

*Planning and Environment Act 1987*

**Panel Report**

**Mildura Planning Scheme Amendment C109mild  
Public Acquisition Overlay - Deakin Avenue, Mildura**

**15 October 2020**

### How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment. [section 27(1) of the *Planning and Environment Act 1987* (the Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the Act]

### *Planning and Environment Act 1987*

Panel Report pursuant to section 25 of the Act

Mildura Planning Scheme Amendment C109mildmild

Public Acquisition Overlay - Deakin Avenue, Mildura

15 October 2020



Tim Hellsten, Chair

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## Glossary and abbreviations

Act	<i>Planning and Environment Act 1987</i>
Council	Mildura Rural City Council
DELWP	Department of Environment, Land, Water and Planning
LACA	<i>Land Acquisition and Compensation Act 1986</i>
MISSS	<i>Mildura Indoor Sports Stadium Study</i>
MRRMP	<i>Mildura Recreation Reserve Master Plan</i>
MSRSP	Mildura South Regional Sporting Precinct
MSRSP Business Plan	<i>The Mildura South Regional Sports Precinct Development and Business Plan, Final Report, September 2017, Otium Planning Group - Sport and Leisure</i>
PAO	Public Acquisition Overlay
PSP	<i>Mildura South Urban Design Plan Precinct Structure Plan, October 2014</i>
Recreation Assessment	<i>Mildura South Recreation Assessment, Hansen Partnership November 2013</i>

## Overview

Amendment summary	
<b>The Amendment</b>	Mildura Planning Scheme Amendment C109mild
<b>Common name</b>	Public Acquisition Overlay - Deakin Avenue, Mildura
<b>Brief description</b>	Apply the Public Acquisition Overlay (PAO4) and make other subsequent changes to the Mildura Planning Scheme
<b>Subject land</b>	704 and 706 Deakin Avenue, Mildura
<b>Planning Authority</b>	Mildura Rural City Council
<b>Authorisation</b>	24 March 2020
<b>Exhibition</b>	14 May to 15 June 2020
<b>Submissions</b>	<ol style="list-style-type: none"> <li>1. Department of Environment, Land, Water and Planning</li> <li>2. Christopher and William Dick</li> <li>3. Eileen Pica</li> <li>4. EPA Victoria</li> <li>5. Goulburn Murray Water</li> <li>6. Country Fire Authority</li> </ol>

Panel process	
<b>The Panel</b>	Tim Hellsten
<b>Directions Hearing</b>	By Video Conference, 9 September 2020
<b>Panel Hearing</b>	By Video Conference, 6 October 2020
<b>Site inspections</b>	Not undertaken
<b>Parties to the Hearing</b>	<p>Mildura Rural City Council represented by Mr Peter Douglas, Coordinator Strategic Planning</p> <p>Mr William Dick and Mr Christopher Dick, represented by Mr Bob Karaszewych of Urban Synergistics</p>
<b>Citation</b>	Mildura PSA C109mild [2020] PPV
<b>Date of this Report</b>	15 October 2020

## Executive summary

Mildura Planning Scheme Amendment C109mild (the Amendment) seeks to apply the Public Acquisition Overlay (PAO) to two parcels of privately owned land area comprising 704 and 706 Deakin Avenue, Mildura to enable the full development of the Mildura South Regional Sporting Precinct (MSRSP).

The Amendment implements the recommendations of:

- the *Mildura Recreation Reserve Master Plan* (MRRMP), adopted by Council in 2009 which provides a 40-year vision for recreational facilities within the Mildura region
- the *Mildura South Recreation Assessment*, November 2013
- the *Mildura South Urban Design Plan Precinct Structure Plan*, October 2014 (PSP) which confirmed the proposed public open space and active recreation precinct and the land required.

A significant portion of the required land to deliver the MSRSP has been acquired by Council and Stage 1 construction has substantially commenced. The Amendment is required to enable the subject land's acquisition to enable completion of the overall project.

Five submissions were received to the Amendment, four of which supported or partly supported it, with one opposing submission from the landowners. The objecting submission sought the direct purchase of the site by Council rather than compulsory acquisition, identifying the potential extended period between need for the land and its purchase and the related economic and business development impacts and potential for planning blight.

The Panel considers that Council has undertaken the necessary strategic work that was missing in response to Mildura Planning Scheme Amendment C56 including the PSP, recreation reviews and business plans which have clearly articulated the need for facilities and the site required to deliver the MSRSP. The Panel is satisfied this strategic body of work establishes a clear community need and public benefit for the Amendment that outweighs the potential economic and other impacts on the landowners. Council has also made a significant commitment to delivering the precinct with substantial works underway to deliver Stage 1.

While the Panel considers there is enough strategic justification for the application of the PAO it encourages Council to continue to explore a direct market purchase approach or provide a clear signal that it would seek to commence compulsory acquisition in the short term. This would address some of the concerns the landowners have about an extended acquisition timeframe.

### Recommendations

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

- 1. Adopt Mildura Planning Scheme Amendment C109mild as exhibited.**

# 1 Introduction

## 1.1 The Amendment

### (i) Amendment description

The purpose of the Amendment is to apply a Public Acquisition Overlay to two parcels of land to support the full development of the Mildura South Regional Sporting Precinct (MSRSP).

