

*Planning and Environment Act 1987*

**Panel Report**

**Mildura Planning Scheme Amendment C75**

**Mildura South Precinct Structure Plan**



**31 August 2015**

*Planning and Environment Act 1987*

Panel Report pursuant to Section 25 of the Act

Mildura Planning Scheme Amendment C75

Mildura South Precinct Structure Plan

31 August 2015



Trevor McCullough, Chair



David Whitney, Member

# Contents

	Page
<b>Executive Summary .....</b>	<b>i</b>
<b>1 Introduction.....</b>	<b>1</b>
1.1 The proposal .....	1
1.2 Amendment Description .....	2
1.3 Issues dealt with in this report .....	2
<b>2 Strategic Planning Context .....</b>	<b>4</b>
2.1 Background.....	4
2.2 State Planning Policy Framework.....	5
2.3 Local Planning Policy Framework.....	5
2.4 Planning scheme provisions .....	6
2.5 Planning and Environment Act 1987 .....	6
2.6 Ministerial Directions and Practice Notes .....	6
2.7 Strategic Assessment.....	7
<b>3 The Mildura South Precinct Structure Plan and the Mildura South (Sixteenth and Deakin West) Development Plan.....</b>	<b>8</b>
3.1 Overview.....	8
3.2 The Mildura South Precinct Structure Plan (MSPSP) .....	10
3.3 The Mildura South (Sixteenth and Deakin West) Development Plan (MSDP).....	12
3.4 Mildura South Recreation Assessment .....	12
3.5 Submissions .....	12
3.6 Discussion .....	13
3.7 Conclusion .....	14
<b>4 The proposed location and layout of the Sixteenth and Ontario Neighbourhood Activity Centre.....</b>	<b>15</b>
4.1 The issue .....	15
4.2 Background.....	15
4.3 Evidence and submissions.....	16
4.4 Discussion .....	21
4.5 Conclusions.....	22
<b>5 The use of the Urban Growth Zone and associated Schedule 1 .....</b>	<b>23</b>
5.1 The issue .....	23
5.2 Background.....	23
5.3 Evidence and submissions.....	24
5.4 Discussion .....	26
5.5 Conclusions.....	26
5.6 Recommendation .....	27
<b>6 Other Issues .....</b>	<b>28</b>
6.1 The provision and distribution of Public Open Space .....	28
6.2 The location of the proposed primary school .....	32
6.3 Proposed residential densities .....	33
6.4 The Development Contributions Plan .....	35

6.5	Planning Scheme Ordinance Changes .....	36
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## Appendix A List of Submitters

## List of Figures

	Page
Figure 1 Mildura South PSP .....	1
Figure 2 Aerial photo showing the PSP area (solid red line) and the Development Plan area (dashed line) .....	9
Figure 3 Mildura South Precinct Structure Plan.....	11
Figure 4 Indicative Activity Centre Diagram.....	16
Figure 5 Open Space reserve on the SJM land .....	30

## List of Abbreviations

DCP	Development Contributions Plan
DELWP	Department of Environment, Land, Water and Planning
DPO	Development Plan Overlay
DTPLI	Department of Transport, Planning and Local Infrastructure (former)
GRZ	General Residential Zone
MSDP	Mildura South Development Plan
MSPSP	Mildura South Precinct Structure Plan
MSS	Municipal Strategic Statement
MSUDP	<i>Mildura South Urban Design Plan</i>
PSP	Precinct Structure Plan
PUZ	Public Use Zone
SDS	<i>Sunraysia Drainage Strategy 2002</i>
SPPF	State Planning Policy Framework
UGZ	Urban Growth Zone
VPP	Victoria Planning Provisions

## Overview

### Amendment Summary

<b>The Amendment</b>	Mildura Planning Scheme Amendment C75
<b>Common Name</b>	Mildura South Precinct Structure Plan
<b>Subject Site</b>	Land in South Mildura between Riverside Avenue, Sixteenth Street, Seventeenth Street and Benetook Avenue and between Etiwanda Avenue, Fifteenth Street, Sixteenth Street and Benetook Avenue
<b>Purpose</b>	To implement the Mildura South Precinct Structure Plan 2014
<b>The Proponent</b>	Mildura Rural City Council
<b>Planning Authority</b>	Mildura Rural City Council
<b>Authorisation</b>	A02951 authorised on 1 December 2014
<b>Exhibition</b>	16 January to 6 March 2015
<b>Submissions</b>	Number Received: 13 Number opposing: 8 Number supporting or raising no objection : 5 A list of all submitters is contained in Appendix A

### Panel Process

<b>The Panel</b>	Trevor McCullough (Chair), David Whitney
<b>Directions Hearing</b>	Mildura, 26 May 2015
<b>Panel Hearing</b>	Mildura, 22 June 2015
<b>Appearances</b>	<ul style="list-style-type: none"> <li>Mildura Rural City Council represented by Mr John Keaney and Mr James Turner and calling expert evidence from Mr David Barnes</li> <li>Dr Michael David</li> <li>Ms Melissa David</li> <li>Ms Heide Batur</li> <li>Ms Elizabeth and Mr Peter George</li> </ul>
<b>Site Inspections</b>	Unaccompanied, 26 May, 22 and 23 June 2015
<b>Date of this Report</b>	31 August 2015

## Executive Summary

### (i) Summary

Amendment C75 to the Mildura Planning Scheme has been prepared to implement the *Mildura South Precinct Structure Plan 2014*. The Amendment applies to land between Riverside Avenue, Sixteenth Street, Seventeenth Street and Benetook Avenue and land between Etiwanda Avenue, Fifteenth Street, Sixteenth Street and Benetook Avenue, South Mildura. This land has been identified as the area which will accommodate the next major stage of Mildura's residential growth.

Thirteen submissions were received in response to the exhibition of the Amendment. The key issues raised in submissions included:

- The need for, location of and design of the proposed Neighbourhood Activity Centre (NAC);
- The use of the Urban Grown Zone for the NAC site;
- Land acquisition;
- The drainage basin on the corner of Sixteenth Street and Walnut Avenue; and
- Other open space and vegetation issues.

The Panel considers that the Mildura South Precinct Structure Plan and the associated Mildura South (Sixteenth and Deakin West) Development Plan are the appropriate over riding planning tools to guide the development of the Mildura South growth area.

A number of the submissions, and much of the discussion at the Hearing, centred on the proposed NAC. The Panel notes the valid concerns raised by submitters about possible amenity impacts and also notes that further, more detailed work is yet to be done in designing the NAC. The Panel accepts that the proposed location and zoning of the NAC are appropriate, subject to the planned further design work addressing the issues raised and an opportunity being provided for residents to participate in the design process.

The Panel considered other aspects of the design of the PSP including: the provision and distribution of open space; the location of the primary school; proposed residential densities; and the application of the Development Contributions Plan.

The Panel notes the close connection between Amendment C75 and Amendment C89 in relation to the broader strategic direction in the Mildura Housing and Settlement Strategy. Coordination of the wording changes to the Municipal Strategic Statement will be required between the two amendments depending on the final form of each amendment.

In summary, the Panel has considered all written submissions; presentations made during the hearings; and expert evidence, and has concluded that the Amendment should be supported subject to a number of minor changes.

**(ii) Recommendation**

Based on the reasons set out in this Report, the Panel recommends that Mildura Planning Scheme Amendment C75 should be adopted as exhibited subject to the following:

1. Add the following to Clause 3 Application Requirements in Schedule 1 to the Urban Growth Zone:

*Before deciding whether to approve an urban design framework/master plan or a substantial amendment to an approved plan, the responsible authority must first display the plan for public comment for a period of 14 days and must take account of any comments received in response to display of the plan.*

2. Review the area of drainage reserve required on the south west corner of Deakin Avenue and Sixteenth Street once more detailed drainage design work is completed.
3. Adopt the proposed changes to Clauses 21.04, 21.05 and 21.10 subject to any changes required to accord with the final adopted form of Amendment C89.



# 1 Introduction

## 1.1 The proposal

This Amendment has been prepared to implement the *Mildura South Precinct Structure Plan 2014*.

The Amendment applies to land between Riverside Avenue, Sixteenth Street, Seventeenth Street and Benetook Avenue and land between Etiwanda Avenue, Fifteenth Street, Sixteenth Street and Benetook Avenue, South Mildura. Refer to Figure 1. This land has been identified for more than a decade as the area which will accommodate the next major stage of Mildura's residential growth.



Figure 1 Mildura South PSP

The Precinct Structure Plan (PSP) forms one component of a project referred to as the Mildura South Urban Design Plan and is a key document in ensuring that future development within Mildura South occurs in an orderly and sustainable manner. The two components comprising the Mildura South Urban Design Plan are:

- The PSP which covers the entire area referred to above; and
- A Development Plan for part of the area which is already zoned for residential use and currently affected by a Development Plan Overlay (DPO).

The PSP nominates a hierarchy for the future road network within the study area, identifies where future commercial, community and other infrastructure will be located, outlines how

open space and landscaping will be incorporated, and provides an indication for preferred housing densities.

