



Pontoon and Single Mooring

Murray River Bank (Victorian Side), Private
Mooring No. YJ018 East Moama

JUNE 2022

Submitted to Murray River Council
On behalf of Nicholas Burls

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1. Introduction

This Statement of Environmental Effects (SEE) has been prepared by Habitat Planning on behalf of Nick Burls and is submitted to Murray River Council in support of a Development Application (DA) for a pontoon and single mooring on the Murray River (Victorian side) at Private Mooring No. YJ018 East Moama.

The existing structure was constructed by a previous landowner of the land, with the current landowner now seeking to formalise the structure with appropriate planning approvals. No physical works are necessary to achieve this outcome.

The proponent has received consent from the NSW Department of Planning Industry and Environment as the owner of the adjacent Crown Land at Lot 269/-/DP1193769 (Application DOC22/014195) to lodge this development application. The structure also has a private mooring licence which is provided for reference.

As the proposal is a retrospective approval, a Building Information Certificate will also be obtained by the landowner upon approval of this Development Application. Detailed plans will be undertaken and submitted to Council upon approval of the Development Application if required to obtain the Building Information Certificate.

The DA and this report have been prepared in accordance with the Environmental Planning and Assessment Act 1979 ("EP&A Act") and the Environmental Planning and Assessment Regulation 2021 ("EP&A Regs").

This report addresses the relevant heads of consideration listed under Section 4.15(1) of the EP&A Act and provides an assessment of the proposed development against the relevant Environmental Planning Instruments (EPIs) and other planning controls applicable to the site and to the proposal. It also describes the site, its environs, the proposed development, and provides an assessment of the environmental impacts and identifies the steps to be taken to protect or lessen the potential impacts on the environment.

1.1. Supporting Plans and Documentation

This application is accompanied by:

- Title information
- Landowners consent of Crown Land
- Site Plans
- Plans and Specifications
- Engineering Certificate
- Biodiversity Offset Scheme Entry Threshold Report
- Desktop Due Diligence and AHIMS Searches

2. Site Analysis

2.1. Site Location and Context

The subject site is located below the top of bank level of the Murray River (Lot 269 in DP1193769) on the eastern bank of the Murray River. The subject site on the Victorian side is located at Private Mooring YJ018, Moama East.

Although located on the Victorian side of the Murray River, as the area of works is located below the top side of the bank and as such the land is located within New South Wales. The subject land is located approximately 3 kilometres east of the main commercial centres of Echuca (Victoria) and 5 kilometres south-east of Moama (NSW).



Figure 1 – Context Map (Sixmaps, May, 2022)

2.2. Site Description

The site is located at Private Mooring Number YJ018, Moama East, which is located adjacent to the Murray River on the Victorian side of the Murray River but below the top of the bank. The subject location for the proposed works is surrounded by a range of native vegetation that flanks the river bank and surrounding areas.

Due to the location, the area of works is not connected to any reticulated infrastructure or services including water, sewerage, stormwater drainage, electricity or gas. However, these services are not required for the ongoing operation of the pontoon.



Figure 2 - Aerial view (Nearmap, May 2022)



Figure 3 - Detailed aerial view (Nearmap, May 2022)

2.3. Surrounding Development

The surrounding area is characterised by residential lifestyle properties that back onto or adjoin the Murray River, as well as Murray riverine land consisting namely of river red gum reserves.

Land located north along the Murray River consists of other similar residential lifestyle properties comprising residential dwellings with associated outbuildings and structures. Of these, there are approximately 10 other examples of similar floating pontoons within a 500 metre stretch of river frontage to the north and south of the subject land.

Land to the south and west of the subject land has been developed for residential lifestyle purposes and contains tourist (caravan) park, residential dwellings and associated outbuildings. Land located further south along the Murray River contains a meat processing plant, and the Echuca East public boat ramp.

3. Description of Proposal

3.1. Overview

The proposal seeks retrospective approval for the development of a pontoon and single mooring structure with associated anchor points along the northern bank of the Murray River. It is understood that the pontoon was constructed in 2009 for a previous owner at Private Mooring Number YJ018, Moama East.

As the pontoon, walkway and mooring is already existing, no earthworks, vegetation removal or construction is proposed as part of this development application.

The pontoon structure itself comprises a galvanised steel frame with steel decking panels and deck. The pontoon also includes an associated steel framed bridge (gang plank).

The floating deck component is a rectangular structure with dimensions of 5 metres x 5.4 metres and a total area of approximately 25m². The associated bridge/gantry has a length of approximately 20 metres. It has an identical steel frame with matching deck akin to the pontoon. This bridge is connected to the floating deck via a fitted slotted and concrete footing at the bank via a hinge, accounting for the variation in water levels.

The structure is anchored to the bank in a location which is not subject to erosion impacts, despite being on the outside bend of the River.



Figure 4 – Existing images detailing the pontoon structure

4. Planning Assessment

Under Section 4.15(1) of the EP&A Act when considering an application for development, the consent authority must take into consideration the relevant environmental planning instruments. This section details and responds to the relevant planning framework applicable to the proposal.

4.1. Applicable Environmental Planning Policies, Instruments and Controls

- Environmental Protection and Biodiversity Conservation Act 1999
- Environmental Planning and Assessment Act 1979
- Biodiversity Conservation Act 2016
- National Parks and Wildlife Act 1974
- Fisheries Management Act 1994
- Water Management Act 2000
- Protection of the Environment Operations Act 1997
- State Environmental Planning Policy (including deemed SEPPs)
- Murray Local Environmental Plan 2011
- Murray Development Control Plan 2012
- Strategic Planning Policies

Compliance with the applicable legislation and policies is discussed below.

4.2. Environmental Protection and Biodiversity Conservation Act 1999

The *Environmental Protection and Biodiversity Conservation Act 1999* ("the EPBC Act") is the principal Commonwealth legislation relating to environmental protection. Specifically, it sets out a framework for identification, protection and management of significant flora, fauna, ecological communities and heritage places as specified within the EPBC Act. The EPBC Act stipulates that approval from the Commonwealth Environment Minister is required if a development is likely to have a significant impact on matters considered to be of National Environmental Significance (NES).

Any actions that will, or are likely to, have a significant impact on the matters of NES require referral and approval from the Australian Government Environment Minister.

The assessment of the proposal's impact on matters of national environmental significance and the environment of Commonwealth land found that there is unlikely to be a significant impact on relevant matters of national environmental significance, particularly given the already disturbed nature of the site. Accordingly, the proposal has not been referred to the Australian Government Department of Sustainability, Environment, Water, Population and Communities.

4.3. Environmental Planning and Assessment Act 1979

Section 4.15 of the EP&A Act 1979 sets out the statutory matters for consideration against which the proposed development is to be evaluated. The matters for consideration under Section 4.15 are as follows:

(1) *Matters for consideration—general*

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:
 - (i) any environmental planning instrument, and
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
 - (iii) any development control plan, and
 - (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
 - (v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates,
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.”

The matters for consideration identified in Section 4.15(1) of the EP&A Act 1979 are addressed in the following section. Subsections (b) to (e) of Section 4.15(1) of the EP&A Act 1979 are addressed in Section 5 of this Statement of Environmental Effects.

The proposal is not identified as “designated development”, pursuant to section 4.10 of the EP&A Act.

The proposal is however identified as “integrated development”, pursuant to section 4.46 of the EP&A Act as it requires a Controlled Activity Approval under the *Water Management Act 2000* as the works will occur within 40 metres of the Murray River.

