

Planning and Environment Act 1987

Panel Report

Mildura Planning Scheme Amendment C89



18 September 2015

Planning and Environment Act 1987

Panel Report pursuant to Section 25 of the Act

Mildura Planning Scheme Amendment C89

18 September 2015

A handwritten signature in blue ink, consisting of a stylized 'T' and 'M' followed by a long horizontal flourish.

Trevor McCullough, Chair

A handwritten signature in black ink, appearing to read 'David Whitney' in a cursive script.

David Whitney, Member

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List of Abbreviations

DCP	Development Contributions Plan
DELWP	Department of Environment, Land, Water and Planning
DP	Development Plan
DPO	Development Plan Overlay
ESO	Environmental Significant Overlay
FZ	Farming Zone
GRZ	General Residential Zone
HSDS	Horticultural Sustainability Development Strategy
IN1Z	Industrial 1 Zone
IN3Z	Industrial 3 Zone
LDRZ	Low Density Residential Zone
MHSS	<i>Mildura Housing and Settlement Strategy 2013</i>
MOIA	Mildura Older Irrigation Areas
MOIA Review	<i>Review of Planning Controls for the Mildura Older Irrigated Areas 2014</i>
MPSR	<i>Mildura Planning Scheme Review Report 2014</i>
MSDP	Mildura South Development Plan
MSPSP	Mildura South Precinct Structure Plan
MSS	Municipal Strategic Statement
NRZ	Neighbourhood Residential Zone
PCRZ	Public Conservation and Resource Zone
PSP	Precinct Structure Plan
RAZ	Rural Activity Zone
RCZ	Rural Conservation Zone
RLZ	Rural Living Zone
s173	Section 173 agreement under the <i>Planning and Environment Act 1987</i>
SDS	Sunraysia Drainage Strategy 2002
SMO	Salinity Management Overlay
SPPF	State Planning Policy Framework
SUZ	Special Use Zone

Overview

Amendment Summary

The Amendment	Mildura Planning Scheme Amendment C89
Subject Site	The Amendment applies to all residential and potential residential land in the Rural City of Mildura
Purpose	<p>The Amendment implements the following strategic planning projects:</p> <ul style="list-style-type: none"> • <i>Mildura Housing and Settlement Strategy 2013</i> • <i>Review of Planning Controls for the Mildura Older Irrigation Areas 2014</i> • <i>Parts of the Mildura Planning Scheme Review Report 2014</i>
The Proponent	Mildura Rural City Council
Planning Authority	Mildura Rural City Council
Authorisation	A02950 authorised on 21 November 2014
Exhibition	16 January to 6 March 2015
Submissions	<p>Number Received: 144, including submissions lodged in response to the <i>Mildura Housing and Settlement Strategy 2013</i> and the <i>Mildura Older Irrigation Area Discussion Paper 2014</i>.</p> <p>A list of all submitters is contained in Appendix A</p>

Panel Process

The Panel	Trevor McCullough (Chair), David Whitney
Directions Hearing	Mildura, 26 May 2015
Panel Hearing	Mildura, 23, 24 and 25 June 2015 (Further information received by the Panel on 31 July 2015)
Appearances	As listed in Table 1
Site Inspections	Unaccompanied, 26 May, 22 June and 23 June 2015
Date of this Report	18 September 2015

Executive Summary

(i) Summary

Amendment C89 to the Mildura Planning Scheme has been prepared to implement the findings of the *Mildura Housing and Settlement Strategy 2013* (MHSS), the findings of the *Review of Planning Controls for the Mildura Older Irrigated Areas 2014* (MOIA Review) and some aspects of the *Mildura Planning Scheme Review Report 2014* (MPSR).

In response to these strategies and reports the Amendment proposes changes to the Local Planning Policy Framework; introduces new zones and schedules; rezones land in Mildura and surrounding townships and rural settlements; and introduces a modified Mildura Older Irrigation Area Incorporated Document.

Exhibition of the Amendment attracted a total of 144 submissions, including submissions lodged in response to the earlier exhibition of the MHSS and the *Mildura Older Irrigation Area Discussion Paper 2014*.

Key issues raised in submissions included:

Mildura Housing and Settlement Strategy

- The adequacy and location of land in the General Residential Zone, particularly in the interface area between Mildura and Irymple.
- The need for more Low Density Residential Zone and Rural Living Zone land, including at Cabarita, Koorlong, Sunnyclyffs and Flora Avenue.
- One submitter opposed the new local policy on Healthy and Sustainable Housing and Design.
- The adequacy of the minimum lot size of 0.4ha in the Low Density Residential Zone (Koorlong and Nichols Point) and the Rural Living Zone (Cardross).

Mildura Older Irrigation Areas

- Opposition to the retention of the Incorporated Document.
- Opposition to aspects of the Incorporated Document especially retention of section 173 agreements.
- Support for removal of sunset clause.
- Opposition to prohibition of dwellings between 2ha and 10ha.
- Support for extension of discretionary dwellings from 0.2ha to 2ha.
- Support for all lots to be able to accommodate a dwelling (including by adding to the exemption Table).

The vast majority of submissions related to individual land holdings and how the MHSS or the MOIA Incorporated Document related to specific sites.

The Panel has reviewed submissions received on the MHSS in relation to each location, and concludes that the recommended rezonings and other planning scheme modifications proposed by Council in the exhibited Amendment are supported. The Panel also supports a number of additional land holdings for rezoning or for further investigation. Rezoning of these additional sites is not, however, recommended in this Amendment and the Panel has instead provided a list of recommendations for further work by Council, including preparation of future amendments.

In relation to the MOIA Incorporated Document, there was a level of support in submissions for the proposed changes, which relax the controls to a certain degree for some land. Some submitters argued that the relaxation of controls did not go far enough. The Panel concludes that the proposed changes, as exhibited, are an appropriate balance, supported by the MHSS and the MOIA Review. The Panel recommends the adoption of a revised version of the MOIA Incorporated Document that makes a number of changes in response to submissions and a number of drafting improvements.

(ii) Recommendations

Based on the reasons set out in this Report, the Panel recommends that Mildura Planning Scheme Amendment C89 should be adopted as exhibited subject to the following changes:

- 1. Modify the Irymple Structure Plan (Figure 6 in Clause 21.10) and Main Urban Area Framework Plan (Figure 4 in Clause 21.10) to include the entire area of the Cappola land at 1076 Karadoc Avenue, Irymple inside the urban growth boundary.**
- 2. Retain the Special Use Zone 2 zoning on land to the north west of Flora Avenue, Mildura in the vicinity of the Golden Rivers Caravan Park and adjoining properties.**
- 3. Amend Schedule 1 to the Low Density Residential Zone to allow minimum subdivision of 0.2ha for lots that can be connected to mains sewerage at Kings Billabong (Nichols Point).**
- 4. Amend Schedule 1 to the Low Density Residential Zone to allow minimum subdivision of 0.2ha for lots that can be connected to mains sewerage at Koorlong.**
- 5. Amend the Mildura Older Irrigation Areas Incorporated Document to the post-Hearing version (July 2015) as shown in Appendix D of this report and amend any references to the Incorporated Document in the Municipal Strategic Statement and Clauses 52.03 and 81.01 to refer to the July 2015 version.**
- 6. Add a note to relevant items in the Schedule to the Farming Zone drawing attention to the possibility that the Mildura Older Irrigation Areas Incorporated Document may apply.**

(iii) Further recommendations

The Panel makes the following further recommendations in order to provide advice to Council on further work arising out of the consideration of submissions on the Mildura Housing and Settlement Strategy:

- a) Prepare a precinct structure plan (or plans) to guide future development in the Mildura East Growth Area.**
- b) Review the area south west of the Calder Highway between Riverside Avenue and Flora Avenue, Cabarita for possible inclusion in the Low Density Residential Zone.**
- c) Review the conservation values of land at 172 Newton Avenue, Sunnycliffs with a view to considering the land for inclusion in the Rural Conservation Zone or providing some other form of planning protection for the land.**
- d) Review the area around Sunnycliffs Crescent, Red Cliffs for possible inclusion in a Low Density Residential Zone.**

- e) Review the area east of the existing township and north of Nursery Ridge Road, Red Cliffs for possible inclusion in a Low Density Residential Zone.**
- f) Review the suitability of the Stewart land in Dal Farra Road, Koorlong for possible inclusion in a Low Density Residential Zone.**
- g) Prepare a separate amendment to rezone land at the rear of 780 Deakin Avenue, Mildura South to the General Residential Zone.**
- h) Prepare a separate amendment to rezone the Greg Wass Pty Ltd land in Riverside Avenue, Mildura South to the Low Density Residential Zone and consider other appropriate controls for the land.**
- i) Review the content of Clause 22.02, in conjunction with other parts of the local policy and Municipal Strategic Statement, in the next Mildura Planning Scheme review.**

1 Introduction

1.1 The Proposal

The Amendment has been prepared to implement the findings of the *Mildura Housing and Settlement Strategy 2013* (MHSS), the findings of the *Review of Planning Controls for the Mildura Older Irrigated Areas 2014* (MOIA Review) and some aspects of the *Mildura Planning Scheme Review Report 2014* (MPSR).

The MHSS puts in place a strategic framework and associated guidelines to inform resolutions about where rezoning should occur to provide an appropriate amount of land for development in Mildura over the next 30 years.

The MHSS has informed the Mildura South Precinct Structure Plan and its implementation is currently the subject of Amendment C75.

The MOIA Review was a study undertaken to address issues related to the loss of irrigated horticultural land to housing not directly related to horticulture, and in particular the potential impact that such housing and the consequent loss of horticultural land would have on the local economy and the structure of employment.

1.2 Background

The issues examined by the MOIA Review have been before Council for many years and in some respects have been addressed by the Minister for Planning who introduced the first version of the *Mildura Older Irrigation Areas Incorporated Document* into the Mildura Planning Scheme by Amendment C58 in May 2009. Due to the complexities of dealing with these issues, the Incorporated Document has been revised several times by the Minister through Amendment C59, C65, C72 and C87.

The MPSR considered the impacts of recent planning reforms and strategic work undertaken by Council and was informed by stakeholder and community contributions as well as the recommendations of the previous review of the planning scheme in 2010.

Amendment C89 has generated a significant number of submissions, many of which repeated or reflected views received as a result of the public comment periods for both the *Mildura Housing and Settlement Strategy 2013* and the *Discussion Paper: Proposed Planning Changes to the Mildura Older Irrigation Areas July 2014*.

Council committed to assist submitters by referring all submissions received in response to the exhibition of both the MHSS and the MOIA Review automatically into this Amendment and submitters were advised that they could add, revise or withdraw their submissions as desired. In total, 94 submissions have been referred from the exhibition of the MHSS and the MOIA Review, while 47 new submissions were received.

1.3 Amendment Description

Specifically, Amendment C89 firstly proposes changes to the Local Planning Policy Framework to:

- Amend the Municipal Strategic Statement by updating Clause 21.01 (Municipal Profile) and Clause 21.02 (Key Influences and Issues).

- Amend Clause 21.03 (Vision and Strategic Framework) by amending the 'Sub-regional Context Plan' at Clause 21.03 and introducing a new plan to Clause 21.03, the 'Settlement Structure Plan'.
- Amend Clause 21.04 (Settlement and Housing).
- Amend Clause 21.06 (Natural Resource Management), Clause 21.07 (Built Environment and Heritage), Clause 21.08 (Economic Development) and Clause 21.09 (Transport and Infrastructure).
- Amend Clause 21.10 by introducing a new plan 'Main Urban Area Framework Plan' and amending the Urban Transition Area Plan, Irymple Town Structure Plan, Merbein Town Structure Plan and Red Cliffs Town Structure Plan.
- Insert a new Local Policy 'Healthy and Sustainable Neighbourhood Design' at Clause 22.02.

Secondly, the Amendment introduces the Neighbourhood Residential Zone (NRZ), the Rural Living Zone (RLZ) and the Rural Activity Zone (RAZ) into the planning scheme, and introduces new schedules to the Rural Conservation (RCZ) and NRZ.

Thirdly, the Amendment introduces new schedules to the Low Density Residential Zone (LDRZ) and the RLZ and applies these to new and existing LDRZ areas in Mildura (Lake Hawthorn and Flora Avenue north), Koorlong, Merbein (north), Cabarita and Kings Billabong and to new RLZ areas in Merbein (south-east), Cardross and Cabarita.

Fourthly, the Amendment rezones a number of areas as follows:

- Land in Nichols Point from General Residential Zone 1 and Low Density Residential Zone to Neighbourhood Residential Zone, delete Development Plan Overlay Schedule 2 (DPO2) and apply Development Plan Overlay Schedule 6 (DPO6).
- Land in Irymple from Farming Zone to General Residential Zone.
- Land in Irymple from Farming Zone to Low Density Residential Zone and apply Development Plan Overlay Schedule 4 (DPO4).
- Land in Cabarita from Farming Zone to Low Density Residential Zone and apply Development Plan Overlay Schedule 5 (DPO5).
- Land in Koorlong from Farming Zone to Low Density Residential Zone and apply Development Overlay Schedule 2 (DPO2) and a Salinity Management Overlay.
- Land in Cabarita from Farming Zone to RLZ.
- Land in Merbein from Farming Zone to RLZ.
- Land in Cardross from Farming Zone to RLZ.
- Land in Mildura from Farming Zone to RAZ.
- Land in Mildura from Farming Zone and Urban Floodway Zone to Rural Conservation Zone and apply a Floodway Overlay.

Fifthly, Amendment C89:

- Amends the Schedule to Clause 52.03 to include reference to the Mildura Older Irrigation Area Incorporated Document October 2014.
- Amends the Schedule to Clause 61.03 to update the list of maps in the planning scheme.

- Amends the Schedule to Clause 81.01 to include reference to the *Mildura Older Irrigation Area Incorporated Document October 2014*.

1.4 Panel process

The Panel conducted Public Hearings on 23, 24 and 25 June 2015 in Mildura. The Panel received presentations from submitters as shown in Table 1.

Submitter	Represented by
Mildura Rural City Council	Mr John Keaney (Keaney Planning and Research) and Mr Peter Douglas (Council) with expert evidence presented by: <ul style="list-style-type: none"> Mr David Barnes of Hansen Partnership (Planning)
CJ Mayes, Keith and Zena Stewart, Sherylee Coombs and S P and PE Ryan	Warrick Fisher of Fisher Planning
BC and VC Vale	Mr Robert Vale
Mr Frank Piscioneri	Brent Williams and Assoc.
W Shaw, N Bravin and K Akyildis	
Mr Jeff and Ms Ann Muller	
15 individual submitters	Mr Roy Costa of Roy Costa Planning and Development r
Mr Rafal Jacyna	
5 individual submitters	Mr Bill Nicol of Nicol Projects
Mr Kevin and Ms Penelope Forbes	
Mr Michael and Ms Cathy Johnson	
Mr William Sutherland	
Ms Maria Riedl	
Mr Frank and Ms Melinda Hickey	
Mr Michael Callipari	
Mr Kevin and Ms Sandra Eastwood	
Mr Graham Leake	
Mr Michael Freeman	The Panel Chair heard from Mr Freeman on 29 June 2015 by conference call with Council and Mr Keaney

Table 1 Parties to the Panel Hearing

Mr Whitney was unable to attend the second and third days of the Hearings for personal reasons. After discussion with the parties, the Panel continued the Hearings with the Chair only. Under section 157 of the *Planning and Environment Act 1987* a two person panel may continue with a quorum comprising the Chair. The report has been prepared by the Chair with limited input from Mr Whitney, but with no input from Mr Whitney on matters discussed or submissions received when he was not present.

Given the broad extent of issues discussed at the Hearing in relation to the MOIA, Council requested time to provide further information to the Panel and, in particular, a revised version of the MOIA Incorporated Document that consolidated the comments and suggestions made during the course of the Hearing. This further information was received by the Panel on 31 July 2015.

1.5 Issues dealt with in this report

The main issues raised in submissions were as follows:

Mildura Housing and Settlement Strategy

- The adequacy and location of land in the GRZ, particularly in the interface area between Mildura and Irymple.
- The need for more LDRZ and RLZ land, including at Cabarita, Koorlong, Sunnycliffs and Flora Avenue.
- One submitter opposed the new local policy on Healthy and Sustainable Housing and Design.
- The adequacy of the minimum lot size of 0.4ha in the LDRZ (Koorlong and Nichols Point) and the RLZ (Cardross).

Mildura Older Irrigation Areas

- Opposition to the retention of the Incorporated Document.
- Opposition to aspects of the Incorporated Document especially retention of section 173 agreements.
- Support for removal of Sunset Clause.
- Opposition to prohibition of dwellings between 2ha and 10ha.
- Support for extension of discretionary dwellings from 0.2ha to 2ha.
- Support for all lots to be able to accommodate a dwelling (including by adding to the exemption Table).

The large number of submissions received reflects the recurrent problem Council is confronted with in respect to managing the older irrigated areas and addressing the pressures for rural residential subdivision and housing excisions on agricultural land.

The Panel considered all written submissions, as well as submissions presented to it during the Hearing. A large number of these are site specific and are related to the particular concerns of individual landowners confronted with the consequences of planning scheme provisions that have been introduced (particularly the MOIA Incorporated Document).

In addressing the issues raised in the many submissions before it, the Panel has been assisted by the information provided to it as well as its observations from site inspections.

This report deals with the issues under the following headings:

- Planning context
- The key strategy reports
- Housing and Settlement Strategy issues (Addressed by location)
- Mildura Older Irrigation Area issues.

The Panel has concentrated on issues that were disputed in submissions. There are a number of changes proposed in the Amendment that were not challenged (for example the

zoning changes around Merbein) and the Panel has generally not commented on these, except in the overall strategic context.

The Panel has not referred to each individual submission in this report. Where individual submissions are not mentioned it is because the issues raised have been covered in the broader response to other issues elsewhere in the report.

1.6 Acknowledgements

The Panel wishes to acknowledge the work of Council staff, Mr Keaney and Hansen Partnership in preparing the Amendment and conducting extensive consultation on what are a very broad range of issues.

The Panel also thanks the large number of submitters who took time to express their views and add to the Panel's understanding of the issues relating to residential and farming land in Mildura and the surrounding area.

The Panel thanks Mr Barnes for providing the excellent plans and illustrations in his expert evidence. These have been reproduced extensively in this Panel report. The Panel has also drawn on Mr Barnes' summaries of issues on some matters.

2 Planning context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report.

The Panel has reviewed the policy context of the Amendment and made a brief appraisal of the relevant zone and overlay controls and other relevant planning strategies.

2.1 Policy framework

(i) State Planning Policy Framework

Council submitted that the Amendment is supported by the following clauses in the SPPF:

Clause 11 – Settlement

- Clause 11 provides strategic guidance for responding to the needs of existing and future communities through the provision of appropriately zoned and serviced land for housing, employment, commercial and community facilities among other considerations.
- Clause 11.05-3 is particularly relevant as it deals with rural productivity on a state-wide basis and has as its objective to *'...manage land use change and development in rural areas to promote agriculture and rural production'*. Accompanying strategies to implement this objective include:
 - Prevent inappropriately dispersed urban activities in rural areas.
 - Limit new housing development in rural areas, including:
 - Directing housing growth into existing settlements.
 - Discouraging development of isolated small lots in the rural zones from use for single dwellings, rural living or other incompatible uses.
 - Encouraging consolidation of existing isolated small lots in rural zones.
- The Amendment supports this clause by providing strategic direction at a local level to facilitate residential development which meets the current and future needs of the Mildura community at a municipal level. It reflects an assessment of the existing land supply and future demand for different housing types and ensures that infrastructure required to support residential growth can be provided in an efficient manner. It identifies ways of achieving appropriate density of development in growth areas and locates rural lifestyle development where this is in line with broader strategic directions for urban growth to ensure that this is not compromised in the longer term. The Amendment also seeks to create well planned neighbourhoods and to provide clarity around sequencing of growth.
- The Amendment reflects the intent of Clause 11 by reflecting the role of Mildura as a regional city, anticipated to accommodate urban growth, including consideration of the roles of Red Cliffs, Irymple and Merbein. It supports Clause 11 by introducing new policy which provides a response to the impacts of climate change by encouraging reduced energy and water consumption through environmentally sustainable subdivision and building design and encouraging a form and density of settlements that support sustainable

transport to reduce greenhouse gas emissions. The Amendment seeks to direct growth into existing urban settlements and to protect land which may be required for future urban expansion, as well as ensure a diverse range of housing is available to future residents. It also seeks to identify a settlement structure that supports ways to maintain equitable service delivery to settlements that have limited or no capacity for further growth, or are experiencing population decline.

Clause 14 – Natural Resource Management

- Clause 14.01 seeks to protect productive farmland which is of strategic significance in the local or regional context.
- The Amendment supports this clause by maintaining the controls on housing development in the MOIA area so as to protect the land for horticulture. Based on the experience of its first four years of operation, Council proposes to allow some greater flexibility for dwellings on existing small lots that are unlikely to make any contribution to horticultural production while maintaining a prohibition on other lots that could make this contribution.

Clause 15 – Built Environment and Heritage

- Clause 15 seeks to create urban environments that are safe, functional and provide a sense of place and protect areas of identified cultural identity and heritage.
- The Amendment supports this clause 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

- Clause 16 encourages a diversity of housing which meets the needs of the community, with a substantial proportion of new housing to be located where they have good access to public transport and a range of services. Additionally, it seeks to provide affordable housing and allow for the timely development of residential aged care facilities.
- This Amendment implements the objectives of this clause within the Rural City of Mildura. The Amendment will provide 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.

The Amendment supports the State Planning Policy in relation to rural living and rural residential development by identifying land suitable for rural living and rural residential development in line with identified projection of need. The Amendment identifies rural living opportunities where these do not compromise agricultural production and where they can support existing settlements.

The Amendment maintains (and modifies) the existing MOIA Incorporated Document which seeks to protect land for horticulture in the Mildura older irrigation area.

(ii) Local Planning Policy Framework

Council submitted that the Amendment supports the following local planning objectives:

- The Amendment supports the Local Planning Policy Framework by amending the Local Planning Policy Framework to implement the *Mildura Housing and Settlement Strategy 2013*, the *Review of Planning Controls for the Mildura Older Irrigated Areas 2014* and aspects of the *Mildura Planning Scheme Review Report 2014*. More detailed background to each of these strategic documents is provided in Chapter 3 of this report.
- The revised Local Planning Policy Framework will clarify and outline the vision, strategic directions and implementation measures for future residential development within the municipality.
- The Amendment supports existing 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 in seeking to support smaller settlements, provide for a greater diversity in housing types and to provide for neighbourhood design which reflects best practice planning for new growth areas.