## **1.2 Amendment Description**

Specifically the Amendment proposes to:

- Amend the Municipal Strategic Statement (MSS) by updating Clause 21.04 (Settlement and Housing), Clause 21.05 (Environment) and Clause 21.10 (Local Areas) and includes the *Mildura South (Sixteenth and Deakin West) Development Plan* and *Mildura South Recreation Assessment 2014* as reference documents;
- Amend Clause 81.01 to include the *Mildura South Precinct Structure Plan 2014* as an incorporated document;
- Insert the Urban Growth Zone and associated Schedule 1 into the Mildura Planning Scheme;
- Rezone land at 634-670 Ontario Avenue Mildura South from General Residential Zone to Urban Growth Zone (Schedule 1);
- Rezone land at 127-135 Sixteenth Street Mildura South from Public Use Zone (Service and Utility) to the Urban Growth Zone (Schedule 1); and
- Rezone three parcels of Council owned land at 624-682 Deakin Avenue Mildura South from Farming Zone to the Public Park and Recreation Zone and apply the Salinity Management Overlay to this land.

## **1.3 Issues dealt with in this report**

The Panel has considered all written submissions, as well as submissions presented to it during the Hearing. In addressing the issues raised in those submissions, the Panel has been assisted by the information provided to it as well as by its observations from inspections of specific sites.

The Panel notes that five agencies, namely Wentworth Shire Council (in NSW), the Department of Economic Development, Jobs, Transport and Resources, the Department of Environment, Land, Water and Planning (DELWP), Lower Murray Water and the Mallee Catchment Management Authority raised no opposition to the Amendment, although DELWP made comment regarding the need for discussion with the Department regarding the environmental significance of land at the corner of Sixteenth Street and Riverside Avenue.

Submissions from objecting submitters raised issues regarding:

- The need for, location of and design of the proposed Neighbourhood Activity Centre;
- The use of the Urban Growth Zone for the Neighbourhood Activity Centre site;
- Land acquisition;
- The drainage basin on the corner of Sixteenth Street and Walnut Avenue; and
- Other open space and vegetation issues.

This report deals with the issues that have arisen as a result of the Panel's consideration of the Amendment and the submissions referred to it under the following headings:

- Strategic Planning Context
- The Mildura South PSP and Development Plan
- The proposed location and layout of the Sixteenth and Ontario Neighbourhood Activity Centre
- The use of the Urban Growth Zone and associated Schedule 1
- Other Issues:
  - The provision and distribution of Public Open Space
  - The location of the proposed primary school
  - Proposed residential densities
  - The Development Contributions Plan
  - Planning scheme ordinance changes.

## 2 Strategic Planning Context

### 2.1 Background

In Council's written submission to the Panel, a useful background was included which gave strategic context for the preparation of the Mildura South Precinct Structure Plan (MSPSP) and the Mildura South Development Plan (MSDP). This background outlined the studies and events leading up to the preparation of both documents including:

- The *Sunraysia Drainage Strategy 2002* (SDS) which identified the major stormwater drainage corridor through the Mildura South area to Lake Hawthorn. The SDS provided a long term blue print for the future management of surface, sub-surface and stormwater drainage in the region and led to the acquisition of easements and road widening to accommodate a wetland style drainage system.
- The *Mildura Irymple Residential Land Strategy 2003* which identified the Mildura South area as one of three areas in which to accommodate a growth of some 34,750 persons between 2003 and 2031. A key recommendation of the strategy was to rezone some 108 hectares south of Sixteenth Street due to its capacity to be connected to existing or planned drainage infrastructure. The strategy also recommended the need for a Development Contributions Plan for the undeveloped residentially zoned land.
- Amendment C28, which implemented the recommendations of the 2003 review of Mildura Planning Scheme and the recommendations of several Council adopted strategic studies including:
  - The Review of the *Mildura and Irymple Residential Land Strategies November 2003* (Maunsells, and OPA Pty Ltd) which reviewed the existing residential strategies for Mildura and Irymple and recommended additional areas be provided to cater for the residential needs of the townships to the year 2030; and
  - The *Mildura South Development Contributions Plan (2005)* (SGS Pty. Ltd) which dovetailed with the above residential strategy and provided detailed costings and apportionment for the provision of necessary infrastructure.

The outcome of Amendment C28 was the recommendation to prepare a structure plan for Mildura South.

- In 2007, Council commenced work on the preparation of the Mildura South Strategic Framework Plan (MSSFP). This plan identified two communities one either side of Deakin Avenue, each with their own neighbourhood activity centre adjacent to Sixteenth Street to include open space, community facilities and medium density housing.
- In 2011 a consultant team was assembled to review the MSSFP and prepare the *Mildura South Urban Design Plan* (MSUDP). Resulting from this work, a preliminary MSPSP was prepared and workshopped with the community and stakeholders.

The MSUDP built on the MSSFP. As background to the preparation of the MSUDP, a *Context and Framework Plan Review (2011)* was prepared which comprised an

assessment of the local context and existing conditions, and a policy and contextual review of the MSSFP, to determine if there had been any changes in the years since 2007 that would need to be considered in the development of the area.

The intention of Urban Design Plan project was not to 'rewrite' the vision for Mildura South, but to build upon the existing knowledge base of the study area and to reinforce the guiding planning and urban design principles established in the initial framework plan.

- The PSP was prepared in line with the *Precinct Structure Planning Guidelines* (2009), prepared by Melbourne's former Growth Area Authority (now the Metropolitan Planning Authority).

## **2.2 State Planning Policy Framework**

The Panel has been taken through the sequence of strategic events in some detail and fully understands the strategic context for the preparation of both the MSPSP and the MSDP. It also accepts that the Amendment is consistent with State Planning Policy and implements State policy on settlement, environment, housing, economic development and infrastructure.

In particular, Council submitted that the Amendment implements the following clauses in the SPPF:

Clause 11 *Settlement* by implementing a PSP which identifies land required for commercial and community uses in addition to residential areas.

Clause 15 *Built Environment and Heritage* by providing appropriate design guidance to ensure that residential development promotes attractive, liveable, walkable, cyclable, diverse and sustainable neighbourhoods. It also seeks to ensure land use and development that is consistent with the efficient use of energy and the minimisation of greenhouse gas emissions.

Clause 16 *Housing* by providing strategic direction and guidance on the appropriate location of residential development as well as facilitating increased housing diversity, encouraging more efficient use of areas close to facilities and services.

## **2.3 Local Planning Policy Framework**

Council submits, and the Panel accepts that the Amendment supports the Local Planning Policy Framework by implementing the MSPSP which builds on existing policy direction established by the MSSFP currently referenced in the Mildura Planning Scheme.

The Amendment supports this clause by furthering the existing direction regarding the planning and implementation of plans for the future residential development of the Mildura South area. See also the Panel's comments in Section 6.5 in relation to the proposed changes to the MSS.

The Amendment supports existing policy by further strengthening the policy which seeks to provide for housing in areas where services are readily accessible and where development will not compromise agricultural land uses. It also supports existing policy to provide for

neighbourhood design which reflects best practice planning for new growth areas and appropriate access to shops, open space and community facilities.

## **2.4 Planning scheme provisions**

### **(i) Zones and Overlays**

The Amendment proposes to introduce the Urban Growth Zone (UGZ) and associated Schedule 1 into the Mildura Planning Scheme. This is discussed in Chapter 5 of this report.

The proposed Schedule 1 to the UGZ applies the PSP, land use and development requirements, application requirements and decision guidelines to land within the precinct.

The Amendment applies the Public Park and Recreation Zone to three parcels of Council owned land which are intended to be used for the purpose of parks and recreation.

## **2.5 Planning and Environment Act 1987**

### **Does the Amendment adequately address any environmental, social and economic effects identified under section 12(2)(b) and (c) of the Act?**

The environmental, social and economic effects have been addressed in the Explanatory Report. Council submitted that the Amendment has a number of positive environmental and social effects.

## **2.6 Ministerial Directions and Practice Notes**

### **(i) Ministerial Directions**

Council submitted that the Amendment meets the relevant requirements of the following Ministerial Directions:

#### **Ministerial Direction 11 - Strategic Assessment Guidelines**

The requirements of Ministerial Direction 11 have been followed in the course of preparing this amendment, and are reflected in the relevant documentation.

#### **The Form and Content of Planning Schemes (s7(5))**

The Amendment is consistent with the Ministerial Direction on the Form and Content of Planning Schemes under Section 7(5) of the Act.

#### **Ministerial Direction 12 – Urban Growth Areas**

Whilst it is recognised that the Precinct Structure Plan Guidelines referred to by Ministerial Direction 12 have been developed primarily for a metropolitan environment they are also relevant to a regional growth area such as Mildura South. However, whilst the Precinct Structure Plan has been developed in line with these guidelines it is important to note that a degree of flexibility is maintained when applying these guidelines in a regional context through both the Strategic Framework and the Development Plan.

**(ii) Planning Practice Notes**

**Precinct Structure Plan Guidelines**

The Amendment accords with applicable parts of the Precinct Structure Plan Guidelines.

**2.7 Strategic Assessment**

The Panel is satisfied that the Amendment has been prepared in accordance with the Act and all relevant Ministerial Directions and Planning Practice Notes. The Amendment is consistent with State and local planning policy.