Specifically, the Amendment proposes to:

- apply the Public Acquisition Overlay (PAO4) to Lot 1 LP 86190 and Lot 1 TP673504 otherwise known as 704 and 706 Deakin Avenue, Mildura (the subject land)
- amend Clause 21.09-1 (Urban and transport infrastructure) under the heading 'Application of zones and overlays' to identify the application of the PAO4 for a regional sports facility and public open space
- amend the schedule to Clause 45.01 (Public Acquisition Overlay) to nominate Mildura Rural City Council as being the acquiring authority of the subject land for the purpose of a regional sports facility including public open space
- amend the Schedule to Clause 72.03 to insert a new Planning Scheme Map No. 28PAO into the list of maps comprising part of the Mildura Planning Scheme.

In accordance with section 5(1) of the *Land Acquisition and Compensation Act 1986* (LACA) the Amendment is required to reserve the subject land for a public purpose.

### (ii) The subject land

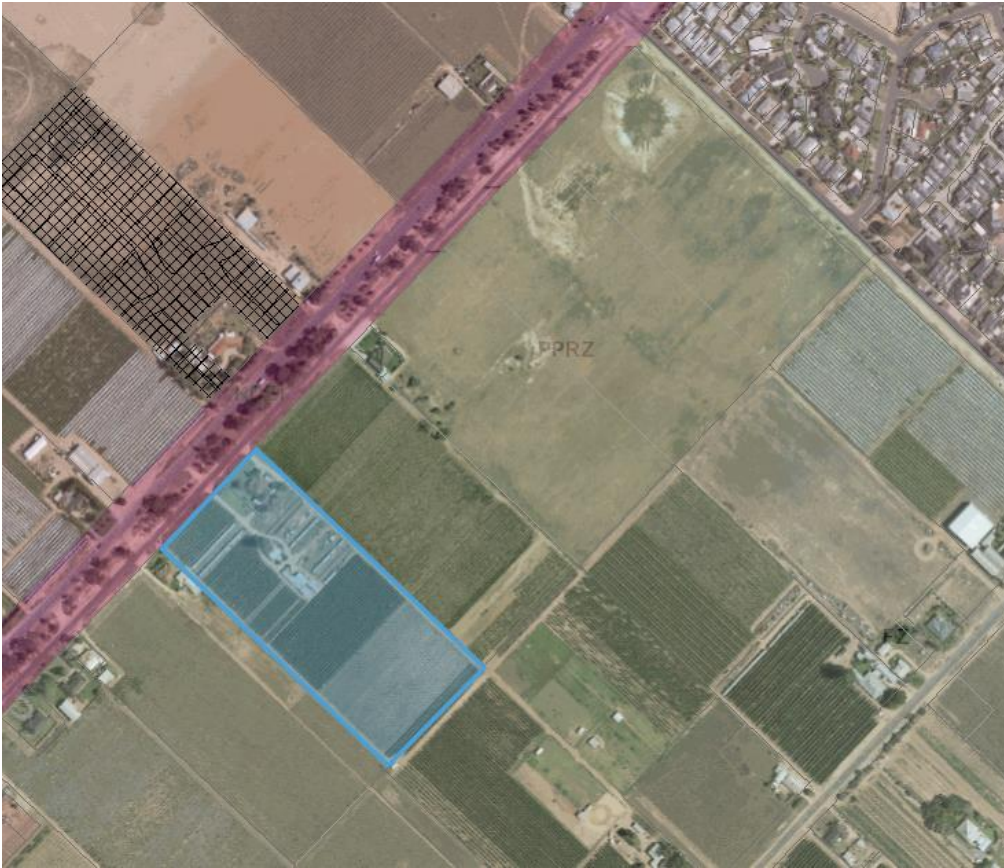
The subject land (refer Figures 1 and 2) is approximately 4 hectares in area and fronts Deakin Avenue on the south-western edge of the Mildura township. The subject land is privately owned. The smaller lot contains an existing dwelling, with the larger lot used for viticulture and containing an earlier dwelling (currently rented), sheds and other structures.

The site adjoins land used for agricultural activity to the north-west and south-east. The adjoining land parcels (12 hectares) to the north east on the corner of Deakin Avenue and Sixteenth Street (624-682 Deakin Avenue) are owned by Council and currently under development to provide stage 1 of the Mildura South Regional Sports Facility.

The subject land and land to the south is in the Farming Zone (FZ). The Council land to the north east designated for the MSRSP is in the Public Park and Recreation Zone. The land opposite the site, on the north side of Deakin Avenue is in the General Residential Zone (GRZ)(refer Figure 3).

The GRZ land and all land north of Benetook Avenue and east of Seventeenth Street and its proposed continuation and the subject land are identified for future urban growth as part of the Mildura South Urban Design Precinct Structure Plan (PSP) (refer Figure 4). The subject land and the adjoining Council land are identified within the PSP as a proposed public open space and active recreation precinct for the purpose of a regional sporting facility within the PSP.