(iii) Key local strategy reports

The key strategy reports are outlined in some detail in Chapter 3.

2.2 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 social and economic effects have been addressed in the Explanatory Report. Council submitted that:

Amendment C89 is built on a strategy that is based on providing:

- *Infill development in the established parts of the Rural City;*
- *Identified growth areas for conventional residential development;*
- *Rural lifestyle opportunities in planned estates;*
- *A limited number of rural lifestyle opportunities supporting the horticultural areas; and*
- *The on-going protection of horticultural land in the MOIA.*

In that context, the amendment will have a number of positive environmental effects. It encourages sustainable urban growth by directing residential development to preferred locations with good access to community infrastructure, services, employment and public transport. It also provides clear direction on the establishment of rural residential development where this will not compromise long term agricultural opportunities or environmental assets. The identification of long term growth areas allows for the efficient establishment of infrastructure and for the consideration of holistic ways of managing key urban impacts such as stormwater, which is particularly important given the proximity of the main urban area to the Murray River.

Identifying housing opportunities in areas where residents will have access to the greatest range of services and facilities and where new housing can support existing smaller settlements will have positive social impacts. Providing certainty about where development will be supported also assists in resolving long standing issues which have impacted on the Mildura community. Providing a variety of housing choices for current and future residents will help support the needs of a changing population. In Mildura, as with many areas of Victoria, this means more smaller households and more older residents.

Providing housing in carefully considered areas where a critical mass can support local businesses supports economic development of the municipality, as does the protection of agricultural areas, which are fundamental to the region's on-going economic prosperity.

Providing certainty around which future areas will be supported for growth also assists the development community and ensures the efficient provision of infrastructure by Council and other relevant authorities. In addition, the implementation of the Strategy will provide additional protection from residential encroachment of key areas for Mildura's economic development, such as the Mildura Airport, future industrial areas and Benetook Avenue heavy vehicle bypass.

2.3 Ministerial Directions and Practice Notes

Council submitted that the Amendment meets the relevant requirements of the following Planning Practice Notes and Ministerial Directions:

PPN11 Strategic Assessment Guidelines

The Amendment is consistent with Ministerial Direction 11 (Strategic Assessment Guidelines)

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.

2.4 Strategic Assessment

The Panel accepts Council's assessment as set out in the Explanatory Report.

The Panel is satisfied that the Amendment has been prepared in accordance with the *Planning and Environment Act 1987* and all relevant Ministerial Directions and Planning Practice Notes.

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 key strategy reports

This Chapter is provided as background to the key strategies on which the Amendment is based. Submissions received related almost exclusively to site specific issues, and all must be considered in the context of the strategic foundations of the Amendment.

3.1 The Mildura Housing and Settlement Strategy

The introduction to the *Mildura Housing and Settlement Strategy* (MHSS) states that the strategy is intended to put in place a strategic framework and associated guidelines to inform where rezoning should occur to provide an appropriate amount of land for development. The strategy also seeks to ensure that the types of neighbourhoods and housing developed within the municipality will meet the current and future needs of the community. The MHSS does not just look at where the next greenfield development should occur, but more holistically at how Mildura can be best positioned to meet the challenges, and make the most of the opportunities, likely to arise in the coming decades.

The MHSS states that the strategy:

provides a framework for the overall structure of settlements across all of Mildura, with a particular focus on the north-eastern area of the municipality where most of the growth has been occurring. It covers the full range of housing policy, from greenfield development, to infill and consolidation, as well as looking at how neighbourhood design, housing diversity and other related matters can be improved within a local context. In considering housing within Mildura the Strategy seeks to provide clear guidance around some of the key issues, identified through this and other recent projects, around the provision of 'rural' or 'lifestyle' residential development and the delivery of infrastructure.

Ten 'key directions' formed part of an adopted Background Report to the strategy and formed the basis for the 'specific' directions which underpin this Strategy:

- *Avoid ad-hoc development in urban and rural areas in favour of carefully planned and orderly outcomes.*
- *Ensure that sufficient land to meet projected needs across a range of residential housing types is provided in appropriate locations.*
- *Recognise the need to provide opportunities 'rural living' and 'low density' residential opportunities and direct these to specific areas where they will not compromise long term agricultural production.*
- *Enhance and celebrate unique township identities.*
- *Support smaller settlements, specifically those with an existing school and general store, where appropriate.*
- *Improve the diversity of housing on offer in both urban and rural areas.*
- *Encourage residential consolidation in Mildura, particularly proximate to the CBD.*
- *Improve community health and sustainability outcomes in urban areas through improved neighbourhood and building design.*

- *Improve provision of appropriate housing for older persons.*
- *Improve access to services and facilities, particularly by active transport.*

Amongst the 40 adopted directions to emerge from the MHSS, underpinned by the key directions above, are a number directly related to the exhibition of the Amendment. These include:

- For urban areas:
 - Provide clear direction about the staging for parcels of urban land around Mildura to reduce speculation and provide location choice and price competition to in the parcels available for development.
 - Rezone ad hoc pockets of Farming zoned land and Urban Flood zoned land around Mildura to reflect long term future use.
 - Acknowledge that the 'interface' area between Irymple and Mildura is compromised and will experience a form of urban development in the medium to long term. The need will exist to strengthen the identity and character of Irymple in order to retain its individual identity, despite development gradually occurring between the two towns.
 - Strengthen the identity of Merbein as a separate, well serviced township, close to and accessible to Mildura, for those seeking an alternative to living in a suburb of the larger township of Mildura.
- For interface areas and future urban land:
 - Remove the provisions of the MOIA incorporated document, but retain land in a Farming Zone, affecting designated areas at the interface between and long term agricultural areas.
 - Clearly identify agricultural land designated for future urban development and prepare a policy to prevent subdivision and the establishment of dwellings that might compromise the future orderly and proper development of such land.
 - In agricultural areas where there are existing 'rows' or 'clusters' of houses, prepare 'common sense' guidelines to allow the possibility for limited infill housing.
 - Explore other circumstances in which a 'common sense' approach might allow the possibility for limited infill 'rural residential' housing.
 - Provide additional LDRZ land (0.4ha lots) in Koorlong, close to the shop and school and reflecting the standard of development established though the Bushland Rise estate.
 - Provide some opportunities for the introduction of a Rural Living Zone in Merbein, to provide lots of around 2ha, to the north and south-east of the town adjoining the environmental feature provided by the river corridor.
 - Provide rural living opportunities around Cardross in clearly designated areas to support the existing township.
 - Provide lower density residential land in Mildura itself only in specific areas where it can provide a 'buffer' with existing industrial areas or the heavy vehicle bypass, in recognition of Mildura's role as an 'urban' centre.
 - Rezone existing Low Density Residential zoned land in Nichols Point to a residential zone, subject to controls that restrict the minimise lot size

permitted to around 1,500 sqm, to reflect the character and identity of the town. This may be achieved through the new Neighbourhood Residential Zone and is subject to exploration of the implications on drainage capacity.

- For agricultural areas:
 - Revise the boundaries of the area covered by the MOIA Incorporated Document controls to exclude designated transition areas which are not considered to have very long term potential for agricultural purposes.
 - Consider innovative approaches to encourage sustainable land management practices and provide incentives for the amalgamation of lots for agricultural purposes.
 - Investigate innovative methods to assist people who need to sell their land due to ill health, age or exceptional circumstances, but who cannot find a buyer.

It is clear to the Panel that the many planning scheme changes proposed by the Amendment are designed to implement the findings of the MHSS. It is also clear to the Panel that the MHSS has been through a thorough and rigorous process involving an appropriate level of consultation and that it provides a sound and logical framework for the development of Mildura for the next 30 years.

3.2 The Mildura Planning Scheme Review

The Mildura Planning Scheme Review (MPSR) is a review of the planning scheme as required under Section 12B(1)(a) of the *Planning and Environment Act 1987*. The recommendations of the previous review in 2010 were introduced through Amendment C64, approved in March 2014.

The MPSR has taken into account strategic work at the State level including:

- the SPPF review.
- Plan Melbourne.
- reforms of the Planning and Environment Act and Regulations.
- reformed zones in the Victoria Planning Provisions.

At the regional and local levels, the review took into account work including the following:

- Draft Loddon Mallee North Regional Growth Plan 2013.
- Irymple Structure Plan 2012.
- Council Plan 2013 -2017 (2013).
- Mildura Housing and Settlement Strategy 2013.
- A series of recently approved planning scheme amendments.

The review addressed a number of specific issues relevant to Amendment C89. These include:

- rural residential pressure on agricultural land
- residential land use conflicts
- farm accommodation
- college leases, and
- the Mildura and Irymple Urban Transition Area.

Perhaps of most relevance to this Amendment are the review's comments in relation to the pressure for rural residential subdivision on productive agricultural land, particularly in the Mildura Older Irrigation Area.

The review noted:

A recurrent issue in Mildura is pressure for rural residential subdivision and development on productive agricultural land, particularly in Mildura Old Irrigation Area (MOIA). Issues are most pronounced in the First Mildura Irrigation Trust area where lot sizes are 4 hectares or less (larger lots exist in the Merbein and Red Cliffs areas).

Mildura Older Irrigation Area (MOIA) is a horticultural area comprising Mildura, Merbein and Red Cliffs pumped irrigation districts. It is currently producing table grapes, dried grapes, wine grapes and citrus. Suitable soils, a firm Council planning policy commitment and confirmed Federal Government investment in irrigation infrastructure (via the Sunraysia Modernisation Project) reflect a commitment to ongoing use of the area for agricultural production. Nevertheless the subdivision pattern of the area is highly fragmented and there are a substantial number of dwellings in the area that appear to be associated with rural residential rather than productive agricultural purposes.

Demand for rural residential subdivision and development appears to be strong in the MOIA, as reflected in the number of recent VCAT appeals pertaining to the area. Current demand may be exacerbated by approvals granted prior to the introduction of stringent planning controls in 2009 as well as the subsequent revision of those controls via a number of planning scheme amendments. This may have created expectations that the controls will change again in the future (i.e. to be further relaxed and allow greater residential use).

It was in response to this issue that the first version of the MOIA Incorporated Document was introduced by the Minister through the un-exhibited Amendment C58 in May 2009. It would appear that, given the complexities of the matter, a series of modifications to the document were introduced through Amendments C59, C65 and C72.

The review noted that, while the MOIA Incorporated Document provides clear direction on development in the older irrigated areas, it allows for limited discretion, a matter about which a number of land owners have been critical. These landowners are concerned that the lack of discretion does not allow circumstances to be taken into account in cases where land is of insufficient size for viable agricultural production - such as personal hardship, land degradation, maintenance issues and reduced land values.

The MPSR also addressed the issue of residential/agricultural conflicts stating:

The development of land for residential use in and near agricultural areas has placed pressure on agricultural operations, particularly in relation to amenity complaints by residents. Agricultural operators are concerned that their 'right

to farm' is being eroded by the high amenity expectations of nearby residential occupants.

Residential growth on the fringe of towns (primarily Mildura) and pressure for ad hoc rural residential development in the agricultural areas raise concerns about land use conflicts with nearby agricultural activities. Residents in and near productive areas have raised concerns about noise from farming operations and deliveries, the smell of bulk grain stores and the impacts of spraying crops and activities during harvest time.

This issue was also considered as part of the MHSS.

3.3 The Mildura Older Irrigation Areas Review October 2014

This review sets out clearly in its introduction, the context for the study. It states:

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

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

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

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

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

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

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

The Council has grappled with the issues surrounding the future of the MOIA for some time, including changes made specifically by the Minister for Planning with the introduction of the MOIA Incorporated Document. Despite the introduction of the Incorporated Document, issues remain and these have been identified as a high priority of Council, particularly the

continued restriction on development of dwellings together with operational issues associated with the MOIA incorporated document.

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

However, as the MOIA Incorporated Document overrides the provisions of the Farming Zone, the Minister's reforms would have no effect locally regarding the opportunities for the establishment of dwellings or subdivision in the MOIA unless the MOIA Incorporated Document was to be modified.

In July 2014 Council released the Discussion Paper: *Proposed planning changes to the Mildura Older Irrigated Areas July 2014* to suggest a way forward to amend the Mildura Planning Scheme.

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

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

Council's preferred option regarding proposed changes was presented in the Discussion Paper. It was generally in accordance with the MHSS and with the previous strategic work and the established principles of the MOIA Incorporated Document.

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

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

Council prepared an updated suite of principles to guide decision making regarding delivery of housing options within the MOIA as follows:

Vision: Seeks to protect the land for horticulture.

- *On-going protection of MOIA land for horticulture and from fragmentation;*
- *Acknowledgement that lot size provisions for an excised lot are to ensure that land lost to horticulture is minimised.*
- *Acknowledgement that farm consolidation is assisted if land is priced at its agricultural value rather than being distorted by its potential housing value.*

- *Support for development potential on lots so small that they are unlikely to ever make any meaningful contribution to horticultural outcomes.*
- *Boundary realignments could only be considered if there is no prospect for an additional dwelling and if farm expansion is the outcome.*
- *Agreement not to take account of very small and unusable lots (channel reserves; old roads etc) in house entitlement considerations.*
- *Excisions must deliver a better agricultural outcome on at least one of the new lots.*
- *Excisions must not create a house entitlement where none presently exists.*
- *Excisions should only be allowed once off any lot.*

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

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

Vision: Acknowledges the existing rural residential development.

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

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

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

In adopting these principles Council pointed out that agriculture from the MOIA generates about \$200m per annum to the local economy. The review stated:

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

While much of the employment in Mildura is associated with horticultural servicing and processing of horticultural produce, increasingly the MOIA is

valued for the landscape amenity it provides, in particular for rural residential living which is a fundamental part of the character and identity of Mildura.

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

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

The review recommended changes to the Incorporated Document which now form part of Amendment C89. These changes are discussed in Chapter 5.

3.4 Residential land supply and demand

The Panel requested further information on residential land supply and demand in order to assist in assessing the context of some of the submissions and the relative urgency of bringing on line further residential subdivision.

Mr Barnes provided a response in his expert witness statement. He noted the following points in his presentation to the Panel:

- A conservative (high growth) scenario should be used for strategic planning purposes.
- A 0.8 to 1.1% growth rate is projected for Mildura's population.
- This equates to population growth in excess of 14,000 by 2032 and will require approximately 7,500 new dwellings.
- There is no RLZ zoned land in Mildura at present and future options are limited.
- Valued horticultural land limits opportunities for development.
- Demand for 'conventional' residential lots will be met by existing zoned land for the next 20 years.
- The Eastern growth front should be regarded as a second (longer term) growth front.

Mr Barnes provided the following tables showing population forecasts (Table 2) and dwelling demand (Table 3).

Table 19: Forecast Population in Rural City of Mildura, 2012-2032

Scenario	2012	2022	2032	Average Annual Growth, 2012-2032	
				No.	%
<u>Low Scenario</u>					
Mildura (RC) - Pt A	48,520	51,510	54,410	290	0.6%
Mildura (RC) - Pt B	3,380	2,760	2,260	-60	-2.0%
Mildura (RC) - Total	51,900	54,270	56,670	240	0.4%
<u>Medium Scenario</u>					
Mildura (RC) - Pt A	48,520	53,070	58,040	480	0.9%
Mildura (RC) - Pt B	3,380	2,910	2,500	-40	-1.5%
Mildura (RC) - Total	51,900	55,980	60,540	430	0.8%
<u>High Scenario</u>					
Mildura (RC) - Pt A	48,520	54,670	61,590	650	1.2%
Mildura (RC) - Pt B	3,380	3,450	3,520	10	0.2%
Mildura (RC) - Total	51,900	58,120	65,110	660	1.1%
Source: Essential Economics					
Note: Figures are rounded					

Table 2 Mildura population forecasts

Table 21: Forecast Net Dwelling Requirements by Settlement, 2012-2032

Settlement	Total Dwelling Demand, 2012-2032		Annual Dwelling Demand, 2012-2032	
	Medium Scenario	High Scenario	Medium Scenario	High Scenario
Mildura (incl Cabarita)	4,760	5,910	240	295
Irymple	460	600	25	30
Red Cliffs	300	430	15	20
Merbein	160	230	8	10
Nichols Point and Kings Billabong	110	130	5	7
Cardross	20	40	1	2
Koorlong	20	30	1	2
Ouyen	20	30	1	2
Other Settlements and Rural Balance	-550	100	-30	5
Total Mildura LGA	5,300	7,500	265	375

Source: Essential Economics
Note: Figures are rounded

Table 3 Mildura dwelling demand

General Residential lots

Mr Barnes advised that the existing available GRZ zoned lots in Mildura (incl Cabarita) total 5377. If the Mildura South Growth Area is added, the total GRZ lots will be 11,151. This equates to around 40 years supply on projected demand, even under a high population growth scenario.

This highlights that the secondary growth front in Mildura East is unlikely to be needed to meet demand in the short term. That does not necessarily mean that there should be no

subdivision in that area, but it does mean there is no imperative for a second growth front to be progressed in the short, or even medium, term to meet housing demand.

The relatively high level of GRZ lot supply created by Mildura South highlights that Council will need to take care not to create an over-supply or to allow development stages to leapfrog or risk fragmentation and inefficient use of infrastructure. The MHSS notes the benefits of creating housing competition and by opening up a second growth front, but this should not be done at the expense of sequential development and efficient infrastructure investment.

Low density and rural residential lots

The following table was provided which shows the low density and rural residential lots created if the rezoning proposed in this Amendment are approved. Mr Barnes noted that this does not include the impact of Council's preference to allow lots down to 0.2ha (if sewerage) in Koorlong and Kings Billabong.

area	size (approx)	zone	minimum subdivision size	potential new dwellings
cabarita	35ha	low density residential	0.4ha	61
cabarita	50ha	rural living	1ha	16
merbein	52ha	rural living	1ha	33
merbein	45ha	rural living	2ha	14
rymple	50ha	low density residential	0.4ha	76
koorlong	34ha	low density residential	0.4ha	77
cardross	23ha	rural living	1ha	28
mildura south (following development of stage 1 of the mildura south growth area)	45ha	low density residential	0.4ha	77
TOTAL (short term)			293 dwellings	
TOTAL (longer term)			370 dwellings	

table 1: potential additional dwellings

Table 4 Estimated low density and rural residential lots as a consequence of the proposed rezonings

What this table shows is that in most cases each area will have over 20 years supply of low density and rural residential land if the Amendment is adopted.

This is comfortably in excess of the 'at least 15 years' supply strategy set out in Clause 11.02-1 *Supply of urban land*, which states:

Plan to accommodate projected population growth over at least a 15 year period and provide clear direction on locations where growth should occur. Residential land supply will be considered on a municipal basis, rather than a town-by-town basis.

4 Housing and Settlement Strategy issues

4.1 Introduction

Approximately 37 submissions were received relating to the MHSS. Most of these submissions relate to location specific issues. In this Chapter the Panel has sought to: summarise the issues raised by location; clarify Council's position on any changes proposed to the Amendment; discuss the merits of each issue; and draw some conclusions.

4.2 Council position

Council engaged Mr Barnes of Hansen Partnership to review and provide advice on submissions to the Amendment.

Mr Barnes' advice in relation to the MHSS, in summary, was that the Amendment was appropriate and should be retained as exhibited with the exception of the following submissions that he supported:

Location	Nature of Submission
Koorlong	Rezoning of land in Twentyfirst Street to a Low Density Residential Zone (Schedule 1) (Submission 43)
Deakin Avenue, Mildura	Rezoning of land at 780 Deakin Avenue, Mildura South, to a General Residential Zone (Submission 118)
Riverside Avenue, Mildura	Rezoning of land at the north corner of Riverside Avenue and Fifteenth Street, from a Farming Zone to a Low Density Residential Zone (0.2 minimum lot size if sewerage) (Submission 140)

Table 5 Submissions supported by Mr Barnes

Council considered the report by Mr Barnes at its 23 April 2015 Ordinary Council meeting and carried the following resolution:

That Council:

- (i) *endorse the position to be taken in response to all submissions received on Amendment C89 as detailed in the 'Response to Submissions to Amendment C89: Those Relevant to Mildura Housing and Settlement Strategy only' (2 April 2015) report by Hansen Partnership (attached to this report); except for the following submissions:*
 - (a) *all submissions relating to lot sizes in the Koorlong LDRZ – Council moves to endorse the minimum size of 0.2ha where lots can be connected to sewage;*
 - (b) *all submissions relating to lot sizes in the Nichols Point LDRZ – Council moves to endorse the minimum size of 0.2ha where lots can be connected to sewage;*
 - (c) *submission 122 – Council moves to support submission 122 seeking LDRZ zoning in Nursery Ridge;*
 - (d) *submission 129 – Council moves to support submission 129 seeking the retention of Special Use 2 zoning in Flora Ave Mildura;*

- (e) submission 38 – Council moves to support submission 38 seeking Conservation Zoning of Land on the corner of Newton Avenue and Twenty Second Street Irymple;*
- (ii) endorse the position to be taken in response to all submissions received on Amendment C89 as detailed in the ‘Response to Submissions: Review of Planning Controls MOIA’ (2 April 2015) report (attached to this report); and*
- (iii) refer all submissions received in relation to Amendment C89 to an Independent Panel appointed by the Minister for Planning.*

The Panel will review Mr Barnes’ advice and Council’s adopted position along with submissions received and presentations to the Panel in assessing each issue.

4.3 Irymple and the Mildura-Irymple interface

4.3.1 The issues

Fourteen submissions were received in relation to the Mildura-Irymple interface area and three submissions were made requesting the rezoning of land abutting or close to existing GRZ land around Irymple to the GRZ.

There was general support for the inclusion of land to the north-east of Fifteen Street in the Mildura East Growth Area. A number of submissions requested the rezoning of land to the north of Fifteen Street to the General Residential Zone. Other issues raised included¹:

- Resolving the interface issues between industrial and future residential areas to the north of Cowra Avenue.
- The inappropriateness of community uses along the Highway.
- The need for the proposed Low Density Residential area to the south-west of Fifteenth Street to either be zoned General Residential Zone, or to allow a minimum lot size of 0.2ha (rather than 0.4ha).

4.3.2 Background

Irymple is the second largest town in the municipality. Considerable residential development has been occurring to the north-east of the town over recent years and is envisaged to continue to do so in the longer term.

The MHSS acknowledges the ongoing role of Irymple as a growth area and identifies land to the north and north-east of the town as being part of the proposed new long term Mildura East Growth Area.

Mr Barnes provided the following useful background to the Mildura-Irymple interface²:

The Mildura Irymple Interface area located between the townships of Mildura and Irymple. The area extends some 2 kilometres along the Calder Highway, which is a main State highway, and is also the main road connection to

¹ As summarised in Mr Barnes’ expert witness report.