4.4. Biodiversity Conservation Act 2016

The *Biodiversity Conservation Act 2016* (“the BC Act”) sets out a number of specific objects relating to the conservation of biological diversity and the promotion of ecologically sustainable development. Importantly, the Act establishes a scientific method for assessing the likely impacts on biodiversity values of proposed development and land use change, for calculating measures to offset those impacts and for assessing improvements in biodiversity value.

When assessing a development, it is important to consider whether a proposal exceeds the requirements of the Biodiversity Offset Scheme Threshold (BOSET).

There are three triggers to determine if a proposed development will exceed the BOSET and whether a Biodiversity Development Assessment Report (BDAR) is required. These include:

1. Determine whether the land is designated within the Biodiversity Values Map (DPE 2022) or an area identified as an ‘Area of Outstanding Biodiversity Value’ (AOBV);
2. Consider the amount of native vegetation proposed to be cleared (including native grasses and groundcover) in association with land zoning and specified minimum lot sizes; and
3. Determine if the proposed works are likely to have a significant impact on threatened species, communities and their habitat.

An assessment against each of these triggers is provided in the following sections.

Biodiversity Values Map

The subject land and pontoon are not identified on DPE’s Biodiversity Values Map as outlined in Figure 16.

It is also confirmed that the subject land is not identified as an 'Area of Outstanding Biodiversity' in accordance with Part 3 of the Biodiversity Conservation Act and Part 3 of the *Biodiversity Conservation Regulation 2017*.

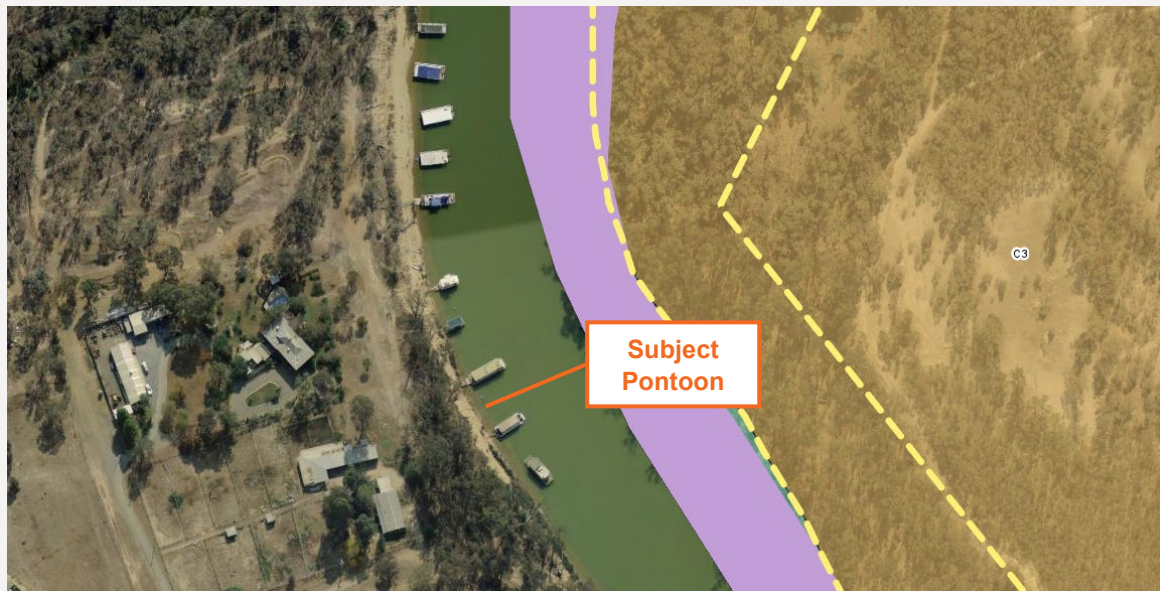


Figure 5 Extract of the Biodiversity Values Map identifying the subject land (outlined)(Source: NSW Dept Planning and Environment, 2022)

Native Vegetation Clearance Threshold

No works are proposed as part of this development application, and no vegetation is proposed to be removed.

Flora and Fauna Assessment

As the development is not identified on the Biodiversity Values Map and does not exceed the minimum area clearance thresholds outlined above, a 'Test of Significance' (flora and fauna assessment) is required to determine if the development is likely to significantly affect threatened species or ecological communities, or their habitats.

The proposal does not involve any tree removal and the groundcover has already been disturbed as a result of the ongoing use of that part of the river bank for a number of pontoons and moorings, and the publicly accessible nature of the site, on Crown land. Consequently, the continued use is of the pontoon is not expected to adversely affect any threatened species or ecological community (both aquatic and terrestrial).

A Biodiversity Values Map and Threshold Report has been prepared confirming the above and is included attached.

4.5. National Parks and Wildlife Act 1974

Sections 86, 87 and 90 of the *National Parks and Wildlife Act 1974* ("the NP&W Act") requires consent from the NSW Environment, Energy and Science Division of the NSW Department of Planning, Industry and Environment ("Environment Division") for the destruction or damage of indigenous objects. The subject land has been disturbed around the impact area. Much of the land comprises disturbed land resulting from earthworks associated with the construction of the unapproved pontoon and similar nearby structures. The site is therefore not expected to contain any items of Aboriginal cultural significance.

In addition, a search was conducted of the Aboriginal Heritage Information Management System (AHIMS) applying a 1 kilometre radius. A copy of this AHIMS Search is shown below. Notwithstanding the above, if any unexpected archaeological items or artefacts of Indigenous heritage significance are discovered during the use of the site, appropriate advice will be sought from DPE.

