sub No.	Key Submission Issue	Assessment	Response
1 Freeman	<ul style="list-style-type: none"> <li>• Opposed to retention of Section 173 agreements</li> </ul>	<p>The requirement for a legal agreement has been a long standing aspect of the MOIA Document to ensure there is only one chance at either a dwelling or a subdivision.</p> <p>However, changes are proposed to the Incorporated Document to assist the submitter</p>	Supported in part
1A Freeman	<ul style="list-style-type: none"> <li>• No need for size of new lot to be 0.4ha.</li> </ul>	This is a practical response to the existing situation.	Agree to changes
1B Freeman	<ul style="list-style-type: none"> <li>• Changes are needed to ensure that subdivision is not jeopardised by existence of utility lots.</li> </ul>	Changes are proposed to the Incorporated Document to assist the submitter.	Supported in part
1C Freeman	<ul style="list-style-type: none"> <li>• The basis of the 0.2ha is from the former Shire scheme</li> </ul>	The 0.2ha was widely used in the former Shire leaving a legacy of lots of this size	Noted
1D Freeman	<ul style="list-style-type: none"> <li>• Supports removal of sunset clause.</li> </ul>	The submission is consistent with the Discussion Paper	Noted

DISCUSSION PAPER			
Sub No.	Key Submission Issue	Assessment	Response
1E Freeman	<ul style="list-style-type: none"> <li>Need to start again on a new Incorporated Document.</li> </ul>	Changes are proposed to the Incorporated Document to assist the submitter	Not supported
1F Freeman	<ul style="list-style-type: none"> <li>Should be dwelling potential for all lots 2ha-10ha.</li> </ul>	Extending dwelling opportunities to all lots between 2ha and 10ha would undermine the 'Vision' leading to a rural residential outcome given that there are over 1320 lots in this category.	Not supported
1G Freeman	<ul style="list-style-type: none"> <li>Opposed to retention of Section 173 agreements especially in the ME Growth Area.</li> </ul>	The requirement for a legal agreement has been a long standing aspect of the MOIA Document to ensure there is only one chance at either a dwelling or a subdivision. However, changes are proposed to the Incorporated Document to assist the submitter	Not supported
2 Freeman	<ul style="list-style-type: none"> <li>Terms such as 'adjoining' need definition.</li> </ul>	The Document would be improved by defining a number of recurrent terms.	Agree to changes
3 Presser	<ul style="list-style-type: none"> <li>Support for change to lot size down to 0.2ha</li> </ul>	The submission is consistent with the Discussion Paper	Noted
4 Collins	<ul style="list-style-type: none"> <li>Support for opportunity to excise a dwelling .</li> <li>Would like to erect another dwelling</li> </ul>	The Discussion Paper supports a one off excision but does not support further dwelling opportunities.	Noted. Not supported
5 Goulburn Murray Water	<ul style="list-style-type: none"> <li>The proposed changes strike a balance between dwelling potential and support for horticulture.</li> </ul>	The submission supports the proposed changes	Noted
6 Cavallo	<ul style="list-style-type: none"> <li>There is a need for a more flexible approach in the Merbein and Birdwoodton areas as at Mildura East</li> </ul>	There is no basis in the MHSS for a relaxation area in this part of the municipality.	Not supported.
7 Violi	<ul style="list-style-type: none"> <li>The opportunity for dwellings between 2ha and 10ha in the ME growth area.</li> </ul>	The submission is consistent with the Discussion Paper.	Noted
8 Thompson	<ul style="list-style-type: none"> <li>Support for change to lot size down to 0.2ha</li> </ul>	The submission is consistent with the Discussion Paper	Noted
9 Mazza	<ul style="list-style-type: none"> <li>There is a need for a more flexible approach in the Merbein South area as at Mildura East</li> </ul>	There is no basis in the MHSS for a relaxation area in this part of the municipality.	Not supported.
10 Monteleone	<ul style="list-style-type: none"> <li>Support for change to lot size up to 2ha</li> </ul>	The submission is consistent with the Discussion Paper	Noted
11 Erskine	<ul style="list-style-type: none"> <li>Every lot should have the potential to apply for a dwelling permit and have it considered on its merits.</li> </ul>	The submission is inconsistent with the MOIA Task Force and the Incorporated Document.	Not supported
12	<ul style="list-style-type: none"> <li>The submitter wants to excise a house and build</li> </ul>	There is scope in the modified Incorporated Document for	Noted

DISCUSSION PAPER			
Sub No.	Key Submission Issue	Assessment	Response
<b>Cavallo</b>	another on an 11.7ha lot.	some subdivision and dwelling potential subject to compliance with all other requirements of the Incorporated Document.	
<b>13 Costa</b>	<ul style="list-style-type: none"> <li>Opposes retention of Section 173 legal agreement</li> </ul>	The submitter has a permit for an excision. The requirement for a legal agreement has been a long standing aspect of the MOIA Document to ensure there is only one chance at either a dwelling or a subdivision..	Not supported
<b>14 Smith</b>	<ul style="list-style-type: none"> <li>General comments</li> <li>MOIA Document should be as flexible as possible</li> <li>Should be dwelling potential for all lots 2ha-10ha.</li> </ul>	<p>The modified document seeks to balance dwelling opportunities and the retention of horticulture.</p> <p>Extending dwelling opportunities to all lots between 2ha and 10ha would undermine the 'Vision' leading to a rural residential outcome given that there are over 1320 lots in this category.</p>	Noted and not supported
<b>15 Midgley</b>	<ul style="list-style-type: none"> <li>The submitter owns two lots in the ME growth area of 845m2 and 2.3ha</li> </ul>	The request on the larger lot is accommodated by the Incorporated Document but not on the smaller lot	Noted
<b>16 Belbin</b>	<ul style="list-style-type: none"> <li>Supports the changes to the MOIA Document.</li> <li>Is concerned about the parts of the 'Vision' statement.</li> <li>Should be dwelling potential for all lots 2ha-10ha.</li> </ul>	<p>The Vision statement is drawn from the existing MOIA Task Force Report.</p> <p>Extending dwelling opportunities to all lots between 2ha and 10ha would undermine the 'Vision' leading to a rural residential outcome given that there are over 1320 lots in this category.</p>	Noted and supported in part
<b>17 Lewin</b>	<ul style="list-style-type: none"> <li>Supports the changes to the MOIA Document.</li> <li>Is concerned about the parts of the 'Vision' statement.</li> <li>Should be dwelling potential for all lots 2ha-10ha.</li> </ul>	<p>The Vision statement is drawn from the existing MOIA Task Force Report.</p> <p>Extending dwelling opportunities to all lots between 2ha and 10ha would undermine the 'Vision' leading to a rural residential outcome given that there are over 1320 lots in this category.</p>	Supported in part. Not supported in relation to 2ha to 10ha.
<b>18 Forbes</b>	<ul style="list-style-type: none"> <li>Should be dwelling potential for all lots 2ha-10ha.</li> </ul>	Extending dwelling opportunities to all lots between 2ha and 10ha would undermine the 'Vision' leading to a rural residential outcome given that there are over 1320 lots in this category.	Not supported
<b>19 Graham</b>	<ul style="list-style-type: none"> <li>Supports the extension in area to 2ha</li> <li>Opposes retention of Section 173 legal agreement limiting further dwellings.</li> <li>Supports removal of the sunset clause</li> </ul>	<p>The submission is generally supportive other than for the need for a legal agreement.</p> <p>It is unclear from the submission if the existing lot is encumbered by a legal agreement.</p> <p>The requirement for a legal agreement has been a long</p>	Supported in part.