² Mr Barnes’ expert witness statement pages 13, 14.

Mildura from Melbourne. In addition it is main road connection between Mildura and Irymple, and to Red Cliffs further to the south.

Traditionally Mildura and Irymple developed as two separate townships, separated by a non-urban area. Over time there have been significant pressures for urban and related development and encroachments into this area. This has been largely due to:

- The proximity between the towns and the continued outward expansion of both towns towards each other.*
- The high levels of exposure presented by the Calder Highway and its desirability for highway related commercial activities.*
- The evolution of Fifteen Street into Mildura's defacto retail and commercial centre.*

There is a long history of strategic planning discussion and debate regard the Mildura Irymple Interface. Whilst current planning policy seeks to maintain a 'break' between Mildura and Irymple, this is principally along Fifteenth Street, where commercial and community development is proposed to occur in a 'campus' style, incorporating significant vegetation, and signalling the transition between the two settlements. Beyond this 'campus style' development, the current policy identifies that the two urban centres will join to the north-east of Fifteenth Street through residential development at a 'range of densities'.

The MHSS does not suggest any change to the nature of development proposed along Fifteenth Street under current policy, which I consider to be fundamental to retaining the sense of a 'break' between Mildura and Irymple. Allowing retail or commercial development to stretch along the road in this area is still strongly discouraged. As such the MHSS is not seeking to fundamentally shift existing policy.

However, in recognition of the importance of proximity to the Fifteenth Street Activity Centre, and the range of services and facilities available in this locality, the MHSS acknowledges that there is benefit in not restricting the density of development beyond the key frontage of Fifteenth Street to the north-east. Hence the Strategy supports urban density residential development in that location in the future.

To the south-west of Fifteenth Street there is no current policy position. The MHSS does not support the development of that land at urban densities to the south-west, given the land available to the north-east of Fifteenth Street. However the MHSS does support a limited area of low density residential development to the south-east of Fifteenth Street.

4.3.3 Priority to residential development in Mildura East Growth Area and the interface between industrial and residential land

(i) Submissions

Submissions generally supported the inclusion of land in the Mildura Irymple Interface Area, to the north-east of Fifteen Street, in the proposed Mildura East Growth Area. Some submitters expressed concern that development in this area was not given sufficient priority over development in Mildura South, and that rezoning should occur earlier than proposed.

Specific comments made in submissions include the following³:

- Opposed to single front of residential development in Mildura South, which is not well suited to residential and which is viable farmland and is too close to the airport (submission 57A).
- Allowing residential development down to Seventeenth Street is wrong as it is getting too close to the airport (submission 57A).
- Rezone the Mildura Irymple interface between Fourteenth and Fifteenth Avenue, and probably to Sandilong Avenue, to a residential zone (submission 57A).
- Area between Fourteenth and Sixteenth Streets, south of Benetook should be priority residential development area (submission 58).
- Due to constraints of the airport to the west and the river to the north, the natural residential growth corridor is towards Irymple. Benetook Avenue and Fifteenth Street is the physical centre of the town (submission 58A).
- Irymple Mildura interface area needs urgent review. All land that does not abut the highway should be zoned residential (submission 58A).

The same submitters raised issues in relation to the interface between industrial and future residential land⁴:

- IN3Z on the south side of Benetook Avenue between Fourteenth and Fifteenth Street be reduced from half depth to one-third depth as it would allow for an excellent plan for development of residential land to the south (submission 57A).
- Rezone to residential land half or preferable two-thirds of the way from Benetook Avenue to Sandilong Avenue between Fourteenth and Fifteenth Street, as preferred new growth area for Mildura in preference to Mildura South (submission 57A).
- The industrial – residential interface between Fourteenth and Fifteenth Street and between Benetook and Cowra Avenue needs immediate attention to provide contributions from both residential and industrial developers so that the IN3Z can be developed now (submission 58).

³ As summarised in Mr Barnes' evidence.

⁴ As summarised by Mr Barnes.

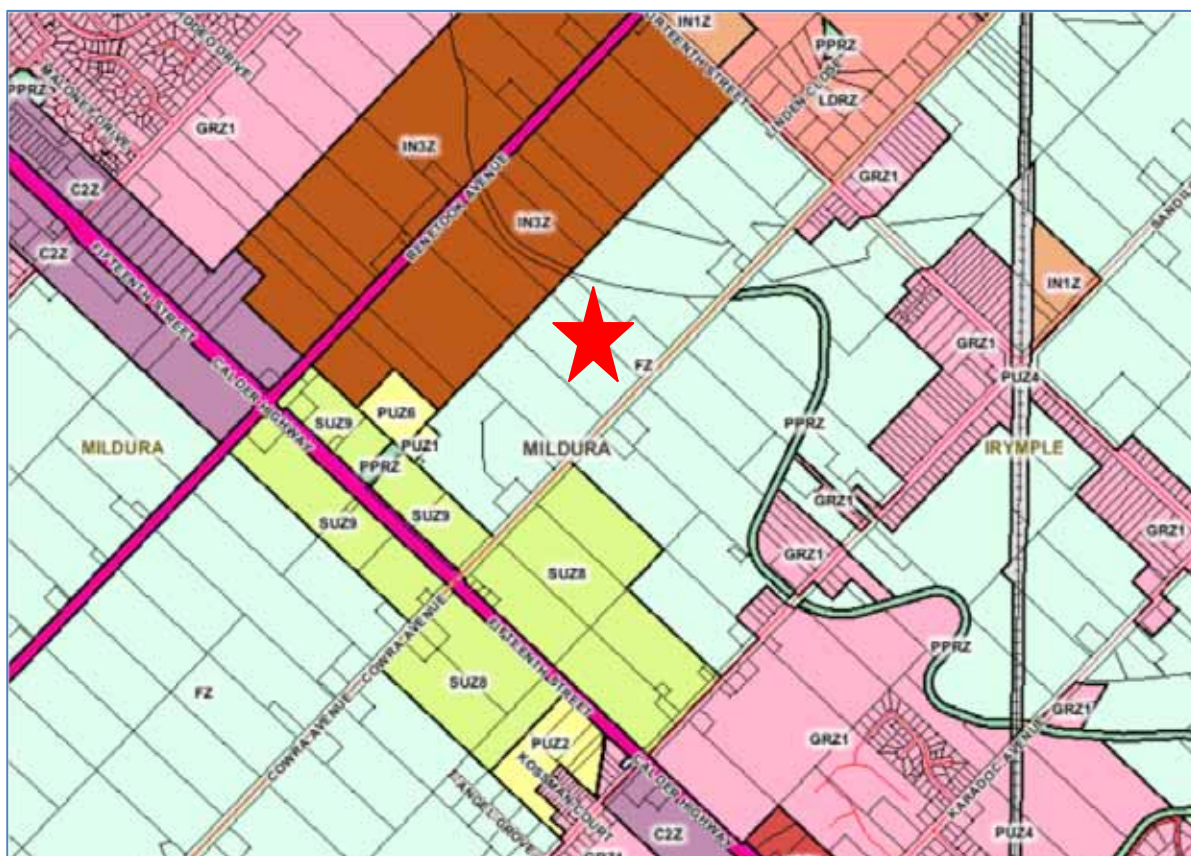


Figure 1 Existing zoning showing the IN3Z on either side of Benetook Avenue and the location of the Sutherland/Riedl land

Ms Riedl (submission 57) and Mr Sutherland (submission 58) submitted that their land in Cowra Avenue should be able to be developed at GRZ density in the short term. They submitted that this made more sense than rezoning viable agricultural land in Mildura South. Mr Sutherland advised that he had sought preliminary advice regarding drainage on the land and was prepared to do further work to demonstrate the suitability of the land for development.

A number of other submissions, including Mr Jacyna (submission 125), Mr and Mrs Castleman (late submission), Mr and Mrs Tabacco (submission 103) and Mr Leake (submission 63) sought early rezoning of land. All sites are in the proposed earlier stages of the Mildura East Growth Area. More detailed comments on submissions 103 and 125 are provided below.

Council relied on Mr Barnes' expert witness report, which responded to the issue of the relative priorities of Mildura South and Mildura East as follows⁵:

The MHSS generally provides for future residential development in Mildura to be accommodated in three different ways (p13):

- *The existing Mildura South Growth Front.*
- *The proposed new Mildura East Growth Area.*

⁵ Mr Barnes' evidence page 14

- *Ongoing consolidation and infill within established urban areas.*

Mildura South is presently the major growth front in Mildura. The MHSS supports Mildura South as the priority growth front in the short to medium term. Considerable strategic planning work has already been undertaken in planning for future growth and the provision of infrastructure in Mildura South. This includes the preparation of a Precinct Structure Plan and Development Construction Plan for Stage 1 of that growth area.

I do not consider that there is any basis to the submissions that Mildura South is not well suited for residential development, is getting too close to the airport, or that the proposed Mildura East Growth Area should become the priority residential growth area in Mildura.

The MHSS fully supports opening up of Mildura East as a second major residential growth area in Mildura, and the eventual rezoning of land in the vicinity of Cowra Avenue and Sandilong Avenue for residential development. However considerable investigations and pre-planning is required to be done before this land should be rezoned. As identified in the implementation section of the MHSS (p53), a drainage strategy needs to be prepared for the broader Mildura East Growth Area. Once that study has been completed a precinct structure plan would need to be prepared for the area.

Council, in response to the issue of the boundary between the industrial and future residential area, relied on Mr Barnes' evidence:

Existing planning policy designates Benetook Avenue as a heavy vehicle bypass route around the settlement of Mildura (21.03-1). Existing policy discourage the establishment of 'sensitive uses' along Benetook Avenue (from Eleventh Street to Seventeenth Street) (21.07-1). An employment corridor of industrial zoned land has been established along the Benetook truck route in recognition of this role. This is reflected and reaffirmed in the MHSS.

It is not proposed to reconsider or to change the boundary of the IN3 Zone between Benetook Avenue and Cowra Avenue, as part of this amendment. I believe this is the appropriate course of action at this time.

The MHSS identifies this area as part of the new Mildura East Growth Area. It recommends that further strategic work be undertaken before any land is rezoned. This work presents the appropriate time to resolve issues to do with the interface between Industrial 3 Zoned land on the south Side of Benetook Avenue and land in Cowra Avenue.

The strategy acknowledges the potential issue in terms of providing drainage infrastructure to enable development of industrial zoned land on the south-east side of Benetook Avenue, and its relationship to abutting land on the north-west side of Cowra Avenue. The Framework Plan contained in the MHSS (Figure 5, p12) clearly shows this land as part of the Future Growth Area and identifies it a "future investigation area". The Strategy specifically refers to this land as follows (p18):

- Within the Mildura East growth area, there is a strip between existing Industrial 3 zoned land (which remains undeveloped) and Cowra Avenue. While this land is identified as being considered as part of planning for the growth area, feedback has indicated that the development of the industrial land is being constrained by drainage costs. As such, while no rezoning of this land is proposed at the present time, it is recommended that some further investigations be undertaken to determine the nexus between the infrastructure required to develop the industrial land fronting Benetook Avenue and any residential development of this strip of land. If there is a clear correlation then consideration should be given to allowing this land to develop in the shorter term (with appropriate contributions to the wider community and other infrastructure for the Mildura East growth area).

Submission 103

Mr Costa, on behalf of Mr and Mrs Tabacco (submission 103) submitted that the subject land (see Figure 2) east of Irymple should be rezoned from FZ to GRZ.

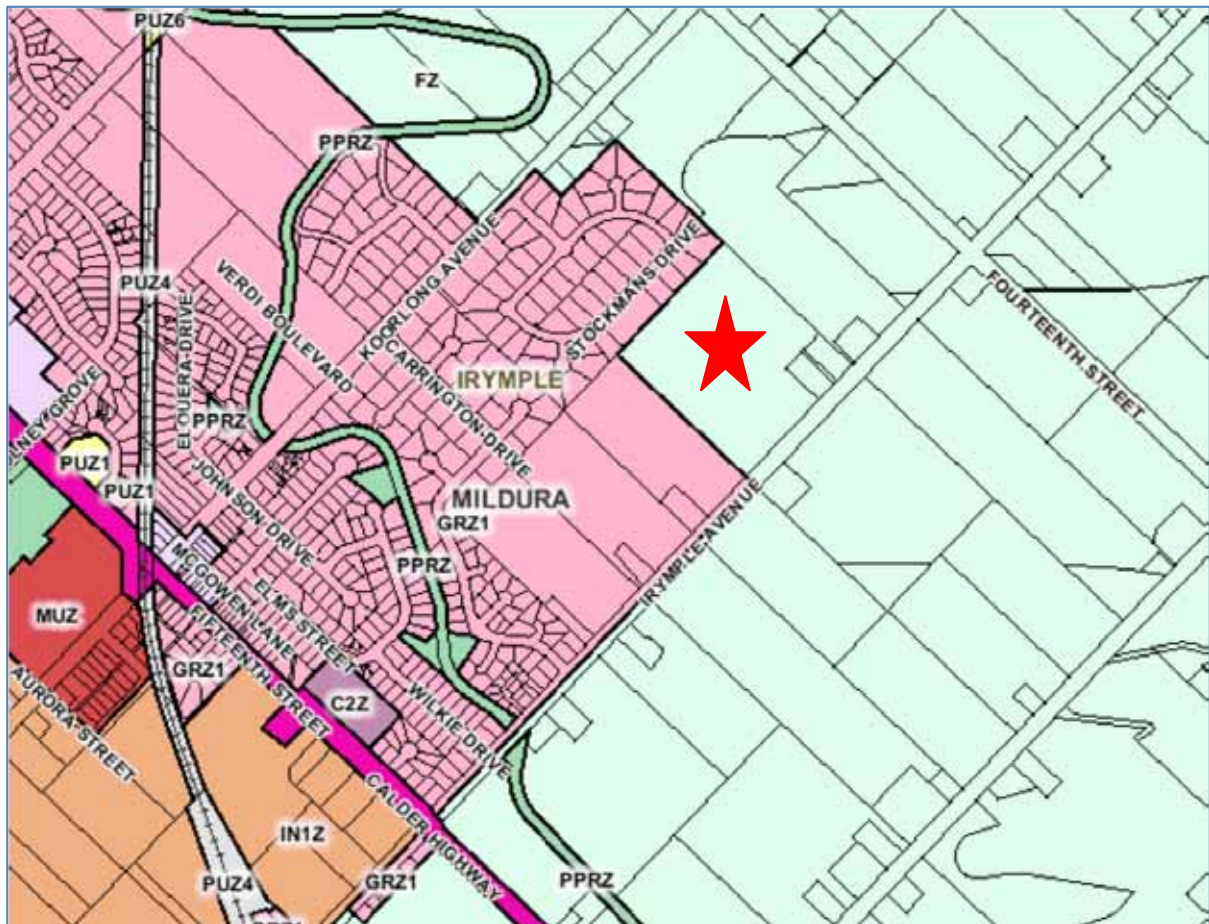


Figure 2 Subject land submission 103

Mr Barnes made the following comments in his expert evidence:

This land abuts existing residential zoned land to the north-west and to the south-west. Land to the north-west, which fronts a different road, is fully

developed. Land to the south-west, which fronts the same road, is not yet subdivided or developed.

Comments are noted about the existence of a planning permit on the adjoining land to the south-west, which requires drainage to be run through this property to the existing drainage basin in Stockmans Drive to the north-west.

The strategy identifies this land as part of the broader Mildura East Growth Area. There is a significant supply of vacant residential zoned land in Irymple to accommodate forecast demand. In my opinion this land should not be considered for rezoning at least until abutting zoned land to the south-west has been developed.

Submission 125

The subject land comprises two lots, one of which is zoned GRZ and the second of which is zoned FZ. Mr and Mrs Jacyna (submission 125) requested rezoning to GRZ of the second, larger lot (see Figure 3).



Figure 3 Subject land submission 125

Mr Barnes provided the following response:

This land is one of many properties throughout Mildura and around Irymple in particular, which involves small lots in a Farming Zones, which about a small pocket of existing lots zoned General Residential, and which is not well suited for agricultural uses in the long term. It is not appropriate to rezone all such lots in such a situation. To do so would lead to large scale fragmented and ad hoc residential subdivision, which would add considerably to the overall supply of vacant residential zoned land, and detract from the orderly and proper planning of identified greenfield growth areas around existing towns. This land is designated as part of the Mildura East Growth Area and will be appropriate to be rezoned and developed in the longer term, in accordance with the orderly and proper planning of land to the north of Irymple.

(ii) Discussion

The Panel agrees with the position put by Mr Barnes in relation to retaining the existing IN3Z boundaries. No compelling case was put to the Panel to support any change. The Panel notes the comments by Mr Barnes regarding the strip of IN3Z land south east of Benetook Avenue, and agrees that further investigations should be carried out to determine the most appropriate zoning and use of this land.

Given the proximity of the Sutherland/Riedl FZ land in Cowra Avenue to existing commercial and community facilities, and the fact that it is on the north western edge of the Mildura East Growth Area, it makes sense that it would be one of the first sites to be developed in the Mildura East Growth Area. The same could be said of the Tabacco and Jacyna land, and possibly other sites in the vicinity. The Panel, however, agrees with Mr Barnes and Council that any development should only proceed if it can be clearly demonstrated that the land is suitable for development (particularly with respect to drainage and access to services) and if suitable buffers to the adjoining industrial area can be incorporated. It would be premature for the Panel to support any early rezoning to residential at this stage before this feasibility work is done.

The Panel also agrees that it would be desirable to have a Precinct Structure Plan (PSP) in place for the Mildura East area before any development is approved. A PSP will enable broad scale planning for community and recreation facilities, servicing infrastructure, roads and open space to be completed on a broader basis. A Development Contributions Plan (DCP) should also be developed for the area so that fair contributions to infrastructure can be determined.

The Panel believes that there is nothing in the Amendment as exhibited, or in the MHSS, that would prevent residential development of some of these sites in the medium term. Whilst Mildura South is nominated as the preferred short term growth front it should not be interpreted as the exclusive growth front, and limited sequential development in other designated future growth fronts should not be ruled out, provided that development does not compromise a future precinct structure plan. The MHSS supports this, defining 'second

stage' urban development as *'the remainder of the Mildura South Growth Area and the first stages of the Mildura East Growth Area.'*⁶

In practice, Council's resources to prepare and implement a PSP or DCP for Mildura East are limited, and Council's resources should quite rightly be directed to Mildura South in the short term. Council may wish to seek assistance from the Metropolitan Planning Authority in preparing the Mildura East precinct structure plan and development contributions plan, but given the ready availability of lots for housing in Mildura South and the relatively low projected demand,⁷ the Panel believes there is no land supply imperative for this work to be done in the next few years. Having said that, the Panel does acknowledge that there may be value in doing work on a drainage plan in the shorter term to assist Council in assessing early, sequential stages of development in Mildura East.

Whether any land can be developed ahead of the preparation of a PSP is a matter for Council to consider. If the land is on the very edge of the precinct and is adjacent to existing developed land, there could be an argument to allow development ahead of a formal PSP, provided other development feasibility work is done.

In any case, it is not appropriate to rezone any further land as part of this Amendment as to do so would be a transformation of the Amendment. Any future rezoning should be the subject of a transparent amendment process that gives neighbouring property owners the opportunity to make submissions.

(iii) Conclusion

The Panel concludes that:

- The boundaries of the existing IN3Z either side of Benetook Avenue should remain.
- There has not yet been sufficient work done to demonstrate that any of the submitters' sites are suitable for residential development at this time.
- Development in the Mildura East Growth Area should be guided by a precinct structure plan.
- It may be appropriate to consider some limited development on the western edge of the Mildura East area ahead of a precinct structure plan if the land is contiguous with existing developed areas and other factors are favourable.
- No changes are required to the Amendment in response to submissions on this issue.

4.3.4 Low density residential area at Irymple

(i) What is proposed?

The Amendment proposes to rezone land south west of Irymple from FZ to LDRZ and apply Development Plan Overlay Schedule 4 (DPO4) as shown in Figure 4. The MHSS refers to this area as follows:

⁶ MHSS page 20

⁷ Refer section 3.4 of this report

An area is also proposed for low density residential uses at the south-western extent of Irymple. Given growth of Irymple is expected to occur to the north-east, the inclusion of some additional land (approx 50ha) in this area is considered appropriate and will add to the diversity of housing available around the settlement, without compromising longer term growth. The area identified essentially 'connects' existing isolated subdivisions and proposed development to the south of Irymple, and includes the existing low density subdivision around Angel Grove in a more suitable zone. It also allows the development of a clearer urban edge along this interface. To ensure the objective of creating a more connected and coherent settlement pattern in the southern part of the Irymple township, including a clear boundary between the township and agriculture areas to the south, a Development Plan should be prepared. This should identify a minimum lot size of 0.4ha to ensure a clear distinction in the character between this area and the urban township, and a road boundary between the low density and farming areas. Consideration should also be given to applying this Development Plan to other areas south of Fifteenth Street.