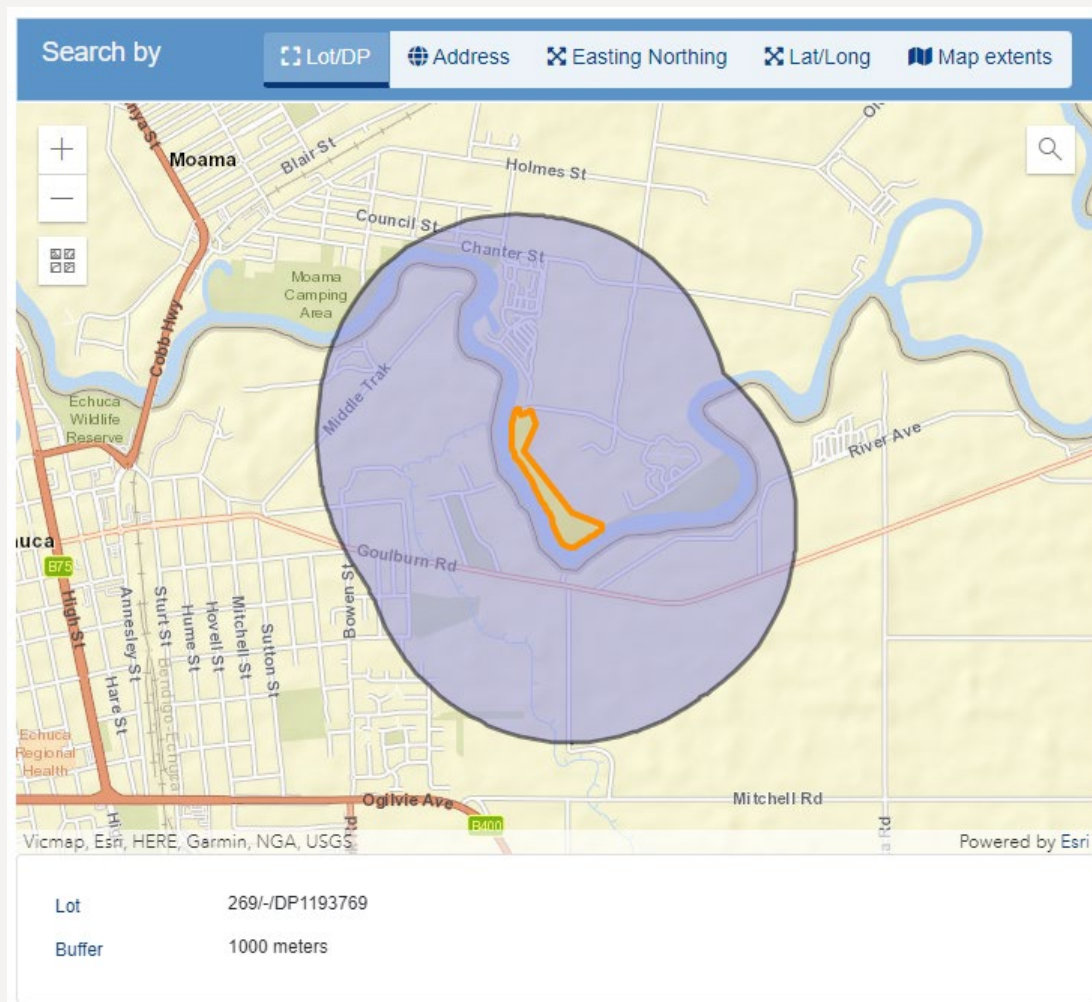


Figure 6 - Extract from AHIMS search (1km buffer)

4.6. Fisheries Management Act 1994

The *Fisheries Management Act 1994* ("the FM Act") provides for the protection, conservation, and recovery of threatened species, populations and ecological communities of fish and marine vegetation and fish habitats, as well as promoting the development and sharing of fishery resources in NSW.

The Murray River is identified by NSW Department of Primary Industries mapping as a key fish habitat and the proposal will involve disturbance of the bank and surrounds of the Murray River. However, the subject site is not within a marine park or aquatic reserve.

The works included in this application are already existing and seek retrospective approval. The works are limited to the land up the bank away from the river and the land is not considered 'water land' as defined by the FM Act. There are therefore no works identified that constitute dredging or reclamation and a permit under the FM Act is not required.



Figure 7 - Extract of Key Fish Habitat Map (NSW Fisheries, May 2022)

4.7. Water Management Act 2000

The main objective of the *Water Management Act 2000* ("the WM Act") is to manage water in NSW in a sustainable and integrated manner that will benefit today's generations without compromising future generations' ability to meet their needs.

As the works are located within 40 metres of the river, the proposal is classified as 'integrated development' and requires the issuing of a Controlled Activity Approval from the Natural Resource Access Regulator (NRAR).

As outlined above, the development seeks to formalise existing works that have been undertaken on-site and seek to achieve environmental protection purposes. This will avoid ongoing erosion and sediment concerns.

4.8. Protection of the Environment Operations Act 1997

The *Protection of the Environment Operations Act 1997* ("the POEO Act") is the key environmental protection and pollution statute. The POEO Act is administered by the EPA and establishes a licensing regime for waste, air, water and pollution. Relevant sections of the Act are listed below:

- Part 5.3 Water pollution
- Part 5.4 Air pollution
- Part 5.5 Noise pollution
- Part 5.6 Land pollution and waste.

Any work potentially resulting in pollution must comply with the POEO Act. Relevant licences must be obtained if required. No licences have been identified as being required including an Environment Protection Licence (EPL).

Similarly, the development will be maintained in a safe and serviceable condition at all times, so as to minimise environmental harm. Moreover, no wastes or waste facilities are proposed to be placed on the bank of the Murray River.

4.9. State Environmental Planning Policy (Resilience & Hazards) 2021

4.9.1. Chapter 4 – Remediation of Land

Chapter 4 of *State Environmental Planning Policy (Resilience & Hazards) 2021* sets out considerations relating to land contamination across the state. The intention of the SEPP is to establish 'best practice' guidelines for managing land contamination through the planning and development control process.

In the context of this application, clause 4.6 of Chapter 4 generally requires that consideration be given to whether or not land proposed for development is contaminated and fit for use for its intended purpose. The SEPP requires the consent authority to consider whether the subject land is contaminated when determining a development application. If the land is contaminated, the consent authority must be satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

In this instance, the subject land has been earlier developed for the purpose of a pontoon and walkway, and is not known to be contaminated, nor is it expected to be at risk of contamination given its historical use and surrounding context.

4.10. State Environmental Planning Policy (Transport & Infrastructure) 2021

4.10.1. Chapter 2 – Infrastructure

Chapter 2 of *State Environmental Planning Policy (Transport & Infrastructure) 2021* provides a provides a consistent and flexible planning system to facilitate the delivery of infrastructure and services. The policy identifies environmental assessment categories for types of infrastructure, matters to consider when assessing development adjacent to infrastructure and provides for consultation with relevant public authorities.

Chapter 2 contains provisions relating to approval processes and assessment requirements for infrastructure proposals according to the type or sector of infrastructure. It outlines land-use zones where types of infrastructure are permissible with or without consent and identifies certain works as exempt and complying development.

There are several Clauses under the SEPP that trigger referral and concurrence matters. These are addressed in the table below for consideration.

Table 1 - Matters for Consideration

Matter for consideration	Response
Clause 2.48 – Determination of development applications – other development	<p>This clause applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following—</p> <ul style="list-style-type: none"> (a) <i>the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,</i> (b) <i>development carried out—</i> <ul style="list-style-type: none"> (i) <i>within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or</i> (ii) <i>immediately adjacent to an electricity substation, or</i> (iii) <i>within 5m of an exposed overhead electricity power line,</i> (c) <i>installation of a swimming pool any part of which is—</i> <ul style="list-style-type: none"> (i) <i>within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level, or</i> (ii) <i>within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool,</i> (d) <i>development involving or requiring the placement of power lines underground, unless an agreement with respect to the placement underground of power lines is in force between the electricity supply authority and the council for the land concerned.</i> <p>Comment:</p> <p>Referral under Clause 2.48 will not be required to the relevant electricity supply authority as no construction or development is being carried out as part of this application.</p>

4.11. State Environmental Planning Policy (Biodiversity and Conservation) 2021

State Environmental Planning Policy (Biodiversity and Conservation) 2021 sets out a number of specific objects relating to the conservation of biological diversity and the promotion of ecologically sustainable development.

4.11.1. Chapter 4 – Koala Habitat Protection 2021

Chapter 4 of the SEPP aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline.

The provisions of this SEPP apply as the Murray River Local Government Area is listed within Schedule 2 as a relevant local government area. Clause 4.9 applies to the subject development as there is no approved koala plan of management for the land, and the land has an area of at least 1ha. Before a council may grant consent to a development application for consent to carry out development on the

land, the council must assess whether the development is likely to have any impact on koalas or koala habitat.

The proposed development complies with the requirements of the SEPP as it does not seek to remove any trees or vegetation.

4.11.2. Chapter 5 – River Murray Lands

The subject site falls within the area to which Chapter 5 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 applies. The aims of the SEPP are to conserve and enhance the riverine environment of the River Murray for the benefit of all users.

The objectives of the Chapter are:

- (a) *to ensure that appropriate consideration is given to development with the potential to adversely affect the riverine environment of the River Murray;*
- (b) *to establish a consistent and coordinated 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.*

The SEPP requires Council to take into account a number of general and specific principles when considering development proposals to which the plan applies. These controls generally relate to the protection of the River Murray.

