

Mr Mark Jenkins
Manager, Community Futures
Mildura Rural City Council
PO Box 105
Mildura Vic 3502

Dear Mr Jenkins

Re: [REDACTED] Newton Avenue, Irymple: Request for Planning Scheme Amendment - Farming Zone to Rural Conservation Zone

The amendment proposed rezones the subject land from Farming Zone (FZ) to Rural Conservation Zone (RCZ). The amendment is made at the request of the landowners, being Alec and Wendy McCracken.

The land has an area of 5.939 hectares, of which 5.206 hectares is native vegetation and 0.733 hectares is cleared land. The southern boundary abuts Twenty Second Street and the eastern boundary abuts Newton Avenue, both of which are sealed rural roads.

The amendment has been considered previously in discussions with council and the Department of Environment, Land, Water and Planning (DELWP). It has also been considered formally:

- The panel report from Mildura Planning Scheme **Amendment C89** (18 September 2015) recommended that, although the rezoning was supported by council, further work was required to review the conservation values of the land. Further work was completed in March 2016, being a consultant report describing the native vegetation values of the site (Ecosystems Consulting 2016 *Native vegetation assessment – Newton Ave – Twenty Second St*. Report dated March 2016).
- A request for a planning scheme amendment was received by council on 23 November 2018 with further information provided 9 January 2020. Council supported the request and Mildura Planning Scheme **Amendment C105** proposed to rezone the subject land from Farming Zone to Rural Conservation Zone – Schedule 4, introduce a new schedule to the Rural Conservation Zone, and amend Clause 21.05-2 Flora and Fauna to include reference to Ecosystems Consulting (2016).
- Council's application for authorisation to prepare **Amendment C105** was rejected by DELWP on 16 June 2020. The department's response recommended overlays be considered to protect remnant vegetation, and raised concerns that the proposed rezoning would allow a planning permit application to be made for a dwelling on the land which would potentially compromise the environment values of the land.

This new request for a planning scheme amendment builds on the previously proposed Mildura Planning Scheme Amendment C105 mild *Explanatory Report*. It also addresses the concerns raised by DELWP in their letter dated 16 June 2020 and during discussions with Robert Rorke, Manager Loddon Mallee Planning Services (DELWP) on 21 June 2021:

Why is the rezoning necessary to protect native vegetation?

Rezoning is the most appropriate mechanism to set expectations about what use and development can occur on the land. The RCZ clearly indicates that future uses of the land must protect and enhance the high biodiversity values of the land. Whereas the current FZ is strongly focused on protecting and promoting farming and agriculture on the land, which is incompatible with the high native vegetation values.

Key features of the RCZ include:

- a purpose 'to protect and enhance natural resources and the biodiversity of the area'
- a permit is required for most agricultural activities
- prohibits uses such as intensive animal husbandry, industry (other than Rural industry) and warehouses (other than Freezing and cool storage and Rural store)
- decision guidelines require consideration of whether a use or development protects and enhances the environmental, agricultural and landscape qualities of the site and its surrounds.

From: *Planning for biodiversity protection and conservation* DELWP 2017

The current zoning of FZ allows access to exemptions under Clause 52.17 which allow the removal of native vegetation without a permit:

- "New buildings and works in the Farming Zone" – allows the removal of 1 hectare of native vegetation without trees, plus 15 trees <40cm diameter and 5 trees >40cm diameter for development associated with agricultural production.
- "Existing buildings and works in the Farming Zone" allows for removal of native vegetation up to 10m from works associated with agricultural production.

Rezoning to RCZ would remove access to these exemptions thus providing a higher level of protection for the native vegetation.

Rezoning to RCZ would also allow a planning permit application to be made for a dwelling on the land which is a key component of the current and future protection of this site.

Can overlays be used to achieve the protection of native vegetation, without rezoning?

An overlay will not achieve adequate protection for the native vegetation on this property:

Overlays cannot change the intent of a zone so their application must be carefully balanced to not disrupt any intention to continue to support the uses contemplated in the zoning. Applying, for example, a Vegetation Protection Overlay to the subject land would effectively preclude the use of the land for many farming activities.

