

**S7074**

## **REPORT**

### **RETROSPECTIVE APPLICATION FOR REPLACEMENT PONTOON ASSOCIATED WITH EXISTING WATER ENTITLEMENT & EXISTING WATER PUMP**

**120 BENARCA FOREST ROAD, MOAMA NSW 2731  
LOT 1 DP1154923 (Development Associated Parcel)  
LOT 113 DP39915 (Location of Works)**

## **BACKGROUND**

This application is for the retrospective approval of a pontoon and anchor points structure along the northern bank of the Murray River, associated with the existing water entitlement and water pump on the property of Lot 1 of DP1154923. The structure is located on Lot 113 of DP39915, which is Crown Land.

It is understood that this structure was constructed to replace the previous dilapidated water supply pontoon, and has been located on the subject land since 2013. As such, this application is seeking retrospective replacement approval, in order to continue to utilise water supply over the land for domestic purposes. The land was subdivided in the past for domestic purposes, as the land did not hold high productive capabilities.

The structure is fixed on high land above the river bank through the use of hinges, allowing it to rise and fall with the fluctuating river levels. From this, the ramp is joined to a floating pontoon within the river, which supports the water intake so that it does not get fouled with mud or other debris. The water pipe is attached to the walkway, ensuring interaction between the bank and the relevant components of the pump and pontoon are minimised. The relaying of pipes to the abutting property which the pump serves is not required.

As evident from a site visit, the bank along this strip of the river is very steep; stairs would not be a feasible approach, as this would require suitably angled access to either be cut deep into the bank to avoid riparian obstruction, or extend far into the river. Furthermore, requesting the landowner to access the pump via boat is also not feasible as the closest boat ramps are 5-10km away via car, with this distance doubled with navigating the meandering river. As the pump is a significant component of the domestic water source to the property, this is not an appropriate approach.

This application is not a mooring. The structure is similar in design and size to other pontoons which were constructed around the same time.

### **Bushfire Planning**

Both the subject Crown Land parcel, and privately owned land are subject to bushfire prone categories: Vegetation 1 and Vegetation Buffer. As the structure is a non-habitable existing pontoon, bushfire aspects are not relevant to assess further. It is noted that the pump and water entitlement associated with the pontoon are critical components in the

event of a bushfire over the land.

### **Flood Planning**

The subject pontoon is a floating, non-habitable structure. The pontoon is hinged to the high bank, and constructed to rise and fall with rising flood water.

Engineering designs will be sought upon Approval of the structure, as Council have done for many previous applications.

Flood Planning has been addressed further within DCP Section 11 of this report.

## **MURRAY REGIONAL ENVIRONMENTAL PLAN NO 2- RIVERINE LAND**

### **3 Objectives of the plan**

*The objectives of this plan are:*

- a) to ensure that appropriate consideration is given to development with the potential to adversely affect the riverine environment of the River Murray, and*
- b) to establish a consistent and co-ordinated approach to environmental planning and assessment along the River Murray, and*
- c) to conserve and promote the better management of the natural and cultural heritage values of the riverine environment of the River Murray.*

Appropriate consideration has been given to the development to ensure it does not adversely affect the riverine environment of the Murray River. The implementation of the proposed development will ensure a coordinated approach to environmental planning and assessment, in order to effectively manage this critical ecosystem.

## **MURRAY REGIONAL ENVIRONMENTAL PLAN NO 2– RIVERINE LAND**

*When this part applies, the following must be taken into account –*

### **Access**

- The waterway and much of the foreshore of the River Murray is a public resource. Alienation or obstruction of this resource by or for private purposes should not be supported.*
- Development along the main channel of the River Murray should be for public purposes. Moorings in the main channel should be for the purposes of short stay occupation only.*
- Human and stock access to the River Murray should be managed to minimise the adverse impacts of uncontrolled access on the stability of the bank and vegetation growth.*

A Variation of Development Standards has been completed regarding point 1 of this Clause. See supporting report for further information. Clause.