DISCUSSION PAPER			
Sub No.	Key Submission Issue	Assessment	Response
		standing aspect of the MOIA Document to ensure there is only one chance at either a dwelling or a subdivision.  However, changes are proposed to the Incorporated Document to assist the submitter	
<b>20 Johnson</b>	<ul style="list-style-type: none"> <li>The submitters own 2.32ha and so are unable to apply for a dwelling permit.</li> </ul>	Extending dwelling opportunities to all lots between 2ha and 10ha would undermine the 'Vision' leading to a rural residential outcome given that there are over 1320 lots in this category.	Not supported
<b>21 Piscioneri</b>	<ul style="list-style-type: none"> <li>Requests rezoning to rural residential at Cabarita.</li> </ul>	The MHSS analysed options for rural living rezonings.	Referred to the MHSS
<b>22 EPA</b>	<ul style="list-style-type: none"> <li>No objections.</li> <li>Wants to clarify that any dwelling will still need to comply with FZ provisions.</li> </ul>	The existing provisions of the FZ will still apply in terms of wastewater treatment etc.	Noted
<b>23 Garrigan</b>	<ul style="list-style-type: none"> <li>Supports the exemptions in the ME Growth area.</li> <li>Opposes the retention of the Section 173 legal agreement.</li> </ul>	The requirement for a legal agreement has been a long standing aspect of the MOIA Document to ensure there is only one chance at either a dwelling or a subdivision	Not supported in part.
<b>24 Shaw</b>	<ul style="list-style-type: none"> <li>While the submission supports the protection of horticultural land from indiscriminate new dwellings, it opposes the retention of the Section 173 legal agreement.</li> </ul>	The requirement for a legal agreement has been a long standing aspect of the MOIA Document to ensure there is only one chance at either a dwelling or a subdivision.  However, changes are proposed to the Incorporated Document to assist the submitter.	Supported
<b>25 Zagar</b>	<ul style="list-style-type: none"> <li>Support for change to lot size up to 2ha</li> </ul>	The submission is consistent with the Discussion Paper	Noted
<b>26 Hammat</b>	<ul style="list-style-type: none"> <li>Support for change to lot size up to 2ha</li> </ul>	The submission is consistent with the Discussion Paper	Noted
<b>27 Callipari</b>	<ul style="list-style-type: none"> <li>Support for change to lot sizes between 0.2ha and 2ha in the ME relaxation area</li> <li>Supports aspects of the Section 173 legal agreement.</li> </ul>	The submission is on land that is now outside the ME growth area  The requirement for a legal agreement has been a long standing aspect of the MOIA Document to ensure there is only one chance at either a dwelling or a subdivision  However, changes are proposed to the Incorporated Document to assist the submitter	Not supported in part
<b>28 Godfrey</b>	<ul style="list-style-type: none"> <li>The submitter wishes to excise a house off 3ha and to erect a second dwelling.</li> </ul>	Extending dwelling opportunities to all lots between 2ha and 10ha would undermine the 'Vision' leading to a rural residential outcome	Not supported

DISCUSSION PAPER			
Sub No.	Key Submission Issue	Assessment	Response
		given that there are over 1320 lots in this category.	
<b>29 Lewin</b>	<ul style="list-style-type: none"> <li>The more liberal rules in the relaxation area should be extended to all of the MOIA.</li> </ul>	Extending dwelling opportunities to all lots between 2ha and 10ha would undermine the 'Vision' leading to a rural residential outcome given that there are over 1320 lots in this category.	Not supported
<b>30 Lower Murray Water</b>	<ul style="list-style-type: none"> <li>Supports the protection of horticultural land.</li> <li>Supports in principle the changes in the ME Growth area but opposes the precise boundaries.</li> <li>Does not support further subdivision opportunities in the ME Relaxation Area as it will raise right to farm issues.</li> </ul>	The extent of the 'relaxation' area has been modified to align with the ME Growth Area.	Supported
<b>31 Pinnington</b>	<ul style="list-style-type: none"> <li>Need to provide more opportunity for lifestyle and retirement.</li> <li>Supports dwellings on lots between 2ha and 10ha throughout MOIA</li> </ul>	Extending dwelling opportunities to all lots between 2ha and 10ha would undermine the 'Vision' leading to a rural residential outcome given that there are over 1320 lots in this category.	Not supported
<b>32 Zappia</b>	<ul style="list-style-type: none"> <li>Need to remove reference to disused channel reserves.</li> </ul>	The MOIA document has been modified to address part of the concern but it remains important to make reference to small utility lots and channel reserves.	Not supported
<b>33 Sunraysia Irrigators Council</b>	<ul style="list-style-type: none"> <li>Notes that the two recurrent issues in the irrigation area are the rights to maximise the potential of the land and the rights to farm without interruption.</li> </ul>	The submission highlights the practical difficulties in balancing these competing objectives.	Noted
<b>34 Cirillo</b>	<ul style="list-style-type: none"> <li>Does not support the MOIA document and supports dwellings on existing lots.</li> <li>Does not support legal agreements or the boundary realignment provisions.</li> </ul>	<p>Extending dwelling opportunities to all lots would undermine the 'Vision' of a horticultural future for the area and would lead to a rural residential outcome.</p> <p>The requirement for a legal agreement has been a long standing aspect of the MOIA Document to ensure there is only one chance at either a dwelling or a subdivision</p> <p>However, changes are proposed to the Incorporated Document to assist the submitter.</p>	Not supported in part
<b>35 Ryan</b>	<ul style="list-style-type: none"> <li>The submission raises right to farm issues as they are horticultural operators who are the subject of complaint about spray etc.</li> <li>The submitter opposes further subdivision and dwellings.</li> </ul>	The submission is essentially supportive of the existing MOIA document but is opposed to further subdivision and dwellings for 'right to farm' reasons.	Noted