The Panel concludes that the Amendment is well founded and is strategically justified subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

### 3 The Mildura South Precinct Structure Plan and the Mildura South (Sixteenth and Deakin West) Development Plan

#### 3.1 Overview

Mr Barnes provided some useful context for the PSP and Development Plan in his expert evidence statement<sup>1</sup>:

*The initial stages of the Mildura South growth area begin at Fifteenth Street. However, few facilities have been developed in that area, within limited open space and community facilities provided in the past. The Mildura South Primary School and the open space provided in conjunction with the Sixteenth Street drainage system are notable exceptions in the area to the north-east of Sixteenth Street (Development Plan report, p6).*

*Access to shopping, including food and discretionary shops, is generally provided by retail facilities in the Fifteenth Street retail and commercial spine, to the east. While there is a small commercial centre on Walnut Avenue, the majority of existing residents rely on Fifteenth Street to meet their needs.*

*To the west the growth area abuts the Lake Hawthorn area, which together with Lake Ranfurly further to the north, form the western edge of Mildura. Both lakes are environmentally sensitive, ephemeral lakes that often dry out in summer.*

*South of the growth area is the Calder Highway, which will form the long term boundary of urban Mildura, given the presence of Mildura Airport to the south.*

The PSP affects an extensive area of land to the south-west of Mildura, spanning both sides of Deakin Avenue as shown in Figure 2.

The Development Plan only applies to that part of the PSP area the north-west of Deakin Avenue, which is already zoned General Residential (see Figure 2). That land has an area of approximately 180ha. The area is defined by Deakin Avenue, Sixteenth Street and Riverside Avenue. To the south, the Development Plan area broadly follows a topographical ridgeline, stopping short of Seventeenth Street (Calder Highway) and reflecting different catchment areas. Land within the Development Plan area has been considered as part of the broader Mildura South drainage plan area, which uses the Sixteenth Street drain, which also services the land between Fifteenth and Sixteenth Streets.

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<sup>1</sup> Mr Barnes' expert evidence pages 4 and 5.





Figure 2 Aerial photo showing the PSP area (solid red line) and the Development Plan area (dashed line)

### 3.2 The Mildura South Precinct Structure Plan (MSPSP)

The PSP proposed to be incorporated into the Planning Scheme as part of this Amendment is shown at a larger scale in Figure 3.

The PSP identifies the following key elements that make up the Plan<sup>2</sup>:

- *Highly landscaped 'Bush Boulevard' (Deakin Avenue) which strengthens the avenue's civic and functional role within Mildura and provides an attractive entrance to the city.*
- *Highly landscaped 'Greenway' (Sixteenth Street) which will accommodate commercial and community infrastructure, facilitating and encouraging walking and cycling to key destinations.*
- *Road network which identifies a hierarchy of roads which provides safe and legible access through and within the study area. Roads will contain significant landscaping which will contribute to the area's character.*
- *Two activity centres with easy access to the 'Greenway', one at a neighbourhood level located on the Greenway to the north, and another 'convenience' centre close to the proposed school and active recreation reserve.*
- *Community services and facilities which are co-located with the activity centre, regional sporting facilities and the primary school.*
- *Primary School located in close proximity to community services and facilities, local shops, and active and regional sporting facilities.*
- *Range of housing densities with higher density housing focused around the activity centres and along the Sixteenth Street spine.*
- *A key Active Recreation Reserve, incorporating regional sporting facilities acting as an anchor point within the study area.*
- *Network of public open spaces providing active and passive recreation opportunities for all members of the community.*
- *Stormwater management incorporated in open space and Water Sensitive Urban Design (WSUD) treatments incorporated into 'Parkways'.*
- *Gateway features at the intersection of Deakin Avenue and Seventeenth Street and at Deakin Avenue and Sixteenth Street to provide an attractive gateway to the study area and Mildura City.*

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<sup>2</sup> Mildura South PSP page 8



Figure 3 Mildura South Precinct Structure Plan

### **3.3 The Mildura South (Sixteenth and Deakin West) Development Plan (MSDP)**

The Amendment proposes to include of the *Mildura South (Sixteenth and Deakin West) Development Plan* as a reference document in the Planning Scheme. The Development Plan has been prepared in accordance with the Development Plan Overlay (DPO) that applies to the land. It is identical to the PSP in terms of the strategic direction, although the Development Plan provides further site specific detail to the area currently zoned GRZ. The DPO and Development Plan apply to the land as shown in Figure 2. The area is currently zoned GRZ except for three small areas of PUZ. The area covered by the Development Plan includes the proposed Sixteenth and Ontario Neighbourhood Activity Centre, which is proposed to be rezoned to the Urban Growth Zone (UGZ) (See Chapter 5).

### **3.4 Mildura South Recreation Assessment**

The Amendment proposes to include of the *Mildura South Recreation Assessment 2014* as a reference document in the Planning Scheme. The Panel understands that the Recreation Assessment was prepared by Hansen Partnership to provide an overview of the recreational needs in the Mildura South Growth Area. It has been used to inform the open space requirements of the PSP and Development Plan. No specific submissions were made in relation to the content of the Recreation Assessment and the Panel has assessed it in any detail.

### **3.5 Submissions**

Tract, on behalf of SJM Developments, (submission 10) raised a number of issues regarding the Development Plan and the PSP. They questioned why a PSP is required when the area is already covered by a DPO and queried how a PSP is triggered when the land is not in the UGZ.

Council relied upon the evidence of Mr Barnes in its response to these issues<sup>3</sup>:

*The reason a PSP is required over the land is to coordinate development of land to the north-west of Deakin Avenue, with development of the wider Mildura South area, which extends to the south-east of Deakin Avenue. The PSP provides an overarching framework that enables a more detailed Development Plan to be prepared, having regard to what might happen in the future, to the south-east of Deakin Avenue. The PSP will have the status of an incorporated document in the planning scheme. The Development Plan will be approved by Council pursuant to the provisions of the Development Plan Overlay.*

*The submission made about the 'trigger' for a PSP when the land is not included in an Urban Growth Zone, raises a matter of terminology. Whether the Precinct Structure Plan is called a Precinct Structure Plan, a Structure Plan, or has some other title, does not make the plan prepared as part of this project flawed or reduce its relevance. Strategic planning in Victoria has for a*

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<sup>3</sup> Mr Barnes' evidence paras 104 to 106

*long time relied on a hierarchy of different types of strategic plans, of various names, ranging from general overview plans to progressively more detailed plans. The names given to such plans have never been clearly defined either in the Planning and Environment Act or the VPPs. .... In addition the VPPs include Development Plan Overlays (DPOs). DPOs are a common means of managing greenfield development, especially in regional Victoria. The provisions of the DPO refer to the need for 'development plans' to be prepared prior to the issue of a planning permit. Whilst there may be some confusion in the use of the term Precinct Structure Plan in this amendment, it is clear that the document termed the Mildura South Precinct Structure Plan is a higher level document than a Development Plan. It covers a broader area of land in Mildura South than the Development Plan, including land that is presently zoned Farming and which is not proposed to be rezoned as part of this amendment.*

*From a strategic planning perspective, the PSP and the Development Plan are identical as they relate to land to the north-west of Deakin Avenue, albeit the Development Plan report is a more detailed document. The Precinct Structure Plan is not redundant as it also relates to land to the south-east of Deakin Avenue. It will provide guidance in the future, at the time when it is appropriate to rezone and to prepare a development plan for that land.*

Tract, on behalf of SJM Developments submitted that it would be sensible to rezone land in the north-west corner of the study area as part of this Amendment. Council responded that this land was part of a different drainage catchment, and at this stage no detailed drainage strategy has been completed to confirm that the land is suitable for residential development. Council advised, however, that the land is earmarked for future residential development if an appropriate drainage scheme can be designed.

### **3.6 Discussion**

The Panel agrees with submissions that it is a little unusual to have a PSP and DPO applying to the one area. It arguably does introduce a certain degree of redundancy. The Panel, however, sees no reason to reject this approach provided that the PSP and Development Plan are consistent. The PSP should apply to the wider area as proposed. This encourages a more holistic approach to planning and ensures that smaller subdivisions are not designed in isolation. In this instance the Development Plan mirrors the PSP at the strategic level but provides more detail in accordance with the DPO. The Panel supports the proposed approach.

Clause 11.02-3 *Structure Planning* requires that planning must consider (amongst other things) the *Precinct Structure Planning Guidelines (Growth Areas Authority, 2009)*. The Panel is satisfied that the PSP has been developed in accordance with the Guidelines.

The Panel agrees with reasons not to rezone the land in the north-west corner of the study area at this stage.

### **3.7 Conclusion**

The Panel concludes that the Mildura South Precinct Structure Plan and the Mildura South (Sixteenth and Deakin West) Development Plan are the appropriate planning tools to apply, subject to the examination of the more detailed issues discussed in Chapters 4, 5 and 6 of this report.

## **4 The proposed location and layout of the Sixteenth and Ontario Neighbourhood Activity Centre**

### **4.1 The issue**

Is the proposed location and layout of the Sixteenth and Ontario Neighbourhood Activity Centre appropriate?