The subject application is seeking ‘retrospective’ planning approval to use the land for an existing water supply pontoon. Although the structure is used for private purposes – as it has done so for a number of years - the land surrounding the structure is still able to be utilised by the public as required.

Existing for over 8 years, the structure is not known to demonstrate conflict with any of the above points, and reduces direct interaction with the Murray River through the use of the floating pontoon. The structure is deemed to pose no impacts

This application is not a mooring.

### **Bank Disturbance**

- *Disturbance to the shape of the bank and riparian vegetation should be kept to a minimum in any development of riverfront land.*

No works are required; therefore, there will be no disturbance of the bank, and no impact on vegetation.

Works undertaken previously required minimal disturbance to the shape of the bank and riparian vegetation.

### **Land degradation**

- *Development should seek to avoid land degradation processes such as erosion, native vegetation decline, pollution of ground or surface water, groundwater accession, salination and soil acidity, and adverse effects on the quality of terrestrial and aquatic habitats.*

As stated above, the structure is existing and no works are required. Degradation will not result from the approval of the existing structure. This application is considered compliant with this principle.

### **Landscape**

- *Measures should be taken to protect and enhance the riverine landscape by maintaining native vegetation along the riverbank and adjacent land, rehabilitating degraded sites and stabilising and revegetating riverbanks with appropriate species.*

The subject structure is existing and does not require vegetation removal. The structure does not interact with any vegetation; therefore, this application is considered compliant with this principle.

### **River related uses**

- *Only development which has a demonstrated, essential relationship with the river Murray should be located in or on land adjacent to the River Murray. Other development should be set well back from the bank of the River Murray.*
- *Development which would intensify the use of riverside land should provide public access to the foreshore.*

A pontoon is a permitted use within the W2 Recreation Waterways Zone; therefore, this indicates this use is allowable and holds an essential relationship with the river.

The built structure will not intensify the use of riverside land along this area, as this area is separated from built up areas, and is utilised to service privately owned developments beyond the Crown Land. General public access to the foreshore will not be limited, as this land is public land and will not be fenced off or restricted.

This application is therefore considered compliant with this principle.

### **Water quality**

- *All decisions affecting the use or management of riverine land should seek to reduce pollution caused by salts and nutrients entering the River Murray and otherwise improve the quality of water in the River Murray.*

Water quality will not be affected by approval of the use of the existing structure. Through elevation of the existing pump, the pontoon reduces the likelihood of silt disposition within the river, reducing the potential of impacts to aquatic processes and environments, and downstream communities.

This application is therefore considered compliant with this principle.

## **ASSESSMENT AGAINST 'MURAY LOCAL ENVIRONMENTAL PLAN 2011 – PART 7 ADDITIONAL LOCAL PROVISIONS'**

### ***Clause 7.4 Development on River Front Areas***

*(1) The objectives of this clause are as follows:*

*(a) to support natural riverine processes, including the migration of the Murray and Wakool Rivers' channels,*

The existing pontoon structure does not impede the migration of the Murray River. The pontoon is above water and floats on the surface allowing water, fauna and debris free passage underneath.

*(b) to protect and improve the bed and bank stability of those rivers,*

'Installation' of the structure and use of it by the water supply pipe has no effect on the river bed or bank. By using the pontoon and walkway to support the pipe no part of the system interacts with the ground; therefore, protecting the stability of the bed and bank.

*(c) to maintain and improve the water quality of those rivers,*

N/A. The pontoon and walkway have no impact on water quality, which is maintained.

*(d) to protect the amenity, scenic landscape values and cultural heritage of those rivers and to protect public access to their riverine corridors,*

Colouring and style of the structure are not obtrusive to the amenity, scenic landscape values or cultural heritage of the river. These structures are common within the riverine landscape, and are often designed and constructed of steel. The utilisation of fake grass provides a natural environmental blend to the structure, whilst providing safety with access.

Public access is not hindered to the riverine corridor by the pontoon. It is noted that the Crown Land subject to the development is land locked amongst private land, no access is available in its current form.