DISCUSSION PAPER			
Sub No.	Key Submission Issue	Assessment	Response
36 <b>Blekic</b>	<ul style="list-style-type: none"> <li>Supports the opportunity for a dwelling on all lots in the MOIA</li> </ul>	Extending dwelling opportunities to all lots would undermine the 'Vision' of a horticultural future for the area and would lead to a rural residential outcome.	Not supported
37 <b>McCracken</b>	<ul style="list-style-type: none"> <li>Support in principle for the changes but wishes to extend the opportunity to apply for a dwelling on all lots between 2ha and 10ha</li> <li>Suggests that part of the land should be included in a 'conservation' type zone as it contains significant native vegetation.</li> </ul>	Extending dwelling opportunities to all lots between 2ha and 10ha would undermine the 'Vision' leading to a rural residential outcome given that there are over 1320 lots in this category.	Noted. Rezoning request to be assessed as part of Planning Scheme Review Amendment.
38 <b>Garreffa</b>	<ul style="list-style-type: none"> <li>Support for change to lot size down to 0.2ha</li> </ul>	The submission is consistent with the Discussion Paper	Noted
39 <b>Paanro</b>	<ul style="list-style-type: none"> <li>Supports the 3ha excision provision.</li> <li>Supports opportunities to apply for a dwelling between 2ha and 10ha in the ME Growth Area.</li> </ul>	The submission is consistent with the Discussion Paper	Noted
40 <b>Arnold</b>	<ul style="list-style-type: none"> <li>Supports the changes to the MOIA Document as striking a balance between dwelling and horticultural objectives.</li> </ul>	The submission is consistent with the Discussion Paper	Noted
41 <b>Cooke</b>	<ul style="list-style-type: none"> <li>While the submitter supports the protection of horticulture, there needs to be greater flexibility for small lots.</li> <li>It appears that the submission opposes the need for a legal agreement as it will inhibit further subdivision and dwelling opportunities.</li> </ul>	The submission is generally consistent with the Discussion Paper in that greater flexibility is provided at the small end. It is unclear what size lots are suggested however there is a need for a legal agreement to ensure there is only one chance for a dwelling or subdivision.	Not supported in part.
42 <b>Stewart</b>	<ul style="list-style-type: none"> <li>Support in principle for the changes but wishes to extend the opportunity to apply for a dwelling on all lots between 2ha and 10ha and not just in the relaxation area.</li> <li>The subject land is at Koorlong which has been addressed as part of the Housing Strategy.</li> </ul>	Extending dwelling opportunities to all lots between 2ha and 10ha would undermine the 'Vision' leading to a rural residential outcome given that there are over 1320 lots in this category.	Not supported Refer to MHSS
43 <b>Rivett</b>	<ul style="list-style-type: none"> <li>While there is support for the proposed MHSS rezoning at Koorlong and the relaxation area, this should be extended to other parts of MOIA.</li> <li>The subject land is at Koorlong which has been addressed as part of the Housing Strategy.</li> </ul>	Extending dwelling opportunities to all lots between 2ha and 10ha would undermine the 'Vision' leading to a rural residential outcome given that there are over 1320 lots in this category.	Not supported Refer to MHSS

DISCUSSION PAPER			
Sub No.	Key Submission Issue	Assessment	Response
44 Vale	<ul style="list-style-type: none"> <li>The submitters have lots of 2ha that they would like to sell with permission to build.</li> </ul>	It appears that the modified Document may assist the submitter as the discretionary limit has been increased to 2ha.	Noted
45 Heley	<ul style="list-style-type: none"> <li>Submitter wishes to extend the opportunity to apply for a dwelling on all lots between 2ha and 10ha as is done at the ME Growth Area.</li> </ul>	Extending dwelling opportunities to all lots between 2ha and 10ha would undermine the 'Vision' leading to a rural residential outcome given that there are over 1320 lots in this category.	Not supported.
46 Holt	<ul style="list-style-type: none"> <li>Support for change to lot size to between 0.2ha and 2ha.</li> </ul>	The submission is consistent with the Discussion Paper	Noted
47 Standley	<ul style="list-style-type: none"> <li>Suggests that the exemptions in the ME Growth area for lots between 2ha and 10ha be extended to other areas.</li> <li>Opposes the retention of the Section 173 legal agreement preventing a further dwelling.</li> </ul>	<p>Extending dwelling opportunities to all lots between 2ha and 10ha would undermine the 'Vision' leading to a rural residential outcome given that there are over 1320 lots in this category.</p> <p>The requirement for a legal agreement has been a long standing aspect of the MOIA Document to ensure there is only one chance at either a dwelling or a subdivision.</p> <p>However, changes are proposed to the Incorporated Document to assist the submitter by identifying the Mildura South growth area.</p>	Supported in part
48 Hughes	<ul style="list-style-type: none"> <li>The submitter is within the ME relaxation area and wishes to realign two titles so as to enable a dwelling to be built. It appears that the total land area is about 8ha</li> </ul>	The submission is on land that is now outside the ME growth area	Not supported
49 Garraway	<ul style="list-style-type: none"> <li>The submitter wishes to be included in Table 1 to the Incorporated Document to enable a dwelling to be erected on its 2.02ha site.</li> </ul>	There is no need to include the land in Table 1 as it is within the ME growth area and dwellings can be considered on lots between 2ha and 10ha.	Noted
50 Cleary	<ul style="list-style-type: none"> <li>Proposed changes are supported but do not go far enough.</li> <li>Suggests that the exemptions in the ME Growth area being extended to other areas.</li> </ul>	Extending dwelling opportunities to all lots between 2ha and 10ha would undermine the 'Vision' leading to a rural residential outcome given that there are over 1320 lots in this category	Not supported
51 Lauder	<ul style="list-style-type: none"> <li>Suggests that the exemptions in the ME Growth area being extended to other areas.</li> </ul>	Extending dwelling opportunities to all lots between 2ha and 10ha would undermine the 'Vision' leading to a rural residential outcome given that there are over 1320 lots in this category.	Not supported.
52	<ul style="list-style-type: none"> <li>Suggests that the</li> </ul>	Extending dwelling opportunities to all lots	Not supported.