### **4.2 Background**

The Sixteenth and Ontario Activity Centre is described in the PSP as a 'Neighbourhood Activity Centre' (NAC). It is the major centre proposed to service the needs of the existing and future Mildura South community. In Council's submission it has been proposed on the south-west corner of Sixteenth Street and Ontario Avenue rather than more centrally within the PSP area at the intersection of Sixteenth Street and Deakin Avenue so as to avoid an overlap with the facilities and services provided at Mildura Centro which caters for a larger sub-regional catchment.

The NAC is described in the PSP as a centre accommodating:

- A supermarket as well as convenience retailing, food and drink premises and personal services in an area of approximately 2ha identified for 'retail' uses with associated car parking, landscaping and some non-retail uses;
- A 2ha 'village green';
- An area of 2ha for nominal community uses such as a medical centre and kindergarten; and
- An area of approximately 2ha specified for higher density housing.

The exact areas required for these uses are to be determined through a master planning process. The Mildura South (Sixteenth and Deakin West) Development Plan gives further clarity to the nature of the NAC and the form it may ultimately take as shown in Figure 4.

The retail component of the centre is anticipated to ultimately comprise: a full line supermarket of 3,500m<sup>2</sup> to 4,000m<sup>2</sup>; an additional 3,000m<sup>2</sup> of retail shopfront; and 1,000m<sup>2</sup> of non-retail shopfront.

Submitters challenged the location of the NAC on the basis of the unanticipated amenity impacts that the centre will have on existing residents living in proximity to the centre. The need for the NAC, its proposed zoning and its layout have given rise to additional submitter concerns.



Figure 4 Indicative Activity Centre Diagram

### 4.3 Evidence and submissions

The submission of Adam Parker on behalf of Mr and Mrs George (submission 4) and the submissions of Janet Collins (submission 2), Rowan Jones (submission 3), and Robyn Gould (submission 13) each opposed the location of the NAC on a series of amenity grounds including:

- Traffic
- Security risk
- Rubbish associated with take-away food outlets
- Damage to lifestyle and rural outlook
- Inappropriate in a low density residential area
- Noise
- Light spill.



Several submissions argued that there were more appropriate locations for the NAC, including the submissions on behalf of Mr and Mrs George and the submissions of Janet Collins, Rowan Jones and Robyn Gould. The submission of Rowan Jones also questioned the need for the Centre given the proximity of Mildura Centro.

The submissions on behalf of Mr and Mrs George criticised the layout of the centre. The submissions by Adam Parker of the Town Planning Group Pty Ltd, described the layout plans for the proposed NAC as being *'hardly credible'* and that the Centre's siting was *'poorly chosen in its interface and its locality when reviewing the development plan's residential areas'*. It was in the submission of Mr Parker that a location on the corner of Walnut Avenue and Sixteenth Street, although slightly closer to the Fifteenth Street activity centre, would *'serve the catchment better and provide easier access for those coming from the north-east off Walnut Street, and better serve the residential growth corridor, with the vast majority of the precinct within 1500 metres of the centre'*.

The submission of Dr Michael and Melissa David (submission 12) raised a number of points of concern:

- Firstly, it was contended that the proposed NAC was inconsistent with *Ministerial Direction 12 – Urban Growth Areas*. It was argued that the objective of allowing connection with bus routes and vehicular routes and encourage walking and cycling was severely compromised in terms of walking and cycling connections. In this regard it was contended that as the MSDP shows the existing open space pedestrian connection being located halfway between Ontario Avenue and Riverside Avenue, rather than at the site of the proposed NAC, a location on the western junction of Ontario Avenue and Sixteenth Street would be a more appropriate location.
- Secondly, it was contended that the objective to locate a full line supermarket as part of the NAC was *'questionable at best'*. In this regard the submission questioned the variable supermarket capture rates used by both Essential Economics and Hill PDA, the economic experts used in the preparation of the *Mildura Retail Strategy 2010* and MSPSP. Further, in support of this point the submitters relied upon a publication *Retail Needs Assessment* by the Department of Housing 2011 where it was stated that generally there is a 3km distance between full line supermarkets while in this case the proposed NAC was approximately 2km.

(The Panel's search for this document revealed only a Perth Department of Housing Retail Needs assessment which stated:

*Mapping of the two full line supermarket chains across urban Australia generally reveals a network distribution of 3km between stores. This means that a full line supermarket can typically be sustained by a catchment with a 1.5km radius – depending on the extent of the residential population and competition in the catchment. It is common for two full line supermarkets to trade successfully within the same 1.5 km catchment. Not all of the supermarket sales will be derived from this catchment, but the vast majority of sales will be.)*

The submitters gained confidence for their contention that a full line supermarket could not be justified by the advice they had received from Aldi who were currently looking for sites more central to the existing township population.

- Thirdly, the David's were of the opinion that the NAC did not accord with *Precinct Structure Planning Guidelines* or the *Activity Centre Design Guidelines* in that a 'sense of place and community' and a 'strong identity that builds on existing local character' would not be achieved at the proposed location where it was Lake Hawthorn which is valued most by the local community and a feature which deserves strong consideration as a potential location for a NAC. This point was central to the presentation of Melissa David at the Hearing which is discussed later.
- Fourthly, it was contended that the land was better suited to residential development and that by allowing a NAC to be developed on the land, future residential development would occur on land that is of poor quality and liable to flooding.

Both Michael and Melissa David appeared at the Hearing to speak in support of their written submission.

Michael David explained that he was not opposed to the Amendment generally, but was opposed to the location of the NAC and the use of the UGZ. He expanded on the first, second and fourth points above, arguing that an evidence-based examination of aspects of the PSP's underlying research did not support the location of the NAC as proposed. He pointed to the fact that only 33% of the MSPSP area, and 62% of the MSDP area, was within 1km of the proposed NAC whereas the PSP Guidelines suggest that 70-80% should be within 1km. He also questioned population estimates underlying the PSP.

Michael David also advised the Panel that he had undertaken a survey of some 27 households in the Mildura South area which indicated that should a full line supermarket be established as proposed, 18 would not be attracted to it. Further he advised that an unnamed source had suggested that the NAC land was best suited for residential use.

Melissa David, who has qualifications in urban development and regional planning, spoke to a detailed power point presentation which addressed the third point contained in the David's written submission.

It was her submission that the planning of the Mildura South area was misconceived in that it failed to take into account the a long term vision for Lake Hawthorn. In an impressive set of sketches, diagrams and photos she presented an alternative future with an activity centre focussed on the Lake. It was her contention that planning should not be just about how easy it is to get to a supermarket and that things other than supermarkets should dictate the planning of an area.

Ms George briefly addressed the Panel to re-affirm the fact that she was opposed to the location of the NAC and that there needed to be a better outcome for the whole community. She was of the opinion that there were sufficient supermarkets in town. She considered that Council had not been transparent in regards to the Amendment and that she was not notified about a change from an earlier depiction of the NAC on the corner of Sixteenth

Street and Walnut Avenue. Ms George did not call Mr Parker to give evidence in support of his written submission, preventing his views to be tested by the Panel or other parties.

In its response to the submissions opposing the location of the activity centre, the Council relied on the evidence of Mr Barnes. His firm was responsible for the preparation of both the MSPSP and the MSDP. In respect to the proposed NAC, it was his opinion that *'the proposed NAC site represents the optimal location for the focal point for the future Mildura South community. Essentially it is the 'best fit' location'*.

In support of this opinion he noted:

- *The importance of locating a NAC along Sixteenth Street was first identified in the Mildura South Strategic Framework Plan (2007).*
- *A location on Sixteenth Street also supports the use of the centre by existing Mildura South residents (i.e. to the north-west of Sixteenth Street, and assists in creating cohesion between the two communities.*
- *Background reports prepared as part of the preparation of the Structure Plan identify that only one 'larger' centre is needed in the Mildura South area, with a meaningful retail component, and that such a centre should be located in the first stage of development, further from the existing Fifteenth Street activity spine.*
- *It also important that the NAC be located on one of the main north / south roads in this part of Mildura, to provide good access to existing and future residential areas. Riverside Avenue was excluded from consideration given that it has been identified as a lower order road and it is located on the 'outer edge' of urban development in Mildura. Deakin Avenue was also excluded due to the presence of a drainage reserve at its intersection with Sixteenth Street, and also its proximity to the Fifteenth Street strip.*

Mr Barnes added that:

- *Potential locations were therefore limited to the intersection of Sixteenth Street and either Walnut or Ontario Avenues. The previous Mildura South Strategic Framework Plan, identified a centre at the corner of Walnut Avenue. By the time this PSP was prepared, additional drainage requirements identified at the corner of Deakin Avenue, made the Ontario Avenue location more logical from the perspective of spatial distribution of open space. In addition to co-locating community spaces and higher density housing with the retail component (in line with best practice), a series of parameters to support the retail component of the centre were identified by HillPDA. These included:*
  - *A location in the heart of the precinct (note that the PSP has also considered the existing area of Mildura South area when considering the location of the precinct's 'heart') with a centre fronting major roads.*
  - *Adjacent to a park and / or school and medium density housing.*
  - *Would benefit from retail being located on the left side of the road for easy access for residents returning from work.*
  - *Accessible by public transport.*

- *The distance between the Fifteenth Street commercial spine and any new centre, was also an important consideration in locating the Centre. The aim is a location that balances the competing objectives of a central location along Sixteenth Street, between Riverside Avenue and Deakin Avenue, and maximising the distance from the Fifteenth Street precinct for commercial viability reasons. This suggests a location to the north-west of the central position between those two roads.*
- *As a result the Centre was identified in its current location. An alternate location at the corner of Walnut Avenue was also exhibited during the evolution of the PSP. That option received considerable objection from the community.*

In addressing the need for the NAC, and a full line supermarket specifically, Mr Barnes advised that he had referred the submissions questioning the retail analysis back to HillPDA who had provided the economic work underlying the MSPSP. He advised that HillPDA had stated that no matter raised in the submission by Michael and Melisa David *'would cause it to alter its view that a supermarket based NAC can be supported in the Mildura South Area'*.