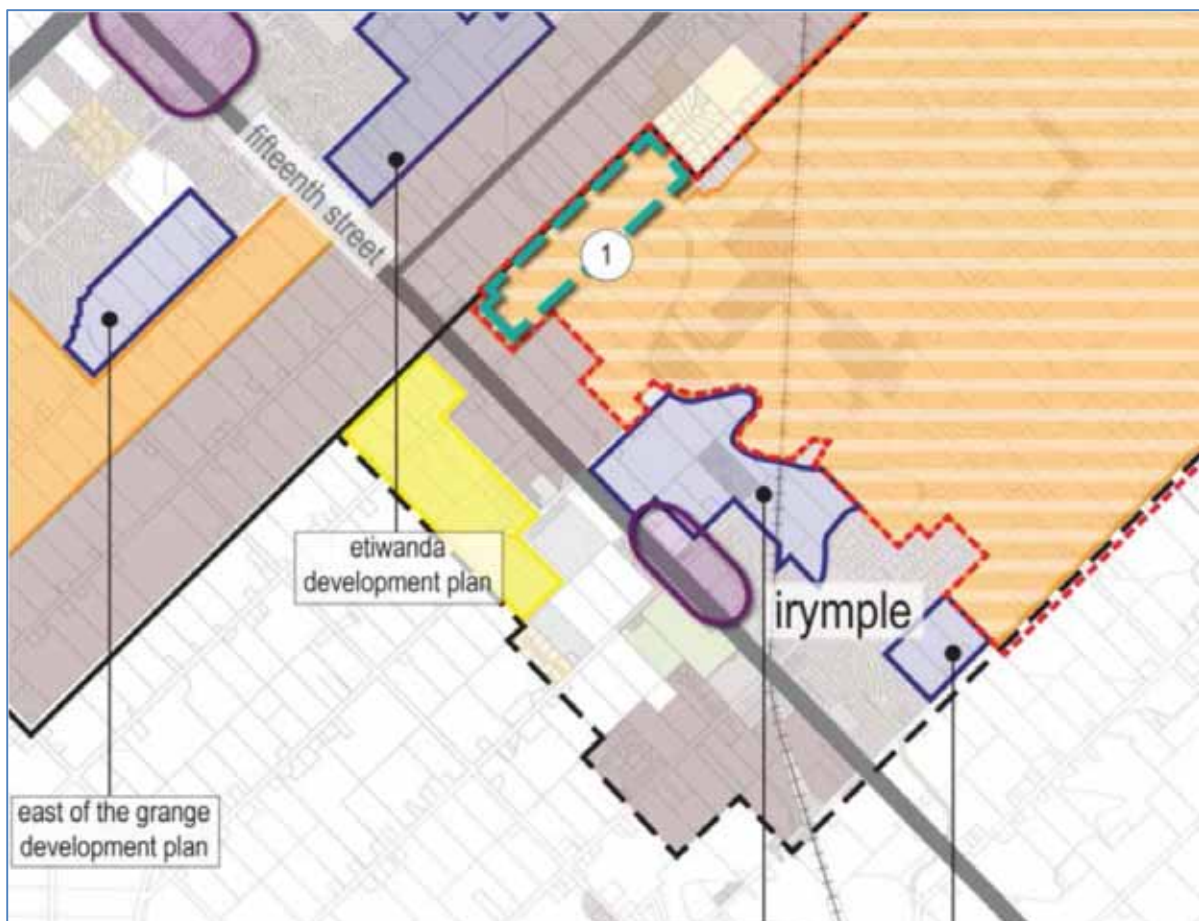


Figure 4 Proposed LDRZ land south west of Irymple shown in yellow

(ii) Submissions

Submissions 57 and 58

A number of submissions opposed the rezoning of land in the Interface area to the south of the Highway to the LDRZ with a minimum lot size of 0.4ha, as exhibited. It was suggested that this is wasteful of land in this area, close to commercial and community facilities in Fifteenth Street and the Highway, and that the land would more appropriately be zoned General Residential.

Specific comments included⁸:

- Irresponsible to have 1ha lots between Mildura and Irymple, where land can be serviced. Those people who want rural residential are more likely to want to be away from the urban fringe (submission 57A).
- Proposed LDRZ land in the Mildura to Irymple area is short sighted given that it can be seweraged and connected to sewerage now. This area should be rezoned to residential now as would assist the development of the Benetook Avenue IN3Z area (submission 57A).
- Objects to minimum 0.4ha lot size in the LDRZ where it can be connected to sewerage. Should allow 0.2ha minimum lot size in accordance with Victoria Planning Provisions where sewerage is available (submission 58B).

In response, Council relied on Mr Barnes' evidence:

I note that the original draft of the Strategy did not identify this land for rezoning to a Low Density Residential Zone. It was included in the final Strategy document in response to earlier submissions.

The MHSS clearly identifies an important role for application of the Low Density Residential Zone to assist in providing a variety of lot sizes in Mildura. The aim of the Strategy is to provide for low density residential development in clearly identified nodes where they can support existing local communities. Generally the Strategy supports low density residential development around to smaller townships separated from the main urban area of Mildura, and expresses a preference for providing larger residential lots (i.e. up to around 2,000m²) within the urban growth areas.

In response to a submission received to the draft Strategy when exhibited, an exception was made to this general principle in relation to this location. This was done for the following reasons:

- *The land abuts the Special Use Zone that applies along the south side of the Highway (Fifteenth Street) in this location.*
- *The land is well located in relation to commercial and community uses within the Fifteenth Street corridor.*
- *Rezoning of the land does not unreasonably fragment land within the Farming Zone.*

⁸ Mr Barnes's summary

- Larger lots in this location would provide some diversity to lots sizes available close to Mildura.

I strongly oppose a change to the schedule of the Low Density Residential Zone to allow sewerred lots of down to 0.2 hectares in this location. In my opinion lots of 2,000sqm, have a much more 'urban' character, than larger lots of 4,000sqm. In the Mildura Irymple interface area the Strategy strongly discourages sewerred residential development to the south-west of the Highway. The Plan identifies all urban residential development as occurring to the north-east of the Highway, in the newly proposed Mildura East Growth Area.

If the Panel was inclined to consider changing the schedule to 0.2 hectares, I would argue that it would be preferable not to rezone this land to a Low Density Residential zone at all, but to retain it in a Farming Zone.

The Panel notes that this is not one of the areas where Council has proposed 0.2ha minimum lot sizes for sewerred land.

Submission 102

Mr Costa, on behalf of the Cappolas (submission 102), submitted that the urban growth boundary currently splits the land owned by the Cappolas at 1076 Karadoc Avenue, Irymple (see Figure 4), with one lot inside and one lot outside of the urban growth boundary. They also request rezoning from FZ to GRZ to allow the development of a specific development comprising Care Facilities.

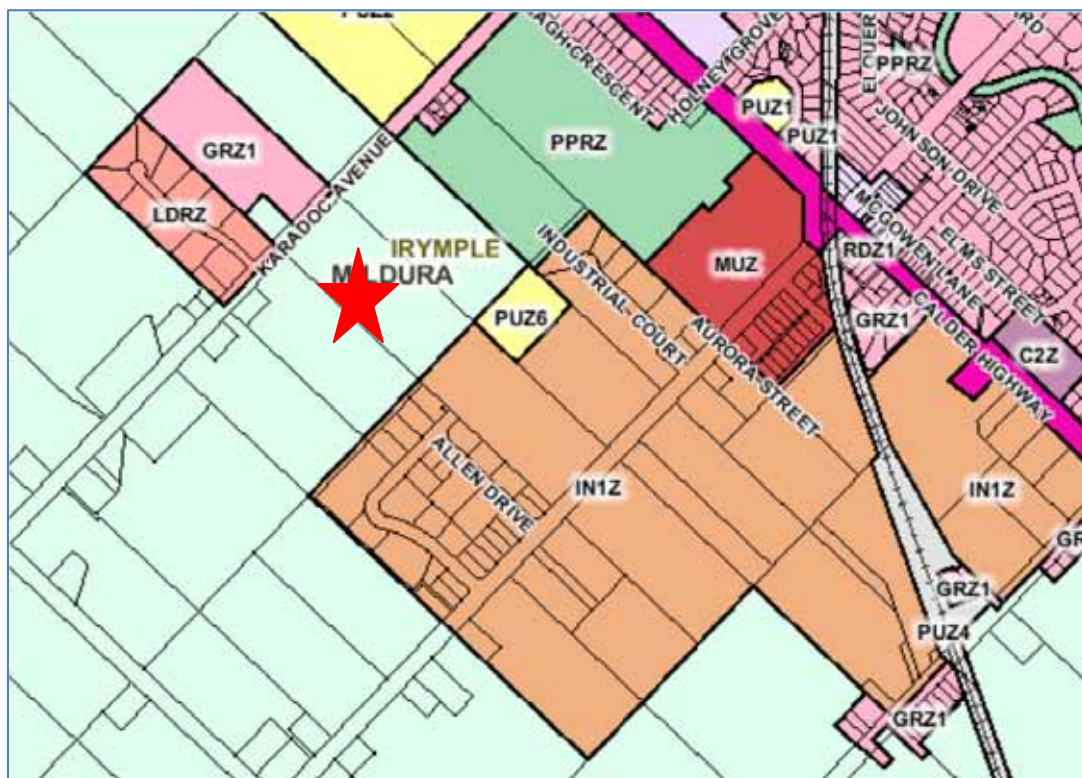


Figure 5 Location of subject land submission 102

Council relied on the evidence of Mr Barnes⁹:

This land is one of many sites throughout the municipality where the existing ad hoc zoning patterns create apparent planning anomalies. The MHSS continues to identify land to the south of Irymple as an industrial and employment area, and supports future industrial expansion to the south of the town in the longer term, if and when demand might occur.

Generally residential expansion in Irymple is planned to occur on the north-east side of the town.

I do not consider that this land is appropriate to rezone to a General Residential due to its abuttal to Industrial 1 Zone land to the rear.

I do note that the MHSS maps show this land as being located within the Urban Growth Boundary. I suggest that this boundary be changed in this area to remove any implication that policy support exists to rezone this land in the future.

Whilst agreeing that the GRZ was not appropriate as part of this Amendment, Mr Keaney did agree that the urban growth boundary should be altered to either include the land ownership fully in or fully out of the urban growth area.

In the further information provided post-Hearing Council submitted:

Either way, this will require a modification to the Rumble Structure Plan (Figure 6 listed in Clause 21.10 of the exhibited scheme). There will need to be a consequential modification to the 'Main Urban Area Framework Plan – Figure 4' in Clause 21.10 to reflect this change.

Submission 132

Mr and Mrs Hickey (submission 132) submitted that their land in Karadoc Avenue, approximately Kim south west of Irymple, should be zoned to allow residential subdivision in order to increase the value of the block.

Mr Barnes gave evidence that this submission should not be supported, as it is not abutting the Irymple Township and to support fragmented rezoning outside the growth boundary would set a poor precedent.

Irymple Structure Plan

Mr Barnes noted a number of anomalies with Irymple Structure Plan:

- The location of the urban growth boundary is different to that shown in the Framework Plan (Figure 5 of the MHSS).
- Areas of FZ remain inside the growth boundary. These should either be low density residential or change the urban growth boundary.

Council submitted that the Irymple Structure Plan needs to be 'tidied up'.

⁹ Mr Barnes' evidence page 18.

(iii) Discussion

Submissions 57 and 58

The Panel believes that the reasons for introducing the LDRZ area south west of Irymple are sound. There will be ample conventional density residential land to the north east of Fifteenth Street and LDRZ south west of Fifteenth Street will provide a lower intensity 'buffer' between higher density residential areas and rural land as well as provide some variety in available lot sizes in the area. Mr Barnes' reasons for supporting this are set out in section 5.3.2 above.

The Panel agrees with Mr Barnes that this low density character is better achieved by requiring 0.4ha minimum lot sizes rather than allowing 0.2ha lots.

Submission 102 and the Irymple Structure Plan

The Panel agrees that the urban growth boundary should be redrawn to include all of the Cappola land. The Panel does not agree that the land should be rezoned to the GRZ. It is adjoining IN1Z zoned land and it is not appropriate to locate a sensitive use in that location.

The Irymple Structure Plan appropriately designates that area as '*discourage the development of sensitive uses that may compromise industrial development*'. The Panel notes that there are other urban uses that the land could be put to in the future that do not include sensitive uses, and for that reason believes that the Cappola land should be more appropriately located inside the urban growth boundary.

The Panel agrees that the Irymple Structure Plan should be 'tidied up' but recommends that the only change required is to re-draw the urban growth boundary to include all of the Cappola land. No further rezoning, other than that already proposed in the exhibited Amendment, is supported.

Submission 132

The Panel agrees with Mr Barnes that it is not appropriate to rezone Mr and Mrs Hickey's land. It is well separated from the Irymple township, well outside the growth boundary.

(iv) Conclusions

The Panel concludes that:

- The proposed rezoning of land to LDRZ south west of Irymple is supported, along with the proposed Development Plan Overlay.
- The urban growth boundary should be redrawn to the west of Irymple to include the Cappola land at 1076 Karadoc Avenue, Irymple inside the urban growth boundary.
- No other changes to the Amendment are required as a result of submissions.

4.4 Cabarita

(i) The issues

General support (4 submissions) exists for the combination Low Density Residential and Rural Living rezonings proposed in the Cabarita area. However, a number of submissions (5) have been made requesting further land be rezoned.

(ii) Background

Cabarita is a locality on the Calder Highway, between Mildura and Merbein, which abuts the south-west shore of Lake Hawthorn. Council submitted that it comprises some of Mildura's more desirable 'low density' residential development. However, it is in a strategic location where unplanned development could have the potential to impact on the longer term planning of both the Mildura Airport and the Sunraysia Modernisation Project. Most existing development is located on the north-east side of the Highway (Seventeenth Street). However a primary school, a small area of commercial zoned land, and sporadic housing exists on the south side of Seventeenth Street. South-west of land fronting the Highway, land is generally used for agricultural purposes.

Rezoning is proposed as shown in Figure 6.

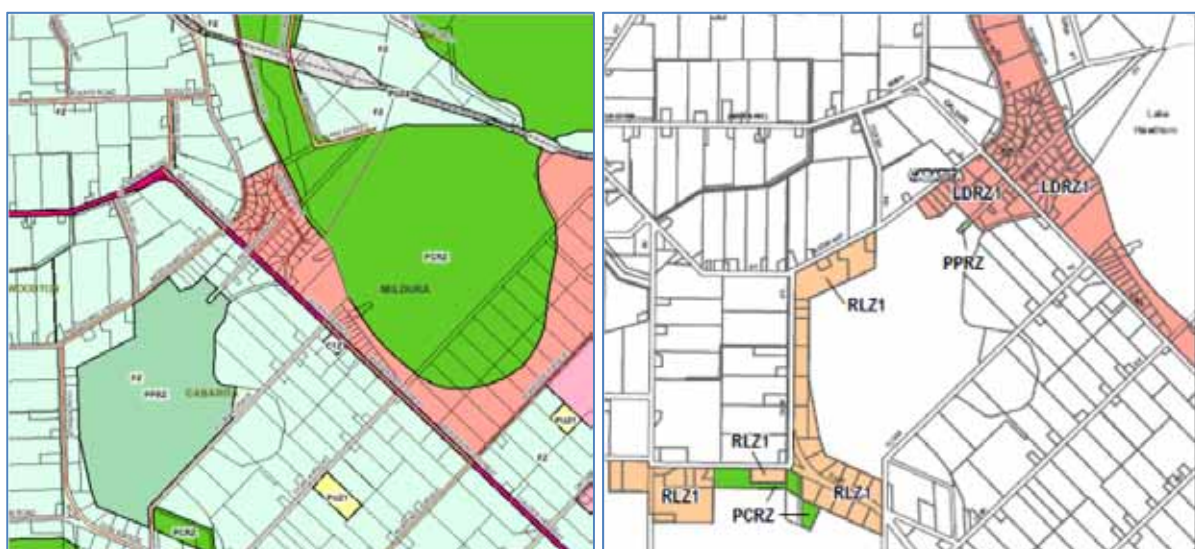


Figure 6 Cabarita existing and proposed rezoning

(iii) Submissions

Submissions generally requested extensions to the proposed LDRZ or RLZ.

Mr and Mrs Ryan (submission 136) requested inclusion of their land at 484 McEdward Street, Cabarita in Table 1 'Hardship Provisions' of the MOIA. They submitted that the land is unable to be used for a viable farming use. Failing that, they seek rezoning of the land to RLZ.

Council did not support the request to rezone the land, noting other more suitable land had been recommended for rezoning to RLZ, but in this case no clear boundary exists between the agricultural land housing lots and rezoning would not be consistent with the objectives of the MHSS.

Similar requests to rezone FZ land to RLZ were made by: CJ Mayes (submission 137) in relation to 48 Dyar Avenue, Cabarita; Mr Piscioneri (submission 22) in relation to 83 Dyar Avenue, Cabarita; Ms Demasi (submission 121) and the Piscitelli family (submission 120). In all cases, Council did not support the rezoning due to the land being outside the urban growth boundary and close to the airport environs.

Mr Shaw (submission 104) submitted that his land on the south side of the Calder Highway at Cabarita should be in the LDRZ or RLZ. He submitted that the land is contiguous with other land with urban uses on the Highway at Cabarita, it is not flood prone and is not subject to the airport overlay.

Council responded that the land had no defined boundary to the south and is not suitable for development due to its proximity to the airport. Council's position is to not allow more intensive development in this strip to protect the long term operation of the airport. Mr Kearney did, however, acknowledge that further investigation of the merits of low density residential development in this location may be warranted.

Council relied on the evidence of Mr Barnes as follows:

The rezonings proposed generally involve land that:

- *Is relatively contained.*
- *Is fragmented and not contiguous with other land with the potential to be used for agriculture in the long term.*
- *Has clear and defensible boundaries that can be used to justify the extent of the area to be rezoned, and avoid establishing a precedent for further expansion into agricultural areas over time.*

The submissions received do not meet the above criteria. Most relate to land to the south-west of the Highway and to the west of McEdward Road. They generally relate to land that abuts other land suitable for long term agriculture, or land without logical boundaries to justify a rezoning, which would have the potential to create an undesirable precedent that could be used to justify further rezonings throughout the area. I do not support any of these submissions.

(iv) Discussion

The Panel generally accepts that the land proposed for rezoning are appropriate additions to the low density residential land supply in Cabarita. The area proposed meets the criteria established by Council and is consistent with the MHSS.

The Panel agrees with the exclusion of the majority of the sites raised in submissions in the bases that they are generally separated from other LDRZ or RLZ land and do not meet the other Council criteria. The Panel does, however, have some sympathies for Mr Shaw's submission. The Panel is of the view that land abutting and south west of the Calder Highway at Cabarita could have potential for LDRZ. There is some existing township development south west of the Highway and the Panel sees some merit in the extension of the LDRZ between Riverside Avenue and Flora Avenue. The Panel does not see how this would threaten the operation of the airport as claimed by Council, provided it was limited to the depth of one lot.

Any rezoning could not, however, be included in this Amendment as it would be a transformation of the Amendment. Surrounding land owners have not been given the opportunity to comment on the rezoning proposal and for Council to rezone this land without exhibition would be a denial of natural justice. The Panel therefore proposes that

the potential for further LDRZ and RLZ rezoning options in the Cabarita area be further investigated (along with other areas also identified in this report).

(v) Conclusion

The Panel draws the following conclusions in relation to Cabarita:

- The proposed rezonings to LDRZ and RLZ at Cabarita are appropriate and should be supported.
- No changes are recommended to the Amendment in response to submissions in relation to Cabarita.
- Council should consider further work to review the area south west of the Calder Highway between Riverside Avenue and Flora Avenue, Cabarita for possible inclusion in the LDRZ.

4.5 Nichols Point

(i) The issues

General support was expressed in submissions for the MHSS approach in relation to Nichols Point and to rezonings proposed in Nichols Point.

The Panel has considered the following issues were raised in objecting submissions:

- Request that the former primary school site be rezoned from a Public Use Zone to the NRZ.
- Request to extend the future growth area shown along the north side of Fifth Avenue, which connects Mildura and Nichols Point, further north to Cureton Avenue.
- Opposition to the rezoning of the area to the NRZ.

(ii) Background

Nichols Point is a small settlement located 5km to the east of Mildura. It comprises a variety of housing types, a general store, recreational reserve and a new primary school. Council advised it is one of the more affluent areas in Mildura and is popular for families with children.

Mr Barnes further described Nichols Point as follows:

The core of the settlement comprises a residential zoned area on the opposite side of Fifth Street from the school. A church and shops sit within the core settlement area. Lots within that area have generally been developed at a larger than average size, ranging between 1,000 and 3,500sqm. The larger lots and associated vegetation, provide a distinct character to Nichols Point, which is highly valued by residents.

Quite extensive areas of Low Density Residential zoned land exist around the settlement, but have not yet developed. A Development Plan has been prepared for that land, which raised identified significant constraints to its development, mainly the high cost for drainage infrastructure. This has led to

advocacy from land owners and developers to reduce the lot size to allow for a more intense form of development.

The MHSS proposes the rezoning of land at Nichols Point from LDRZ and GRZ, to the NRZ1, and applying the DPO6 to the same area. A minimum lot size of 1,800m² is proposed in Schedule 1 to the NRZ in order to retain the existing character of Nichols Point. The area proposed for rezoning is as shown in Figure 7.



Figure 7 Existing and proposed zones for Nichols Point

The area between Nichols Point and the existing urban area of Mildura has been identified as a secondary area within the Mildura East Growth Area. The intent expressed in the MHSS is for a second stage of 'neighbourhood residential' development as shown in Figure 8.



Figure 8 Future growth area between Mildura and Nichols Point

The Amendment proposes to introduce the LDRZ1 to land at Kings Billabong, at the south eastern end of Eleventh Street, approximately 4km from Nichols Point. The LDRZ1 schedule, as exhibited, lists Kings Billabong as having a minimum subdivision area of 0.4ha.

Council proposed to change this to a minimum subdivision size of 0.2ha where lots can be connected to mains sewerage at Kings Billabong.

(iii) Evidence and submissions

Mr Barnes' evidence supported the NRZ in Nichols Point, noting that NRZ with a minimum lot size of 1,800m² would better achieve the objectives of preserving the unique character and amenity of Nichols Point than a LDRZ zone.

Mr and Mrs Muller (submission 65) submitted that their land should be included in the Mildura East Growth Area and be rezoned from FZ to LDRZ. Council supported the inclusion of the site in the Mildura East Growth Area. The site is included in the area designated as 'future neighbourhood residential growth area' in Figure 8.

Mr Eastwood (submission 71) appeared at the Hearing to express his support for the NRZ at Nichols Point.

Mr Costa on behalf of Mr Brady (submission 127) submitted that Mr Brady's land to the north of proposed Future Growth Zone (i.e. north of Fifth Street) should be included in the Future Growth Area. In response, Council relied on the evidence of Mr Barnes:

The Strategy identifies an area for the possible longer term extension of the Nichols Point Neighbourhood Residential Zone, between Nichols Point and the existing urban area of Mildura. This area is within the Mildura East Growth Area. The MHSS identifies that the planning of this area should be further considered when the Precinct Structure Plan and drainage strategy is being prepared for the Mildura East Growth Area.

The northern boundary of this area has been carefully considered and in my view no extension should be supported. North of Nichols Point, there is a distinct topography that slopes down towards the river from the identified boundary. Development of those slopes, on land on the flats at the base of the slope, would have a significant impact on the 'rural' experience along Cureton Avenue, which adds value and amenity to the housing stock and future agri-tourism opportunities within this area.

The submission by Spiire on behalf of the Department of Education and Training (submission 134) generally supported the changes for Nichols Point, but submitted that the former school site should be rezoned Neighbourhood Residential.

Mr Barnes provided the following response in his evidence called by Council:

The former primary school site is strategically located in what will become the centre of an expanded Nichols Point township, abutting the new school and the sports reserve, and opposite the general store and post office.

The existing Development Plan prepared for Nichols Point identifies the former school site as public open space.

In addition to rezoning Nichols Point to a Neighbourhood Residential Zone, the amendment applies a Development Plan Overlay to land within the proposed Neighbourhood Residential Zone. Accordingly a new development plan will need to be prepared for Nichols Point. In the preparation of that plan, consideration will need to be given to the future use and development of the former school site, even though it is not covered by the DPO.