DISCUSSION PAPER			
Sub No.	Key Submission Issue	Assessment	Response
<b>Willcocks</b>	exemptions in the ME Growth area being extended to other areas.	between 2ha and 10ha would undermine the 'Vision' leading to a rural residential outcome given that there are over 1320 lots in this category.	
<b>53 Brizzi</b>	<ul style="list-style-type: none"> <li>Suggests that the exemptions elsewhere in MOIA (especially in the ME Growth area) should be extended to other areas such as Red Cliffs.</li> </ul>	Extending dwelling opportunities to all lots between 2ha and 10ha would undermine the 'Vision' leading to a rural residential outcome given that there are over 1320 lots in this category.	Not supported.
<b>54 DTPLI</b>	<ul style="list-style-type: none"> <li>The submission notes the interrelationship between the MHSS and the MOIA Review</li> </ul>	It is proposed to progress both reviews in the one consolidated amendment.	Noted
<b>55 McGinniskin</b>	<ul style="list-style-type: none"> <li>The submitter supports extending opportunities to apply for a dwelling to the 0.2ha to 2ha category.</li> <li>The submitter is within the ME relaxation area</li> </ul>	The submission is on land that is now outside the ME growth area	Not supported
<b>56 Riedl</b>	<ul style="list-style-type: none"> <li>Disappointed with the lack of consultation and the constant changing of the planning regulations without notice.</li> <li>The MOIA area has changed greatly over recent years.</li> <li>No discussion on the impacts of climate change.</li> </ul>	<p>The submission highlights the practical difficulties for Council in balancing a number of competing objectives.</p> <p>The existing MOIA document is stricter than the modified version and so Council is endeavouring to introduce greater flexibility for some (but not all) landowners.</p>	Noted
<b>57 Sutherland</b>	<ul style="list-style-type: none"> <li>Questions whether horticulture does underpin the local economy.</li> <li>Volume farms are not in MOIA but are beyond this.</li> <li>People live in the MOIA as much for its visual amenity as for its horticulture.</li> <li>Market forces should and will determine the use of irrigated land.</li> </ul>	<p>The existing MOIA document is stricter than the modified version and so Council is endeavouring to introduce greater flexibility for some (but not all) landowners.</p> <p>As with other submissions, this submission highlights the practical difficulties for Council in balancing a number of competing objectives.</p>	Noted
<b>58 Foreman</b>	<ul style="list-style-type: none"> <li>The submitter supports the proposed rezonings in the MHSS to include land around McEdwards Street, Birdwoodton in the RLZ.</li> </ul>	This land is included in the rezonings as part of MHSS	Referred to MHSS
<b>59 Assimakopoulos</b>	<ul style="list-style-type: none"> <li>The submitter requests that he be considered for table 1 as a 'hardship' case given that he had a live planning permit at the</li> </ul>	Extending dwelling opportunities to all lots between 2ha and 10ha would undermine the 'Vision' leading to a rural residential outcome given that there are over 1320	Not supported

DISCUSSION PAPER			
Sub No.	Key Submission Issue	Assessment	Response
	<p>time of Amendment C58.</p> <ul style="list-style-type: none"> <li>Alternatively, the submitter requests that dwellings be permissible on lots between 2ha and 10ha.</li> </ul>	<p>lots in this category.</p> <p>It is up to DTPLI to further consider whether the land should be included in Table 1.</p>	
<b>60 Costa Planning</b>	<ul style="list-style-type: none"> <li>Suggests that the exemptions in the ME Growth area being extended to other areas so that all lots between 2ha and 10ha have the same opportunity to apply for a dwelling permit.</li> </ul>	<p>Extending dwelling opportunities to all lots between 2ha and 10ha would undermine the 'Vision' leading to a rural residential outcome given that there are over 1320 lots in this category.</p>	Not supported.
	<ul style="list-style-type: none"> <li>Suggests that the lower end needs to be reduced to 0.1ha.</li> </ul>	<p>There is no evidence to support lowering the small end to 0.1ha.</p>	Not supported
	<ul style="list-style-type: none"> <li>Disputes that there are large areas of the MOIA being brought back into agricultural production.</li> </ul>		Not supported
	<ul style="list-style-type: none"> <li>Specific requirements in the document should be removed including date when dwelling existed, requirement for legal agreement, minimum lot size for existing dwelling lot, dwelling setbacks, and no restrictions on lots in excess of 10ha.</li> </ul>	<p>There is potential to tidy up some of the specific aspects of the document (minimum size for existing dwelling and the replacement dwelling).</p> <p>The requirement for a legal agreement has been a long standing aspect of the MOIA Document to ensure there is only one chance at either a dwelling or a subdivision</p> <p>However, changes are proposed to the Incorporated Document to assist the submitter.</p>	Supported in part

## 13 Conclusion

---

### **MHSS**

The MHSS did not address MOIA directly but has a direct relationship given finite market for rural residential development and its position to encourage development where net community benefit exists.

Several submissions focussed on the opportunity for additional rural residential areas (referred to subsequent amendment) and other submissions focussed on the 'relaxation area'.

The MHSS did identify greater flexibility ('relaxation area') where long term agricultural use of the land is unlikely or challenging given a proximity to the urban area. The MOIA Discussion Paper addressed rural areas but also influences the proposed 'relaxation area'.

It is now proposed to not refer to 'relaxation area' in forthcoming amendment but to place emphasis on 'future growth areas'. These will have controls around placement of dwellings on lots to avoid compromising future growth and connectivity and more flexibility for dwellings given the long term future.

Second stage of Mildura South will also be identified as a 'future growth area' and the same policy will apply to that area as for Mildura East.

### ***Incorporated Document***

In accordance with the responses to submissions in Table 1 in Section 12 above, further changes proposed are as follows:

#### *Generally*

- New wording updating *Purpose* to reference this document
- Include *Glossary* to clarify intentions regarding terms including 'adjoining' and 'battle-axed lots';
- A simpler document structure for ease of reading

#### *Subdivision Controls*

- Additional Mildura South Growth Area and Mildura South Benetook By-Pass Corridor included in siting requirements for excisions and boundary realignments
- Additional wording providing clarification of protection of existing dwelling entitlements and existing lot sizes for re-subdivision (0.2-2ha/less than 0.4ha)

#### *Dwelling Controls*

- Additional Mildura South Growth Area included in dwelling opportunity 2.0-10ha generally ( additional 17 potential dwellings)
- Mildura East Relaxation Area restricted to defined Mildura East Growth Area for dwelling opportunity 2.0-10ha generally (additional 49 potential dwellings)

- Additional Mildura South Growth Area and Mildura South By-Pass Corridor included in siting requirements for dwelling opportunity 10-20ha
- Additional restriction on Mildura South Benetook By-Pass Corridor for dwelling opportunities 0.2-10ha

### Outcomes

The outcomes with respect to the responses to submissions received are identified in Table 2 below.