He added that he believed that it was also relevant that the *Mildura Retail Strategy (Essential Economics 2010)* identified the potential for the Mildura South area to support a NAC within a full line supermarket and that the *Growth Area Authorities Precinct Structure Planning Guidelines* include a standard that *'80-90% of households should be within 1km of an activity centre of sufficient size to allow for provision of a supermarket.'*

It was the opinion of Mr Barnes that from a strategic planning perspective, even if there was some validity in the submission about the 'flawed' nature of the economic analysis, it would go more to the size and the retail composition of the centre, than to the need for the Centre per se.

In response to the evidence and submissions, Mr Keaney, on behalf of Council, stated that the need for a supermarket-based NAC had been identified as far back as the 2010 Essential Economics report. He did not agree with the detailed criticisms of the planning of the area raised by Michael David with reference to aspects of the Precinct Structure Plan Guidelines. He pointed to the fact that guidelines should not be used with such precision, but rather as a guide.

With respect to the survey undertaken by Michael David, Mr Keaney, despite being underwhelmed by the small sample size, stated that Council should be buoyed by the fact that one third of the people surveyed said they would use the proposed NAC at such an early stage in its inception.

Mr Keaney applauded the civic focus of the presentation made by Melissa David proposing a NAC at Lake Hawthorn. He noted, however, that her presentation gave support for the need for a NAC but added that Council is proposing to respond to Lake Hawthorn through the use of the LDRZ. He acknowledged that a significant area of College Lease land presented a problem in the planning around the Lake.

While accepting that Ms George already finds existing shopping facilities convenient, Mr Keaney in closing re-emphasised the fact that Council is looking at the long term and, in this

regard, the need for a supermarket-based NAC in the South Mildura area has been around for a significant time.

#### **4.4 Discussion**

The Panel believes that Council has for many years undergone comprehensive forward planning exercises, and the degree to which these exercises have provided opportunities for community input has been exemplary. The strategic designation of Mildura South as a major growth front for the City has been long known and long accepted as have the various economic studies giving support to the need for a supermarket-based NAC in the Mildura South area. Mr Keaney correctly noted that, no matter how well Council does its long term planning, such planning will inevitably lead to frustrations in the short term.

The Panel does not accept that there is no need for the proposed NAC. The strongest arguments put to it disputing the need for the centre have not in fact rejected the notion of a NAC in Mildura South. Rather they have actually suggested the centre should be located in an alternative location.

Whilst accepting that there is a need for the NAC, the Panel completely understands the amenity concerns of Janet Collins, Rowan Jones and Robyn Gould, and other submitters living on the land opposite the proposed NAC site. At the same time, the Panel recognises that, as the land has been included in the GRZ1 for some considerable time, urban development will eventually replace the peaceful horticultural outlook those concerned submitters currently enjoy. The Panel also recognises that an activity centre containing a full scale supermarket will bring with it potential annoyances that would not result from residential development. However, the final design, composition and precise size of the Centre are yet to be determined and the planning processes to be followed before the centre is established will provide further opportunity for community comment and sufficient opportunity for off-site amenity impacts to be fully discussed and minimised.

The Panel has followed with interest arguments for establishing the NAC at an alternative location. Regardless of where the Centre is established, there will always be the possibility of off-site amenity impacts with the result that an alternative site will not remove a degree of community opposition.

The Panel accepts the evidence of Mr Barnes that, in the interests of a net community benefit, the location proposed in the MSPSP and MSDP is an appropriate location. It suggests that opponents of the centre treat the indicative designs of the layout of the NAC shown in the MSDP with a degree of caution, as further work will be required before a design and layout of the Centre can proceed through the planning process. At the same time, the Panel wishes to alert Council for the need, at the appropriate time, to work closely with the community in undertaking that work and also in finalising the design of Sixteenth Street and Ontario Avenue in the vicinity of the centre. The design of the NAC should carefully consider the amenity impacts raised by submitters and seek to minimise disruption to the existing community. Opportunities also exist to utilise the road reserve in Sixteenth Street in particular to provide a buffer between the existing residential area and the NAC.

Finally on this issue, the Panel wishes to record that it is aware that Council, in conjunction with Lower Murray Water, Goulbourn-Murray Water and Mallee Catchment Management

Authority are working together to develop a Lake Hawthorn Management Plan. Whilst not discussed at the Hearing, the Plan is to consider the needs and interests of all users of the lake, including adjoining landholders and licensees, recreational users and government agencies. The preparation of this plan is perhaps recognition of the importance of Lake Hawthorn to the local community as put to the Panel by Melissa David. The Panel understands that the management plan will identify a long term vision for Lake Hawthorn; recognise the diverse range of values, uses and issues associated with the Lake; and, identify important social, economic and environmental issues and develop a series of actions to address these issues over the next decade.

## **4.5 Conclusions**

The Panel concludes that:

- Mildura South is of sufficient population and catchment size in its own right to justify the inclusion of an NAC in the PSP.
- The location of the NAC as shown in the Mildura South PSP is appropriate.
- Further work needs to be done to design the detail of the NAC.
- Design work on the NAC should consider the linkages with, and potential impacts on, existing residential areas north of Sixteenth Street.

## 5 The use of the Urban Growth Zone and associated Schedule 1

### 5.1 The issue

Is it appropriate to apply the Urban Growth Zone and Schedule 1 to the NAC site?

### 5.2 Background

Rather than rezoning the NAC site into zones corresponding to the activities proposed such as a Commercial Zone, Residential Zone and Public Park and Recreation Zone, Council is proposing to rezone the land from General Residential Zone (GRZ) and Public Use Zone (Service and Utility)(PUZ1) to Urban Growth Zone Schedule 1 (UGZ1).

The UGZ has the following purpose:

- *Implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies;*
- *Manage the transition of non-urban land into urban land in accordance with a precinct structure plan;*
- *To provide for a range of uses and the development of land generally in accordance with a precinct structure plan;*
- *To contain urban use and development to areas identified for urban development in a precinct structure plan; to provide for the continued non-urban use of the land until urban development in accordance with a precinct structure plan occurs; and*
- *To ensure that, before a precinct structure plan is applied, the use and development of land does not prejudice the future urban use and development of the land.*

UGZ1 applies to the land identified as the Sixteenth and Ontario Activity Centre on the PSP as shown in Figure 4. The Schedule states that, where land is identified as part of the NAC, a permit must not be granted to use or subdivide land, or to construct a building or construct and carry out works until an Urban Design Framework/Master Plan for the activity centre has been prepared to the satisfaction of the responsible authority.

UGZ1 further states that the provisions of the following zones in the Mildura Planning Scheme apply to the use and subdivision of land, the construction of a building, and the construction or carrying out of works by reference to the depiction of the activity centre as shown in Figure 4.

As a result:

- Retail and Commercial use will need to comply with the provisions of Clause 34.01 – Commercial 1 Zone;
- Public Open Space use will comply with the provisions of Clause 36.02 – Public Park and Recreation Zone;
- Community Uses will comply with the provisions of Clause 36.01 – Public Use Zone; and

- Higher Density Residential uses will comply with the provisions of Clause 32.07 – Residential Growth Zone.

The precise boundary of the Commercial 1 Zone, Public Use Zone and Residential Growth Zone will be determined by the approved Urban Design Framework/Master Plan.

### **5.3 Evidence and submissions**

Given the fact that the PSP relates to a large area, of which the NAC comprises a minor part, submitters questioned the proposed use of the UGZ1 over the activity centre site only. The questions were raised in the context that the UGZ is a zone whose purpose is primarily to manage the transition of non-urban land into urban land in accordance with a precinct structure plan and provide for a range of uses and the development of land generally in accordance with that precinct structure plan.

The submission made on behalf Mr and Mrs George (submission 4) argued that the retail component of the activity centre should be included in the Commercial 1 Zone limiting the centre of a specified area (albeit at an alternative location on the Sixteenth Street and Walnut Avenue) and that the remainder of the activity centre site not currently within the GRZ could be included in UGZ. The submission of Dr Michael and Ms Melissa David (submission 12) also opposed the application of the UGZ in their written submission stating that the zoning was ‘flawed and breaches planning guidelines’.