*(e) to conserve and protect the riverine corridors of those rivers, including wildlife habitat.*

No vegetation removal was required for this application. Minor excavation was undertaken; however, this was minimal and did not impact the high or riparian banks, or impact wildlife habitats.

As the pontoon floats on the surface of the river and is elevated above the riparian bank, aquatic and terrestrial wildlife habitats are undisturbed and protected.

(2) *Despite any other provision of this Plan, development consent may only be granted to development on land in a river front area for the following purposes:*

- (a) *boat building and repair facilities, boat launching ramps, boat sheds, charter and tourism boating facilities or marinas,*
- (b) *the extension or alteration of an existing building that is wholly or partly in the river front area, but only if the extension or alteration is to be located no closer to the river bank than the existing building,*
- (c) *environmental protection works,*
- (d) *extensive agriculture and intensive plant agriculture,*
- (e) *environmental facilities and recreation areas,*
- (f) *water recreation structures.*

The pontoon and walkway are associated with the existing water entitlement of the land which is provided via the pump and pipe from the Murray River associated with the long-established water rights.

Despite this Clause, this is seeking a replacement of the structure,

The land is used for both stock and domestic purposes, which consist of extensive grazing agriculture undertaken on the R1 Primary Production land. The application is categorized within (d) above.

(3) *Development consent must not be granted under subclause (2) unless the consent authority is satisfied of the following:*

- (a) *that the appearance of the development, from both the river concerned and the river front area, will be compatible with the surrounding area,*

Use of steel, natural stained timber, and fake grass for construction and aesthetic purposes ensure the development is safe, and blends with the natural landscape. The structures appearance is compatible with the surrounding area.

- (b) *that the development is not likely to cause environmental harm, including (but not limited to) the following:*

- (i) *pollution or siltation of the river concerned,*
- (ii) *any adverse effect on surrounding uses, riverine habitat, wetland areas or flora or fauna habitats,*
- (iii) *any adverse effect on drainage patterns,*

Not applicable. The pontoon floats on the surface of the river, the walkway does not interact with the river bank. No pollution or siltation of the river will be created by this structure as no works are required for its construction.

No adverse effect on surrounding uses, habitats, wetlands, flora or fauna habitats or drainage patterns will arise from the approval of the application.

- (c) *that the development is likely to cause only minimal visual disturbance to the existing landscape,*

Yes, colouring and style of the structure have been chosen to minimise visual disturbance to the existing landscape, with consideration of safety.

- (d) *that continuous public access, and opportunities to provide continuous public access, along the river front and to the river concerned are not likely to be compromised,*

The pontoon, walkway and hinged landing do not impede on public access or opportunities. The structure is not privately fenced beyond the title boundary of Lot 1 of DP1154923.

- (e) *that any historic, scientific, cultural, social archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land is to be maintained.*

Not applicable.

***Clause 7.5 Riparian land and Murray River and other watercourses—general principles***

- (1) *The objective of this clause is to protect and maintain the following:*
- (a) *water quality within the Murray and Wakool Rivers and other watercourses,*
  - (b) *the stability of the bed and banks of those rivers and other watercourses,*
  - (c) *aquatic riparian habitats,*
  - (d) *ecological processes within those rivers and other watercourses and riparian areas.*

As outlined within clause 7.4 (1) of this report, the existing structure will have no impact on the riparian land of the Murray River. The structure does not interact with this area, and does not impede on ecological processes within this section of the ecosystem.

With a floating pontoon, aquatic riparian habitats are also protected from disturbance due to the lack of interaction.

- (2) *This clause applies to land:*

- (a) *identified as “Riparian Land and Waterways” on the Watercourse Map, and*
- (b) *situated within 40 metres of the top of the bank of a watercourse (being a watercourse situated on land referred to in paragraph (a)).*

The pontoon location is identified as ‘Riparian Land and Waterways’ on Watercourse Map 003 of the Murray LEP, and is located along the top of bank; therefore, the structure is within 40 metres of the watercourse.

- (3) *Before determining a development application to carry out development on land to which this clause applies, the consent authority must consider whether or not the development:*

(a) *is likely to cause any adverse impact on the following:*

(i) *the water quality and flows within a watercourse,*

Not applicable. Water quality and flows will be unaltered as a result of this application.