**Table 2: Table of Outcomes**

DISCUSSION PAPER				
Submission Issue.		Support – No Change Required	Satisfied by Further Changes	Remains Not Satisfied
<b>General</b>	Overall	29, 40, 50		
	Completely new MOIA Plan prepared			1E
	Inclusion of Section 173 generally			1G
	Definition of adjoining		2	
	No objection	5, 22		
<b>Subdivision</b>	Re-subdivision dwelling clarification	17	1, 2, 19, 24, 27, 34, 60	
	Channel reference clarified	1B		1B, 32
	Excision including S173 - Generally			13, 28, 31, 41, 47, 51, 60
	Excision including S173 – Growth Area			4, 23, 60
	Excision 3ha minimum	39		13
	Setback requirements existing dwellings			60
	No subdivision into 4 acre lots for dwellings/rural living			53
<b>Dwellings</b>	0.2 to 2.0 Ha	1C, 3, 8, 10, 15, 16, 17, 19, 25, 26, 27, 34, 38, 41, 44, 46, 55		60
	Removal of sunset clause	1D, 16, 17, 27		
	Dwelling opportunity 2.0-10ha – In Relax/Growth Area	7, 15, 16, 17, 27, 39, 48, 49, 55		
	Dwelling opportunity 2.0-10ha – In Mda Sth Growth Area		47	
	No Dwelling opportunity 2.0-10ha – Outside Relax/Growth Area			1F, 6, 9, 11, 14, 16, 17, 18, 20, 29, 31, 34, 36, 45, 47, 50, 51, 52, 53, 59, 60
	No Dwelling opportunity 2.0-10ha – In Relaxation Area		30	27, 48, 55
	Replacement dwelling clarification	16, 17, 60		
	No more dwellings allowed			35

<b>DISCUSSION PAPER</b>				
<b>Submission Issue.</b>		<b>Support – No Change Required</b>	<b>Satisfied by Further Changes</b>	<b>Remains Not Satisfied</b>
	More relaxation areas provided			43, 45
	No infill in relaxation areas			48
<b>MHSS Issue (Submissions to be referred to amendment)</b>	Include land in RCZ			(37)
	Koorlong LDRZ			(42, 43, 45)
	ME Growth Area			(56, 57)
	McEdward Street RLZ			(58)
	Cabarita RLZ			(21, 59)

## 14 Final Proposed Incorporated Document Summary

---

The final proposed Incorporated Document comprising the cumulative changes identified above is included at **Appendix 3**.

*The key outcomes given effect by the proposed revised document involve the following:*

---

### Subdivision

*Within the Mildura older irrigated areas of Mildura, Red Cliffs and Merbein the following applies:*

- *The minimum lot size for subdivision is 40ha (other than for a re-subdivision or an excision of an existing dwelling); [NO CHANGE TO EXISTING DOCUMENT]*
- *A permit may be granted to excise a dwelling (subject to revised conditions including siting controls and that the parent lot is minimum of 3ha);*
- *A permit may be granted for a re-subdivision of existing lots (subject to revised conditions including siting controls and protection of existing dwelling options).*

---

### Dwellings

*Within the Mildura older irrigated areas of Mildura, Red Cliffs and Merbein the following applies:*

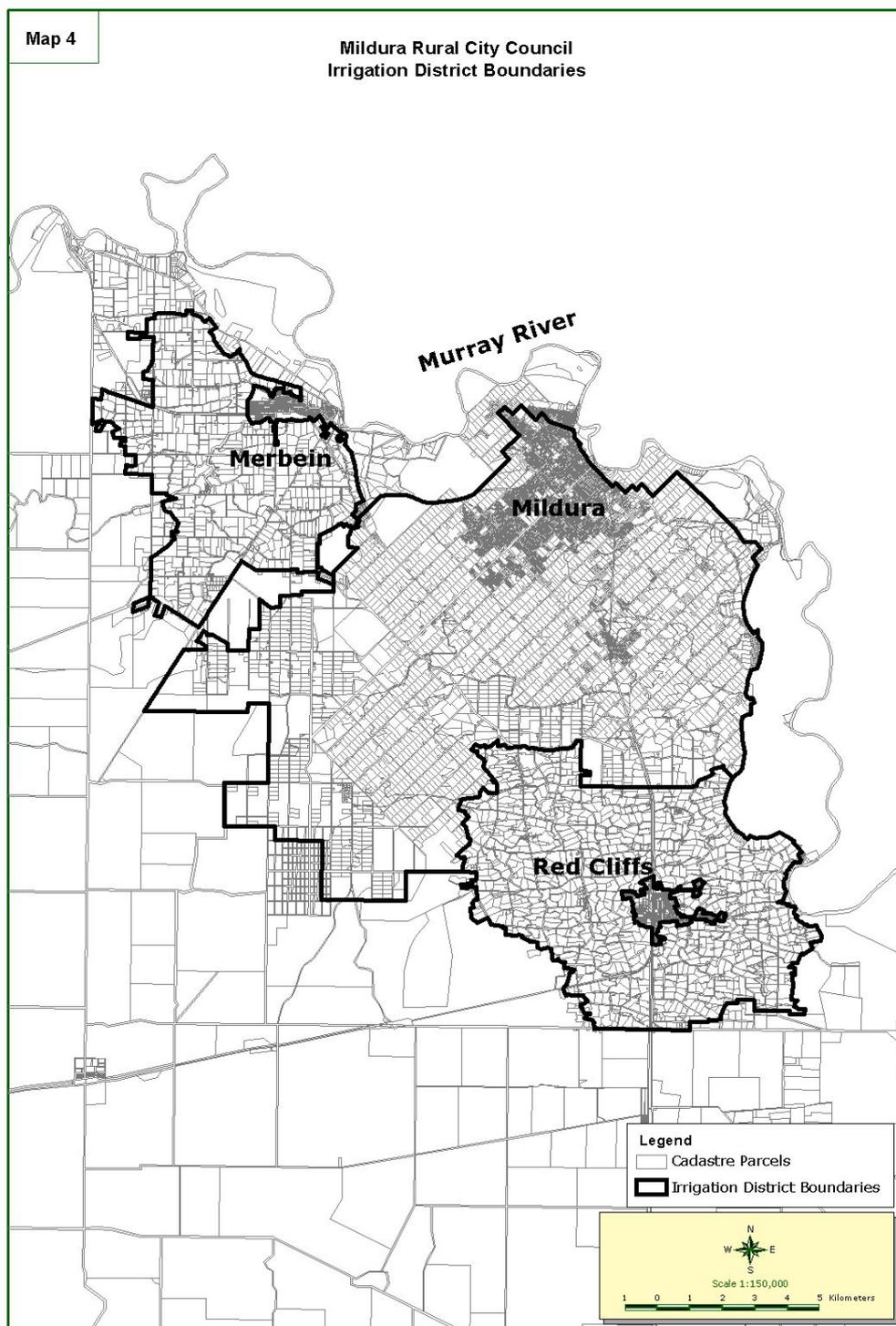
- *A permit cannot be granted for a dwelling on a lot which is less than 0.2 hectares;*
- *A permit may be granted for a dwelling (subject to revised conditions including the restriction that the dwelling must not be located within the Mildura South By-Pass Corridor but not including a sunset clause) on a lot which is 0.2 hectares or greater but less than 2ha;*
- *A permit may be granted for a dwelling (subject to conditions including siting controls and the restriction that the dwelling must only be contained within the Mildura East Growth Area or the Mildura South Growth Area) on a lot which is 2ha or greater but less than 10ha in size;*
- *A permit may be granted for a dwelling (subject to revised conditions including siting controls) on a lot which is 10ha or greater but less than 20 ha in size;*
- *A permit may be granted for a dwelling (subject to revised conditions including siting controls) on identified lots [Table 1];*
- *A permit may be granted for a replacement dwelling (subject to conditions);*
- *The minimum lot size for an 'as of right dwelling' is 20 ha (A permit may still be required for the development); [NO CHANGE TO EXISTING DOCUMENT]*