Clause 5.8 & 5.9 requires Council to take into account a number of general and specific principles when considering development proposals to which the plan applies. These controls generally relate to the protection of the River Murray. These are addressed in Table 2 below.

The type of development proposed in this application is also included in the list of 'specific' developments for which Chapter 5 requires additional consultation. These matters are summarised and discussed in Table 3 below. It is noted that for the purposes of the application the SEPP best defines a water recreation structure (pontoon) as a 'single mooring' which has guided the assessment below.

Table 2 - Consideration of General Planning Principles in Chapter 5

General principles to be taken into account	Compatibility of proposal
(a) the aims, objectives and planning principles of this plan.	Satisfaction against the general objectives can be determined by the assessment against the specific principles below.
(b) any relevant River Management Plan (Note: that a River Management Plan is defined in the SEPP as any development control plan, plan of management, study, strategy, guideline or the like, which has undergone a public participation process, which is consistent with the aims, objectives and principles of this plan and which is endorsed by the MDBC.)	There are no relevant river management plans that apply to the subject land.

General principles to be taken into account	Compatibility of proposal
(c) any likely effect of the proposed plan or development on adjacent and downstream local government areas.	The proposal is not expected to have any adverse impacts on adjacent and downstream local government areas given the minor nature of the structure.
(d) the cumulative impact of the proposed development on the River Murray.	River structures in the Murray River are common in and around the Echuca/Moama area due to high levels of commercial and private vessel usage. Professionally designed, appropriately sited and competently constructed pontoons such as the one proposed, will have no cumulative impact.

Table 3 - Consideration of Specific Planning Principles in Chapter 5

Specific principles to be taken into account	Compatibility of proposal
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.	<p>The area of works is in public ownership (Crown).</p> <p>Whilst it is acknowledged that the development is seeking approval for a private mooring (pontoon), the land is already largely inaccessible by the public and the construction of the pontoon is consistent with a large number of other similar structures located along this section of the Murray River.</p>
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.	<p>As outlined above, the development seeks approval for a private mooring, which is inconsistent with this specific principle.</p> <p>A variation to a development standard is sought under clause 4.6 of the LEP.</p>
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.	The subject land does not currently contain any stock and none are proposed.
Bank disturbance	

Specific principles to be taken into account	Compatibility of proposal
Disturbance to the shape of the bank and riparian vegetation should be kept to a minimum in any development of riverfront land.	There will be no disturbance to the bank of the Murray River as the pontoon is existing.
Flooding	
<p>Where land is subject to inundation by floodwater:</p> <p>(a) the benefits to riverine ecosystems of periodic flooding,</p> <p>(b) the hazard risks involved in developing that land,</p> <p>(c) the redistributive effect of the proposed development on floodwater,</p> <p>(d) the availability of other suitable land in the locality not liable to flooding,</p> <p>(e) the availability of flood free access for essential facilities and services,</p> <p>(f) the pollution threat represented by any development in the event of a flood,</p> <p>(g) the cumulative effect of the proposed development on the behaviour of floodwater, and</p> <p>(h) the cost of providing emergency services and replacing infrastructure in the event of a flood.</p>	<p>The site is subject to inundation in a major flood event. The structure has been designed so as the walkway to the pontoon can be detached from its anchoring point. This enables the pontoon to either float with the rising water or be removed to higher ground.</p> <p>Being a floating structure, the pontoon won't be inundated in a flood and consequently won't have to be repaired or replaced following such an event.</p> <p>The fixed part of the structure on the top of the bank will be constructed so it is not susceptible to erosion if inundated.</p> <p>The structure will have no impact on flow or storage of floodwater, or on water quality. Access to the structure during a major flood is not necessary and will not present a threat to life or property.</p> <p>There are no alternative locations for the pontoon within the river frontage of the property that are flood free.</p>
Flood mitigation works constructed to protect new urban development should be designed and maintained to meet the technical specifications of the Department of Water Resources	Not applicable.
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.	The pontoon already exists and no further development will be undertaken.

Specific principles to be taken into account	Compatibility of proposal
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.	No trees are to be removed as part of the development and hence no revegetation works are required.
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	The pontoon has an essential relationship with the river because it is related to boating and recreational activities.
Development which would intensify the use of riverside land should provide public access to the foreshore.	The 'foreshore' below the top of the bank along the river frontage of the property does not offer any benefit to the public. There is no sandbank or other feature that the public might want to access.
Settlement	
New or expanding settlements (including rural-residential subdivision, tourism and recreational development) should be located: (a) on flood free land, (b) close to existing services and facilities, and (c) on land that does not compromise the potential of prime crop and pasture land to produce food or fibre.	Not applicable.
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.	The proposed land use will not cause 'salt and nutrients' to enter the river.

Specific principles to be taken into account	Compatibility of proposal
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Wetlands

<p>Wetlands are a natural resource which have ecological, recreational, economic, flood storage and nutrient and pollutant filtering values.</p> <p>Land use and management decisions affecting wetlands should:</p> <ul style="list-style-type: none"> (a) provide for a hydrological regime appropriate for the maintenance or restoration of the productive capacity of the wetland, (b) consider the potential impact of surrounding land uses and incorporate measures such as a vegetated buffer which mitigate against any adverse effects, (c) control human and animal access, and (d) conserve native plants and animals 	<p>The subject land is not defined as a wetland. As outlined above, the development seeks to a retrospective approval for a pontoon.</p>
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In addition to consideration of the above principles, there are specific requirements in Chapter 5 for referral of applications for “single moorings” to a number of government agencies for comment. See, below A “single mooring” is permissible with Council consent. The consultation required under 5.12 will be undertaken by Council following receipt of the application.

Table 4 - Clause 5.12 - Planning Control and Consultation Summary

Trigger	Definition	Planning Control	Consultation	Comment
Clause 5.12(25) – single mooring	A berth or apparatus located on or in the River Murray (but not in a grouped mooring area identified in a River Management Plan) which may be used for the purpose of storing only one vessel.	Council consent.	Transport for NSW Department of Planning and Environment (DPE).	Consultation with relevant agencies is required.

In summary, the development proposal is not considered to be inconsistent with the intent and application of Chapter 5 of the SEPP as it has been designed to a high standard and there will be no net detrimental impact on the river environment.

4.12. Murray Local Environmental Plan 2013

Murray Local Environmental Plan 2011 (“the LEP”) is the principal planning instrument that guides development within the LGA. The below provides an overview of consistency and compliance of the proposal against the relevant provisions.

The applicable provisions of the LEP are:

- Clause 2.3 – Zone objectives and Land Use Table
- Clause 2.4 – Unzoned Land
- Clause 4.6 – Exceptions to Development Standards
- Clause 5.10 – Heritage Conservation
- Clause 5.21 – Flood planning
- Clause 7.2 – Earthworks
- Clause 7.3 – Biodiversity Protection
- Clause 7.4 – Development on River Front Areas
- Clause 7.5 – Riparian land and Murray River and other Watercourses – General Principles
- Clause 7.6 – Additional provisions – Development on River Bed and Banks of the Murray and Wakool Rivers.
- Clause 7.7 – Wetlands

4.12.1. Clause 2.3 – Objectives and the Land Use Table

The subject land is located on the Victorian side of the Murray River but is still contained within NSW as it comprises land below the top of the river bank. A review of the applicable zoning map technically shows the subject land as being ‘unzoned’, as such Clause 2.4 of the LEP has been addressed. Zoning has been assumed and addressed accordingly below.