(ii) *aquatic and riparian species, habitats and ecosystems,*

Not applicable. The structure is existing and has resided on this land for over 5 years. No impacts have arisen, indicating the structure has posed negligible negative impacts. Terrestrial and aquatic biodiversity is flourishing within the immediate area.

(iii) *the stability of the bed, shore and banks of a watercourse,*

Not applicable. The structure is existing. Removal of this structure is likely to pose significant impacts to the bank stability, which will in turn impact the bed and shore of the riparian land, compromising future safety of this area.

(iv) *the free passage of fish and other aquatic organisms within or along a watercourse,*

Not applicable. This will remain unaltered.

(v) *any future rehabilitation of a watercourse and riparian areas, and*

Not applicable. Future rehabilitation will not be negatively impacted.

(b) *will increase water extraction from a watercourse.*

The purpose of the pontoon structure is to assist with a water entitlement on the land. Water extraction is permitted per that entitlement.

- (4) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*

(a) *the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*

The existing pontoon and walkway have been designed to pose minimal impacts to the environment, both physically and visually. It is sited so that no disturbance to the environment or habitat occurs. It will be managed and maintained to avoid any significant adverse environmental impacts.

(b) *if that impact cannot be avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*

Not applicable.

- (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Not applicable.

***Clause 7.6 Additional provisions—development on river bed and banks of the Murray and Wakool Rivers***

- (1) *The objectives of this clause are as follows:*

- (a) *to manage and maintain the quality of water in the Murray and Wakool Rivers,*
- (b) *to protect the environmental values and scenic amenity and cultural heritage of those rivers,*
- (c) *to protect the stability of the bed and banks of those rivers,*
- (d) *to limit the impact of structures in or near those rivers on natural riverine processes and navigability of those rivers.*

As outlined previously in Clause 7.4 and 7.5 of this report, the subject structure will have no impact on the bed or bank of the river, and will have no impact on existing environmental values or ecological processes.

- (2) *This clause applies to land comprising the bed of the Murray or Wakool River and up to the top of the bank of that River.*

The pontoon structure is located on the high land at the top of bank, and extends over the bank from the top to the water level by a suspended walkway, which accesses the pontoon which floats on the surface of the Murray River. The bed and face of the river bank are unaffected by this pontoon.

- (3) *Development consent must not be granted to any development on land to which this clause applies unless the consent authority is satisfied of the following:*

- (a) *that the development is likely to contribute to achieving the objectives of the zone in which the land is located,*

As detailed in the zoning part of this report.

- (b) *that the development will not increase erosion,*

With no modification or works on the face of the river bank, erosion risk is minimised.

- (c) *that the development is not likely to cause an adverse effect on riverine habitat or flora or fauna habitats,*

Previously detailed.

- (d) *that the development will not cause an adverse effect on drainage or flow patterns.*

Not applicable.



(4) *Development consent must not be granted for the erection of a structure on land to which this clause applies unless the consent authority is satisfied of the following:*

(a) *that the proposed structure will not be located on an outside bend of the Murray or Wakool River,*

The location of the pontoon is considered to be on an outside bend; therefore, a variation of the development standards has been sought.

(b) *that the appearance of the proposed structure, from both that River and any adjacent land, will be compatible with the surrounding area,*

As detailed earlier, the structure is designed to complement the surrounding area with use of colouring and materials. It is similar in design and materials to existing structures, and as such is not considered to detract from the natural significance of the landscape.

(c) *that the development does not involve, and will not result in, the erection of more than one mooring per lot or per lots owned by the same owner or owners.*

No applicable. This application is not for a mooring. The pontoon is for irrigation purposes.