**Figure 1** Subject land and context



Source: Vic Plan

**Figure 2** Subject land looking north east to the Mildura South Regional Sports Facility site development



Source: Google street view

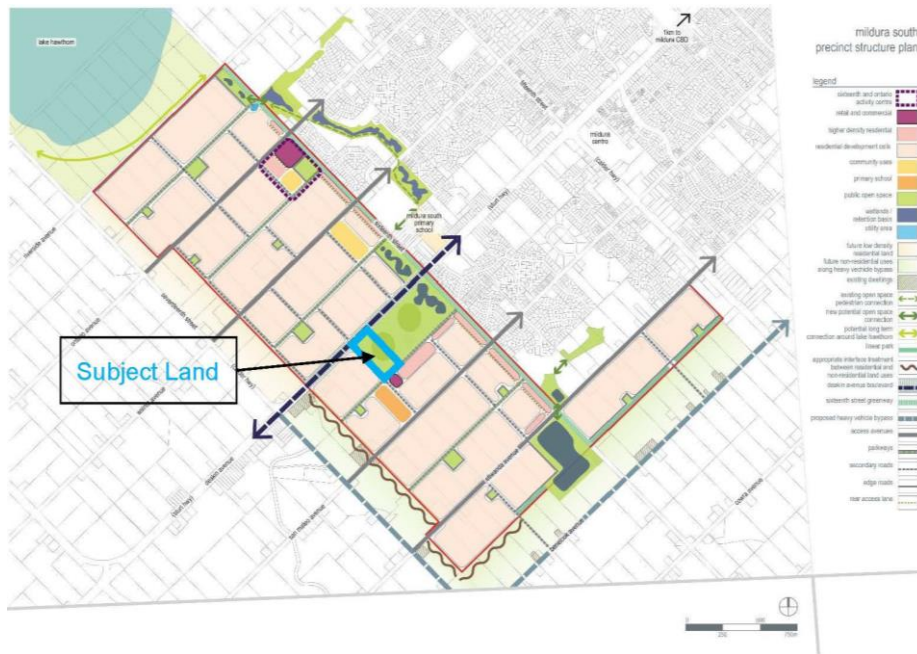


**Figure 3 Existing Zones**



Source: Council

**Figure 4 Subject land in the context of the Mildura South Urban Design Precinct Structure Plan**



Source: Mildura Planning Scheme Amendment C109mild Explanatory Report

## 1.2 Background

### (i) Chronology of events

Council’s Part A submission contained a chronology of events as summarised in Table 1.

**Table 1** Chronology of events

Date	Event
June 2002	Sunraysia Drainage Strategy, 2002 completed providing basis for acquiring land at Deakin Avenue and Sixteenth Street for drainage purposes
December 2007	Mildura South Strategic Framework Plan approved identifying growth area to accommodate 8,400 new residents and identifies a site for a regional sporting stadium site on the corner of Deakin Avenue and Sixteenth Street centred around land acquired by Council for a drainage and recreation
January 2009	The Council resolves to commit to the development of Mildura South Sporting Precinct on the corner of Sixteenth Street/Deakin Avenue/San Mateo Avenue and proceed with process to compulsory acquire land through the application of a PAO
November 2009	Mildura Recreation Reserve Master Plan and Mildura Indoor Stadium Strategy and Old Aerodrome Ovals Master Plan Review adopted
May 2011	Mildura South Urban Design Plan – Preliminary Draft prepared
23 December 2011	The Panel considering Amendment C56 to apply a PAO to 653, 663, 677, 685 and 687 San Mateo Avenue, for a regional sports facility recommends that the amendment be abandoned
January 2012	Council abandons Amendment C56 and proposes further strategic work
March 2012	Modelling undertaken for Mildura South drainage
November 2013	Adoption of Mildura South Recreation Assessment, November 2013 and Community Infrastructure Site Evaluation Framework 2013
September 2014	Draft Mildura South Urban Design Precinct Structure Plan adopted with resolution to seek authorisation to exhibit Amendment C75
December 2014	Mildura Recreation Reserve Master Plan Review adopted
September 2016	Amendment C75 approved and gazetted
September 2017	Council endorses Business case for MSRSP
September 2018	Amendment C100 Part 1 gazetted to include two parcels of MSRSP land in PPRZ
21 October 2019	Planning permit 005.2019.00000191.001 issued for staged development of land at 624-682 Deakin Avenue for a minor sports and recreation facility. Permit amended 12 December 2019
December 2019	Construction of Mildura South Regional Sports Facility commenced
14 May – 15 June 2020	Amendment exhibited