Conversion: 1 Acre = 0.4047ha

1Hectare = 2.4711acres

APPENDIX 1

MILDURA OLDER IRRIGATION AREA



## **APPENDIX 2: EXISTING**

---

### **MILDURA RURAL CITY COUNCIL MILDURA OLDER IRRIGATION AREA INCORPORATED DOCUMENT, DECEMBER 2013**

---

#### **Introduction**

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

Pursuant to clause 52.03 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 recommendations of the Mildura Planning Taskforce, Final Report, December 2009.

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.

#### **The Land**

The land that is the subject of the specific controls in this document is the land zoned Farming Zone located within the gazetted irrigation districts of Mildura, Merbein and Red Cliffs, generally known as the Mildura older irrigation area and as indicated on the attached map.

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

##### **Subdivision**

A permit must not be granted to create a smaller lot under clause 35.07-3 unless any of the following apply:

- The subdivision is to create a lot for an existing dwelling and all of the following requirements are met:
  - The dwelling must have existed on 29 May 2009 and the lot must be a minimum of 1 hectare.
  - The requirements of clause 35.07-2.
  - The subdivision must be a two lot subdivision. An agreement under section 173 of 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 resubdivision which is in accordance with the provisions of this incorporated document) and that no further dwellings will be constructed on either lot (unless the balance of the lot is 10 hectares or greater and is unencumbered by a section 173 agreement stating no further dwelling). Any variation to this agreement, including amending or ending the agreement, requires approval from both the responsible authority and the Minister for Planning.
  - The subdivision must not include lots that are disused channel reserves, other small utility lots and lots created via a vinculum (except a vinculum involving adjoining or abutting lots).

- The dwelling must be a Class 1A building as defined by the current Building Code of Australia. This must be confirmed in writing by a building surveyor.
- The dwelling (not including outbuildings) must be setback a minimum of 5 metres from any new boundary to minimise amenity and environmental impacts to or from adjoining land uses.
- The lot created for an existing dwelling must have a minimum area of 0.4 hectares and a maximum area of 1.0 hectare.
- The lot created for an existing dwelling should not be a battle axe shaped lot or a lot where access is via a carriageway easement or common property driveway.
- The new boundaries must be positioned to protect the balance of the land for horticulture.
- The subdivision is the re-subdivision of existing lots (may include an existing dwelling) and the number of lots is not increased and all of the following requirements are met:
  - The dwelling must have existed on 29 May 2009.
  - The requirements of clause 35.07-2.
  - An agreement under section 173 of 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 resubdivision which is in accordance with the provisions of this incorporated document) and that no further dwellings will be constructed on any lot. Any variation to this agreement, including amending or ending the agreement, requires approval from both the responsible authority and the Minister for Planning.
  - The subdivision must not include lots that are disused channel reserves, other small utility lots and lots created via a vinculum (except a vinculum involving adjoining or abutting lots).
  - The dwelling must be a Class 1A building as defined by the current Building Code of Australia. This must be confirmed in writing by a building surveyor.
  - The dwelling (not including outbuildings) must be setback a minimum of 5 metres from any new boundary to minimise amenity and environmental impacts to or from adjoining land uses.
  - The lot created for an existing dwelling must have a minimum area of 0.4 hectares.
  - The lot created for an existing dwelling should not be a battle axe shaped lot or a lot where access is via a carriageway easement or common property driveway.
  - The new boundaries must be positioned to protect the balance of the land for horticulture.
- 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 a lot for a dwelling must be accompanied by a written statement which explains how the proposed dwelling responds to the decision guidelines in Clause 35.07-6.

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 any of the following apply:

- The size of the lot is between 0.3 hectares and 1.2 hectares and all of the following requirements are met:

- An application to use and/or develop land for a dwelling has been made before 9 January 2015.
  - The requirements of clause 35.07-2.
  - The dwelling (not including outbuildings) must be setback a minimum of 5 metres from any boundary to minimise amenity and environmental impacts to or from adjoining land uses.
  - The lot must not be a disused channel reserve, other small utility lot or a lot created via a vinculum (except a vinculum involving adjoining or abutting lots).
- The size of the lot is between 10 and 20 hectares and all of the following requirements are met;
- The requirements of clause 35.07-2.
  - The lot must have a legal title that existed on 29 May 2009.
- or
- The lot is unencumbered by a Section 173 Agreement ensuring no further dwellings will be constructed.
- The dwelling (not including outbuildings) must be setback a minimum of 5 metres from any boundary to minimise amenity and environmental impacts to or from adjoining land uses.
- The size of the lot is between 10 and 20 hectares and the lot was created via a consolidation of adjoining lots which were unencumbered by a Section 173 Agreement ensuring no further dwellings will be constructed and all the following requirements are met;
- The requirements of clause 35.07-2.
  - An agreement under section 173 of the Act must be entered into with the owner of the lot created which ensures that the land may not be further subdivided. Any variation to this agreement, including amending or ending the agreement, requires approval from both the responsible authority and the Minister for Planning.
  - The dwelling (not including outbuildings) must be setback a minimum of 5 metres from any boundary to minimise amenity and environmental impacts to or from adjoining land uses
- The land is identified in Table 1, Site Specific Provisions of this Incorporated Document and all the following requirements are met.
- The requirements of clause 35.07-2.
  - The dwelling (not including outbuildings) must be setback a minimum of 5 metres from any boundary to minimise amenity and environmental impacts to or from adjoining land uses.