Accordingly the former school site should not be rezoned until its future use and development is assessed as part of the preparation of a new development plan for Nichols Point.

Mr Freeman (submission 1) objected to the rezoning of Nichols Point from LDRZ to NRZ. He submitted that the new provisions of the LDRZ allow lots of 2,000m², whereas the schedule to the NRZ allows lots down to 1,800m². He submitted that rezoning will detract from wonderful rural residential feeling of the area.

Council relied on Mr Barnes evidence:

As there is no development presently within the Low Density Residential Zone in Nichols Point, the character of Nichols Point is determined by existing housing within the General Residential Zone. Most of that is on lots of between 1,000 and 3,500sqm.

I acknowledge that there is not a great difference in the minimum lot size between the two zones. However the proposed Neighbourhood Residential Zone 1, does allow for a marginally smaller minimum lot size than the default provisions of the Low Density Residential Zone. This, in my view, is more consistent with the existing pattern of development in Nichols Point. In addition, it will enable a slightly greater number of lots to be achieved in the area over time, which will assist in overcoming the infrastructure constraints that have prevented development in the existing Low Density Residential Zoned to date.

Rezoning of land in Nichols Point to a Neighbourhood Residential Zone has been exhibited as part of the amendment and no other objection has been raised.

(iv) Discussion

The Panel agrees with Council and Mr Barnes on the reasons not to include the Brady land within the Growth Area. The Panel agrees that the area north of the defined urban growth boundary has distinctly different topography down towards the River and is not suitable for urban development.

The Panel accepts that the most appropriate underlying zone for the former Nichols Point school site is probably NRZ, but also accepts Mr Barnes' advice that it would be appropriate to review the most appropriate zone for the land as part of the Structure Plan work for the area. The site should remain in its current zone until then.

The Panel accepts the basis for applying the NRZ at Nichols Point. The settlement has a well defined lot pattern that is an important part of its character and the Panel considers that the NRZ has some advantages over the LDRZ. The NRZ includes as one of its purposes:

To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics.

The Panel believes that the identification of neighbourhood character more appropriately describes the aspirations in the MHSS for the Nichols Point settlement than the purpose of the LDRZ, which is simply to provide for low-density residential development.

The Panel sees no reason why 0.2ha minimum lot sizes should not be allowed for LDRZ1 Land at Kings Billabong. The Panel is, however, not aware if the area can be sewered and is not aware that any submissions were made in relation to the area.

(v) Conclusion

The Panel draws the following conclusions in relation to Nichols Point:

- The boundaries of the urban growth boundary as set out in the MHSS at Nichols Point are appropriate as exhibited.
- The proposed NRZ1 and DPO6 to apply to land at Nichols Point are appropriate and should be supported.
- Schedule 1 to the LDRZ should be amended to allow minimum subdivision to 0.2ha for sewered lots at Kings Billabong (Nichols Point).

4.6 Flora Avenue

(i) The issues

What are the most appropriate planning controls for land north west of Flora Avenue, Mildura?

(ii) Submissions

Mr Barnes provided the Figures shown in Figure 9 below. They provide a useful understanding of what is proposed in the Amendment for this area. He provided the following background:

Other than for an area of Low Density Residential Zoned land, Flora Avenue effectively represents the north-west boundary of urban development in Mildura. Land to the north-west is generally low lying and flood affected and on the north-east side of Flora Avenue.

The future of land in this area was addressed as part of an earlier study, the Ontario–Flora Land Use Vision and Urban Design Framework. That study identified that a Rural Conservation Zone should be applied to this area, other than for land presently zoned Low Density Residential. It recommended that no further intensification of subdivision or built form was appropriate to the north of Flora Avenue.



Figure 18 - Flora Avenue - Existing Zoning



Figure 17 - Flora Avenue - Proposed Zoning



Figure 20 - Flora Avenue - Existing ESO1



Figure 19 - Flora Avenue - Existing LSIO

Figure 9 Flora Avenue – existing and proposed controls

Submission 99

Mr Costa, on behalf of Dimasi and Roccisano (submission 99) submitted that their land in Flora Avenue should be zoned LDRZ. The land is presently zoned FZ. The Amendment proposes to rezone to RC3Z.

Council relied on the evidence of Mr Barnes¹⁰:

I note that this Farming zoned land in this area is also included within an ESO1, which relates to the Murray River corridor, and seeks to protect the environs of this nationally significant river. In addition, a substantial part of the land is also included within a Land Subject to Inundation Overlay.

I note that the Mallee Catchment Management Authority is presently updating its flood mapping around Mildura but that the new information is

¹⁰ Mr Barnes' evidence page 26.

not yet available. The boundaries of any Floodway Overlay applied in this area, should be reviewed and should be based on the updated mapping when it is available.

I do not support the rezoning of any additional land in this area to allow future low density residential development.

Submission 123

Mr Nichol, on behalf of Mr and Mrs Robinson (submission 123), supported the application of the RCZ and realignment of the boundary of the LDRZ applying to the land. He also suggested that the LSIO boundaries needed review. Council agreed that all the flood overlay boundaries were in need of review.

Submission 129

Submission 129 relates the site of the former Golden Rivers Zoo, now owned by Danyo Holdings Pty Ltd. The land is shown in Figure 3. The land adjoins the Golden Rivers Caravan Park. The land is currently part UFZ and part SUZ2. The entire site is proposed to be zoned RCZ3. SUZ2 has the following purpose:

To provide for a range of tourist experiences which help reinforce the role of Mildura as a popular tourist destination. To ensure the continued operation and viability of tourist activities in the municipality.

To encourage development which complements the Mildura Arts Centre and Rio Vista Park as major cultural, tourist and entertainment facilities; and which takes advantage of and enhances the Murray River.

Mr Nichol submitted that Danyo Holdings Pty Ltd (submission 129) objects strongly to the proposed removal of the SUZ2 as:

- *The land was purchased with the intent of developing the land consistent with the opportunities the Special Use Zone 2 provides.*
- *Rezoning as proposed will effectively “backzone” the land, undermining the value of the land.*

Note: There was no consultation or communication by Council with Danyo Holdings (or the adjoining caravan park owners) prior to exhibition of Amendment C89 which is considered remiss in such a circumstance.

- *The availability of land capable of supporting the sustainable development of “tourist facilities”, close to the river is rare and represents a valuable asset for a community where tourism forms a large component of the local economy.*
- *The land within the Special Use Zone 2 boundary lies outside of the Current Urban Flood Zone boundary indicating appropriate development is feasible in terms of flood protection/impact.*



Figure 10 Danyo Holdings site showing the caravan park site to the left and the existing SUZ boundary (in yellow)

Mr Nichol submitted that the caravan park would become a prohibited use under the RCZ, and would need to rely on existing use rights to continue to operate. He advised that it was the intention of Danyo to subdivide part of their lot (currently in the SUZ2) and sell it to the owner of the caravan park to enable expansion of the facilities. This would not be possible under the proposed rezoning as there are no existing use rights for the caravan park use on the Danyo land.

At the 23 April 2015 Council meeting, Council resolved as follows:

- (d) *submission 129 – Council moves to support submission 129 seeking the retention of Special Use 2 zoning in Flora Ave Mildura.*

(iii) Discussion

The Panel agrees with Council's position in relation to submission 99. The environmental and flooding constraints on the land make it unsuitable for the LDRZ or RLZ.

With regard to submission 129, the Panel has some concern that the change to the Amendment proposed by Council, i.e. retention of the SUZ2, means that two zones will continue to apply to these lots, the RCZ3 and the SUZ2. This is generally regarded as poor planning practice as it creates uncertainty about how any planning applications would be assessed. Under the current zoning it is not a significant issue because the allowable uses under the Urban Floodway Zone are very limited. Under the RCZ3, however, the range of allowable uses is much broader, including allowing a dwelling subject to permit. The Panel, however, agrees that the application of the RCZ3 to the whole area would create an unexpected and undesirable outcome if it results in limiting the tourism potential of the area. On balance the Panel supports Council's position to retain the SUZ2 and rezone the balance of the land to RCZ3. In the future, Council may wish to consider a revised SUZ schedule to apply more specifically to the entire lots, perhaps in conjunction with a Design and Development Overlay or Development Plan Overlay to provide more clarity and certainty for how the land can be developed.

(iv) Conclusion

The Panel concludes that:

- The proposed zoning changes relating to the area north west of Flora Avenue are generally appropriate.
- The SUZ2 applying to land north west of Flora Avenue should be retained.

4.7 Cardross

(i) The issues

Are the proposed zone changes at Cardross appropriate?

(ii) Background

Cardross is a small rural hamlet located about 4km to the north-west of Red Cliffs. It has quality recreation facilities, a local shop / post office, a primary school and a cluster of existing dwellings. The Amendment proposes to introduce an area of RLZ1 to the south of the township (see Figure 11). Schedule 1 to the RLZ at Cardross, Cabarita and Merbein allows subdivision down to 1ha.

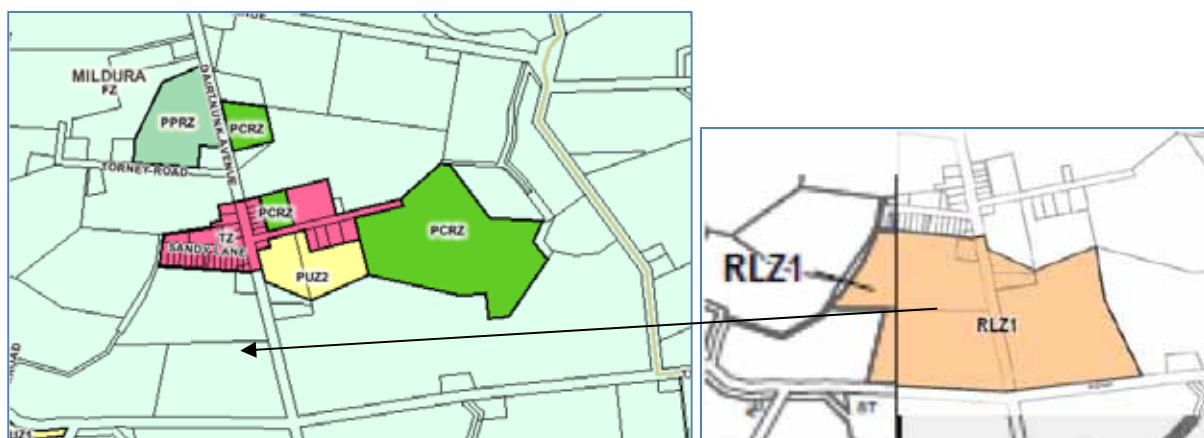


Figure 11 Existing and proposed new RLZ1 at Cardross

(iii) Submissions

Mr Barnes provided the following evidence in relation to Cardross:

Servicing constraints in Cardross mean expansion of the existing Township Zone or the introduction of a LDRZ was not supported by the MHSS.

However, merit exists in allowing some Rural Living development (1ha minimum) to provide additional population to support the township, whilst also providing opportunities for this style of residential development in the southern part of the MOIA. The potential for flooding to the north of the township (around the recreation reserve) means that the only land suitable for a possible rezoning is to the south of the township.

Mr Freeman, on behalf of the Uyanik family (submission 119) submitted that, whilst they are pleased that Council has acknowledged the need for rezoning in Cardross, they request their land be rezoned LDRZ rather than RLZ1. The Uyanik land is effectively the eastern half of the land proposed to be rezoned to RLZ1.

Council relied on the evidence of Mr Barnes:

A Low Density Residential Zone is not supported in Cardross given servicing constraints, its rural setting, other areas of Low Density Residential Zone land provided elsewhere as part of the MHSS, as well as the aim of providing a diversity of lot sizes.

In response to submissions made when the draft MHSS was exhibited, the minimum lot size proposed at Cardross has been reduced from 2ha to 1ha, and an additional area of land is proposed to be rezoned to the west of Dairtnunk Avenue. This will increase the potential supply of land and ensure there are opportunities for more than one landowner to develop rural residential land in this location (should they chose to do so).

I do not consider it appropriate to rezone the whole of the land referred to in Submission 119, which extends east to Euston Avenue, to Rural Living. I consider it a better planning outcome to rezone two separate parcels, one on either side of the main road through Cardross, to allow greater proximity to the school, shop and to the 'centre' of the town.

(iv) Discussion

The Panel accepts Council and Mr Barnes' reasons for preferring RLZ1 to LDRZ in this rural setting. The introduction of the schedule 1 allowing subdivision to a 1ha minimum is somewhat of a compromise, allowing higher density than the 2ha that would normally be allowed in the RLZ. The Panel believes that the 1ha lot size is justified given the proximity to the school and modest services on offer at Cardross.

(v) Conclusion

The proposed RLZ1 rezoning at Cardross is supported. No changes to the Amendment are required in response to submissions.

4.8 Red Cliffs

(i) The issues

Is there any land in the Red Cliffs area that is appropriate for rezoning for low density residential development?

(ii) Background

The MHSS addresses Red Cliffs and surrounding area. It concludes that there is already a range of residential opportunities in Red Cliffs and no areas are proposed for rezoning.

Sunnycliffs is a small settlement approximately 3km north of Red Cliffs. No zone changes are proposed in the Amendment for this area.

(iii) Submissions

Mr Nichol, on behalf of Mr and Mrs McCracken (submission 38), submitted that the land at 172 Newton Avenue, Sunnycliffs ought to be zoned RCZ in order to preserve the conservation values of the land. Council responded that it is appropriate for Council to undertake a future review of land in the MOIA with environmental significance.

At the 23 April 2015 Council Meeting, Council resolved as follows:

(e) submission 38 – Council moves to support submission 38 seeking Conservation Zoning of Land on the corner of Newton Avenue and Twenty Second Street Irymple.

Mr Costa, on behalf of Mr and Mrs Milner (submission 113), submitted that the land in Sunnycliffs Crescent, Red Cliffs should be considered for RLZ as the land use circumstances are very similar to other small townships such as Cardross.

Mr Keaney submitted that Council had no objection to reviewing Sunnycliffs in a future review of low density residential land.

Mr Freeman, on behalf of Mr Cufari (submission 122), submitted that Mr Cufari's land in Nursery Ridge Road, Red Cliffs should be rezoned to the LDRZ on the basis that it is contiguous with other residentially zoned land.

Council moved to support the Cufari submission, post-exhibition at the 23 April 2015 Council meeting.

(iv) Discussion

In relation to submission 38 (McCracken), the Panel is of the view that further assessment of the conservation values of the site should be undertaken before any rezoning is implemented. In making this assessment the Panel is not saying that the land does not have conservation value, indeed it seems likely that it does, and that the RCZ may well be appropriate. The Panel's main concern is that it is poor planning practice to make a call on a single piece of land without proper assessment and without providing the opportunity for others to make submissions on the proposal. Indeed, the Panel believes that to propose a rezoning of this site without exhibition would be a transformation of this Amendment and a

breach of the requirements of the *Planning and Environment Act 1987* to advertise such proposals.

The Panel believes that it would be far better to consider this site, possibly along side other similar sites, in a separate planning scheme amendment after proper assessment of the conservation values. The review could consider the most appropriate form of planning protection for the site, whether rezoning or application of an overlay.

The Panel notes that there are other sites that are proposed to have the RCZ applied as part of this Amendment (specifically in Flora Avenue). The Panel believes that those sites can be supported for RCZ and have two important differences to the McCracken land. Firstly, the other sites already have an Environmental Significance Overlay on the land (implying the environmental significance has been assessed and considered worthy of protection); and secondly, the proposal to rezone to RCZ was exhibited and people given the opportunity to make submissions.

In any case, rezoning of the McCracken land to RCZ in this Amendment could not be supported as it would be a transformation of the Amendment.

In relation to submission 113 (Milner), the Panel believes that the land may have some merit for inclusion in the RLZ, but agrees with Council that it is more appropriate to consider this in a future review of low density residential land in conjunction with other locations.

Likewise, the Panel agrees with Council that there is merit in considering the Cufari land in Nursery Ridge Road (submission 122) for low density residential development. The Panel, however, does not support the rezoning of this land as part of the current Amendment. The Panel believes that other land on the north side of Nursery Ridge Road may also be suitable for inclusion in a Low Density Residential Zone and more investigation is required before rezoning in this area is progressed.

The Panel is of the view that to rezone the Cufari land would, in any case, be a transformation of the Amendment. Surrounding land owners have not been given the opportunity to comment on the rezoning proposal and for Council to rezone this land without exhibition would be a denial of natural justice.

(v) Conclusion

The Panel draws the following conclusions in relation to Sunnycliffs:

- The post-exhibition proposal by Council to rezone the McCracken land at 172 Newton Avenue, Sunnycliffs is not supported.
- Council should consider further work to review the conservation values of land at 172 Newton Avenue, Sunnycliffs with a view to considering the land for inclusion in the Rural Conservation Zone or providing some other form of planning protection for the land.
- Council should consider further work to review the area around Sunnycliffs Crescent, Red Cliffs for possible inclusion in a Low Density Residential Zone.
- The post-exhibition proposal by Council to rezone the Cufari land in Nursery Ridge Road, Red Cliffs is not supported.

- Council should consider further work to review the area east of the existing township and north of Nursery Ridge Road for possible inclusion in a Low Density Residential Zone.

4.9 Koorlong

(i) The issues

Is the proposed rezoning of land (and application of overlays) in Koorlong appropriate?

(ii) Background

Koorlong is a small rural settlement of around 460 people (2011 estimate) located approximately 12km to the south-west of Mildura. It comprises a primary school, community hall and local shop / post office, supported by a relatively recent low density subdivision, and by dwellings on surrounding farming land. To the south and west of the settlement there are extensive areas of conservation and public land, including a large area of State Forest, and some significant wetlands to the west. Some distance further to the south is a large area of industrial zoned land intended to accommodate much of Mildura's future large scale industrial growth.

Koorlong has seen recent, quality low density development at the Bushland Rise estate. Amendment C84 recently rezoned additional land in Koorlong to Low Density Residential Zone.

The Amendment proposes rezoning of land to the south of Koorlong township to LDRZ1 and applying Schedule 1 to the existing LDRZ land in Koorlong, which applies a 0.4ha minimum subdivision to the land. (Refer Figure 12) At its 23 April 2015 Council Meeting, Council resolved to support changing this Schedule to allow 0.2ha minimum subdivision for sewered LDRZ1 land in Koorlong. The Amendment also proposes to apply a Development Plan Overlay Schedule 2 (DPO2) over part of the LDRZ1 area and a Salinity Management Overlay (SMO) over the entire LDRZ1 area.

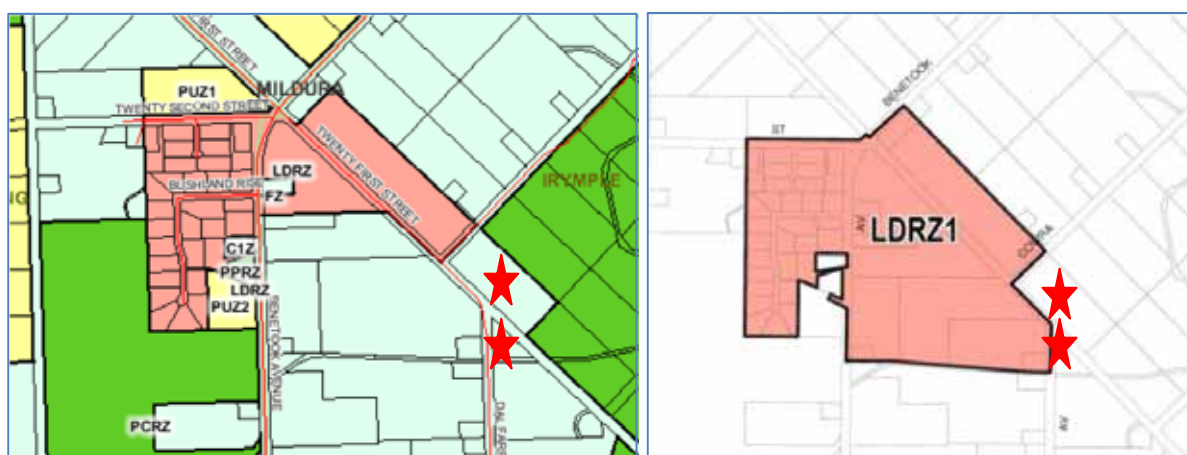


Figure 12 Existing zones and proposed LDRZ1 for Koorlong

(iii) Submissions

Mr and Mrs Stewart (submission 43) requested the rezoning of their land in Dal Farra Road Koorlong from FZ to LDRZ. The land immediately abuts the area proposed for LDRZ as shown (by the red stars) on Figure 12.

Council relied on the evidence of Mr Barnes:

I note that Council's resolution of the 23rd April supports a Low Density Zone (within a minimum lot size of 0.2 hectares if sewerage) at Koorlong.

The MHSS supported additional rezoning of land at Koorlong to a Low Density Residential Zone (minimum lots size of 0.4ha) to consolidate the role of the town as an outlying settlement of Mildura, that provides an alternative lifestyle choice for residents of the municipality.

Submission 43 relates to two lots. One is a 4ha lot to the north-east of Twentyfirst Street, which is presently under vine, but without a house. The other is a smaller 0.6ha lot with a house, which is to the south-west of Twentyfirst Street.

Abutting land to the north-east of Twentyfirst Street, and north-west of the larger lot, has recently been rezoned to a Low Density Residential 1 Zone, as has land to the south-west of Twentyfirst Street abutting the smaller lot.

The larger lot is a single isolated lot surrounded to the north and east by a Public Conservation and Resource Zone. Hence it will be physically separated from other land used for agriculture in the area.

I support the rezoning of both of these lots to a Low Density 1 Zone.

Mr Freeman (submission 1) objected to the application of the Salinity management Overlay (SMO) to the LDRZ land at Koorlong. In response, Council referred to the direction provided in Clause 21.05 for the application of the SMO to undeveloped GRZ or LDRZ land.

(iv) Discussion

The MHSS provides strategic support for the extension of the LDRZ in Koorlong as exhibited, along with the application of the DPO2 and the SMO.

The Panel agrees that the Stewart land (submission 43) should be considered for inclusion in the LDRZ, but believes that further investigation is warranted before any rezoning could be supported. The Panel notes that the land immediately abuts land zoned Public Conservation and Resource Zone (PCRZ) and therefore suggests that some further investigation of the suitability of the Stewart land might be therefore warranted before any decision is made on rezoning.

In any case, the Panel believes that any further rezoning should not be included in this Amendment as it would be a transformation of the Amendment. Surrounding land owners have not been given the opportunity to comment on the rezoning proposal and for Council to rezone this land without exhibition would be a denial of natural justice.