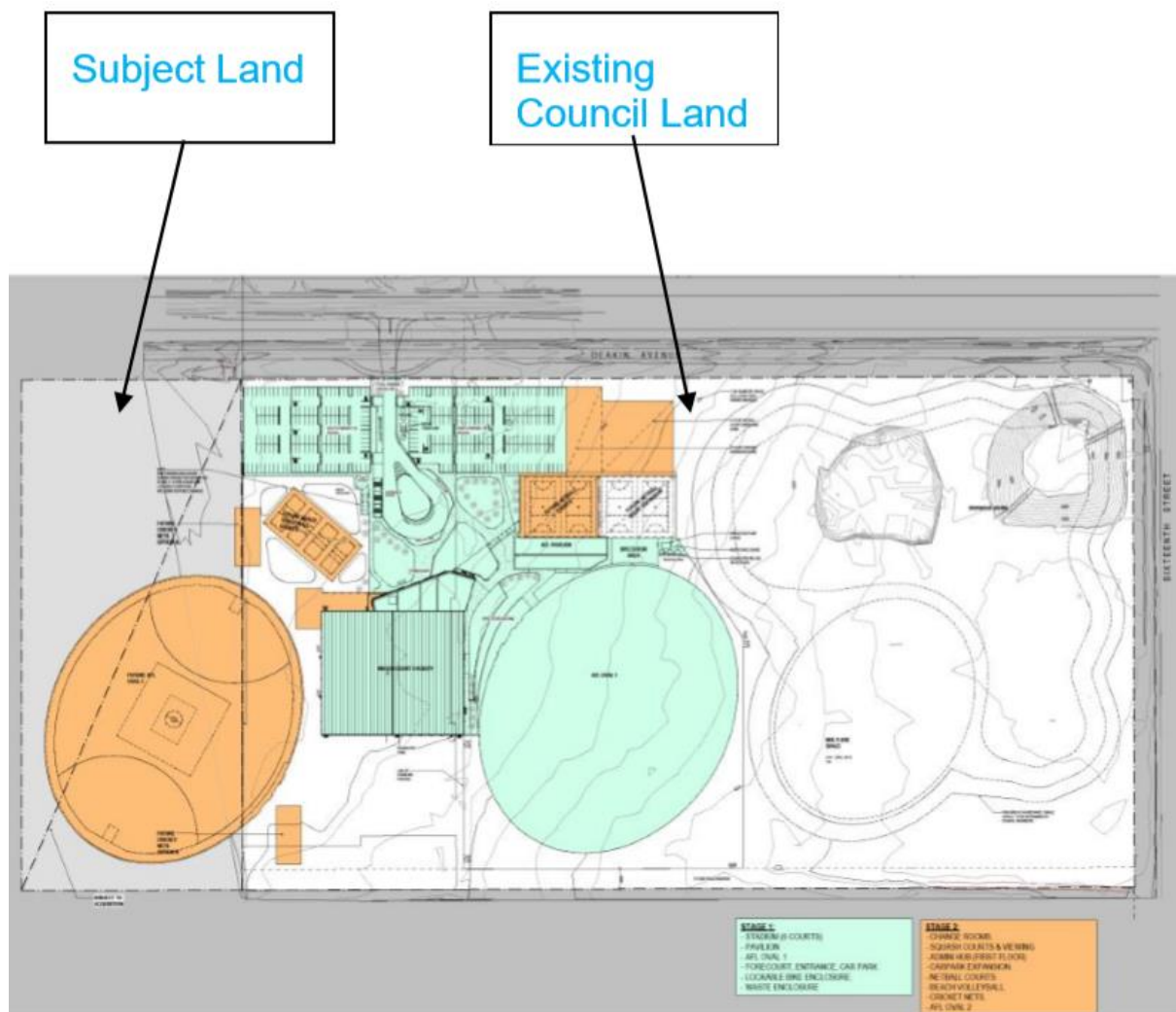
**(ii) Mildura South Regional Sporting Precinct**

The MSRSP is proposed to accommodate in Stage 1 - one AFL standard oval (to meet regional standards in order to cater for pre-season AFL matches), indoor stadium including

six netball/basketball courts and carparking, with Stage 2 comprising a second oval, squash courts, change rooms, administration hub, netball and beach volley ball courts (Figure 5). Drainage and passive open space areas to the Sixteenth Street end of the site are to be completed over time in response to site and surrounding residential development. Construction of Stage 1 is currently underway (Figure 6). Council submitted that the Amendment is required to support the delivery of Stage 2 of the Precinct.

Council advised that project will be the largest infrastructure investment by all levels of government to date in the region, contributing a direct spend of \$76 million into the economy and 229 jobs during and post construction with the capacity to bring significant sporting and entertainment events and visitors.

**Figure 5 Mildura South Regional Sports Facility Precinct**



Source: Mildura Planning Scheme Amendment C109mild Explanatory Report

**Figure 6 MSRPSP indoor stadium and carpark areas under construction**

Source: Council's Part A submission attachments

### **(iii) Mildura Planning Scheme Amendment C56**

Amendment C56 sought to apply the PAO to 653, 663, 677, 685 and 687 San Mateo Avenue, to acquire land to accommodate a regional sports precinct adopting a different land configuration extending to San Mateo Avenue. The Panel report for Amendment C56 recommended the amendment be abandoned identifying that the rationale for selecting the land including the 2009 *Mildura Recreation Reserve Master Plan* and *Mildura Indoor Sports Stadium Study* (MISSS) to be lacking. These reports are discussed in greater detail in Chapter 3.

### **(iv) Mildura South Recreation Assessment 2013**

The *Mildura South Recreation Assessment*, Hansen Partnership November 2013 (Recreation Assessment) provided an assessment of existing recreation facilities and gaps needs for Mildura South. It confirmed the passive, formal and active recreation needs of the future 8,000 - 10,000 residents and a basis for identifying a site to accommodate future recreation needs (up to 18 hectares) aligned to an adopted set of evaluation criteria (*Community Infrastructure Site Evaluation Framework*, 2013). The Recreation Assessment identified the Council land at Deakin Avenue as the preferred site (subject to the acquisition of the additional land required) and included a Landscape Concept Master Plan for the precinct.

### **(v) Mildura South Urban Design Precinct Structure Plan 2014**

The PSP builds on the *Mildura South Strategic Framework Plan*, David Lock and Associates, 2007 and provides a framework for the Mildura South Growth area to accommodate 8,400 persons. A preliminary PSP was placed on hold following the abandonment of Amendment C56 and while additional strategic work was completed including the *Mildura Housing and Settlement Strategy* and the Mildura South Recreation Assessment. The PSP analysis identified a 2010 municipal population of 53,900 which was forecast to grow at between 0.2 and 0.5 per cent per annum to 2026 when the population will be 55,523. This growth rate represents 130 to 250 dwellings per year.