**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	

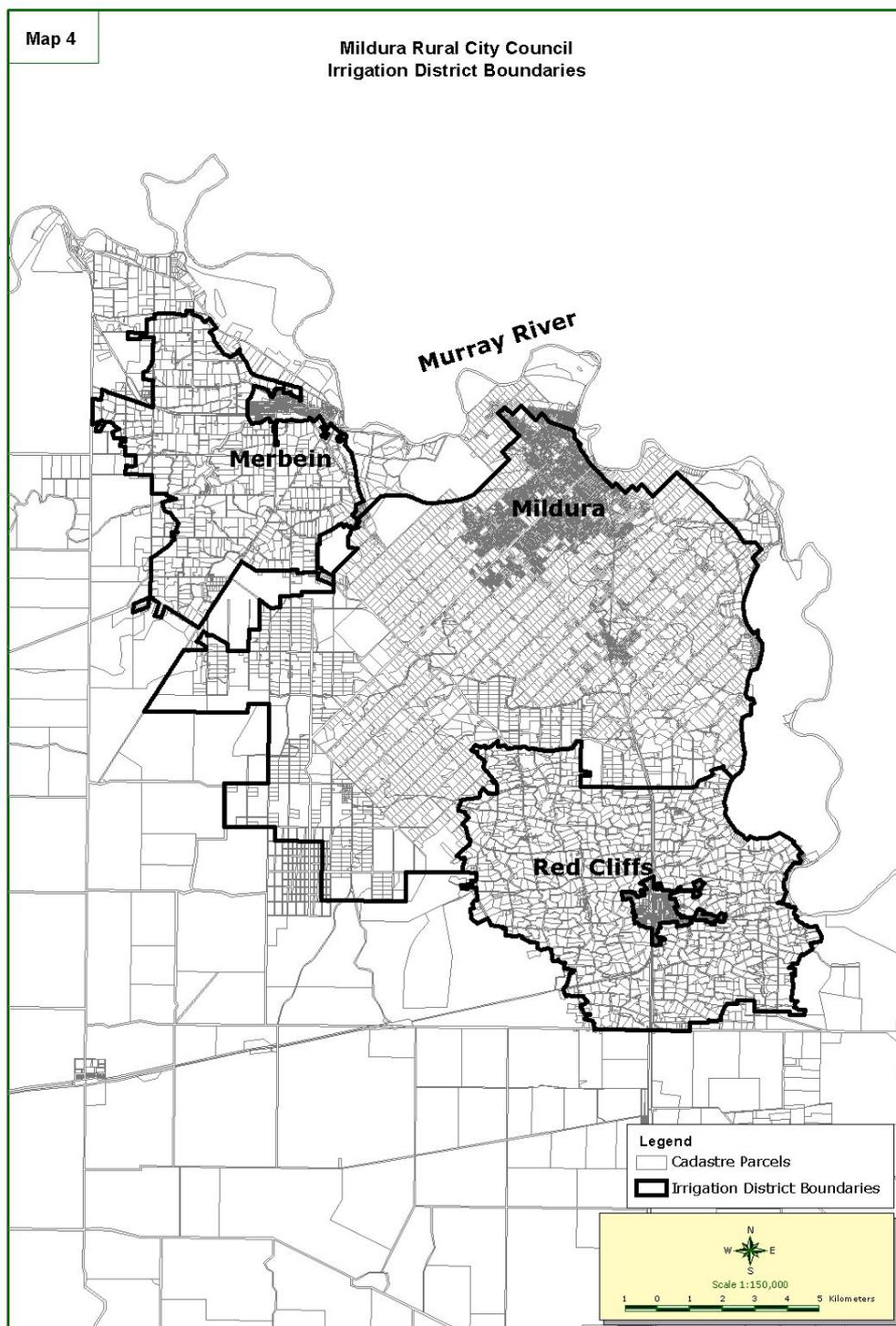
Lot 2 PS 208742L Sec 55 Blk F
Lot 1 TP 675016E Sec 22 Blk F
Lot 1 TP 849989T Sec 48 Blk E
Lot 1 TP 674839M Sec 22 Blk F
Lot 2 TP 674810N Sec 130 Blk F
CA 383A Sec B Parish of Mildura
Lot 1 and 2 TP 675099W Sec 97 Blk F
Lot 2 PS 48497 Sec A
Lot 3 PS 147497J Sec 9 Blk F
Lot 2 PS 306580Y Sec G Parish of 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, construct a building or construct or carry out works, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- How the proposed dwelling responds to the decision guidelines in Clause 35.07-6.
- Whether the environmental conditions of the land are or will be suitable for a residential use, in the event that potentially contaminated land is to be used for a sensitive use, including residential.

### Map: Boundary of the Mildura Older Irrigation Area



## APPENDIX 3: PROPOSED

---

### MILDURA RURAL CITY COUNCIL

### MILDURA OLDER IRRIGATION AREA INCORPORATED DOCUMENT

**(REVISED) SEPTEMBER 2014**

---

#### Introduction

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

Pursuant to clause 52.03 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 recommendations of the Mildura Planning Taskforce, Final Report, December 2009 and the Review of Planning Controls for the Mildura Older Irrigated Areas, September 2014.

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.

#### The Land

The land that is the subject of the specific controls in this document is the land zoned Farming Zone located within the gazetted irrigation districts of Mildura, Merbein and Red Cliffs, generally known as the Mildura older irrigation area and as indicated on the attached map.

#### What does this document provide for?

##### 1.0 Glossary of terms

##### Excision

*A two lot subdivision that creates a lot for an existing dwelling (the 'dwelling' lot) and a second lot that does not contain a dwelling (the 'balance' lot).*

### **Boundary re-alignment**

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

### **Adjoining land**

*Land that is contiguous with and physically abutting other land. It does not include land across a road or reserve and it does not include any land that is physically separated from the subject land except if such land is joined by a 'vinculum' as defined below and is directly aligning on opposite sides of a road or channel reserve.*

### **Vinculum**

*Lots that are legally joined on Title.*

### **Battle axed lots**

*A battle axe shaped lot is a lot that relies on a long narrow access resulting in fragmentation of farming land.*

## **2.0 Subdivision**

### **2.1 Permit requirement**

A permit must not be granted to create a smaller lot (including an excision or boundary re-alignment) under Clause 35.07-3 unless **all** of the following requirements are met:

- The requirements of Clause 35.07-2 and Clause 63.
- The subdivision must not **rely** on lots that are disused channel reserves, other small utility lots and lots created via a vinculum (except a vinculum involving lots adjoining and directly aligned on opposite sides of a road or channel reserve) so as to be counted as existing lots or to meet minimum area requirements.
- The lot created containing an existing dwelling must not be a battle axe shaped lot or a lot where access is via a carriageway easement or common property driveway.
- The new boundaries must be positioned to protect the balance of the land for horticulture.
- Within the Mildura East Growth Area, the Mildura South Growth Area and the Mildura South By-pass Corridor [Figure 1], applications must also demonstrate that the subdivision does not compromise the future urban development of the land and should include, where necessary, the provision of easements or setbacks to ensure longer term servicing connections, to the satisfaction of Council.
- An existing dwelling must be setback a minimum of 5 metres from any new boundary to minimise amenity and environmental impacts to or from adjoining land uses (not including outbuildings).