The Panel supports the application of the DPO2 and the SMO to the area to be zoned LDRZ, and the Council proposal (post-exhibition) to allow subdivision down to 0.2ha for sewered lots is supported.

(v) Conclusion

The Panel makes the following conclusions in relation to Koorlong:

- The application of the LDRZ1, DPO2 and SMO to land in Koorlong is supported as exhibited.
- Schedule 1 to the LDRZ should be amended to allow minimum subdivision to 0.2ha for sewered lots at Koorlong.
- The post-exhibition proposal by Council to rezone the Stewart land in Dal Farra Road, Koorlong is not supported.
- Council should consider further work to review the suitability of the Stewart land in Dal Farra Road, Koorlong for possible inclusion in a Low Density Residential Zone.

4.10 Mildura South

(i) The Issues

Several property owners on the periphery of, or within, the Mildura South Growth Area have requested rezoning. The Panel has examined these requests.

(ii) Submissions and Evidence

Mr Fisher, on behalf of Sherylee Coombs (submission 118), requested the rezoning of FZ land at the rear of 780 Deakin Avenue, Mildura South to the GRZ (Refer Figure 13),



Figure 13 Subject land submission 118

Mr Barnes provided the following evidence:

This land is part of a strip of land zoned General Residential which is developed for houses. Access to the body of the lot is via a 'battle-axe handle' that is zoned General Residential. The body of the lot is at the rear of the houses that front Deakin Avenue. It has an existing permit for a dwelling.

This land is located just to the south of (outside) the area covered by the Mildura South Precinct Structure Plan (see Am C75). The Precinct Structure Plan notes that the land is intended to be used for "future non-residential uses along heavy vehicle bypass." The nature of such uses has not yet been determined. However the designation is provided to give a clear message that it is not appropriate to establish residential development along this truck route.

Despite this, given the location of the land in relation to the existing General Residential Zone land and houses in the area, I support the rezoning of this land.

Mr Goldsworthy, on behalf of Greg Wass Pty Ltd (submission 140) requested that the land in Riverside Avenue, Mildura South shown in Figure 14 be rezoned from FZ to GRZ or LDRZ.

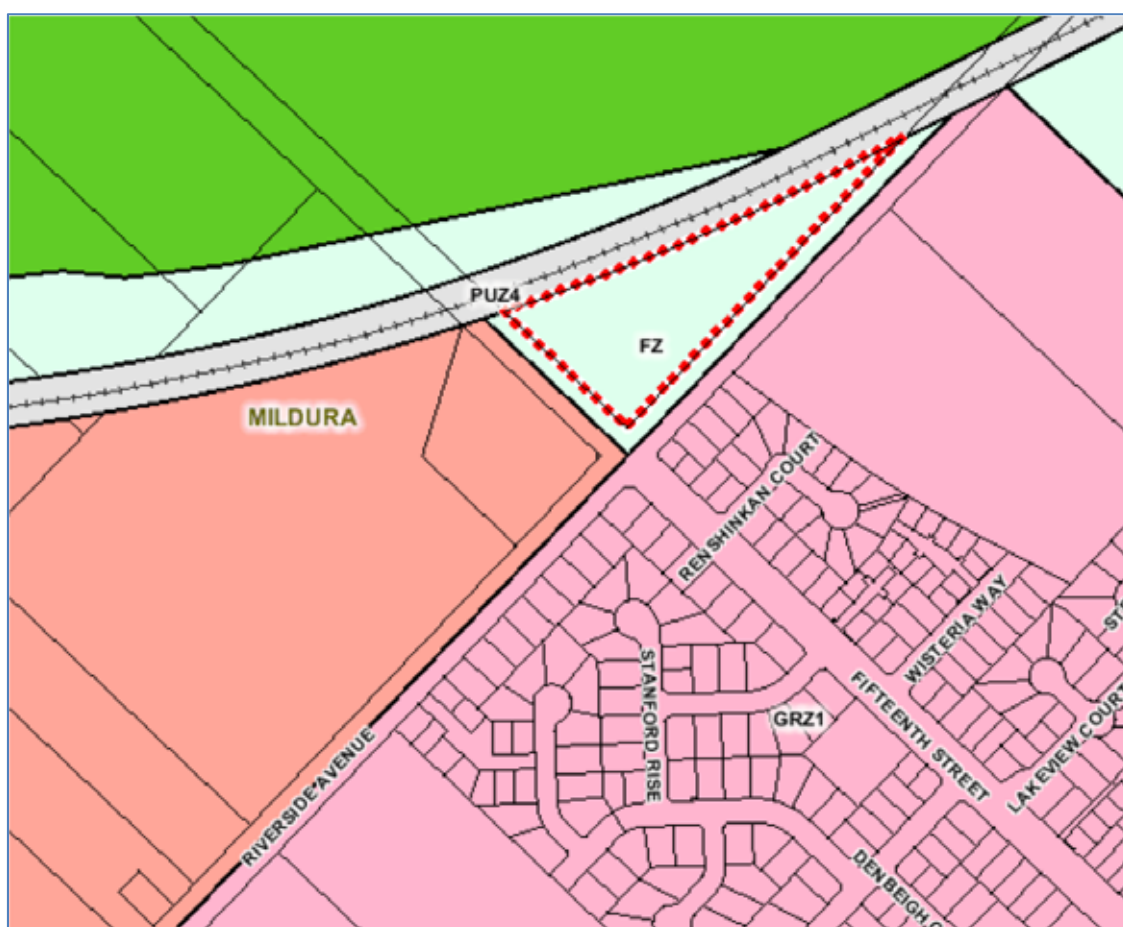


Figure 14 Subject land submission 140

Council relied on the evidence of Mr Barnes in supporting rezoning to the LDRZ subject to a DPO and EAO:

This land is a small remnant of Farming Zoned land on the north-west side of Riverside Avenue, to the south of the railway line and to the north-east of Fifteenth Street. The southern part of the land is occupied by an industrial use and a dwelling. The northern part is vacant.

All other land in this area, between Riverside Avenue and the Railway Line is presently zoned Low Density Residential. Much of that land is College Lease land and is unlikely to be developed. That land is proposed to be rezoned to a Low Density Residential 1 Zone by Amendment C89. An area of privately owned land on the north-west side of Riverside Avenue, immediately to the south-west of Fifteenth Street, is proposed to be retained in the existing Low Density Residential Zone (without a schedule), thus allowing a minimum lot size of 0.2 hectares.

In my opinion merit exists in rezoning this land to a Low Density Residential Zone (minimum lot size 0.2ha), as proposed for land to the south-west of Fifteenth Street. The land would also need to be included in the same DPO as land to the south, and a development plan would need to be prepared. An Environmental Audit Overlay should also be applied to the land given its existing industrial use. No residential development should occur on the land until the industrial use ceases.

Several submissions, including Mr and Mrs Grey (submission 101), Mr Bailey (submission 100) and Mr Dick (submission 112) requested that their land in Mildura South be rezoned to the GRZ as a part of the Amendment. The land is part of the Mildura South Growth Area and is earmarked for future residential development.

Council responded that some of the land is part of a different drainage catchment to nearby GRZ land, and further work would be required to resolve a drainage plan for the area before rezoning could occur. A Development Plan is also required by Council before rezoning can be supported.

(iii) Discussion

The Panel supports the rezoning proposal for the Coombs land (submission 118) to GRZ and the Wass land (submission 140) to LDRZ for the reasons put forward by Mr Barnes. In both cases the proposals are logical extensions of existing or proposed residential areas. However, consistent with the approach taken to all other proposed additional zone changes proposed in submissions, the Panel does not support the rezonings as part of this Amendment. To do so would, in the Panel's view be a transformation of the Amendment and deny surrounding residents the opportunity to make submissions in relation to the proposals.

The Panel supports the Council response to the submissions from Mr and Mrs Grey (submission 101), Mr Bailey (submission 100) and Mr Dick (submission 112). Further work needs to be done in these locations to confirm the suitability of the land for GRZ.

(iv) Conclusions

The Panel makes the following conclusions in relation to submissions in Mildura South:

- Council should consider preparing a separate amendment to rezone land at the rear of 780 Deakin Avenue, Mildura South to the GRZ.
- Council should consider preparing a separate amendment to rezone the Greg Wass Pty Ltd land in Riverside Avenue, Mildura South to the LDRZ and consider other appropriate planning controls for the land.
- Lots in the Mildura South Growth Area should not be rezoned to the GRZ (or any other residential zone) until appropriate land feasibility work has been done, including the appropriate drainage studies.

4.11 Objection to the Healthy and Sustainable Neighbourhood Design Policy

(i) Submission

Mr Freeman (submission 1) strongly objected to the proposed new Clause 22.02 Healthy and Sustainable Neighbourhood Design Policy. Mr Freeman submitted that:

- It is unnecessary given the provisions of Clause 56 of the Planning Scheme, which relate to residential subdivision.
- Particular concern was raised with policies regarding a diversity of lot sizes, and expressing a preference for a grid street network rather than cul-de-sacs.
- Policy is not needed and is unnecessary red tape.
- Clause 56 provides all necessary residential subdivision requirements.
- Particularly object to setting density targets. Questions the use of the term 'net residential area'.
- Courts are supported in residential subdivisions.

Mr Barnes provided the following response in his expert evidence:

Consultation held during the preparation of the MHSS outlined widespread dissatisfaction with the nature and standard of recent greenfield residential development within Mildura. In particular a desire was expressed for a form of development that responded better to local conditions (which are very hot and very dry) and which provide for more connected streets, similar to that of the older and more established parts of Mildura.

In response to that feedback the MHSS focussed on two key areas of neighbourhood design:

- *healthy communities; and*
- *cooling the suburbs.*

The amendment proposes to insert a new Clause 22.02 into the planning scheme that deals with the issue of Healthy and Sustainable Neighbourhood Design. The clause includes objectives, and also policies in relation to:

- *Energy and resource efficiency*
- *Landscape and water sensitive urban design*
- *Public open spaces*

- *Public realm interfaces*
- *Accessible places*
- *Housing diversity*
- *Movement and infrastructure.*

Most policies are expressed in the form of suggestions regarding matters of 'good design' that should be taken into account in the design of new residential developments, in a hot and dry climate such as Mildura.

Clause 56 of the planning scheme provides generic directions applicable to all areas throughout Victoria. Given the climatic conditions that apply in Mildura, I believe that there is clear merit in providing additional policy direction in the development of residential areas, compared to that contained in Clause 56.

Clause 22.02 is a 'policy' and not a 'control'. Some of the specific matters addressed in the policy relate to matters such as the density of development, the mix of housing types and lots to be provided, and a preference for a 'grid street pattern' rather than 'cul-de-sacs'. In my view these are very relevant to residential development in Mildura. I believe that it is entirely appropriate that these matters be taken into consideration by Council when considering planning permit applications for subdivision. As they are 'policies' and not 'requirements', it is open to an applicant to make a submission to Council as to why an alternative approach.

(ii) Discussion and conclusion

The Panel agrees with Mr Freeman that the planning scheme should not contain unnecessary policy detail. In this case, however, the Panel is satisfied that the specific policies will provide guidance on subdivision and development of urban land that are specific to the Mildura environment, and in particular take account of the harsh climate. The rationale for the inclusion of the consolidated policy is well articulated in the MHSS.

The Panel is not convinced that the policy needed to be quite so detailed and suggests that it be reviewed in conjunction with other parts of the local policy and MSS in the next Mildura Planning Scheme review.

4.12 The drafting of the proposed planning scheme provisions

No specific submissions were received in relation to the proposed changes to the following MSS clauses:

- Clause 21.01 (Municipal Profile)
- Clause 21.02 (Key Influences and Issues)
- Clause 21.03 (Vision and Strategic Framework)
- Clause 21.04 (Settlement and Housing)
- Clause 21.06 (Natural Resource Management)
- Clause 21.07 (Built Environment and Heritage)
- Clause 21.08 (Economic Development)
- Clause 21.09 (Transport and Infrastructure)

Some minor changes are required to the Irymple Town Structure Plan as identified in section 4.3. The other proposed changes to Clause 21.10 (Local Areas) i.e. introducing a new plan 'Main Urban Area Framework Plan' and amending the Urban Transition Area Plan, Merbein Town Structure Plan and Red Cliffs Town Structure Plan, received no submissions.

The Panel notes that, with the exception of Clauses 21.04 and 21.10, the changes proposed to the MSS are relatively minor additions or reference changes to ensure consistency. Clauses 21.04 and 21.10 are the primary clauses that relate to settlement, housing and local areas and appropriately the Amendment changes these substantially to respond to the changed directions and policies arising from the *Mildura Housing and Settlement Strategy 2013*, the *Review of Planning Controls for the Mildura Older Irrigated Areas 2014* and aspects of the *Mildura Planning Scheme Review Report 2014*.

The submissions in relation to the proposed new Local Policy 'Healthy and Sustainable Neighbourhood Design' at Clause 22.02 are discussed in section 4.11.

With respect to the revised and updated Clause 21.04 (Settlement and Housing) and Clause 21.10 (Local Areas), the Panel has noted that similar revisions to these Clauses were proposed in the concurrently considered Amendment C75.

The Panel for Amendment C75 noted that:

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.

4.13 Recommendations

4.13.1 Recommendations on the MHSS in relation to this Amendment

For the reasons set out in this report, the Panel recommends that the following changes should be made to the exhibited Amendment:

- 1. Modify the Irymple Structure Plan (Figure 6 in Clause 21.10) and Main Urban Area Framework Plan (Figure 4 in Clause 21.10) to include the entire area of the Cappola land at 1076 Karadoc Avenue, Irymple inside the urban growth boundary.**
- 2. Retain the Special Use Zone 2 zoning on land to the north west of Flora Avenue, Mildura in the vicinity of the Golden Rivers Caravan Park and adjoining properties.**
- 3. Amend Schedule 1 to the Low Density Residential Zone to allow minimum subdivision of 0.2ha for lots that can be connected to mains sewerage at Kings Billabong (Nichols Point).**
- 4. Amend Schedule 1 to the Low Density Residential Zone to allow minimum subdivision of 0.2ha for lots that can be connected to mains sewerage at Koorlong.**

4.13.2 Further recommendations

Many of the submissions received in response to this Amendment relate to future directions or future use of specific land that, whilst not inconsistent with the MHSS, require further work before they can be implemented.

With respect to further rezoning requests, the Panel has taken the view that any further rezonings should be the subject of future amendments rather than being adopted as part of this Amendment. The Panel considers that this approach is more prudent in order to avoid any likelihood of the Amendment being transformed and to provide a transparent opportunity for any party to make a submission on the specific proposals. As indicated in the report, the Panel has supported some of these rezonings, and for others has suggested that further work might be needed. Council may wish to split any future amendments into those that can proceed essentially as 'supported in principle by C89' and those that 'require further strategic work'. The Panel makes no recommendation in relation to the priorities or timing of further work. They are appropriately matters for Council.

The Panel makes the following further recommendations in order to provide advice to Council on further work arising out of the consideration of submissions on the MHSS:

- a) Prepare a precinct structure plan (or plans) to guide future development in the Mildura East Growth Area.**
- b) Review the area south west of the Calder Highway between Riverside Avenue and Flora Avenue, Cabarita for possible inclusion in the Low Density Residential Zone.**
- c) Review the conservation values of land at 172 Newton Avenue, Sunnycliffs with a view to considering the land for inclusion in the Rural Conservation Zone or providing some other form of planning protection for the land.**
- d) Review the area around Sunnycliffs Crescent, Red Cliffs for possible inclusion in a Low Density Residential Zone.**
- e) Review the area east of the existing township and north of Nursery Ridge Road, Red Cliffs for possible inclusion in a Low Density Residential Zone.**
- f) Review the suitability of the Stewart land in Dal Farra Road, Koorlong for possible inclusion in a Low Density Residential Zone.**
- g) Prepare a separate amendment to rezone land at the rear of 780 Deakin Avenue, Mildura South to the General Residential Zone.**
- h) Prepare a separate amendment to rezone the Greg Wass Pty Ltd land in Riverside Avenue, Mildura South to the Low Density Residential Zone and consider other appropriate controls for the land.**
- i) Review the content of Clause 22.02 in conjunction with other parts of the local policy and Municipal Strategic Statement in the next Mildura Planning Scheme review.**

5 Mildura Older Irrigation Area Issue

5.1 The issues

In this Chapter the Panel discusses submissions in relation to the MOIA Incorporated Document and assesses whether the changes proposed to the MOIA Incorporated Document area appropriate.

5.2 Background

Council provided an overview of the long history of rural land use planning in Mildura, including an account of relevant Council and VCAT decisions that wrestled with the issue of residential subdivision of irrigated area lots.

Amendment C58, introduced by the Minister for Planning on 28 May 2009, amended the schedule to the Farming Zone and amended the schedules to clauses 52.03 and 81.01 to include a new incorporated document titled *Mildura Older Irrigation Area Incorporated Document, May 2009* containing the following provisions:

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

The Incorporated Document has been modified a number of times in response to policy changes and to introduce a number of 'refinements' through Amendments C59, C65, C72 and C87. The current version is the *Mildura Older Irrigation Area Incorporated Document, December 2013*.

The history of the controls is summarised in Chapter 3 of this report.

Amendment C89 proposes changes based on the *Mildura Older Irrigation Areas Review October 2014*.

5.3 The proposed changes

With respect to subdivision, the Amendment proposes change the Incorporated Document to accord with the recommendations of the *Mildura Older Irrigation Areas Review October 2014* as follows:

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

- *the minimum lot size for subdivision is 40ha (other than for a re-subdivision or an excision of an existing dwelling);*
- *a permit may be granted to excise a dwelling (subject to revised conditions including siting controls and that the parent lot is minimum of 3ha); and*
- *a permit may be granted for a re-subdivision of existing lots (subject to revised conditions including siting controls and protection of existing dwelling options).*

With respect to dwellings, the following changes proposed were recommended:

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

- *a permit cannot be granted for a dwelling on a lot which is less than 0.2 hectares;*
- *a permit may be granted for a dwelling (subject to revised conditions including the restriction that the dwelling must not be located within the Mildura South By-Pass Corridor but not including a sunset clause) on a lot which is 0.2 hectares or greater but less than 2ha;*
- *a permit may be granted for a dwelling (subject to conditions including siting controls and the restriction that the dwelling must only be contained within the Mildura East Growth Area or the Mildura South Growth Area) on a lot which is 2ha or greater but less than 10ha in size;*
- *a permit may be granted for a dwelling (subject to revised conditions including siting controls) on a lot which is 10ha or greater but less than 20 ha in size;*
- *a permit may be granted for a dwelling (subject to revised conditions including siting controls) on identified lots [Table 1];*
- *a permit may be granted for a replacement dwelling (subject to conditions); and*
- *the minimum lot size for an 'as of right dwelling' is 20 ha (A permit may still be required for the development).*

Council drafted a revised Incorporated Document exhibited as part of the Amendment. No changes were proposed in response to submissions received, although Council has since tabled a revised post-Hearing July 2015 version of the Incorporated Document that proposes a number of minor (mainly drafting) changes. The proposed changes are discussed in the following sections.

5.4 Submissions

(i) Summary of submissions

A total of 69 submissions were received, either in response to the *Mildura Older Irrigation Areas Review October 2014* or in response to the Amendment, relating to the MOIA Incorporated Document. A summary of the response to each of the particular issues in the Incorporated Document was provided in the agenda for the 23 April 2015 Council meeting. This summary has been reproduced as Appendix C to this report.

The summary shows that there was a high level of support for many of the proposed changes to the Incorporated Document. The main issues that continue to draw objection include:

- The continued prohibition of the opportunity to apply for a dwelling permit on lots between 2ha and 10ha outside the designated growth areas.
- The requirement for s173 agreements on remnant lots.
- A number of individual, site specific hardship cases.

(ii) Individual submissions

The Panel received Hearing presentations from a number of submitters who provided a valuable insight into how they were directly affected by the Incorporated Document:

- Mr Vale (submission 45) submitted that the proposed change to the Incorporated Document would assist, as the discretionary limit has been lifted to 2ha.
- Mr Cooke (submission 42) seeks changes to allow further subdivision.
- A number of submitters, including Mr and Mrs Piscioneri (submission 105), Mr and Mrs Arisoy (submission 108) and Mr Caminiti (submission 109) sought inclusion of their land in Table 1 of the Incorporated Document.
- Mr Callipari (submission 28) submitted that the MOIA had prevented him from realigning titles at his lot in Curetin Avenue, Nichols Point. Council submitted that the proposed changes to the Incorporated Document will assist Mr Callipari. The land is within the proposed Mildura East Growth Area.
- Mr and Mrs Forbes (submission 19) and Mr and Mrs Johnson (submission 21) submitted that the Incorporated Document should be changed to allow a dwelling to be built on lots between 2ha and 10ha.
- Mr and Mrs Hickey (submission 132) own two remnant lots of 9.25 acres. They seek to be able to build a dwelling on each lot to increase the value of the lots.

(iii) Broader submissions

Mr Costa made a general submission (number 61) in relation to the MOIA. He submitted that ideally the MOIA should be removed. He submitted that it is not Council's document and is no longer necessary. He submitted that the best way to make agricultural land viable is to live on it and provided information on the decline of irrigated lots.

Mr Costa submitted that, if the Incorporated Document is to remain, some changes should be made, including:

- Dwellings should be allowed on lots between 2ha and 10ha, subject to conditions.
- The requirement that a dwelling must have existed before 29 May 2009 should be removed.
- Excisions should be treated the same as re-subdivisions.
- The minimum size for excision should be changed to 0.2ha to make consistent.
- The requirement for section 173 agreements should be removed.
- For re-subdivision – shouldn't lose right for dwelling if boundaries are removed.
- Dwellings should be allowed on lots down to 0.1ha.
- Manager's residences should be allowed.

Mr Nichol (submissions 39 and 40) supported the retention of the Incorporated Document in the short term but submitted that the longer term way forward needed review.

He made the following specific submissions regarding the proposed changes to the Incorporated Document:

- Supports the excision of dwellings subject to conditions.
- Supports dwellings on lots between 2ha and 10ha subject to conditions.

- Does not support the requirement for a s173 agreement on the balance lots. He submitted that the imposition of a s173 agreement, particularly in the Mildura East Growth Area, would lead to unnecessary bureaucracy to remove the agreements in the future if higher density development occurs.

Mr Freeman (submission 1) made a number of submissions in relation to the Incorporated Document. His issues included:

- For the purposes of consolidation, lots need not be touching.
- The requirement for a s173 agreement creates problems for many property owners.
- Concern about metric conversion of 5 acre lots being just over 2ha.
- Supports removal of the sunset clause.
- Supports a number of other changes proposed.