(5) *This clause is in addition to clause 7.5 and prevails to the extent of any inconsistency with that clause.*

## **ASSESSMENT AGAINST MURRAY LOCAL ENVIRONMENTAL PLAN 2011 – ZONE RU1 PRIMARY PRODUCTION**

### ***Objectives of zone***

- *“To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.”*
- *“To encourage diversity in primary industry enterprises and systems appropriate for the area.”*
- *“To minimise the fragmentation and alienation of resource lands.”*
- *“To minimise conflict between land uses within this zone and land uses within adjoining zones.”*

All objectives of this zone relate to primary industry production, fragmentation and alienation of resource land, and minimizing conflict between land uses within RU1 Zone and adjoining zones. These objectives are unaffected by this proposal for the replacement of a private pontoon structure in support of an existing water entitlement.

There is no conflict between RU1 and the adjoining zone of W2 Recreational Waterways with respect to pontoons as both zones permit water supply systems with consent.

### **3 Permitted with consent**

*Air transport facilities; Airstrips; Animal boarding or training establishments;*

*Aquaculture; Bed and breakfast accommodation; Boat building and repair facilities; Boat launching ramps; Boat sheds; Building identification signs; Business identification signs; Camping grounds; Cellar door premises; Cemeteries; Charter and tourism boating facilities; Community facilities; Correctional centres; Depots; Dwelling houses; Eco-tourist facilities; Environmental facilities; Extractive industries; Farm buildings; Farm stay accommodation; Flood mitigation works; Freight transport facilities; Heavy industries; Helipads; Home-based child care; Home businesses; Home industries; Home occupations (sex services); Information and education facilities; Intensive livestock agriculture; Jetties; Landscaping material supplies; Mooring pens; Moorings; Open cut mining; Plant nurseries; Recreation areas; Recreation facilities (major); Recreation facilities (outdoor); Roads; Roadside stalls; Rural industries; Rural workers' dwellings; Secondary dwellings; Storage premises; Turf farming; Veterinary hospitals; Water recreation structures; **Water supply systems.***

## **ASSESSMENT AGAINST 'MURRAY LOCAL ENVIRONMENTAL PLAN 2011 – W2 RECREATIONAL WATERWAYS'**

### ***1. Objectives of zone***

- *“To protect the ecological, scenic and recreation values of recreational waterways.”*
- *“To allow for water-based recreation and related uses.”*
- *“To provide for sustainable fishing industries and recreational fishing.”*

This planning application is seeking to permit an existing pontoon for the private water pump currently servicing the land of Lot 1 DP1154923 - 120 Benarca-Forest Road, Moama.

The pontoon is to be of steel structure hinged from the top of the bank of the Murray River with a floating landing within the waterway which rises and falls with water levels. The structure is decorated with fake grass for both safety when climbing the steep walkway, and aesthetically to blend with the natural environment.

Zone objectives will not be compromised as per this application.

- *“To protect the ecological, scenic and recreation values of recreational waterways.”*

The proposed private pontoon structure will have no impact on the ecology of the Murray River. The pontoon structure is made from non-corrosive/rust proof steel, and appropriate colour finishing.

The pontoon is to be floating on the water surface, it will rise and fall with the water levels; therefore, no anchoring to the river bed is required.

- *“To allow for water-based recreation and related uses.”*

The pontoon is not associated with water-based recreation or related uses. It will be used for private water entitlement via pump and pipe infrastructure.

- *“To provide for sustainable fishing industries and recreational fishing.”*

Occasionally recreational fishing may take place on the pontoon by the land owner or the public. This is uncontrolled.

Sustainable fishing industries are not affected by this pontoon.

Under Section 3 of Zone W2 Recreational Waterways, water supply systems are permitted with consent.

### **3 Permitted with consent**

*“Aquaculture; Boat building and repair facilities; Boat launching ramps; Boat sheds; Building identification signs; Business identification signs; Charter and tourism boating facilities; Environmental facilities; Environmental protection works; Floor mitigation work; Heliports; Information and education facilities; Jetties; Kiosks; Marinas; Mooring pens; Moorings; Recreation areas; Recreation facilities (outdoor); Roads; Water recreation structures; **Water supply systems**; Wharf or boating facilities”*

## **MURRAY DEVELOPMENT CONTROL PLAN**

### **10.3 PONTOONS & WALKWAYS**

#### **Objectives**

- *To restrict floating pontoons, walkways and jetties on Rivers in Murray Shire.*
- *To preserve the riverine environment from unsightly, artificial structures that have a detrimental effect on the ecological river system.*
- *To ensure river structures do not impact on river traffic safety.*

#### **Controls**

- *Pontoons, walkways and jetties for private recreational use are not permitted.*

The existing pontoon and walkway are not for recreational use. Its purpose is for water pipe control, safety, and maintenance in conjunction with the existing water entitlement for Lot 1 DP1154923.