Michael David did not expand on this matter in his appearance before the Panel, however it is clear that he saw no need for rezoning the NAC site which he believed would be far more appropriately used for residential development.

Mr Parker’s written submission on behalf of Mr and Mrs George was critical of the use of the UGZ. In this submission it was stated:

*The activity centre should be placed within a Commercial 1 Zone, limiting the centre to a specified area on the southern corner of Walnut Avenue and Fifteenth Street, thus ensuring appropriate matching of land uses with purposes of the land.*

In response, Council argued that it would be premature to rezone the site of the proposed NAC into specific zones before a more detailed master plan, which is required under the provision of UGZ1, has been prepared and approved for the site. In stating this, Council has taken into consideration the fact that the plans for the activity centre are at this stage indicative only.

Mr Barnes, in his evidence, stated that the UGZ was identified for the NAC as a 'best fit' from the available suite of zones. In support of this, his written statement said:

*Under the provisions of the existing General Residential Zone, landowners could apply and could gain a planning permit for a residential subdivision, thus preventing the establishment of a NAC on the land. This would exacerbate the current situation whereby very few services and facilities have been provided as part of the earlier stages of development in the wider Mildura South area.*

*In my opinion it would be premature to rezone the site of the proposed NAC into specific zones now (i.e. Commercial 1, General Residential, Public Park and*



*Recreation Zone etc), before a more detailed master plan has been prepared for the site. Further, I do not believe it is appropriate to retain the site of the proposed NAC in a Residential General Zone, now that the site has been identified for a NAC.*

*The drafted UGZ allows Council to manage the land to ensure it develops consistently with the anticipated master plan for this activity centre.*

Council submitted that<sup>4</sup>:

*While it is acknowledged that this zone is generally reserved for metropolitan areas, it has been used recently in larger Regional Cities such as Mildura to facilitate urban growth. While the area to which the zone is proposed to be applied is relatively contained, this is appropriate given the existing circumstances, which include:*

- The first stage of land within the PSP area has already been rezoned to the General Residential Zone and is affected by a Development Plan Overlay. A Development Plan has been prepared and adopted by Council for all land in that area with the exception of land proposed for rezoning to the UGZ.*
- A more detailed plan needs to be prepared for the activity centre area to clarify the extent of land required for the proposed uses, including identification of the extent of land that will need to be acquired for public purposes. As such, prior to the development of such a plan the precise areas to which specific zones would apply are not known.*
- The land is currently zoned General Residential Zone, under which a number of the proposed uses sought by the Precinct Structure Plan are prohibited. The Urban Growth Zone represents the 'best fit' zone in implementing the PSP.*
- The application of the UGZ will also provide a statutory requirement for the preparation of the required plan.*

In response to the Panel's question as to whether or not there was a need to include a floor space limit on 'shop' in the proposed UGZ1, Mr Barnes' statement said:

*There is no intention to place a floor space cap in the schedule to the Commercial 1 Zone for the Mildura South Neighbourhood Activity Centre.*

*The proposed Schedule 1 to the Urban Growth Zone includes the following requirements:*

- The precise boundary of the Commercial 1 Zone, Public Use Zone and Residential Growth Zone will be determined by the Urban Design Framework / Master Plan approved under Clause 3.0 of this schedule.*
- If land is identified as part of the neighbourhood activity centre on Map 1, a permit must not be granted to use or subdivide land, or to construct a building or construct and carry out works until an Urban Design Framework*

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<sup>4</sup> Excerpt from the Explanatory Report

*/ Master Plan for the activity centre has been prepared to the satisfaction of the responsible authority.*

*The boundaries of the Commercial 1 Zone will be determined when the Master Plan is prepared for the activity centre. It is envisaged that the boundaries of the zone will effectively 'limit' the retail floor space of the centre and there will be no need to include a floor space limit in the schedule to the zone. If for some reason this is not the case, the option exists to include a cap in the schedule at that time.*

## **5.4 Discussion**

The Panel accepts what has been put before it by Council and Mr Barnes with respect to the proposed rezoning of the NAC site from GRZ1 to UGZ1 and it accepts that the provisions of the proposed schedule will provide an appropriate control mechanism over future use and development. However, it notes that nothing in the Zone provisions or the Schedule provisions make any specific reference to the need for community input.

While the proposed schedule states that where land is identified as part of the NAC, a permit must not be granted to use or develop land until a master plan has been prepared, that requirement states only that the master plan need be to the satisfaction of the responsible authority.

Council offered to seek community input in the master planning process. Mr Keaney drew to the Panel's attention a provision in Schedule 4 to the Development Plan Overlay contained in the Whitehorse planning Scheme. That provision, which the Panel understands can be found in similar form in other planning schemes, states as follows:

*Before deciding whether to approve a development plan or a substantial amendment to an approved development plan, the responsible authority must first display the plan for public comment for a period of 14 days and must take account of any comments received in response to display of the plan.*

The Panel is of the opinion that this is an appropriate case where a requirement for community input, along these lines, should be included in the planning scheme.

## **5.5 Conclusions**

The Panel concludes that:

- The Urban Growth Zone Schedule 1 is appropriate to apply to the Sixteenth and Ontario Neighbourhood Activity Centre site.
- A requirement for public comment should be included in UGZ1.

## 5.6 Recommendation

The Panel makes the following recommendation:

1. **Add the following to Clause 3 Application Requirements in Schedule 1 to the Urban Growth Zone:**

*Before deciding whether to approve an urban design framework/master plan or a substantial amendment to an approved plan, the responsible authority must first display the plan for public comment for a period of 14 days and must take account of any comments received in response to display of the plan.*

## 6 Other Issues

### 6.1 The provision and distribution of Public Open Space

#### (i) The issues

Is the overall provision of open space in the PSP appropriate and are the individual locations shown for open space appropriate?

#### (ii) Evidence and submissions

##### Overall provision of open space in the PSP

The Panel requested Council provide information of the overall area of open space proposed to be provided in the PSP. Council relied on the evidence of Mr Barnes:

*The area of open space provided for the Mildura South area is outlined below.*

*Precinct Structure Plan:*

- *Net developable area = 408.3 hectares*
- *Area of open space = 30.5 hectares*
- *Proportion of open space = 7.5%.*

*Development Plan Area:*

- *Net developable area = 169.7 hectares*
- *Area of open space = 10.5 hectares*
- *Proportion of open space = 6.2%.*

*The areas of open space comprise the following:*

- *Sixteenth Street North Village Green = 2 hectares in Development Plan area.*
- *Recreation reserve (noting 8 hectares already owned by Council, with land also used for drainage purposes) = 12 hectares*
- *Major local open spaces = 6 hectares in two parks in Development Plan area, one in other stages of the growth area*
- *Local open spaces = 9 hectares in three parks in Development Plan area, six in other stages of the growth area*
- *Gateway water feature park (Riverside Avenue) = 1.5 hectares in Development Plan area*
- *Green belt = An exact area has not been allocated to this feature, which separates residential from industrial land along Benetook Avenue. This is anticipated to be determined during the preparation of a development plan for this later stage of development.*

*The following is also noted:*

- *An additional 4 hectares of land required for drainage purposes at the intersection of Deakin Avenue and Sixteenth Street, is identified as also providing some recreational opportunities (Gateway water feature park). However, this function will be secondary to the drainage function, so it is*

*not been included in the calculation of open space. An additional area for drainage is also identified between Etiwanda and Benetook Avenues*

- *There was very little public open space provided in the first stage of Mildura South. I understand that this was a key concern raised by the community and stakeholders during the preparation of the PSP. This is likely to influence the use of open space provided closer to Sixteenth Street*
- *There is the future possibility of land around Lake Hawthorn becoming available for recreational purposes. However this would need to be subject to further investigations, give the environmental sensitivities of the area.*

#### **South-west corner of Deakin Avenue and Sixteenth Street (Ms Batur's submission)**

Mr Robert Freeman appeared on behalf of Ms Batur. He articulated Ms Batur's concerns regarding the proposed open space at the south-west corner of Deakin Avenue and Sixteenth Street. He submitted that 4ha was an excessive area of land for the drainage reserve given that no detailed drainage plans have been prepared. He submitted that it may be possible to pipe the drainage water to the wetland system to the north of Sixteenth Street. Ms Batur is concerned about the uncertainty about when the land required for drainage will be acquired, and the impact that uncertainty will have on her ability to sell the land to a developer. She requests that the Panel require Council to promptly acquire the land they require.

In response, Mr Keaney advised that a preliminary drainage assessment has been done and that work identifies that 4ha is required for overflow drainage. It also confirms that overflow could not be feasibly piped to the wetlands to the north as the size of pipe required would be excessive. Mr Keaney indicated that Council may be able to review the design of the overflow drainage area with a view to reducing the impact on the Batur property. He advised that drainage costs are included in the DCP and Council is endeavouring to 'keep ahead of the curve' in terms of acquiring property required for public purposes in the DCP area.

#### **Location of open space between Riverside Avenue and Ontario Avenue**

Mr Terrill on behalf of SJM Developments (submission 10) submitted that, if the PSP does proceed, there should be a more central location for the public open space currently shown on their land (see Figure 5), by shifting it to the north-east.