Despite this categorisation, consideration of the requirements of the adjoining W2 Recreational Waterways Zone ("W2 Zone") under the provisions of the *Murray Local Environmental Plan 2011* has been undertaken.

The objectives of the W2 zone are as follows:

- *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.*

The proposed development is consistent with the zone objectives as;

- It will not adversely impact the ecological, scenic and recreation values of the waterway,
- It will protect and improve the recreation values of the waterway as the pontoon will allow direct access to the river by the owner of the property and their guests for water-based recreation and recreational fishing, and
- The proposal represents a suitable land use within the riverine environment of the Murray River.

The proposal is regarded as not inconsistent with the objectives of the W2 zone because it is a small structure on top of the bank used for occasional access to the river (pontoon) and therefore environmental impacts are insignificant. The works have also been carried out previously, with no further impacts to be expected. The pontoon will provide for water-based recreation by only allowing direct access to the river by the owner of the property.



Figure 8 - Extract of Land Use Zoning Map

4.12.2. Clause 2.4 – Unzoned Land

As outlined within Section 4.8.1, the subject land represents unzoned land for the purposes of the LEP as it is located on the Victorian side of the Murray River and not identified within Council's LEP. Given that approval is required under NSW planning, consideration is given to the requirements of the adjoining W2 zone and the applicant is seeking development consent.

The proposed environmental protection works are compatible with the permissible land uses in the adjoining W2 zone.

4.12.3. Clause 4.6 – Exceptions to Development Standards

Clause 4.6 of the LEP relates to exceptions to development standards. The objectives of this clause are to provide an appropriate degree of flexibility in applying certain development standards to a particular development and to achieve better outcomes for and from development by allowing flexibility in certain circumstances.

As outlined in Section 3.1, the development involves the retrospective approval for a pontoon along the main channel of the Murray River. As the development is for private purposes and seeks approval of a structure on the outside bend of the River, approval is sought under the provisions of this control seeking a variation to a development standard.

Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. The subject development application specifically seeks to vary the following 'development standards' under the relevant environmental planning instruments.

- **Clause 5.9 (Access)** pursuant to *State Environmental Planning Policy (Biodiversity & Conservation) 2021*
- **Clause 6.7(4)(a)** pursuant to *Murray Local Environmental Plan 2011* which requires that the proposed structure will not be located on an outside bend of the Murray or Wakool River.

In order to satisfy the requirements of clause 4.6 of the LEP, a development must satisfy the requirements of subclauses (3) and (4) before council can grant development consent. An extract of these clauses is outlined below, emphasis added:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is **unreasonable or unnecessary** in the circumstances of the case, and*
 - (b) *that **there are sufficient environmental planning grounds** to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has **adequately addressed the matters required to be demonstrated by subclause (3), and***
 - (ii) *the proposed development **will be in the public interest** because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,*

The development satisfies the requirements of subclause (3) above as follows:

- Compliance with the development standard is considered 'unreasonable' and 'unnecessary' in this instance given the relatively small size of the proposed structure and the limited impact that it would have on the function and operation of the Murray River. The standards ability to be strictly imposed and assessed are also considered to be eroded by the fact that numerous other structures are already located along the same outside bend of the River and function as private pontoon facilities.

- The proposed construction will not have an adverse effect on the natural values of the Murray allowing water to continue to flow as the pontoon is hinged and designed to float with the rise and fall of the water level.
- The application does not propose any tree removal or earthworks to continue the use of, or facilitate, the proposed development.
- The location of the proposed structures will not hinder or alienate the Murray River and will still allow persons to access the bank of the Murray River if so desired.
- No practical off river mooring in the immediate area of the property is offered. The securing of the vessel will not result in permanent occupation of the vessel.
- There are approximately 10 other examples of other similar mooring points and pontoons located within an approximate 500m-stretch of river bank both north and south of the subject land on the outside bend (See Figure 8 below).

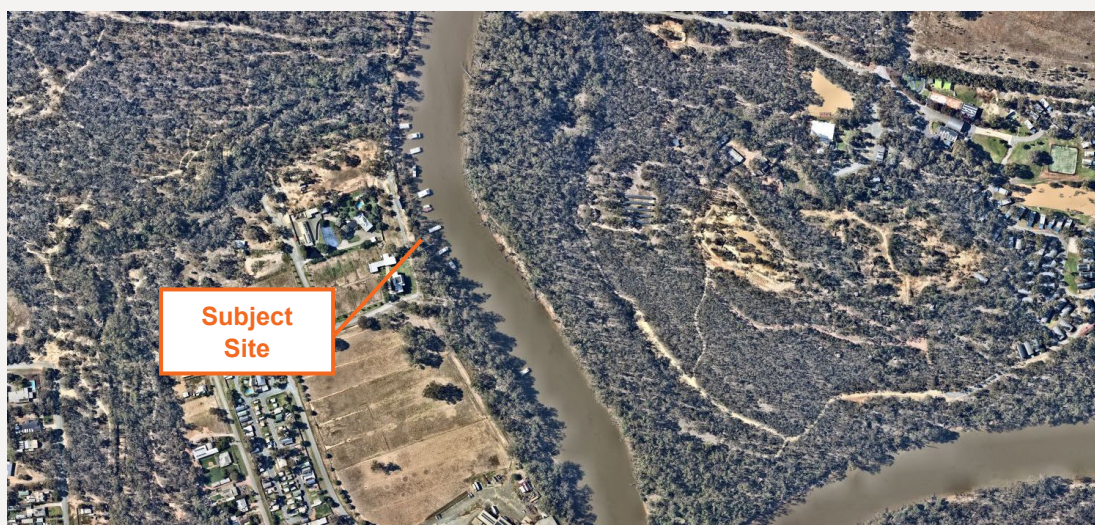


Figure 9 – Aerial view of subject site, adjacent moorings on same river bend (Nearmap, May 2022)

- The works will not create any environmental or social impacts and are consistent with the context and setting of the area.

Similarly, the development satisfies the requirements of subclause (4), as follows:

- This written response has adequately addressed the matters required to be addressed in clause 4.6(3);
- The development is in the public interest because it is consistent with the objectives of W2 zone (assumed zoning for the land) and a large number of similar structures that already exist within the area.

For these reasons, compliance with the development standard is considered unreasonable and unnecessary and the development is considered appropriate on environmental planning grounds.

4.12.4. Clause 5.10 – Heritage Conservation

Clause 5.10 of the LEP relates to heritage conservation and seeks to conserve the environmental heritage of the Murray River LGA, the heritage significance of heritage items and heritage conservation areas, archaeological sites and Aboriginal objects and places of heritage significance.

The subject land is not identified as a heritage item nor is it located within a heritage conservation area following a review of Schedule 5 and the Heritage Map of the LEP.

Similarly, matters regarding Aboriginal Cultural Heritage have also been investigated. A review of the Aboriginal Heritage Information Management System (AHIMS) database was undertaken and it is confirmed that there is a recorded item of Aboriginal cultural significance within 1 kilometre of the subject site, however none of these are contained within or adjacent to the development site.

The structure already exists and has been in place for some time. The outcome of this development is such that there will be no further works or disturbance to the bank as it seeks to endorse an existing structure.

Notwithstanding the above, if any unexpected archaeological items or artefacts of Indigenous heritage significance are discovered during construction works, all works will cease and appropriate advice will be sought from DPE

4.12.5. Clause 5.21 – Flood Planning

Clause 5.21 of the LEP refers to flood planning considerations and applies to land shown on the flood planning area map including the subject land as outlined below.



Figure 10 Extract of the Flood Planning Map identifying the subject land (outlined)

The subject land adjoins land that is classified as ‘flood prone’ and is subject to certain considerations outlined in this clause.