- *Pontoons and walkways will be assessed on their merits where they are fundamental and ancillary to large scale tourist developments.*

The existing pontoon and walkway are for private use and not associated with large scale tourist development.

- *Pontoons and walkways may still be permissible within private waterways/marinas and to provide safe access to approved mooring sites.*

Location of the pontoon and walkway is external to private waterways or marinas, siting is along the New South Wales bank of the Murray River which is zoned W2 Recreational Waterway.

- *Pontoons and walkways for the placing of a water pumps will only be considered in exceptional circumstances where the pump is substantial and will service many properties.*

The pontoon and walkway are for private use with a water pump associated with Lot 1 DP1154923 being 12.85ha.

Pontoons south of the land contain existing pumping arrangements and private pontoons and walkways to cater for stock and domestic purposes, which is a similar arrangement to this property. A pontoon is evident 190m away, which provides 142 Benarca Forest Road with stock and domestic water. It is understood that these structures were constructed around the same time.

The subject land is large and removed from the ability to share the pontoon and walkways with neighbouring properties. The structure is needed as part of the water entitlement associated with the existing dwelling, and ensures mud and silt are not drawn through the pumping system. It is understood that a pontoon existed prior to this structure, and the replacement will serve the same water supply purposes.

- *Walkways and landings are to be hinged to the high bank of the waterway and floating so they can rise and fall with the water levels.*

The existing walkway and pontoon are hinged off the top of bank by an anchored landing, as can be seen on the enclosed plans submitted with this application. This hinging system allows for the structure to rise and fall with river water levels.

Furthermore, two tether point from the pontoon to existing anchoring points are located on either side of the structure, stabilising the pontoon within the river to minimise horizontal movement caused by river currents.

- *All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry of sediments into the adjacent waterway.*

Works are existing. Soil and vegetation disturbance would have been minimal as there is no evident erosion or damage to the river bank from the pontoon's installation. Use of the pontoon and walkway for pipeline access to the Murray River are not required, and will not cause additional erosion or the entry of sediments into the waterway.

- *Pontoons and walkways are to be fitted with reflective markers for the purposes of river navigation.*

Currently the pontoon and walkway have no reflective markers. These can easily be installed upon granting of a Development Approval.

Structural plans will be undertaken and submitted to Council upon approval of the Development Application. These will be submitted and form part of the Building Information Certificate application. This is the process Council has allowed for a number of retrospective applications in the past.

### **11.0 FLOOD PRONE LAND**

The subject Crown Land allotment is deemed flood prone in accordance with Murray LEP Mapping FLD\_003. Upon review to the Echuca-Moama-Torrumbarry Flood Study Modelling, the land is subject to flood depths of 1-2m in the event of a 1% AEP flood. This is expected due to the structure's proximity to the river. As the structure is not habitable and is hinged to the bank in a way which allows it to rise and fall with flood waters, the development is not anticipated to be significantly affected by flood impacts. Engineering designs and certification demonstrating flood water capabilities can be presented following the granting of Development Approval.

### **CONCLUDING COMMENTS**

The purpose of this application is to gain approval for the retrospective construction of a replacement pontoon.

Assessed against the Murray LEP 2011 and Murray DCP 2012, and Part 4 of the EP&A Act, it is concluded that the proposed subdivision is permitted with consent, and will pose negligible impacts to the Murray River, the town of Moama, or local environment, and therefore should be supported.

Being retrospective, a Building Information Certificate will be sought upon approval of a DA. This is the practice Council have undertaken in the past.