In response, Mr Barnes in his evidence acknowledged that the open space shown on land referred to in Submission 10 is not central to land in one ownership. He went on to say<sup>5</sup>:

*However, the open space is central to land in the wider development cell bounded by Sixteenth Street, Ontario Avenue, Seventeenth Street and Riverside Avenue, as shown on the Precinct Structure Plan.*

*The PSP and Development Plan identify this open space as a "major open space". This is a larger and a higher order area of open space than a "local open space", which is also proposed throughout the Development Plan area. Whilst there is some flexibility in the location of open space given that*

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<sup>5</sup> Mr Barnes evidence page 25

*planning permits for subdivision must be “generally in accordance with a development plan”, it is important that this area of “major local open space” remains in a position that is central to the wider development cell.*

*Hence, in my opinion, it should generally remain at the intersection of the “greenway” and the “secondary road”, as shown on the PSP and on the Development Plan. This will not preclude additional open space from being provided within any development that might occur on the subject land.*

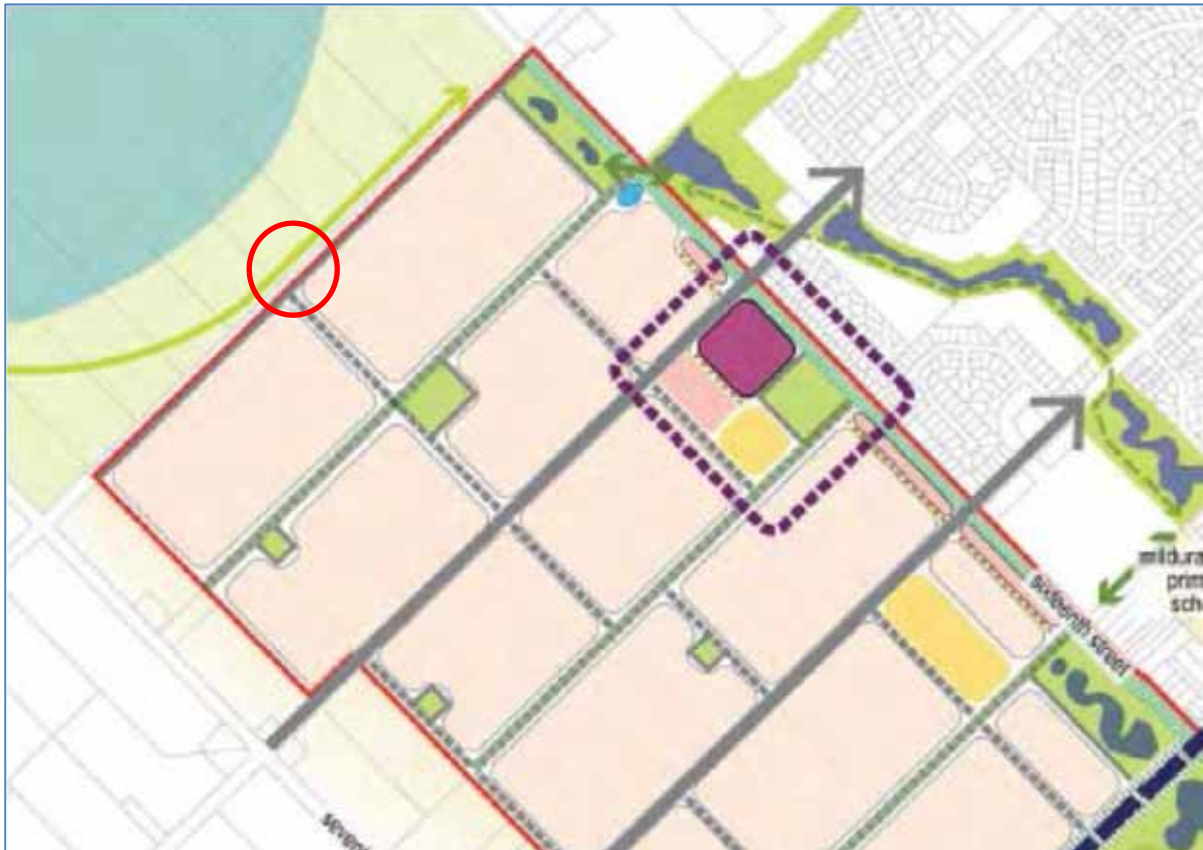


Figure 5 Open Space reserve on the SJM land

### **Native vegetation at the corner of Sixteenth Street and Riverside Avenue**

The submission form DELWP (submission 6) submitted that:

*Land at the corner of Sixteenth Street and Riverside Avenue contains native vegetation and is a potential habitat for the Hooded Scaly Foot, a legless lizard listed as threatened under the Flora and Fauna Guarantee Act.*

Council relied on the evidence of Mr Barnes on this matter<sup>6</sup>:

*Land at corner of Sixteenth Street and Riversdale Avenue is not included in an environmental overlay that identifies it as having significant vegetation or ecological values. The land is presently zoned General Residential, after*

<sup>6</sup> Mr Barnes' evidence pages 26 and 27.

*having been zoned Residential 1 by Amendment C28 to the Mildura Planning Scheme in 2005.*

*Pursuant to Clause 52.17 of the Planning Scheme, a planning permit is required to remove any native vegetation. Reference to the Native Vegetation Information Management System indicates that the land has a Native Vegetation Location Risk of A, which is the lowest risk category. Any permit application to remove more than 1 ha or 15 trees, would be classified as a 'moderate risk' and an ecological assessment would be required to be submitted with a permit application. This would enable the ecological values of the land to be assessed prior to any development proceeding. In my opinion, this is sufficient to protect the suggested environmental values of the land.*

*It is not appropriate to include an environmental overlay over land as part of this or any other amendment, until a detailed ecological assessment has been undertaken to verify the existence of features of environmental significance.*

*Ecological assessments were not considered necessary to be prepared as background to the preparation of this Development Plan, as the land has been zoned for residential purposes and has been covered by a Strategic Framework Plan for a considerable period of time.*

*In my view discussions should be held with DELWP to more clearly determine the environmental significance of this land.*

*I agree that any reference to the Department of Environment and Primary Industries should be amended to refer to the Department of Environment Land Water and Planning.*

### **Council owned land**

The Amendment proposes to rezone three parcels of Council owned land at 624-682 Deakin Avenue Mildura South from Farming Zone to the Public Park and Recreation Zone and apply the Salinity Management Overlay to this land.

No submissions were received on this aspect of the Amendment and the Panel agrees that the rezoning is consistent with the overall PSP.

### **(iii) Discussion**

The Panel notes that the overall proportion of open space (7.5%) is slightly lower than that typically provided in Melbourne growth areas (typically between 8 and 10%). Given the additional areas of passive recreation in drainage reserves and the buffer to the industrial area, and the potential for further opportunities around Lake Hawthorn, the Panel does not consider the proposed area insufficient. The Panel notes that the school facilities have also not been counted in the open space calculation.

The Panel accepts that the location of reserves as shown in the PSP is appropriate, with either larger active or smaller passive reserves located within easy walking distance of all residential properties.

With regard to the proposed drainage reserve on the south west corner of Deakin Avenue and Sixteenth Street, the Panel supports Council's offer to review the design of this area. If the drainage overflow can be accommodated in a smaller area it should be. The Panel also notes Council's goodwill in attempting to purchase land for public purposes as early as it is able. It is also noted, however, that no commitments can be made and Council must make decisions based on balancing a range of issues and a limited budget. This unfortunately doesn't give much comfort to submitters such as Ms Batur who have part of their land designated for public use, but it is an inevitable consequence of growth area development.

The Panel accepts the reasoning behind the location of open space between Riverside Avenue and Ontario Avenue. The Panel agrees that it is appropriate to locate larger areas of open space centrally to the precinct rather than central to one land ownership.

The Panel accepts Mr Barnes' evidence with respect to the need for further work on the ecological values of the land on the corner of Sixteenth Street and Riverside Avenue. The Panel agrees that this is appropriately done at the permit stage when the likely impact of development on the land is clearer. The Panel has not made a specific recommendation in this regard as it does not affect the PSP. The need for any review will be triggered at the planning permit stage.

#### **(iv) Conclusions**

The Panel concludes:

- The area of open space shown in the PSP is appropriate.
- The location of open space reserves is appropriate.
- A review should be done to see if the area of the drainage reserve required on the south west corner of Deakin Avenue and Sixteenth Street can be reduced.
- The ecological values of the land on the corner of Sixteenth Street and Riverside Avenue should be reviewed prior to any permits being issued for subdivision.

#### **(v) Recommendation**

The Panel makes the following recommendation:

- 2. Review the area of drainage reserve required on the south west corner of Deakin Avenue and Sixteenth Street once more detailed drainage design work is completed.**

### **6.2 The location of the proposed primary school**

#### **(i) The issue**

Is the proposed primary school location appropriate?

#### **(ii) Evidence and submissions**

The Panel requested Council to explain the rationale for the location of the proposed primary school shown in the PSP. There were no submissions in relation to this issue.