The PSP identifies the sporting precinct which includes the subject land and the Council owned land for:

A key Active Recreation Reserve, incorporating regional sporting facilities acting as anchor point within the study area and for its stormwater management values and passive open space opportunities for the Mildura South community”.

The PSP identifies further implementing actions including master planning for the Mildura South Active Recreation Reserve based on *“further assessment and identification of the specific active recreation needs of the Mildura South community (ie are two ovals required or an oval and football pitch etc)”*.

The PSP was included as an incorporated document in 2016 through Mildura Planning Scheme Amendment C75 which also included the Council owned land in the Public Park and Recreation Zone.

#### **(vi) Mildura Planning Scheme Amendment C104mild**

Mildura Planning Scheme Amendment C104mild which is currently awaiting authorisation proposes to transition Clause 21 (Municipal Strategic Statement) and Clause 22 (Local Planning Policy Framework) into the Planning Policy Framework. Amendment C104mild is unlikely to be approved before a decision is made on this Amendment and has little impact on the purpose or outcomes of the Amendment. The Panel notes that Amendment C109mild proposes to amend Clause 21.09 by referring to the application of the PAO4. This is largely a procedural change and may not be reflected in the final version of the Planning Policy Framework introduced through Amendment C104mild.

#### **(vii) Authorisation**

The Amendment was authorised for exhibition by the Minister for Planning under delegation on 24 March 2020 subject to minor changes to the draft Explanatory Report, Instruction Sheet and inclusion of a Schedule to Clause 72.03. These matters were addressed by Council prior to exhibition of the Amendment.

### **1.3 Submissions**

Six submissions were received to the exhibition of the Amendment. These included four supporting submissions from authorities; Department of Environment, Land, Water and Planning (DELWP) covering all DELWP (except the Planning Group) and Parks Victoria, EPA Victoria, Goulburn Murray Water and the Country Fire Authority. Submission 3 supported the Amendment but supported fair compensation for the owners. Submission 2 made on behalf of the landowners opposed the Amendment.

### **1.4 The Panel’s approach**

Because of the movement restrictions associated with COVID 19 and the site specific nature of the Amendment the Panel did not undertake a site inspection. This was discussed with the parties at the Directions Hearing. It was agreed that Council would provide the Panel (and Mr Karaszekwych of Urban Synergistics for the landowners) with access to its GIS aerial and street view imagery along with instructions for its use and the location of other sites identified by Mr Karaszekwych<sup>1</sup>. The Panel has relied on this material and the submissions

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<sup>1</sup> Mildura Recreation Reserve and Aerodrome Oval Reserve



made to it to understand the subject land, the adjoining Council reserve and the context of those sites.

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, submissions and other material presented to it during the Hearing. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Planning context
- Application of the Public Acquisition Overlay.

## 2 Planning context

Council's Explanatory Report and Part A submission identified that the following provisions of the Act and the Planning Policy Framework were relevant to the Amendment which the Panel has summarised.

### 2.1 Victorian Planning Objectives

The amendment implements the following objectives of planning in Victoria as outlined in section 4(1) of the *Planning and Environment Act 1987* (the Act):

- (a) to provide for the fair, orderly, economic and sustainable use, and development of land;
- ...
- (c) to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria;
- ...
- (e) to protect public utilities and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community;
- ...
- (g) to balance the present and future interests of all Victorians.

Council submitted that the Amendment will support orderly planning for the future by identifying the subject land for future use of the local and regional community for recreational use consistent with the PSP and protecting it from inappropriate development.

### 2.2 Planning Policy Framework

Council identified that the following clauses of the Mildura Planning Scheme are relevant to the Amendment:

#### Clause 11 (Settlement)

The Amendment is consistent with Clause 11 by:

- promoting the sustainable growth and development and deliver choice and opportunity through a settlement framework offering convenient access to jobs, services, infrastructure and community facilities - 11.01-1S (Settlement)
- supporting the growth of Mildura through planned development - Clause 11.01-1R (Settlement – Loddon Mallee North)
- ensuring a sufficient supply of land is available for use including residential, recreational and other community uses and supporting infrastructure to support sustainable urban development - Clause 11.02-1S (Supply of Urban Land).

#### Clause 19 (Infrastructure)

The Amendment is consistent with Clause 19 by:

- establishing and improving a diverse and integrated network of public open spaces that meet the needs of the community and planning open space for multiple uses including sports and recreation, active transport routes and flood storage basins
- identifying the requirement of the land for recreational purposes and designing it to provide active and passive recreational needs

- provide further stormwater detention basin infrastructure to service the drainage needs of the site and future residential development and protect the environment consistent with the Sunraysia Drainage Strategy 2002 - Clause 19.02-6S (Open space for urban communities and rural areas).

#### **Clause 21.04 (Settlement and housing)**

The Amendment is consistent with Clause 21.04 by:

- providing sufficient residential land supply to meet market demands (Objective 3)
- implementing the PSP (Clause 21.04-2 Strategy 3.6).

#### **Clause 21.09 (Transport and infrastructure)**

The Amendment is consistent with Clause 21.09 by:

- protecting existing infrastructure and effectively plan and implement the development of new infrastructure that meets the needs of the growing community (Objective 1)
- encouraging the application of water sensitive urban design principles in subdivision and development (Strategy 1.4).

### **2.3 Planning scheme provisions**

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

#### **(i) Zones**

The land is in the Farming Zone. The purposes of the Zone are:

To provide for the use of land for agriculture.

To encourage the retention of productive agricultural land.

To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.

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

To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

The Amendment does not change the zoning of the subject land.