- (1) *The objectives of this clause are as follows—*
- (a) *to minimise the flood risk to life and property associated with the use of land,*
 - (b) *to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,*
 - (c) *to avoid adverse or cumulative impacts on flood behaviour and the environment,*
 - (d) *to enable the safe occupation and efficient evacuation of people in the event of a flood.*

It is considered that the proposed development meets the objectives of the clause as outlined below.

Under Clause 5.21 development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—

- (a) *is compatible with the flood function and behaviour on the land, and*
- (b) *will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) *will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) *incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) *will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

The works will not alter the existing function or behaviour of the river and will not create erosion or the removal or destruction of riparian vegetation. The works will not alter the existing function or behaviour of the river and will not create erosion or the removal or destruction of riparian vegetation.

Additionally, in deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—

- (a) *the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) *the intended design and scale of buildings resulting from the development,*
- (c) *whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) *the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

Within the context of the proposal, Council can be satisfied in this regard because as outlined above the works are non-habitable and are not expected to adversely affect flood behaviour. In addition, the structure is small scale in nature, designed to accommodate water movements and is appropriate for the riverine environment.

4.12.6. Clause 7.3 – Biodiversity Protection

Clause 7.3 of the LEP relates to terrestrial biodiversity and applies to land identified as “Key Fish Habitat” or “Terrestrial Biodiversity”, which applies in this instance.

Before determining a development application for development on land to which this clause applies, the consent authority must consider-

- (a) *whether the development is likely to have—*
 - (i) *any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
 - (ii) *any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
 - (iii) *any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
 - (iv) *any adverse impact on the habitat elements providing connectivity on the land, and*
- (b) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

In addition, Council must not grant development consent unless it is satisfied that:

- (a) *the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) *if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*

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

This is a retrospective proposal for an existing pontoon and walkway. Given its relatively small scale, any ongoing environmental impacts from the structure will be limited and its continued use will ameliorate impact to the surrounding environment. The pontoon has been professionally and suitably designed for the conditions, and regularly inspected.



Figure 11 - Extract from Biodiversity Map (NSW DPE, May 2022)

4.12.7. Clause 7.4 – Development on River Front Areas

Clause 7.4 of the LEP relates to river front areas and applies in this instance as the subject land is located within 100 metres of the Murray River. The objectives of this zone include supporting natural riverine processes, protection and improvement of the bed and bank stability, maintenance and improvement of water quality and protection of amenity, scenic, environmental and cultural heritage values of the river.

Subclause (2) states that despite any other provision of this Plan, development consent may only be granted to development on land in a river front area for (amongst other uses) '(f) water recreation structures'. The proposed development complies with this requirement and is not prohibited.

Before granting development consent, the consent authority must be 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,
- (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,
- (c) that the development is likely to cause only minimal visual disturbance to the existing landscape,
- (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,

- (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.*

There are no works proposed, as this is a retrospective application for a pontoon and walkway. The scale of the proposal is considered to be proportional to the site and the context of the whole of the river frontage of the property and the river environment in general. The pontoon and walkway structure will be visible from the river and the opposite bank. The pontoon has also been professionally and suitably designed for the conditions, and regularly inspected.

There are limited opportunities for general public access to the “river front area” the proposed works have been designed to ensure that the environment is not adversely affected as a result of the works. The development does not involve tree removal and there is no known heritage or archaeological items within or near the site of the proposed works.

4.12.8. Clause 7.5 – Riparian Land and Watercourses

Clause 7.5 of the LEP relates to biodiversity protection and seeks to maintain riparian biodiversity and applies to land identified as “Riparian Land and Waterways” and situated within 40 metres of the top of the bank of a watercourse, which applies in this instance.

Before determining a development application for 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,*
 - (ii) *aquatic and riparian species, habitats and ecosystems,*
 - (iii) *the stability of the bed, shore and banks of a watercourse,*
 - (iv) *the free passage of fish and other aquatic organisms within or along a watercourse,*
 - (v) *any future rehabilitation of a watercourse and riparian areas, and*
- (b) *will increase water extraction from a watercourse.*

In addition, Council must not grant development consent unless it is satisfied that:

- (a) *the development is designed, sited and will be managed to avoid any adverse environmental impact, or*
- (b) *if that impact cannot be avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*



Figure 12 - Extract of Riparian Lands and Watercourses Map (NSW DPE, May 2022)

This is a retrospective proposal for an existing pontoon and walkway with no works being necessary under this application. Further, given its relatively small scale, any ongoing environmental impacts from the structure will be limited with the structure having been professionally and suitably designed for the conditions.

4.12.9. Clause 7.6 – Additional provisions – Development on River Bed and Banks of the Murray and Wakool Rivers

Clause 6.7 of the LEP applies to land comprising the bed of the Murray River up to the top of the bank of the river and applies in this instance. The objectives of this zone seek to manage and maintain the quality of waters in the Murray River, protect the environmental and scenic amenity and cultural heritage of the river, protect the stability of the bed and banks of the river and limit the impact of structure on the riverine environment.

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,*
- (b) *that the development will not increase erosion,*
- (c) *that the development is not likely to cause an adverse effect on riverine habitat or flora or fauna habitats,*
- (d) *that the development will not cause an adverse effect on drainage or flow patterns.*

In addition, Council must not grant development consent unless it is satisfied of the following-

- (a) *that the proposed structure will not be located on an outside bend of the Murray River,*
- (b) *that the appearance of the proposed structure, from both that River and any adjacent land, will be compatible with the surrounding area,*
- (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.*

The proposed development complies with these requirements as it is consistent with the objectives of the W2 zone and has been specifically proposed to address ongoing concerns of bank instability and

erosion. Moreover, the development does not involve any tree removal or the removal of natural groundcovers and will not alter existing drainage patterns.

The subject structure will be consistent with approximately 10 other structures that already exist along a 500 metre stretch of the Murray River, approved for boat mooring.

4.12.10. Clause 7.7 – Wetlands

Clause 7.7 of the LEP relates to wetlands and applies to land identified as Wetlands and Freshwater Lakes on the Wetlands Map, which applies in this instance. The objective of this clause is to ensure that natural wetlands are preserved and protected from the impacts of development.

When assessing a development application, the consent authority must consider potential adverse impacts from the proposed development on—

- (a) *the growth and survival of native flora and fauna, and*
- (b) *the condition and significance of the native flora on the land and whether it should be substantially retained, and*
- (c) *the provision and quality of habitats for indigenous and migratory species, and*
- (d) *the surface and groundwater characteristics of the site, including water quality, natural water flows and salinity, and*
- (e) *any wetland in the vicinity of the proposed development, and any proposed measures to minimise or mitigate those impacts.*

In addition, Council must not grant development consent unless it is satisfied that-

- (a) *the development is sited, designed and managed to avoid potential adverse environmental impacts, or*
- (b) *where an impact cannot be avoided, and having taken into consideration feasible alternatives, the proposed design, construction and operational management of the development will mitigate and minimise those impacts to a satisfactory extent.*

As outlined above, the subject development does not propose to remove any existing native vegetation as the land has already been modified from earlier construction and use. This is a retrospective proposal for an existing pontoon and walkway. Given its relatively small scale, any ongoing environmental impacts from the structure will be limited. The pontoon has been professionally and suitably designed for the conditions, and regularly inspected (See Appendix XX)



Figure 13 - Extract from Wetlands Map (NSW DPE, May 2022)

4.13. Murray Development Control Plan

The Murray Shire Development Control Plan 2010 (“the DCP”) provides specific requirements for development within the LGA, including the subject site.