(iv) Council response to submissions

Council provided the following overview of its response to submissions in its presentation to the Panel Hearing:

Based upon the same (Council) resolution of 23 April 2015, Council has provided a summary of every submission and its adopted response. A tabular summary of this process is attached for the assistance of the Panel.

As with the MHSS, any submission, in isolation can appear persuasive and worthy of support.

A key difference with the MOIA part of Amendment C89 is that there is already an Incorporated Document in place that will remain until it is changed. If Amendment C89 founders, then that Incorporated Document will remain in place.

Council would like to be in a position where it could support all submissions but it again acknowledges that it must assess every submission against the key objectives that are trying to be achieved by the amendment.

In the case of the MOIA, these considerations are to:

- *Protect land for horticulture within the Mildura older irrigation area.*
- *Provide for the growth and expansion of the horticultural industry within the Mildura older irrigation area.*

As well as these objectives of the Incorporated Document there is the stated MOIA 'Vision' that:

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

In assessing submissions, Council has asked itself, how does a request to (say) expand the 'pool' to all lots between 2ha and 10ha impact on its prime objective to 'protect land for horticulture within the Mildura Older Irrigation area'?

Furthermore, submissions that request an exemption because a lot area falls just outside the proposed minima, or that want an isolated site added to the exemption list also need to be assessed against the objectives and well as considering the cumulative impact of such requests.

Of the submissions lodged in respect of the MOIA, the following is a short summary of the main issues and the Council response.

Main Issues	Council Response
Opposition to the retention of the Incorporated Document	Not Supported
Opposition to aspects of the Incorporated Document especially retention of legal agreements.	Support in part with further clarification provided. This is a matter to be further discussed in the Panel forum.
Support for removal of Sunset Clause	Supported
Opposition to prohibition of dwellings between 2ha and 10ha	Not Supported. This would undermine the objectives of the MHSS and of MOIA retaining horticulture and could add over 1000 dwellings to the 'rural living' pool.
Support for extension of discretionary dwellings from 0.2ha to 2ha.	Supported
Support for all lots to be able to accommodate a dwelling (including by adding to the exemption Table).	Not supported as it would undermine the objective of retaining horticulture in MOIA by potentially adding possibly thousands of new dwellings.

(v) Further post-Hearing responses from Council

Council provided the following further (post-hearing) response to issues raised in submissions and issues raised by the Panel:

Additions to Table 1 in the Incorporated Document.

Numerous submissions (Nos 42, 105, 108, 136, 137) requested that land be included in the Table attached to the Incorporated Document.

Council notes that eleven (11) of the thirty two (32) properties in Table 1 have not only had permits issued, but these permits have been acted on and

dwellings have been built. Another seventeen (17) permits for dwellings have been issued although none of these are yet to be built.

As noted below, Council is committed to undertaking a 'Horticulture Sustainability Development Strategy' which will (among other things) address planning control options for the MOIA. While it is unlikely that the Table (or its equivalent) would survive that review, it is considered prudent to 'leave well enough alone' until the outcomes of that strategy are apparent.

On that basis, Council does not support any changes to Table 1.

Future options for the MOIA

The Panel noted from the outset that Council appeared to have some underlying concerns with the manner in which the MOIA Incorporated Document had been applied.

The Panel requested Council's advice on what, if any changes, might be made.

Firstly, Council is mindful to avoid any 'transformation' of the exhibited amendment C89. Any option for change (zone, overlay or especially local policy) would run the risk of transforming the amendment.

Secondly, the Panel queried Council on its long-term intentions for the MOIA which might include (among other things) an alternative Incorporated Document, or no Incorporated Document at all.

Council discussed this issue at its regular Forum on 9 July 2015 and it appreciates the Panel's invitation to comment on its long-term objectives. As noted at the hearing, and in conjunction with its resolution to place C89 on exhibition, Council resolved to commission a further analysis of the MOIA tentatively titled 'Horticultural Sustainability Development Strategy (HSDS)'. The HSDS is expected to be a much broader analysis of MOIA than just planning issues and it might address (among other things) federal and global agriculture policy, the recent Government White Paper on Agriculture, tariffs and treaties, the impacts of the Sunraysia Modernisation Project, taxation and rating issues, etc.

Any significant change to the Mildura Planning Scheme generally, and to the planning controls in MOIA particularly, are expected to be an outcome of the HSDS.

In the meantime, Council supports the exhibited amendment, subject to the attached modifications to the Incorporated Document which were the subject of discussions on the final day of the hearing.

Modifications to the Incorporated Document

Council is mindful of the Panel's suggestion that some of the exhibited 'permit requirements' might be better expressed as either 'application requirements' or 'decision guidelines'.

Council's attached modified Incorporated Document has listed some (but not all) existing Permit requirements as Application requirements. For example, the exhibited permit requirement that the dwelling location not be subject to inundation has been repositioned as an application requirement.

However, Council believes that it is important to maintain certainty for some aspects by listing them as mandatory permit requirements. These include (among others), the need for a minimum 5m boundary setback from an existing dwelling; the prohibition on reliance on battle axe blocks; and the need for new boundaries to be positioned to protect the balance of the land for horticulture.

In the view of Council, turning requirements into guidelines runs the risk of dismantling some of the certainty that has thus far characterized the operation of the Incorporated Document and turns it into more of a 'policy' guide.

Experience shows that if there is a discretion provided (as it would be if the requirements are listed as either application requirements or decision guidelines) then this could easily undermine the primary objective of protecting the land for horticulture.

What is Council's attitude to 2ha not equating with 5 acres?

Submission No 1 (Freeman) raised a relevant issue that the Incorporated Document relied on a metric conversion of an old imperial measure. Specifically, the inclusion of 2ha as a benchmark size does not equate with the former '5 acre' measurement rendering most of these 5 acre lots as unable to benefit from the modified provisions.

Council is unsure of how often this issue will really arise. 5 acre lots were not part of the original Chaffey Brothers settlement pattern in the MOIA and any 5 acre lots would only have come into existence as a result of the subdivision in two of the original 10 acre lots.

It seems that no other lot sizes in the MOIA will be affected as the 'lower end' lot sizes of 2000m² (or 3000m²) are direct metric translations from the former Shire of Mildura Planning Scheme.

That said, Council understands the concern of the submitter and wishes to assist landowners in realizing its objectives in the MOIA. However, it suggests that this issue be further analysed as part of the upcoming HSDS.

Accordingly, Council does not support any change at this stage to the proposed Incorporated Document as its implications have not been fully analysed.

What is Council's attitude to lowering 2000m² to 1000m²?

Submission No. 62 (Costa) queried whether the proposed minimum lot size in the Incorporated Document of 2000m² should be reduced to 1000m² to reflect the requirements of the former Shire of Mildura Planning Scheme.

Council has analysed the former scheme and has found no reference to small lot sizes of 1000m².

Accordingly, Council does not support any change to the proposed Incorporated Document to reduce the lot size to 1000m².

Council provided a revised version of the Incorporated Document that reflects the above responses. A copy of the Post-Hearing version is attached as Appendix D to this report.

The changes are all minor drafting changes that do not affect the meaning of the exhibited document, with the exception of the substituted Map 2 (formerly Figure 1) which shows the corrected area of the Mildura South Growth Area. The previous map inadvertently cut off the western end of the area.

(vi) Mildura East Growth Area

Mr Barnes noted in his evidence to the Panel that the MOIA Incorporated Document assisted in providing subdivision controls that protect land from fragmentation and preserve it for longer term conventional density residential development as part of the Mildura East Growth Area. He noted the community pressure to allow a relaxation area.

In response to questions from the Panel, Mr Barnes acknowledged the anomalies between the MHSS and the proposal to relax the MOIA controls in the Mildura East Growth Area. He stated that *'the last thing you want to do is further fragment the land'*. He did, however, note that it made sense to allow some flexibility to fill in gaps in developed areas. He submitted that it would be a poor planning outcome if a large number of lots were 'blighted' for a long period. He cautioned against implementing this across all irrigation areas, and submitted that any relaxation should be limited to areas where there are greater pressures on urban development. In his evidence, some relaxation in Mildura East would not impact on agriculture; and development would not compromise future plans if houses were located so as not to limit future subdivision and development. He submitted that the proposed change to the MOIA Incorporated Document would assist this by ensuring that, for example, any new houses were not relocated to the middle of a block. He estimated that relaxation of controls in the Mildura East Growth Area would most likely only result in 20 to 40 additional applications for subdivision. He submitted that this would not create a significant fragmentation problem.

Mr Barnes noted that the proposed 'relaxation area' has been reduced to the growth area only. He supported that change.

5.5 Discussion

The Panel generally supports the intention to try to make the Incorporated Document more practical and relevant to local conditions. The Panel is mindful that the prime purpose of protecting land for horticulture must be maintained, and in this vein any changes should not compromise this purpose.

The Panel is of the view that the proposed changes to the Incorporated Document appropriately implement the strategic directions of the MHSS, particularly in relation to new low density residential rezonings; and the identification of more relaxed controls in the designated growth areas of East Mildura and South Mildura. The changes put the

requirements of the FZ front and centre in the document, make the criteria for establishing dwellings clearer and deal with some of the identified problems of the current provisions. Council has benefitted from input to the process by experienced local practitioners, including Mr Freeman, Mr Nichol and Mr Costa, and has taken account of what they have had to say in preparing the Amendment. All three supported much of the proposed change, saying that it was a big improvement.

The Panel makes the following comments on the specific changes proposed and the issues raised in submissions:

Opposition to retaining the Incorporated Document

There was some discussion in the Panel Hearing about whether the Incorporated Document would be required in the longer term. Some submitters argued that the 'standard' provisions of the Farming Zone provided sufficient controls for Council to exercise discretion on subdivision and development particularly in the context of local policy.

The MHSS adopts as one of its 40 key directions:

For interface areas and future urban land...remove the provisions of the MOIA incorporated document, but retain land in a Farming Zone, affecting designated areas at the interface between and long term agricultural areas.

The Panel notes Council's intention to commission a *Horticultural Sustainability Development Strategy*, and agrees with Council that the outcomes of this work could guide a future position on whether the MOIA Incorporated Document will be required, and if so what form it should take and what land it should apply to. The Panel therefore accepts that a modified MOIA Incorporated Document will continue to play an important role in the mean time.

The Panel does, however, have some concerns with the lack of transparency of the application of the Incorporated Document in the planning scheme. There is some mention of the MOIA Incorporated Document in Clause 21.06 of the MSS, however, the detail of how and where the Incorporated Document applies is not immediately obvious, and there is no flag in the FZ Schedule that alternative subdivision and dwelling requirements may apply in some locations.

The Panel recommends that, in order to improve transparency, a flag (or asterix) should be added in the FZ Schedule on any item in the table that may be varied by the MOIA Incorporated Document and a note added at the bottom of the tables pointing out that the MOIA Incorporated Document may apply and should be read in conjunction with the schedule. Although unusual, there is precedent for adding notes to schedules for the Heritage Overlay in many schemes. The Panel sees no problem with adding a note in this case to the FZ Schedule as it does not introduce any provisions, merely alerts to the possibility that the Incorporated Document may apply.

Changes to requirements for excisions and boundary realignments

The Panel agrees that the proposed changes to the Incorporated Document to provide some broader subdivision exemptions for excisions and re-subdivisions are appropriate. The

addition of the brief glossary of terms is also useful, although the Panel prefers the shorter list as in the post-Hearing version.

The proposed changes are designed to address specific issues in the current provisions and are sensible additions that will not compromise the purpose of the controls. The proposed changes add certainty in a number of specific circumstances.

A number of submitters, including Mr Freeman, argued that there could be further refinements to these provisions. The Panel believes that the proposed changes will cover most instances, and further improvement should be revisited in any future review.

Expand the range of lots with potential for a dwelling from the current 0.3ha to 1.2ha to proposed 0.2ha to 2.0ha

The expansion of the number of lots with potential for a dwelling was a specific option supported in the *Mildura Older Irrigation Areas Review October 2014*. Council supported this greater flexibility on the basis that it supports the principles developed in the MHSS for the housing in the MOIA, whilst not compromising the primary commitment to the long term maintenance and primacy of horticulture in the MOIA. The Review noted at page 26:

... the most attractive option for Council is to adopt a more flexible approach for dwellings at the 'small lot' end of the market, especially between 0.2ha and 2ha.

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

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

The Panel agrees that expansion of the range of lots with potential for a dwelling as proposed will relieve a number of hardship cases. The Panel agrees that lots in the range 0.2ha to 2.0ha are unlikely to ever make a realistic horticulture contribution. The Panel agrees it is appropriate to ensure that all subdivision applications in this lot range that are in the Mildura East and Mildura South Growth Areas should not compromise future urban development.

Allow potential for a dwelling on lots between 2.0ha and 10ha, but only in the Mildura East and Mildura South Growth Areas

The relaxation of controls to allow the potential for dwellings on lots between 2.0ha and 10ha in the growth areas is a difficult question. On one hand the Panel is concerned that granting of any permits on these lots may further fragment the land compromise the future development of the growth fronts? On the other hand the Panel does not wish to see such lots 'blighted' for a long period of time.

The Panel accepts the evidence of Mr Barnes in relation to the Mildura East Growth Area that the number of lots affected is small and that, given the potentially long time before the area will be developed, some relaxation is appropriate. The Panel draws some comfort from the following proposed application requirements:

- *That the dwelling does not compromise the future urban development of the land; and*
- *That the dwelling should include, where necessary, the provision of easements or setbacks to ensure longer term road access and servicing connections; and*
- *That the dwelling does not compromise the continuation of an existing horticultural use; and*
- *The dwelling does not affect on-going agricultural use of adjoining land; and*
- *The dwelling does not compromise the ability to achieve preferred urban design outcomes.*

The Panel believes that these application requirements imply that any application will have to demonstrate compatibility with any precinct structure plan.

Whether the same level of relaxation should apply to Mildura South is at first glance more problematic. Any potential 'blighting' of the land is likely to be shorter, as urban development is likely in a shorter time frame. Once a PSP is in place the provisions of that incorporated document will prevail once land is rezoned out of the Farming Zone (The MOIA Incorporated Document only applies to FZ land). There are, however, some areas within the Mildura South Growth Area that may not have an applicable precinct structure plan for some time, and it does no harm to continue to have those areas covered by the MOIA Incorporated Document in the mean time.

The Panel therefore accepts that, on balance, the changed requirements can apply to both growth areas on the basis that the proposed application requirements will resolve any potential issues of compromising future development.

The Panel notes that Council have proposed a change to Map 2 (Figure 1 In the exhibited version) of the Incorporated Document to correctly identify the entire areas of the Mildura South and Mildura East Growth Areas. The Panel supports the changed figure.

Allow potential for a dwelling on all lots between 2.0ha and 10ha

A number of submitters sought an extension to the 'relaxation' proposed for the growth areas to all lots between 2.0ha and 10ha within the MOIA. The Panel agrees with Council that this is not appropriate. This would undermine the objectives of the MHSS by adding

potential for over 1000 dwellings to the 'rural living' pool. This would create a significant over supply. It would also compromise the primary MOIA Incorporated Document objective of protecting land for horticulture.

Replacement dwellings

The Panel agrees that the addition of permit requirements for replacement dwellings is a reasonable and useful addition to clarify the situation where a replacement for an existing dwelling is proposed that may otherwise not meet the criteria for a dwelling permit.

Additions to the site specific exemptions Table 1

A number of submitters requested that their properties be added to Table 1 for hardship reasons. The Panel agrees with Council that no further additions should be made to this list. It would be very difficult to determine criteria for further inclusions and it would run the risk of opening up exemptions to a large number of owners and compromising the objectives of the MHSS and the Incorporated Document.

The Panel in fact questioned Council on whether the list could be substantially reduced or deleted altogether on the basis that ample opportunity has already been given for listed owners to apply for a permit. The Panel noted Council's advice that 11 of the 32 listed properties have already had permits issued and houses built, and a further 17 permits have been issued but have not been enacted.

The Panel believes that Table 1 could be deleted, but accepts Council's advice that any decision on the Table should more appropriately await the outcome of the future *Horticulture Sustainability Strategy*. That said, the Panel has a firm view that the Table was intended as a transitional tool and that transition period has well and truly expired. The Panel believes that the starting point for the future review should be that any list of exemptions should be removed unless it can be demonstrated otherwise. Council may also consider putting a sunset date on acting on any exemptions.

The requirement for a s173 agreement

The Panel notes that the Farming Zone now no longer requires a s173 agreement for an excision or small lot re-subdivision restricting further subdivision. The Panel, however, believes that the requirement for the s173 agreement contained in the subdivision permit requirements of the Incorporated Document is of value for two reasons. Firstly, it actively protects against further inappropriate fragmentation of horticultural land that would otherwise be permitted; and, secondly, inclusion of a s173 agreement on title makes potential purchasers aware that the land cannot be further subdivided.

Sunset clause

It is proposed to remove the existing sunset clause applying to the permit option for dwellings on lots between 0.3ha and 1.2ha. No submissions opposed this change. The Panel supports the removal of the sunset clause (for lots in the new proposed range of 0.2ha to 2.0ha) on the basis that it is consistent with the recommendation of the *Mildura Older Irrigation Areas Review October 2014* to expand the options for dwellings on lots too small to contribute to horticulture.

Drafting changes

The drafting of the Incorporated Document was discussed at some length at the Hearing, with a number of suggestions for improvement made by submitters, Council and the Panel. Council has taken these suggestions on board in the revised post-Hearing version July 2015 attached as Appendix D. The proposed changes are minor clarifications and re-formatting that do not change the intent of the document, but do improve readability. The Panel supports the proposed drafting changes.

The Panel notes that there are a number of references in the Local Planning Policy Framework to the Incorporated Document. The newer July 2015 version should be referenced in each case.

2.0ha or 5 acres

It was submitted that land owners with 5 acre lots would be disadvantaged by the changed provisions as 5 acres is just over 2ha (Actually 2.023ha) and therefore no dwelling would be possible on 5 acre lots outside growth areas. No information was provided to the Panel on whether there are any in fact 5 acre lots that would be affected. Council was not aware if there were any. The Panel is therefore not in a position to comment on whether there is any value in changing the definition to allow dwellings on say 2.1ha lots. The Panel suggests that this issue be assessed by Council in a future review.

0.1ha minimum lot size

The Panel was not provided with any evidence to support a further lowering of the minimum lot size to 0.1ha. Council has found no reference to such lot sizes. The change is not supported by the Panel.

5.6 Conclusions

The Panel agrees that the proposed changes to the Incorporated Document strike a reasonable balance between limiting the dwelling potential in the MOIA area, encouraging expansion of horticulture in the region and equitably responding to the existing and long established settlement pattern.

The Panel believes that the further changes proposed in the post-Hearing version July 2015 of the MOIA Incorporated Document improve the document and should be adopted.

5.7 Recommendations

The Panel makes the following recommendations:

- 5. Amend the Mildura Older Irrigation Areas Incorporated Document to the post-Hearing version (July 2015) as shown in Appendix D of this report and amend any references to the Incorporated Document in the Municipal Strategic Statement and Clauses 52.03 and 81.01 to refer to the July 2015 version.**
- 6. Add a note to relevant items in the Schedule to the Farming Zone drawing attention to the possibility that the Mildura Older Irrigation Areas Incorporated Document may apply.**

Appendix A List of Submitters

No.	Submitter	No.	Submitter
1	Michael Freeman	34	Sunraysia Irrigators Council
2	Michael Freeman on behalf of V Cirillo	35	Vince Cirillo
3	Peter and Lesley Presser	36	Fiona and Matt Ryan
4	Kevin and Dawn Collins	37	Marianna Blekic
5	Michael Freeman on behalf of Kevin and Dawn Collins	38	Bill Nicol on behalf of A & W McCracken
6	Goulburn-Murray Water	39	Bill Nicol on behalf of Gino & Elina Garreffa
7	Bill Cavallo	40	Bill Nicol on behalf of Paanro Pty Ltd
8	Tom and Sarah Violi	41	Brenton and Rachael Arnold
9	Ken Thompson	42	CR & CI Cooke
10	Darren and Christine Mazza	43	Zena and Keith Stewart
11	Giuseppe Monteleone	44	Tania and Jason Rivett
12	Brian Erskine	45	Bob and Vicki Vale
13	N & M Cavallo	46	Michael Freeman on behalf of John and Lorraine Heley
14	Mrs Serafino Costa	47	Ross Holt
15	Rodney Smith	48	Michael Freeman on behalf of Kym Standley
16	Pam Midgley	49	Margaret and Rachel Hughes
17	Jim Belbin	50	Warrick Fisher
18	Greg Lewin	51	Chris Cleary
19	Kevin Forbes	52	Robert and Rhonda Lauder
20	R & S Graham	53	Melissa Willcocks and Rowan Tegart
21	Michael and Cathy Johnson	54	Grace Brizzi
22	Frank Piscioneri	55	DELWP
23	Environmental Protection Authority	56	Barry McGinniskin
24	W & R Garrigan	57	Maria Riedl
25	I H & J A Shaw	58	William Sutherland
26	Josef Zagar	59	Christine and Ian Foreman
27	Malcolm and Merridee Hammat	60	Michael Assimakopoulos
28	Michael Callipari	61	Roy Costa
29	Shane and Lynette Godfrey	62	Wen Shuyun
30	Diane Lewin	63	Mildura Civil Construction
31	Lower Murray Water	64	Brent Williams
32	Neil and Lynne Pinnington	65	Jeff & Ann Muller
33	Michael Freeman on behalf of Pat Zappia	66	Lower Murray Water