#### **(ii) Overlays**

The Amendment proposes to apply the PAO to the subject land, the purposes of which are:

To identify land which is proposed to be acquired by a Minister, public authority or municipal council.

To reserve land for a public purpose and to ensure that changes to the use or development of the land do not prejudice the purpose for which the land is to be acquired.

To designate a Minister, public authority or municipal council as an acquiring authority for land reserved for a public purpose.

The Overlay Schedule requires the public purpose of the reservation and the acquiring authority to be identified.



## **2.4 Ministerial Directions**

The Explanatory Report discusses how the Amendment meets the relevant requirements of:

- Ministerial Direction 11 (Strategic Assessment of Amendments)
- Ministerial Direction (The Form and Content of Planning Schemes pursuant to section 7(5) of The Act) – referred to as Ministerial Directions 7(5) in this Report.

That discussion is not repeated here however, the Panel agrees with it.

## 3 Application of the Public Acquisition Overlay

### 3.1 The issues

The issues are:

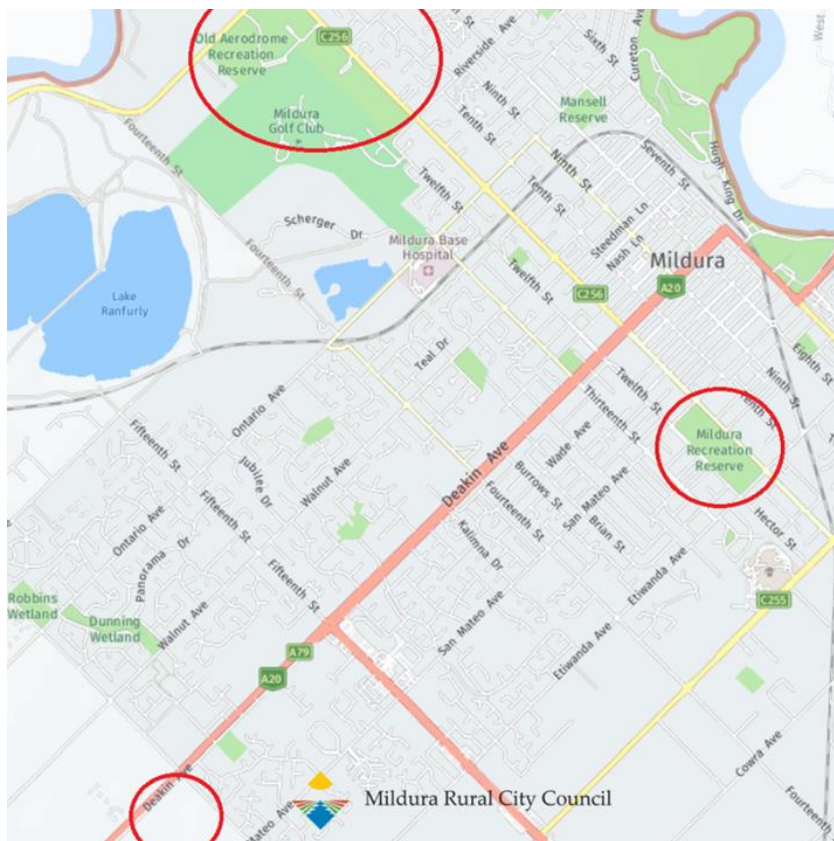
- whether the application of the Public Acquisition Overlay is strategically justified
- whether the application of the Public Acquisition Overlay is premature
- whether the application of the Public Acquisition Overlay will cause planning blight or result in a significant economic impact.

### 3.2 Relevant strategies and studies

#### (i) Old Aerodrome Sporting Complex

The Old Aerodrome Recreation Reserve and the Mildura Recreation Reserve (Figure 7) are Mildura's primary existing multisport precincts.

Figure 7 Mildura Multisport Precincts



Source: Council (Document 3). Note: MSRSP site in left hand corner.

The Old Aerodrome Recreation Reserve is a focus for hockey, baseball and softball, tennis, athletics, cricket and soccer and BMX sporting activities. The *Old Aerodrome Sporting Complex Master Plan Stakeholder Review: Final Report*, SGL Group, November 2009 provides a review of an earlier precinct Master Plan and seeks to retain the focus on participation based (rather than spectator-based) sport and passive activities and acquisition of some 4 hectares of land to accommodate future club needs.

**(ii) Mildura Recreation Reserve Master Plan**

The Mildura Recreation Reserve provides a focus for football and cricket with a main oval and two smaller ovals, grandstand, netball courts and a harness racing track with stables and a pavilion and fire training track. The *Mildura Recreation Reserve Master Plan, 2014* (MRRMP) reviewed the earlier 2009 Master Plan which also sought to provide a 40 year vision for recreational facilities within the Mildura region. Apart from identifying enhancements to the reserve's facilities the MRRMP reaffirmed key directions of the 2009 Master Plan including supporting the use of the reserve for junior level netball and football, greater utilisation for passive activities and social use and relocation of the Mildura Football Netball Club to the MSRSP.

**(iii) Indoor Sport Stadium Strategy**

The MISSS identifies the basis for supporting a new greenfield site indoor – outdoor integrated sports complex and master planning for the proposed Mildura South Sports Precinct at the Council owned land in Deakin Avenue. It identifies a facility comprising:

- two AFL ovals (one of high quality natural grass and the other with a lower level playing surface for training and junior games)
- an indoor facility providing netball/basketball courts, squash courts with the capacity for future expansion, shared social and function facilities
- a sports hub administration area that would include the offices of the Mallee Sports Assembly and the Sunraysia Sports Academy.