The following chapters of the DCP are applicable to the development application:

- Chapter 10 – Watercourses and Riparian Land
- Chapter 11 – Flood Prone Land
- Chapter 12 – Notification Policy

These matters are addressed in the following sections below.

4.13.1. Variations to Development Controls

In considering the requirements of the DCP, it is important to acknowledge the changed role of DCP’s since the *Environmental Planning and Assessment Amendment Act 2012*. The Amendment Act makes it clear that the principal purpose of a DCP is to provide guidance to a consent authority rather than statutory controls. If a development application does not comply with provisions in a DCP, the consent authority must be flexible in the way it applies the controls and allow for reasonable alternative solutions to achieve the objectives of those standards.

Planning Circular PS13-003 provides an overview as to what weight should be given to controls within a DCP when assessing development applications.

4.13.2. Chapter 10 – Watercourses and Riparian Land

Chapter 10 of the DCP applies to land mapped as riparian land and waterways on the Watercourses Map, as well as land within 40 metres of the top of the bank of the Murray River and applies in this instance. An assessment of the proposed development against the controls of this chapter have been addressed within the Planning Compliance Tables, attached to this report. In summary, the proposed works comply with the provisions of this chapter.

4.13.3. Chapter 11 – Flood Prone Land

Chapter 11 of the DCP applies to flood prone land and seeks to ensure that matters regarding flood planning are appropriately addressed at the development application stage. As outlined previously outlined within this report, the subject land is identified as being flood prone.

There are no specific development controls applicable to development on flood prone land, however Council must consider a number of decision guidelines before determining a development as follows.

Whether the proposed development is reasonable having regard for the flood risk and resources available to the location. Applicants should place no reliance on the implementation of a condition specifying a private evacuation/flood management plan as a means to overcome an unacceptable flood risk.

The need for a benefit/cost assessment that takes account of the full cost to the community of the flood response and flood damage likely to be incurred to the development and upon other development.

Specific principles relating to flood liable land contained within Murray Regional Environmental Plan No.2 - Riverine Land (MREP2) (now known as Chapter 5 of the Biodiversity and Conservation SEPP) including:

- *the benefits to riverine ecosystems of periodic flooding;*
- *the hazard risks involved in the development of that land;*

- *the redistribution effect of the proposed development on floodwater;*
 - *the availability of other suitable land in the locality not liable to flooding;*
 - *the availability of flood free access for essential facilities and services;*
 - *the pollution threat represented by any development in the event of a flood;*
 - *the cumulative effect of the proposed development on the behaviour of floodwater;*
 - *the cost of providing emergency services and replacing infrastructure in the event of a flood; and*
 - *flood mitigation works constructed to protect new urban development should be designed and maintained to meet the technical specifications of the NSW government department responsible for such works.*
- *The Floodplain Development Manual – the Management of Flood Liable Land (2005)*

Consideration of matters regarding flooding have already been previously addressed in response to Clause 5.21 of the LEP and are considered appropriate in this instance. Further consideration of flooding is also addressed in Section 5 of this report.

4.13.4. Chapter 12 – Notification Policy

Chapter 12 of the DCP applies to Council's notification policy and outlines the requirements for when development applications will be notified and the process. It is expected that the subject application will be notified to adjoining neighbours, as well as relevant government agencies.

5. Assessment of Environmental Impacts

This section of the SEE identifies potential impacts which may occur as a result of the proposed development and are relevant matters for the consideration of the DA under Section 4.15(1)(b) to (e) of the EP&A Act 1979.

These impacts and mitigating measures have been identified following comprehensive analysis of the site and the development plans. The analysis and impact identification were undertaken by:

- Site analysis and visual inspection of the subject land and surrounding properties.
- Analysis of the proposed plans for development.
- Desktop review of applicable Environmental Planning Instruments
- Consideration of the Councils Development Plans and Policies including the DCP
- Consultation with Council

5.1. Context and Setting

The subject land is located within an established riverine environment characterised by large residential lifestyle properties that adjoin the Murray River. The proposed pontoon and walkway are not considered to be out of context, but rather represent a structure and activity that is largely expected and consistent along the Murray River foreshore.

It is also noted that this application is a retrospective application for a pontoon and walkway and as such, no development or construction will be occurring. The impact of the development is already existing and there has been no adverse impact on the context as a result of its long standing existence.

The proposed structure is existing and no construction or further disturbance of the bank is proposed. No construction or disturbance works will result and there will be no requirements for 'make good' or rehabilitation works.

The proposed works will be consistent with the context and setting of the area as it will be similar in nature to other river front properties along the surrounding stretch of the Murray River.

5.2. Traffic, Access and Parking

The development will not generate any additional traffic movements on-site as it will provide for the private recreation needs of the landowner.

The frequency of use of this pontoon and mooring is expected to continue to be low and consequently the impacts of boat wash on the bank in the vicinity of the pontoon is not expected to exacerbate existing impacts. Vessels approach the pontoon at very low speed and consequently generate little wave motion.

Access from the pontoon to the river bank will also be managed via the installation of a gangplank/gantry that rises and falls with the river level. This limits bank disturbance and will provide safe access to water recreation vehicles.

5.3. Utilities and Infrastructure

The proposed development does not require the extension or augmentation of utilities or infrastructure as the structure is non-habitable and does not need to be serviced.

5.4. Heritage

The subject land and its surrounds are not identified on the heritage map or within Schedule 5 of the LEP as being of heritage significance. The property also does not adjoin any identified or registered heritage items.

5.5. Cultural Heritage

As outlined in response to the NPW Act and Clause 5.10 of the LEP, the subject land adjoins the Murray River and matters regarding Aboriginal Cultural Heritage have been previously considered. As outlined above, the subject land has been highly disturbed and is not expected to contain any items of Aboriginal cultural heritage significance in recognition of the previous works conducted on-site.

Similarly, search of AHIMS did not identify any registered Aboriginal sites on the subject land, or within a 1km buffer, see Figure 5..

It is considered appropriate to have regard to the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales* ("the Code") to ascertain the potential for items of Aboriginal cultural heritage being present. This assessment has been undertaken in Table 5 below.

Table 5 – Aboriginal archaeology due diligence assessment

Due diligence steps	Response
1. Will the activity disturb the ground surface or any culturally modified trees?	No, there will be no ground disturbance or construction as part of this development application.
2. Are there any: (a) relevant confirmed site records or other associated landscape feature information on AHIMS? and/or (b) any other sources of information of which a person is already aware? and/or (c) landscape features that are likely to indicate presence of Aboriginal objects?	There are no recorded archaeological sites on the AHIMS database or on the Heritage Map in the LEP within or near the subject land. The subject land is located adjacent to the Murray River, which is an identified and known landscape feature that may indicate previous occupation by traditional landowners. Notwithstanding, the area of proposed works has been previously disturbed and is not expected to contain any items of Aboriginal cultural significance.
3. Can harm to Aboriginal objects listed on AHIMS or identified by other sources of information and/or can the carrying out of the activity at the relevant landscape features be avoided?	As outlined above, the development site is not expected to contain any items of Aboriginal cultural significance that warrant avoiding.
4. Does a desktop assessment and visual inspection confirm that there are Aboriginal objects or that they are likely?	No, see above for further details.

5. Further investigation and impact assessment	Not required having regard for the response to Steps 2-4 above.
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Notwithstanding, if any unexpected archaeological items or artefacts of Indigenous heritage significance are discovered during construction works, all works will cease, and appropriate advice will be sought from NSW BCD.