No.	Submitter	No.	Submitter
67	Roy Costa	99	Roy Costa on behalf of A Dimasi, C Rocciasano, P & A Dimasi
68	DEDJTR	100	Roy Costa on behalf of Sharon Bailey
69	Donica and Clinton Cook	101	Roy Costa on behalf of Diane and Robert Gray
70	Paul Butler	102	Roy Costa on behalf of L & D Cappola and J Cappola
71	Sandra and Kevin Eastwood	103	Roy Costa on behalf of N & Phyllis Tabacco
72	Merbein College	104	W Shaw on behalf of W and N Shaw, N and M Bravin and S and K Akyildis
73	Rachael Arnold	105	Roy Costa on behalf of G & J M Piscioneri
74	Bill Sutherland & Maria Riedl	106	John and Roslyn Nicholls
75	Maria Riedl	107	Teresa Cavallaro
76	Rob Graham	108	Roy Costa on behalf of Mr A and Mrs E Arisoy
77	Martha Maiorana	109	Roy Costa on behalf of S Caminiti
78	Chris Dawe Landscapes	110	Terry Lang
79	Antonio Caminiti	111	Mikel Pretty
80	Nick and Mary Cavallo	112	Roy Costa on behalf of William and Christopher Dick
81	Michael Freeman	113	Roy Costa on behalf of Gregory and Leonie Milner
82	Wayne D Wilkie	114	Roy Costa on behalf of JR & GE Bath
83	Mike and Tracey Maynard	115	Barbara Tregonning
84	Stuart Pain	116	Wayne D Wilkie
85	Jason & Tania Rivett	117	Lisa Wilkie
86	Roxanne & Moe Carter	118	Sherylee Coombs
87	Larry Dichiera	119	Michael Freeman on behalf of the Uyanik Family
88	Jan Kennedy	120	Michael Freeman on behalf of Piscitelli Family
89	Healthy Together Mildura	121	Michael Freeman on behalf of Melina Demasi
90	Mildura Passenger Train Action Group	122	Michael Freeman on behalf of Frank Cufari
91	Mildura Passenger Train Action Group	123	Bill Nicol on behalf of A & A Robinson
92	DELWP	124	Adam Terrill on behalf of SJM Developments
93	Rob Biggs	125	Rafal Jacyna on behalf of R M & K P Jacyna
94	Kealey Lush	126	Katherine Mathewson
95	Wendy Yeung	127	Roy Costa on behalf of Malcolm Brady
96	Cabarita Heights Pty Ltd	128	Mallee Catchment Management Authority
97	B F & E A Woollard	129	Bill Nicol on behalf of Danyo Holdings Pty Ltd
98	Roy Costa on behalf of Alec & Sharon Hawtin	130	Mark Fullgrave

No.	Submitter	No.	Submitter
131	Malcolm Bennett	139	Robert Freeman on behalf of Joan Rix
132	Frank and Melinda Hickey	140	James Golsworthy on behalf of Gregg Wass Pty Ltd
133	Max and Naomi Pitt	141	Goulburn Murray Water
134	Department of Education and Training		
135	Lower Murray Water		Late submissions not considered by Council:
136	Warrick Fisher on behalf of J P & P E Ryan	L1	Roy Costa on behalf of F & P Mammone
137	Warrick Fisher on behalf of C J Mayes	L2	Roy Costa on behalf of Castleman
138	David Hunter on behalf of Jason & Tania Rivett	L3	Anna Smart

Appendix B Document List

No.	Document	Tabled by
1-3	Council submission and attachments	Mr Keaney
4	Copy of Clause 35.01 Rural Zone	Council
5	Copy of Clause 35.07 Farming Zone 2007	Council
6	Copy of Clause 35.07 Farming Zone 2015	Council
7	Presentation – Submission 43	Mr Fisher
8	Presentation – Submission 118	Mr Fisher
9	Presentation – Submission 136	Mr Fisher
10	Presentation – Submission 104	Mr Shaw
11-12	Presentation – Submission for Mr and Mrs Cook – Submission 42	Mr Costa
13	Mildura drainage plans	Mr Costa
14	Background documents – Mr and Mrs Castleman submission	Mr Costa
15	Background documents – Mr and Mrs Tabacco submission	Mr Costa
16	Press article	Mr Costa
17	Email re land use in MOIA	Mr Costa
18	Email re land valuations in MOIA	Mr Costa
19	Presentation - Submission 125	Mr Jacyna
20	Presentation - Submission 40	Mr Nichol
21	Presentation - Submission 39	Mr Nichol
22	Presentation - Submission 38	Mr Nichol
23	Presentation - Submission 123	Mr Nichol
24	Presentation - Submission 129	Mr Nichol
25-27	Presentation – Submission 58	Mr Sutherland
28	Presentation – Submission 57	Ms Riedl
29	Presentation – Submission of Mr Michael Freeman	Mr Freeman
30	Response to Panel on issues raised in Hearing – recd. 27/07/2015	Council
31	Copy of Council minutes 9 October 2014 – recd. 27/07/2015	Council
32	Post-panel changes to Incorporated Document – recd. 27/07/2015	Council

Appendix C Summary of submissions on the MOIA Incorporated Document

AMENDMENT C89: MOIA ISSUES – C89 Submission Numbers (Previous Submissions)					C89 – New Submissions		
Submission Issue.		Original Support for Proposal – No Change Required from MOIA Discussion Paper	Originally Satisfied by Changes Reflected in Exhibited C89	Not Satisfied by Exhibited C89	Support for Amendment C89 – Maintained or New	Satisfied by Further Changes to Exhibited C89	Remains Not Satisfied
General	Overall	30, 41, 51					
	Completely new MOIA Plan prepared			1			1C
	Inclusion of Section 173 generally			1			
	Definition of adjoining (Inc Doc Wording)		2			1A, 1C, 1D, 61A, 131	
	No objection	6, 23			135		
Subdivision	Re-subdivision dwelling clarification	18	1, 2, 20, 25, 28, 35, 61				
	Channel reference clarified	1		1, 33			
	Excision including S173 - Generally			14, 29, 32, 42, 48, 52, 61			
	Excision including S173 – Growth Area			1, 4, 24, 61			1D, 4A, 14A, 40A,
	Excision 3ha minimum	40		14			14A
	Setback requirements existing dwellings			61			
	No subdivision into 4 acre lots for dwellings/rural living			54			
Dwellings	0.2 to 2.0 Ha	1, 3, 9, 11, 16, 17, 18, 20, 26, 27, 28, 35, 39, 42, 45, 47, 56		61	39A, 108, 109, 115		
	Removal of sunset clause	1, 17, 18, 28					
	Dwelling opportunity 2.0-10ha – In Relax/Growth Area	8, 16, 17, 18, 28, 40, 49, 50, 56			108		
	Dwelling opportunity 2.0-10ha – In Mda Sth Growth Area		48				
	No Dwelling opportunity 2.0-10ha – Outside Relax/Growth Area			Twenty submissions			52A, 53A, 106, 111, 133
	No Dwelling opportunity 2.0-10ha – In Relaxation Area		31	28, 49, 56			
	Replacement dwelling clarification	17, 18, 61					
	No more dwellings allowed			36			
	More relaxation areas provided			44, 46			
	No infill in relaxation areas			49			
	Manager's residence						61A
	Inclusion in Table 1						131, 139
	Battle - axe						105
	By-Pass corridor					118	
MHSS Issue (Refer Response to Submissions – MHSS)	Include land in RCZ			38			
	Koorlong LDRZ			43, 44, 46			
	ME Growth Area			50, 57, 58			
	McEdward Street RLZ		59				
	Cabarita RLZ			22, 60			

Appendix D Post Hearing version of the Incorporated Document

Proposed post-Hearing additions to the Incorporated Document as exhibited are shown in **blue** and deletions are shown in **red**.

MILDURA RURAL CITY COUNCIL**MILDURA OLDER IRRIGATION AREA INCORPORATED DOCUMENT****OCTOBER JULY 2014⁵ [DRAFT CHANGES POST C89 PANEL]****1.0 Introduction**

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

Pursuant to clause 52.03 of the Mildura Planning Scheme, the land identified in this incorporated document may be developed and used in accordance with the specific controls contained in this document.

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

2.0 Purpose

- To protect land for horticulture within the Mildura older irrigation area.
- To provide for the growth and expansion of the horticultural industry within the Mildura older irrigation area.
- To implement the recommendations of the Mildura Planning Taskforce, Final Report, December 2009 and the Review of Planning Controls for the Mildura Older Irrigated Areas, ~~September~~ October 2014.

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

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

3.0 The Land

The land that is the subject of the specific controls in this document is the land zoned Farming Zone located within the gazetted irrigation districts of Mildura, Merbein and Red Cliffs, generally known as the Mildura ~~e~~Older ~~i~~rrigation ~~a~~Area (MOIA) and as indicated on the attached map [Map 1].

~~What does this document provide for?~~

4.0 Glossary of terms**Excision**

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

Boundary re-alignment

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

~~Adjoining land~~

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

~~Vinculum~~~~Lots that are legally joined on Title.~~**Battle axed lots**~~A battle axe shaped lot is a lot that relies on a long narrow access way resulting in fragmentation of farming land.~~**5.0 Subdivision****5.1 Application requirements for all subdivision**

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

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

Within the Mildura East Growth Area, the Mildura South Growth Area and the Mildura South By-pass Corridor [Map 2], applications must also demonstrate, to the satisfaction of the responsible authority:

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

5.2 Permit requirements for all subdivision

A permit must not be granted to create a smaller lot (including an excision or boundary realignment as referred to in Sections 5.3 and 5.4 of this Incorporated Document) under Clause 35.07-3 unless **all** of the following requirements are met:

- The requirements of Clause 35.07-2 and Clause 63; and
- The subdivision must not rely on lots that are disused channel reserves, other small utility lots and lots which are separated in multiple parcels ~~created via a vinculum~~ (except a ~~vinculum involving~~ lots where the parcels are ~~adjoining~~ abutting and directly aligned on opposite sides of a road or channel reserve) so as to be counted as existing lots or to meet minimum area requirements; and
- The lots created containing an existing dwelling and the balance lot must not be a battle axe shaped lots ~~resulting in fragmentation of farming land~~ or a lot where access is via a carriageway easement or common property driveway. ; and
- The new boundaries must be positioned to protect the balance of the land for horticulture; and
- Within the Mildura East Growth Area, the Mildura South Growth Area and the Mildura South By-pass Corridor [~~Figure 4~~Map 2], ~~applications must also demonstrate that the subdivision does~~ must not compromise the future urban development of the land ~~and should include, where necessary, the provision of easements or setbacks to ensure longer term servicing connections, to the satisfaction of Council, and~~
- An existing dwelling must be setback a minimum of 5 metres from any new boundary to minimise amenity and environmental impacts to or from adjoining land uses (not including outbuildings).

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

5.3 Permit requirements for ~~E~~excisions

In addition to the requirements of Section 5.2 of this Incorporated Document, a permit must not be granted ~~The subdivision is~~ to create a smaller lot for an existing dwelling under Clause 35.07-3~~and unless~~ all of the following requirements are met:

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

5.4 Permit requirements for ~~B~~boundary re-alignments

In addition to the requirements of Section 5.2 of this Incorporated Document, a permit must not be granted to create a smaller lot under Clause 35.07-3 unless ~~the~~ the subdivision is the re-subdivision of existing lots (which may or may not include an existing dwelling) ~~and the number of lots is not increased~~ and all of the following requirements are met:

- The number of lots is not increased; and
- The lot created for an existing dwelling must be ~~a minimum~~ at least 0.4 hectares in area, unless the original lot containing the dwelling is less than 0.4 hectares in area ~~and in which case the lot created is must be~~ of at least equal size; and
- An agreement under section 173 of the Act must be entered into with the owner of each lot created which ensures all of the following:
 - ~~That~~ the land may not be further subdivided other than for a re-subdivision which is in accordance with the provisions of this incorporated document; and
 - ~~That~~ no further dwellings will be constructed on any lot, except for new lots created which are in accordance with the following:
 - the new lot is at least 0.2 hectares but ~~less~~ not greater than 2 hectares in area and all of the following requirements are met:
 - the new lot is created from original lots including an equivalent lot of at least 0.2 hectares but ~~less~~ not greater than 2 hectares; and

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

5.5 Permit requirements for subdivisions by a ~~P~~public authority

Notwithstanding the requirements of Sections 5.1, 5.2, 5.3 and 5.4 of this Incorporated Document, a permit may be granted to create a smaller lot under Clause 35.07-3 if ~~T~~the subdivision is by a public authority or utility service provider to create a lot for a utility installation.

6.0 Dwellings

6.1 Application requirements for dwellings

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

- How the proposed dwelling responds to the requirements of clause 35.07-2 and the decision guidelines in Clause 35.07-6; and
- That the dwelling location is not subject to inundation; and
- That the proposed dwelling has an appropriate landscape buffer to any agricultural land so as to minimise potential conflict; and
- ~~That the lot was not a lot that was created via a vineulum (except a vineulum involving lots abutting and directly aligned on opposite sides of a road or channel reserve); and~~
- That the dwelling (not including outbuildings) is setback a minimum of 5 metres from any boundary to minimise amenity and environmental impacts to or from adjoining land uses.

Within the ~~MHS~~ Mildura East Growth Area, the Mildura South Growth Area and the Mildura South By-pass Corridor [~~Figure 1~~Map 2], applications must also demonstrate, to the satisfaction of the responsible authority:

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

- That the dwelling does not compromise the continuation of an existing horticultural use; and
- The dwelling does not affect on-going agricultural use of adjoining land; and
- The dwelling does not compromise the ability to achieve preferred urban design outcomes.

6.2 Permit requirements for all dwellings

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

- The requirements of clause 35.07-2; and
- The dwelling (not including outbuildings) must be setback a minimum of 5 metres from any boundary to minimise amenity and environmental impacts to or from adjoining land uses; and
- ~~The dwelling location must not be subject to inundation as approved by Council; and~~
- The lot must not be a disused channel reserve or other small utility lot; and
- The lot must not be separated in multiple parcels except where the parcels are abutting and directly aligned on opposite sides of a road or channel reserve.

~~A permit must not be granted to use land for a dwelling under section 2 of the Table of uses to Clause 35.07-1, unless any of the following apply:~~

6.3 Permit requirements for Ddwellings on lots between 0.2ha and 2ha.

In addition to the requirements of Section 6.2 of this Incorporated Document, a permit must not be granted to use land for a dwelling under section 2 of the Table of uses to Clause 35.07-1, unless ~~the~~ the size of the lot is at least 0.2 hectares but ~~less~~ not greater than 2 hectares and all of the following requirements are met:

- The lot is ~~not~~ ~~un~~encumbered by a Section 173 Agreement ensuring no further dwellings will be constructed; and
- The lot must not be a lot created via a consolidation of lots which increases dwelling opportunity; and
- The dwelling location ~~is~~ must not be within the Mildura South By-pass Corridor [Figure ~~1~~Map 2].

6.4 Permit requirements for Ddwellings on lots between 2ha and 10ha.

In addition to the requirements of Section 6.2 of this Incorporated Document, a permit must not be granted to use land for a dwelling under section 2 of the Table of uses to Clause 35.07-1, unless ~~the~~ the size of the lot is ~~at least~~ greater than 2 hectares but less than 10 hectares and all of the following requirements are met:

- The dwelling location ~~is~~ must be within the Mildura East Growth Area or the Mildura South Growth Area [Figure ~~1~~Map 2]; and
- The lot is ~~not~~ ~~un~~encumbered by a Section 173 Agreement ensuring no further dwellings will be constructed; and
- The lot must not be a lot created via a consolidation of lots which increases dwelling opportunity; ~~and~~
- ~~The dwelling location is within the Mildura East Growth Area or the Mildura South Growth Area [Figure 1] and all of the following requirements must be met:~~
 - ~~— The dwelling must not compromise the continuation of an existing horticultural use; and~~
 - ~~— The dwelling must not affect on-going agricultural use of adjoining land; and~~
 - ~~— The dwelling must not compromise the ability to achieve preferred urban design outcomes.~~

6.5 Permit requirements for ~~D~~wellings on lots between 10ha and 20ha.

In addition to the requirements of Section 6.2 of this Incorporated Document, a permit must not be granted to use land for a dwelling under section 2 of the Table of uses to Clause 35.07-1, unless ~~T~~he size of the lot is at least 10 hectares but less than 20 hectares and all of the following requirements are met:

- The lot is ~~not~~ ~~un~~encumbered by a Section 173 Agreement ensuring no further dwellings will be constructed; and
- If the lot was created via a consolidation of lots, all of the following requirements ~~are~~ must be met:
 - The original lots were ~~not~~ ~~un~~encumbered by a Section 173 Agreement ensuring no further dwellings will be constructed; and
 - ~~— The original lots were adjoining; and~~
 - An agreement under Section 173 of the Act must be entered into with the owner of the lot created which ensures that the land may not be further subdivided (other than for a re-subdivision which is in accordance with the provisions of this incorporated document). ~~Any variation to this agreement, requires approval from both the responsible authority and the Minister for Planning.~~

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

6.6 Permit requirements for ~~R~~eplacement ~~D~~wellings on any lot.

Notwithstanding the requirements of Sections 6.2, 6.3, 6.4 and 6.5 of this Incorporated Document, a permit may be granted to use land for a dwelling under section 2 of the Table of uses to Clause 35.07-1, if ~~T~~he dwelling is a replacement dwelling and all of the following requirements are met:

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

7.0 Site Specific Provisions

Notwithstanding the requirements of Section 6.2, 6.3, 6.4 and 6.5 of this Incorporated Document, a permit may be granted to use land for a dwelling under section 2 of the Table of uses to Clause 35.07-1, if ~~T~~he land is identified in the following Table 1; (Site Specific Provisions) ~~of this Incorporated Document.~~

Table 1: Site Specific Provisions

Address of Land	Site Specific Provisions Applying to the Land
Lot 2 PS 63286	The responsible authority may grant a permit for the use of land for the purpose of a dwelling
Lot 2 PS444390	
CA 652B 652C Sec B	
Lot 2 PS 408734E Sec 49 Blk E	
Lot 2 PS 208742L Sec 55 Blk F	
Lot 1 TP 675016E Sec 22 Blk F	
Lot 1 TP 849989T Sec 48 Blk E	
Lot 1 TP 674839M Sec 22 Blk F	
Lot 2 TP 674810N Sec 130 Blk F	
CA 383A Sec B Parish of Mildura	

Lot 1 and 2 TP 675099W Sec 97 Blk F	
Lot 2 PS 48497 Sec A	
Lot 3 PS 147497J Sec 9 Blk F	
Lot 2 PS 306580Y Sec G Parish of Merbein	
Lot 2 PS 313839S Sec 9 Blk F	
Lot 2 PS 437898H Sec B	
Lot 1 TP 673647C	
Lot 2 PS 324033D Sec F Parish of Merbein	
Lot 2 PS 416458G Sec B	
Lot 2 PS 602011Q Sec 139 Blk F	
Lot 2 PS 111114 Sec B	
CA135 Sec B	
Lot 2 PS 529821J Sec 115 Blk F	
Lot 2 PS 440734W Sec B	
Lot 2 PS609046G	
Lot 1 TP802102J Section 73 Block E	
Lot 2 PS347069B	
Lot 1, PS219003M	
Lot 2, PS500956V	
Lot 1, PS316479F	
CA 9B, Sec B, Barnetts Road, Red Cliffs	
Lot 2 TP 848589R Sec 11 Blk F	

8.0 Decision guidelines

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

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

Map 1:
Boundary of the Mildura Older Irrigation Area

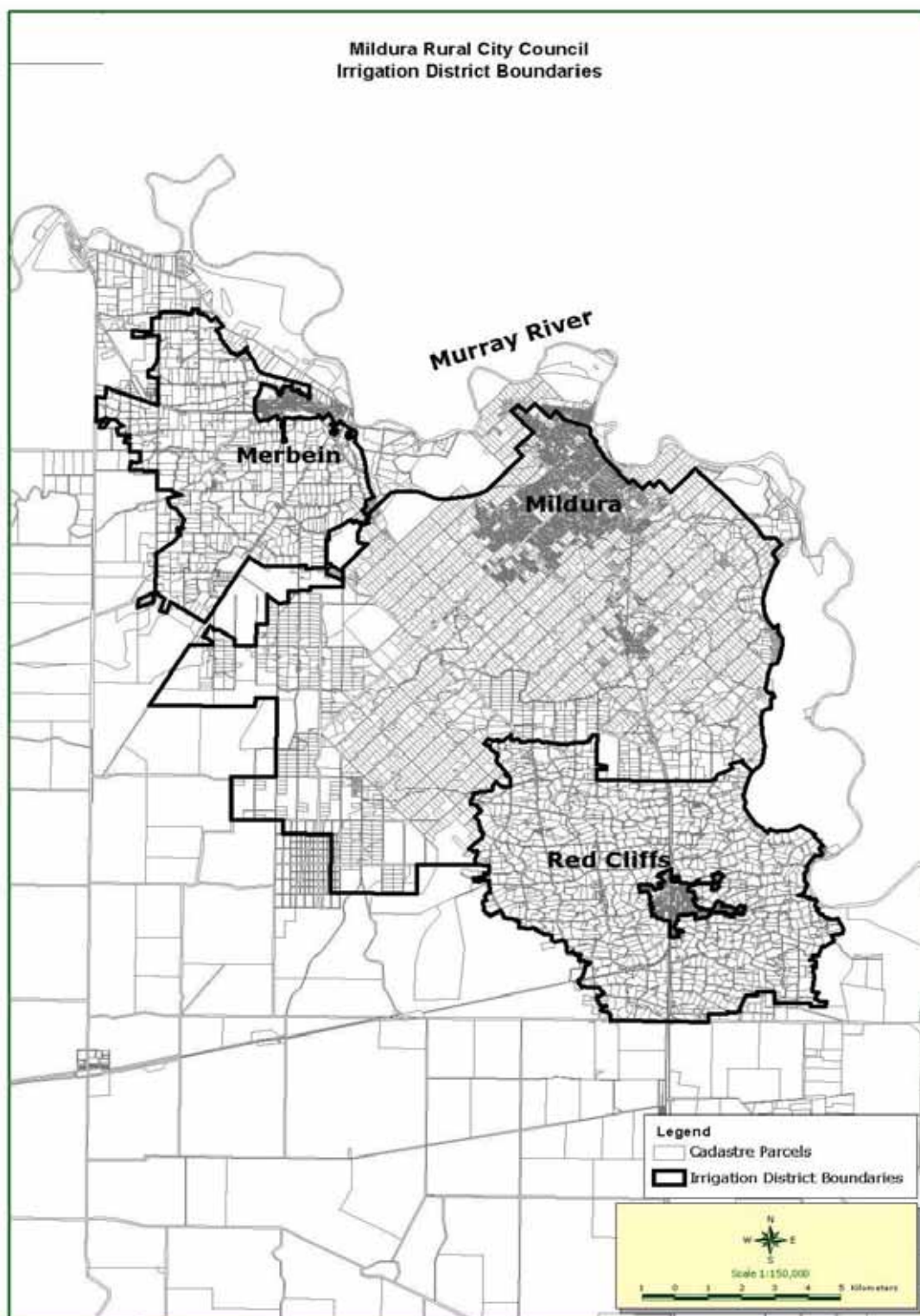


Figure 4 Map 2:

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



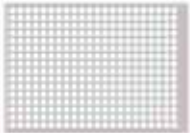
Mildura South Growth Area



Mildura East Growth Area



Mildura South By-Pass Corridor



X



Mildura East Growth Area

Mildura South By-Pass Corridor

Mildura South Growth Area

Map: Boundary of the Mildura Older Irrigation Area

X