The MISSS supports a staged development subject to capital funding availability and the purchase of additional land to accommodate the sports complex, open space and drainage requirements.

**(iv) Mildura South Regional Sports Precinct Development and Business Plan**

The *Mildura South Regional Sports Precinct Development and Business Plan, Final Report*, September 2017, Otium Planning Group - Sport and Leisure (MSRSP Business Plan) provides a business case for the delivery of the \$30 million MSRSP. It includes a sport and leisure trend benchmarking, design layout for the precinct's key components, a 10 year financial model, a review of previous strategic work (including the PSP and MISSS) and a funding strategy. The Business Plan identifies strong interest in use of both ovals to meet cricket, AFL, soccer and rugby training and competition requirements. The site concept plan includes the subject land to accommodate the second oval.

Council advised that the MSRSP Business Plan provides the master planning considerations recommended in the PSP.

**(v) Other strategies**

Council's Part B submission referred other studies that broadly support the provision of further open space in Mildura South to meet community needs, identification of the MSRSP and the drainage needs and constraints of the Council site:

- Mildura Rural City Council Public Open Space Strategy, 2004
- Mildura Rural City Council Indoor Sports Facility Provision Assessment Report, 2008
- Mildura Rural City Council Recreation Strategy 2008-2018 (Volumes 1 and 2).

### 3.3 Submissions

Council submitted that in accordance with the LACA, it was necessary to first reserve the required land through the introduction of the PAO before the compulsory acquisition process can commence. It considered that the key issues to be addressed were whether the Amendment was strategically justified and complied with all technical content requirements.

Council considered that there was a clear strategic basis for acquiring the land for the MSRSP and providing certainty through the application of the PAO based on cumulative strategic work undertaken before and following the Panel's recommendations on Amendment C56. Its Part A and Part B submissions set out the strategic work that had been undertaken to confirm the elements of the precinct and its spatial requirements and the supporting planning policy framework elements which the Panel has already summarised. It identified that the extent of Stage 1 works identified an impetus to progress Stage 2 to support current sporting facility demand while providing a facility to meet emerging and future needs as Mildura grows.

Council identified that while Stage 2 of the MSRSP was contingent on funding there were no current applications in place to secure this funding. It submitted that ownership of the site or the application of the PAO would provide greater certainty and confidence to funding bodies that the project could be delivered. It submitted that Council was committed to and actively seeking to purchase the site regardless of funding for Stage 2 and was in a position to do so financially, indicating that it was flexible in terms of accommodating a staged purchase to enable some site activities to continue. It indicated that it would continue to explore the direct purchase option regardless of the LACA process and identified that it had engaged solicitors to commence more formal dialogue with the owners.

Council, while acknowledging potential economic impacts on the landowners, considered that the environmental, economic and social impacts of the Amendment were positive and would generate a net community benefit. It submitted the Amendment supported the provision of community infrastructure in a growth area, met community needs, would generate regional investment, provide a sporting precinct that will support sporting and community events and contribute to the health and wellbeing of the community.

Submission 3 supported the application of the PAO considering it would be of community benefit. It identified however, that the landowners should not be disadvantaged in any way by the Amendment including financially and that they should receive an amount that they would receive in an open market.

Submission 2 on behalf of the two land owners and supplemented by a further submission to the Panel from Mr Karaszewych did not support the Amendment on the basis that it was premature, unfair, likely to cause the land owner financial and other loss, and would result in planning blight. The submission proposed that Council should avoid the costs, uncertainties and related implications of a more protracted LACA process in favour of the simpler option of direct purchase.

In support of this position the submission identified:

- financial and emotional impacts associated with potential loss of rental income from the existing dwelling at 706 Deakin Avenue, loss of family home and inheritance opportunity, relocation of irrigation infrastructure, ability to invest in and improve other sites

- site use constraints including doubt as to whether to act on approved shed permits and planned investment in major site improvements at 706 Deakin Avenue to replace existing sheds with a modern vehicle and equipment storage building, and that Council will effectively control site use and development and potentially not support further development because it will elevate the purchase price
- Council has not proactively progressed purchase negotiations and was effectively seeking to 'land bank' the site
- no Council resolution to purchase the land and lack of a clear business plan and financial strategy to purchase the land and develop facilities at this site and at the Old Aerodrome and Mildura Recreation Reserves and no current funding applications for Stage 2 works
- blight because of the potential long period between application of PAO and acquisition. It is unclear when and if the additional oval will be required, given the existing capacity for sporting facilities at the Mildura Recreation Reserve and Aerodrome Oval Reserve to meet the future population growth needs over a 20 to 30 year horizon. The Amendment is therefore premature
- the potential to reduce the area required and consolidate it with adjoining land in San Mateo Avenue in the same ownership.

### **3.4 Discussion**

While acknowledging that the Act and LACA provide a basis for financial compensation the question for the Panel is whether it is appropriate and fair in this instance that the wider public interest should prevail and outweigh any personal loss to the land owners (including being deprived of their land). To support the future acquisition of land requires establishing certainty about the public need for and benefit of the facility and a high level of strategic justification, rigour and transparency.

The Amendment C56 Panel was not convinced that this benefit had been established and outweighed the impacts on landowners. Since that time Council has undertaken additional strategic work (including the PSP) and reviews of its future recreation needs.