Council relied on the evidence of Mr Barnes<sup>7</sup>:

*Whilst there is general acknowledgment that a new primary school will be required in the Mildura South precinct, there is considerable debate amongst stakeholders as to when the school will be required. Feedback from the Department of Education during consultation for the PSP indicated that it did not anticipate a school being required in the short term, given capacity at the Lake Primary School and the Irymple Primary School. The Education Department also indicated it would prefer the location to be separated from the existing Mildura South Primary School, with San Mateo Avenue identified as a preferred location. In addition, a series of parameters were identified by the Department and clarified through the PSP process. These were:*

- A land size of minimum 3.5ha, or 3.8-4.0ha if other facilities are to be provided on site.*
- Abuttal to three street frontages.*
- Co-location with open space and / or community facilities where possible.*

*In the context of Mildura South, the location of the primary school proximate to the recreation reserve was considered ideal and the location identified on the plan best fulfilled the identified criteria.*

*It is important to note also that a potential non-government school has also been identified in the Development Plan area. This is both in response to community and stakeholder concern regarding the need for another school in the shorter term but also the particulars of that land, namely its status as 'college lease' land.*

### **(iii) Discussion and Conclusion**

The Panel has no concern about the rationale for the proposed location of the primary school. It is noted that it is not a long distance from the existing Mildura South Primary School, but the Panel agrees that it is appropriate to identify a future location for the new school when required.

## **6.3 Proposed residential densities**

### **(i) The issue**

Is the proposed residential lot density appropriate?

### **(ii) Evidence and submissions**

The Panel requested Council to explain the rationale for the proposed residential lot density. There were no submissions in relation to this issue.

Council relied on the evidence of Mr Barnes<sup>8</sup>:

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<sup>7</sup> Mr Barnes' evidence page 7.

<sup>8</sup> Mr Barnes' evidence page 8.

*The Mildura South Strategic Framework Plan prepared in 2007 identified a relatively low density of 3.5 lots per acre, which equates to just under 9 lots per hectare.*

*Since the preparation of the previous Strategic Framework Plan, the density to be achieved in urban growth areas identified by State planning policy has increased to 15 dwellings per hectare.*

*While an overall density of 15 dwellings per hectare is sought in the PSP, I note the intent of proposed changes to the Mildura Planning Scheme by Amendment C89, which implements the Mildura Housing and Settlement Strategy (2014) (MHSS). The principles contained in the Housing Strategy are reflected in the Mildura South Development Plan. The aim is to achieve an overall density of 15 lots per hectare, but by providing a range of lot sizes, including small areas of higher density housing, as well as areas of lower density dwellings.*

*Consideration of the broader planning context through the preparation of the PSP, confirmed that the Mildura South growth area had an important role to play in accommodating urban growth in the region, and that the efficient use of land was an important. The context of Mildura is quite different to other regional centres throughout Victoria:*

- It is the only major urban centre for up to 200km in all directions that provides a full range of services and facilities for existing and future residents. This means that there are few options for 'urban living' elsewhere in the region, apart from Mildura.*
- It has a large agricultural hinterland undergoing significant change and restructuring, the population of which relies heavily on Mildura as a service centre. This also results in Mildura being the destination, as older residents move from agricultural areas to access services, facilities and health care, which are not available in other parts of the municipality.*
- Mildura has significant constraints to long term growth, namely: the airport to the south; the Murray River to the north; irrigated agricultural areas to the south and east; and Lakes Hawthorn and Ranfurly to the west. Whilst a significant area has been identified for long term growth in Mildura East, in the Mildura Housing and Settlement Strategy, the efficient use of future urban land remains a relevant consideration in Mildura.*
- Given the flat nature of the terrain, drainage infrastructure presents a particularly high cost for urban and related development in Mildura. The higher the density of development the greater is the ability to accommodate this cost of drainage and other infrastructure.*

*Having regard to these considerations I am comfortable that it is appropriate to seek a density of 15 lots per hectare in growth areas in Mildura.*

**(iii) Discussion**

In discussion on this issue in the Hearing, the Panel expressed some surprise that there has not been more demand for larger lots in Mildura as has been the case in some other regional centres. The Panel accepts Mr Barnes' evidence, but believes that Council should be flexible in approving development if a density of 15 lots per hectare cannot be sustained. The Panel notes the words in Clause 11.02-2 of the SPPF:

*Encourage average overall residential densities in the growth areas of a minimum of 15 dwellings per net developable hectare.*

The Panel is of the view that this guideline should be more flexibly interpreted in regional areas to ensure that development is not prevented by forcing the creation of lot sizes that are not in demand.

**(iv) Conclusions**

The Panel concludes that:

- The lot densities as proposed in the PSP are appropriate.
- Council should maintain a degree of flexibility in considering lot sizes in future development approvals.

**6.4 The Development Contributions Plan****(i) The issue**

The Panel asked for information about the Development Contributions Plan (DCP) that applies to this area. No submissions were received on this issue.

**(ii) Evidence and submissions**

Mr Barnes provided the following response on Council's behalf<sup>9</sup>:

*There are a series of relatively old development contributions plans that apply to most undeveloped land to the south and east of Mildura.*

*The Mildura South PSP area is covered by Development Contributions Plan Overlays 1 and 2. These overlays apply to a broader area than just the Mildura South PSP area.*

*The development contributions plan that underlies those overlays was prepared for the wider Mildura South area by SGS in 2003. Council has been collecting funds under that document for a number of years. I understand that the Plan identified only basic infrastructure for the area, including some roads, drainage, open space and a basic levy for community infrastructure. As a consequence there is a significant shortfall that needs to be made up by Council. The implications of the development plan for the exiting DCPs, were examined and identified some additional cost implications regarding*

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<sup>9</sup> Mr Barnes' evidence page 12

*implementation (Development Plan report, p 52). The consequence of this is that there would be additional costs for Council, but not for developers.*

**(iii) Discussion**

The Panel has some concern that the funds being collected under the existing DCP may be 'light on' by comparison to other DCPs in the State. If this is the case, there will be a higher dependence on Council funds to provide public infrastructure, but the Panel acknowledges that this is Council's prerogative and so accepts the decision not to apply a new DCP overlay over the PSP area.

## **6.5 Planning Scheme Ordinance Changes**

**(i) The Issues**

The Amendment proposes a number of ordinance changes necessary to implement the *Mildura South Precinct Structure Plan 2014*. These changes were noted in Section 1.2 of this report, and each is discussed below.

**(ii) Discussion and conclusions**

**Amends the Municipal Strategic Statement by updating Clause 21.04 (Settlement and Housing), Clause 21.05 (Environment) and Clause 21.10 (Local Areas) and includes the *Mildura South (Sixteenth and Deakin West) Development Plan* and *Mildura South Recreation Assessment 2014* as reference documents.**

With respect to the revised and updated Clause 21.04 (Settlement and Housing), the Panel has noted that a similar revision to this Clause has been proposed in the concurrently considered Amendment C89 and indeed, the majority of the changes proposed to this Clause relate directly to matters forming part of Amendment C89.

No submissions were made in response to the proposed changes to Clause 21.04, but the Panel believes that it is problematic to include changes to Clause 21.04 in Amendment C75 that do not relate to the Amendment.

Similar comments apply in the case of the proposed changes to Clause 21.10 (Local Areas).

Mr Keaney addressed this point in submissions, highlighting that the C89 and C75 changes had been presented as a 'bundle', but that they could, in fact, stand alone. Council identified the changes to Clauses 21.04 and 21.10 that were particular to Amendment C75 in a marked up version of the clauses. Where the proposed changes are adding 'Further Strategic Work' or adding 'Reference Documents', the Panel accepts that these changes can be made independently of the outcome of Amendment C89. There are, however, a number of additions relating to Amendment C75 that are included under new headings created by Amendment C89.

The Panel accepts that the changes to Clauses 21.04, 21.05 and 21.10 proposed as part of Amendment C75 are appropriate and can be supported provided that it is noted that they may require some adjustment to accord with the final adopted form of Amendment C89.

**Amends Clause 81.01 to include the *Mildura South Precinct Structure Plan 2014* as an incorporated document.**

No submissions were received in relation to this and the Panel supports the inclusion of the PSP as an incorporated document.

**Inserts the Urban Growth Zone and associated Schedule 1 into the Mildura Planning Scheme.**

This issue is discussed in Chapter 5 and the Panel has made a recommendation to change the Schedule.

**(iii) Recommendation**

The Panel makes the following recommendation:

- 3. Adopt the proposed changes to Clauses 21.04, 21.05 and 21.10 subject to any changes required to accord with the final adopted form of Amendment C89.**

## Appendix A List of Submitters

No.	Submitter
1	Wentworth Shire Council (NSW)
2	Janet Collins
3	Rowan Jones
4	Town Planning Group on behalf of Peter and Elizabeth George
5	Department of Economic Development, Jobs, Transport and Resources
6	Department of Environment, Land, Water and Planning (DELWP)
7	Roy Costa on behalf of William Dick
8	Mallee Catchment Management Authority
9	Heide Batur
10	Tract on behalf of SJM Developments
11	Lower Murray Water
12	Michael and Melissa David
13	Robyn Gould