A permit must not be granted to create a smaller lot under Clause 35.07-3 unless **any** of the following apply:

#### **Excision**

The subdivision is to create a lot for an existing dwelling and all of the following requirements are met:

- 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 able to be issued with a certificate of occupancy (and this must be confirmed in writing by a building surveyor).
- The subdivision must be a two lot subdivision.
- The existing lot must be a minimum of 3 hectares.
- The lot created for an existing dwelling must be 0.4 hectares 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 so long as the maximum lot size created is 1.0 hectare in area.
- An agreement under section 173 of 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 or 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 unencumbered by a section 173 agreement stating no that no further dwelling is allowed).
- Any variation to this agreement, including amending or ending the agreement, requires approval from both the responsible authority and the Minister for Planning.

### **Boundary re-alignment**

- The subdivision is the re-subdivision of existing lots (which may or may not include an existing dwelling) and the number of lots is not increased and all of the following requirements are met:
  - An agreement under section 173 of 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 that no further dwellings will be constructed on any lot, except for new lots created which are:
    - at least 0.2 hectares but less than 2 hectares in area created from original lots of at least 0.2 hectares but less than 2 hectares, which are unencumbered by a section 173 agreement stating that no further dwelling is allowed (and the number of lots at least 0.2 hectares but less than 2 hectares without an existing dwelling is not increased); or
    - at least 10ha from original lots unencumbered by a section 173 agreement stating that no further dwelling is allowed (and the number of lots 10ha or greater without an existing dwelling is not increased);
  - Any variation to this agreement, including amending or ending the agreement, requires approval from both the responsible authority and the Minister for Planning.
  - The existing dwelling (not including outbuildings) must be setback a minimum of 5 metres from any new boundary to minimise amenity and environmental impacts to or from adjoining land uses.
  - The lot created for an existing dwelling must be a minimum 0.4 hectares in area, unless the original lot containing the dwelling is less than 0.4 hectares in area and the lot created is of at least equal size.

### **Public authority**

- The subdivision is by a public authority or utility service provider to create a lot for a utility installation.

### 3.0 Dwellings

#### 3.1 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 conflict; and
- That the lot was not a lot that was created via a vinculum (except a vinculum involving lots abutting and directly aligned on opposite sides of a road or channel reserve); and
- That the dwelling (not including outbuildings) is setback a minimum of 5 metres from any boundary to minimise amenity and environmental impacts to or from adjoining land uses.

Within the MHSS Mildura East Growth Area, the Mildura South Growth Area and the Mildura South By-pass Corridor [Figure 1], applications must also demonstrate, to the satisfaction of the responsible authority:

- That the dwelling does not compromise the future urban development of the land; and
- That the dwelling should include, where necessary, the provision of easements or setbacks to ensure longer term servicing connections.

#### 3.2 Permit requirements for 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 **all** of the following requirements are met:

- The requirements of clause 35.07-2; and
- The dwelling (not including outbuildings) must be setback a minimum of 5 metres from any boundary to minimise amenity and environmental impacts to or from adjoining land uses; and
- The dwelling location must not be subject to inundation as approved by Council; and
- The lot must not be a disused channel reserve or other small utility lot.

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 **any** of the following apply:

##### **Dwellings on lots between 0.2ha and 2ha.**

- The size of the lot is at least 0.2 hectares but less than 2 hectares and all of the following requirements are met:
  - The lot is unencumbered by a Section 173 Agreement ensuring no further dwellings will be constructed;
  - The lot must not be a lot created via a consolidation of lots which increases dwelling opportunity; and
  - The dwelling location is not within the Mildura South By-pass Corridor [Figure 1].

##### **Dwellings on lots between 2ha and 10ha.**

- The size of the lot is at least 2 hectares but less than 10 hectares and all of the following requirements are met:

- The lot is unencumbered by a Section 173 Agreement ensuring no further dwellings will be constructed; and
- The lot must not be a lot created via a consolidation of lots which increases dwelling opportunity; and
- The dwelling location is within the Mildura East Growth Area or the Mildura South Growth Area [Figure 1] and all of the following requirements are met:
  - o The dwelling must not compromise the continuation of an existing horticultural use; and
  - o The dwelling must not affect on-going agricultural use of adjoining land; and
  - o The dwelling must not compromise the ability to achieve preferred urban design outcomes.

#### Dwellings on lots between 10ha and 20ha.

- 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 unencumbered 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 are met:
    - o The original lots were unencumbered by a Section 173 Agreement ensuring no further dwellings will be constructed; and
    - o The original lots were adjoining; and
    - o An agreement under Section 173 of the Act must be entered into with the owner of the 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). Any variation to this agreement, requires approval from both the responsible authority and the Minister for Planning.

#### Replacement Dwellings on any lot.

- The dwelling is a replacement dwelling and all of the following requirements are met:
  - A written agreement that the original dwelling is to be removed within 3 months of the issue of the Occupancy Permit for the new dwelling
  - The applicant can demonstrate compliance with the requirements of Clause 63
  - The original dwelling must be a Class 1A building as defined by the current Building Code of Australia and able to be issued with a certificate of occupancy. This must be confirmed in writing by a building surveyor.

#### Site Specific Provisions

- The land is identified in Table 1, Site Specific Provisions of this Incorporated Document.

**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, construct a building or construct or carry out works, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- How the proposed dwelling responds to the decision guidelines in Clause 35.07-6.
- Whether the environmental conditions of the land are or will be suitable for a residential use, in the event that potentially contaminated land is to be used for a sensitive use, including residential.

**Figure 1:**

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



**Mildura East Growth Area**

**Mildura South By-Pass Corridor**

**Mildura South Growth Area**

**Map: Boundary of the Mildura Older Irrigation Area**