There is clear support in legislation and the Planning Policy Framework for the planned provision of open space and community recreational facilities. Settlement planning including the preparation of Precinct Structure Plans provide a strategic approach to planning for future growth and identifying opportunities to identify and provide open space and other community infrastructure. In this instance the PSP clearly identifies the need and location for a major recreation reserve which includes the subject land.

Council and Mr Karaszekewych were in general agreement about what was proposed for the MSRSP, the strategic basis for it and the setting of land aside to accommodate the precinct. What is primarily in dispute are the consequences of applying the PAO and the impacts on the landowners, particularly if the acquisition process was not enacted for some time and where the purchase timing might be aligned to a future need and demand for Stage 2 site facilities attribute to the areas longer term growth.

The Panel accepts that there is a sound case established for the incorporation of the subject land into the precinct to enable the delivery of the MSRSP. The precinct concept has developed significantly since Amendment C56. The need for and format, including land requirements of the precinct have been well articulated and explored over many years

through a number of studies and business cases seeking to identify the long term recreation needs for Mildura and the regional catchment it serves. Council with the support of other stakeholders has made a considerable investment in the precinct through the current development of Stage 1. There is a strong basis therefore within the Planning Policy Framework and Council strategic planning for using the PAO as a tool to acquire the subject land.

The Panel acknowledges the concerns of the landowners that Council may not acquire the land for some time, particularly if the need for purchase is linked to a substantial population threshold being reached within the Mildura South growth area. Based on current growth rates it could take over 20 years to reach a population requiring a regional level recreation facility. Such a long delay could create unreasonable limitations on the use and development of the land. However, the Panel is persuaded this is not Council's intent. Rather Council is acting expeditiously to apply the PAO and acquire the land so it can seek funding to deliver Stage 2 of the MSRSP in the near term. The Panel notes that certain facilities including a second oval is linked to latent demand and use of the premier oval for a regional need including the potential to attract AFL games, rather than on local population growth. Local population growth rates are likely to be linked to other lower demand sporting activities, additional outdoor courts and change facilities, passive open space and site drainage.

There was some difference in opinion about whether Council had made concerted approaches to purchase the land. Council was clear however, that it would continue to pursue voluntary purchase and that it was preferable to compulsory acquisition. Pursuing the Amendment and compulsory acquisition in parallel however provides a level of certainty and establishes a clear position in the event a voluntary purchase cannot be negotiated in a timely manner. The Panel considers this a reasonable approach.

The Panel does not consider that the application of the PAO for a clear purpose which might restrict land improvements and developments is tantamount to planning blight particularly when the short - medium term outcome for surrounding land is an urban rather than agricultural or commercial one.

The Panel notes that the PAO is a restrictive control in that a permit is required for use and development and requires referral to the acquiring authority. Any permit granted can include conditions limiting the extent of buildings, materials used and require the demolition or removal of buildings without compensation. Depending on the timeframe for initiating acquisition it is potentially possible (with Council approval) for some development to be permitted where it does not prejudice the purpose for which the land is to be acquired. There is no evidence that Council is seeking to apply the PAO to limit site use or development to minimise future potential compensation.

The Panel considers that the community need for the MSRSP is well established and that it will deliver a net community benefit. It supports the application of the PAO as an appropriate and sound planning response to the identified strategic direction for the precinct and site. While it acknowledges there may be some impacts on the landowners it considers that this is outweighed by the wider public benefit. The Panel notes that in applying the PAO Council can still progress a direct negotiated voluntary purchase approach. This may include a staged purchase approach to minimise some of the potential additional costs and time delays potentially associated with the LACA process.

### **3.5 Conclusions and recommendations**

The Panel concludes that the Amendment is supported by, and implements, the relevant sections of the Planning Policy Framework and Local Planning Policy Framework and is consistent with the relevant Ministerial Directions and Practice Notes. The Amendment is well founded and strategically justified, and the Amendment should proceed.

The Panel recommends:

- 1. Adopt Mildura Planning Scheme Amendment C109mild as exhibited.**

## Appendix A Document list

No.	Date	Description	Provided by
1	17/09/2020	Copy of DELWP submission	Council
2	"	Link to Council's 'Pozi interface' GIS with user instructions	"
3	"	Map and aerial image showing location of the subject land, Mildura Recreation Reserve and Aerodrome Oval Reserve	"
4	"	Council reports considering the exhibition and authorisation of the Amendment and the consideration of submissions	"
5	"	<i>Mildura Recreation Reserve Master Plan Review</i> , November 2014	"
6	"	<i>Old Aerodrome Sporting Complex Master Plan Stakeholder Review Final Report</i> , November 2009, SGL Group	"
7	"	<i>Mildura South Recreation Assessment</i> , November 2013, Hansen Partnership	"
8	"	<i>Mildura South Urban Design Plan Precinct Structure Plan</i> October 2014, Hansen Partnership	"
9	28/09/2020	Council Part A submission and attachments	"
10	5/10/2020	Council Part B submission	"
11	"	Christopher Dick and William Dick submission	Urban Synergistics
12	6/10/2020	Letter of 30 July 2020 from Maddocks (on behalf of Council) to the landowner	"
13	"	Letter of 17 September 2020 from Maloney Anderson legal (on behalf of the landowner) to Maddocks	"
15	7/10/2020	Email response from Council regarding circulation of documents 12 and 13	Council
16	"	Copy of MSRSP Development and Business Plan	"