Overlays can themselves require a planning permit for removal of native vegetation. However, if the removal is exempt under Clause 52.17 then DELWP (2017) *Guidelines for the removal, destruction or lopping of native vegetation* do not apply. There is currently no mechanism to compensate for the permitted removal of native vegetation (offsets are not required) when the only permit trigger is an overlay. This does not meet the three-step approach outline in VPP 12.01-2S *Native vegetation management* of "Avoid, Minimise, Offset".

Applying an overlay whilst maintaining the current zoning of FZ will not allow a planning permit application be made for a dwelling which is a key component of the current and future protection of this site.

Why is a dwelling necessary to protect native vegetation?

The current zoning of Farming Zone prohibits the making of a planning permit application for a dwelling on the land by the provisions of the *Mildura Older irrigation Area Incorporated Document, August 2016*. Rezoning to RCZ would allow a planning permit application to be made for a dwelling on the land which is a key component of the current and future protection of this property.

The conservation values of the land are very high, and it is the intent of the landowners that these values be protected in the long-term. Research has demonstrated that long-term protection and intergenerational stewardship of high conservation-value private land is more likely to be achieved when the property has the potential for construction of a dwelling¹.

On-title protection via a conservation covenant is currently being contemplated by the landowners to achieve the highest level of protection for the native vegetation on this property. Trust for Nature staff have recently inspected the property and in May 2021 confirmed it was eligible for permanent protection with a Deed of Covenant for the Conservation of Land under the *Victorian Conservation Trust Act 1972*. However, the associated Management Plan highlights a series of management actions which will be difficult to achieve without ongoing and on-site presence of custodians to care for the land.

The Trust for Nature inspection recognised the multi-decadal care of the land already undertaken by the landowners, Alec and Wendy McCracken, whilst they have been resident on an adjoining parcel of land. Trust for Nature anticipated the continuation of on-site stewardship in the proposed Deed, by including as part of the Covenant a 0.733-hectare Domestic Area to be used for a dwelling. There is no native vegetation in the Domestic Area therefore a dwelling can be constructed without any need to remove native vegetation.

The proposed rezoning would allow a planning permit application to be made for a dwelling on the land. This would facilitate the continuation of the current high level of care and protection for the biodiversity values on the property:

- Allows ongoing planting and watering of revegetation daily.
- Allows regular maintenance and harvesting of seed from the native Pine (*Callitris gracilis*) Seed Production Area, as well as close (daily) monitoring of seed as it ripens.
- Allows use of cage traps to remove feral cats and foxes. The *Prevention of Cruelty to Animals Act 1986* requires a minimum inspection frequency for set traps of no less than every 24 hours.
- Allows management of incursions by high threat weeds *Gazania*, *Wiry Noon-flower* and *Buffel Grass* which are currently absent from the site but if left unchecked would spread rapidly.
- Is a disincentive to prevent rubbish dumping and unauthorised access.

¹ Hardy, M. J., Fitzsimons, J.A., Bekessy, S. A. Gordon, A. (2018) *Factors influencing property selection for conservation revolving funds*. *Cons. Biol.* 32(2):276-286.



Figure 1 Aerial image of the subject land showing the area the Conservation area and the Domestic Area contemplated by Trust for Nature.

In conclusion, the amendment makes proper use of the Victorian Planning Provisions contributing to the fair, orderly, economic and sustainable use and development of the land and is supported through the Local Planning Policy Framework (LPPF) of the planning scheme. The LPPF seeks to ensure land of natural value which provides nodes and linkages of vegetation should be retained and the quality improved. The amendment will not negatively impact on the agricultural activity on the adjoining land.

Yours sincerely,

Alec McCracken

Enc.

- Explanatory Report
- Instruction Sheet
- Notice of preparation of an Amendment
- Ecosystems Consulting 2016 *Native vegetation assessment – Newton Ave – Twenty Second St.* report dated March 2016
- *Covenant Management Plan, [REDACTED] Newton Avenue, Irymple*, report dated 29 July 2020.