5.6. Soils & Erosion

No construction or earthworks are proposed as part of this development application. As such, there is no anticipated impact.

5.7. Biodiversity

The subject land adjoins the Murray River and is located within a sensitive riverine environment, therefore consideration of environmental impacts is required.

Notwithstanding, as outlined above the subject land has already been extensively cleared and disturbed and the subject works do not propose to remove any trees or groundcovers (both native or non-native). Similarly, the development does not involve any works within the bed of the Murray River and will therefore not adversely affect any aquatic or marine biodiversity.

A Biodiversity Values Map and Threshold Report has been prepared confirming the above and is included attached.

The proposal does not involve any tree removal and the groundcover has already been disturbed as a result of the ongoing use of that part of the river bank for a number of pontoons and moorings, and the publicly accessible nature of the site, on Crown land. Consequently, the continued use is of the pontoon is not expected to adversely affect any threatened species or ecological community (both aquatic and terrestrial).

5.8. Waste

As the pontoon has already been constructed, no waste will be generated as a result of this development application.

5.9. Noise

As the pontoon has already been constructed, no noise will be generated as a result of this development application.

5.10. Natural Hazards

The subject land is classified as both bushfire prone and flood prone given its location alongside the Murray River. Notwithstanding as the development comprises non-habitable structures that are non-combustible in design further consideration of matters regarding bushfire is not warranted in this instance.

As outlined above, the subject land is classified as flood prone in Figure 11.1 of the DCP.

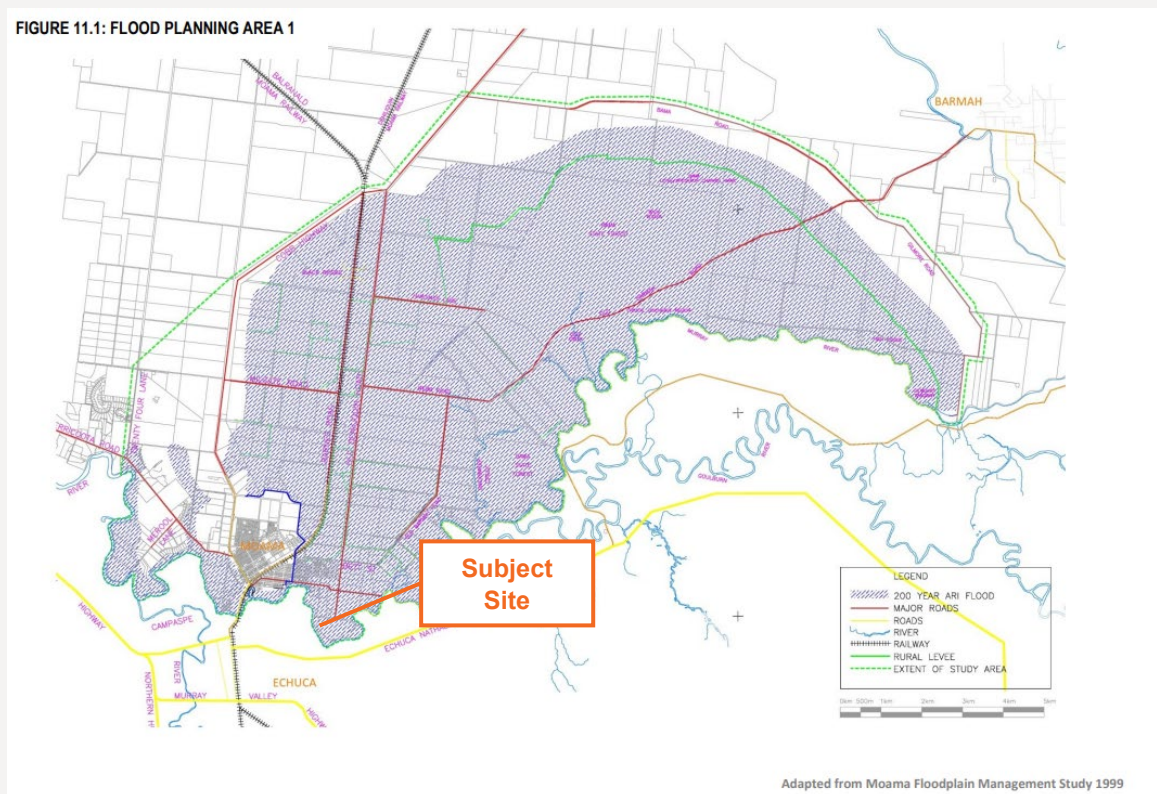


Figure 14 – Flood Planning Area 1 identifying the subject land (Murray Shire Council DCP)

Matters regarding flooding have been previously addressed in response to Clause 5.21 of the LEP. The structure is considered minor in the overall context of the Murray River and as no additional works are proposed, it will not lead to any impacts on flooding.

The structure has been designed so the walkway to the pontoon can be detached from its anchoring point. This enables the pontoon to either float with the rising water or be removed to higher ground. As a floating structure, the pontoon won't be inundated in a flood and consequently won't have to be repaired or replaced following such an event.

5.11. Socio-Economic

The proposed works will have a generally positive socio-economic impact as they will improve the recreational values of the site and are consistent with the type of interface works undertaken on private properties and Crown land along this stretch of the Murray River.

5.12. The Public Interest

The public interest is a broad consideration relating to many issues and is not limited to any one particular issue. Taking into account the full range of matters for consideration under Section 4.15C of the Environmental Planning and Assessment 1979 (as discussed within this report), it is considered that approval of the application is consistent with the public interest.

The development of land in an orderly and economic way is in the public interest.

6. Conclusion

The Development Application seeks retrospective approval for a for a water recreation structure (pontoon) on the Murray River (Victorian side) at Private Mooring No. YJ018 East Moama.

The application seeks development consent under Part 4 of the EP&A Act and has been assessed against the provisions of Section 4.15(1) of the EP&A Act.

As demonstrated by the detailed assessment above, the proposal satisfies the intent of the provisions of the applicable EPIs and will result in a positive development outcome in terms of social, environmental, and economic impacts.

Having regard for the content of this report, the proposal deserves the support of Council because:

- it is consistent with the relevant environmental planning instruments and development control plan;
- it is consistent with relevant state government requirements and will be subject to separate approval;
- it will provide for a development which is responsive to its context and setting and seeks approval for waterway structures within a riverfront area;
- it has been completed to a high standard of design and is not expected to adversely affect the amenity of the river bank, particularly in terms of erosion or environmental impact.
- it will not create any adverse environmental impacts as the works do not involve any tree or vegetation removal and the land has already been disturbed from previous and ongoing activities conducted on-site;
- it will not create any adverse social impacts and is consistent with a larger number of other similar waterway structures that have been established along this section of the Murray River; and
- it will have no detrimental impact upon the function of existing services or essential infrastructure.

In light of the above considerations, it is our opinion that the proposal is appropriate from a planning point of view and is in the public interest. The proposed development warrants support by Council

Appendix A: Crown Land Owner's Consent

Appendix B: Mooring Permit

Appendix C: Plans & Specifications

Appendix D: Schedule of Colours and Material

Appendix E: Biodiversity Offset Scheme Entry Tool (BOSET)

Appendix F: Planning Compliance Tables

Standard	Compliance	Comment
10.1 Visual Amenity		
All structures and buildings are to be designed to minimise the visual impact	Complies	<p>The proposed structure has been designed and located to minimise its impact and will be compatible with a large number of other structures located within the area in terms of its materials, location and design.</p> <p>The development represents a water recreation structure and associated works on the banks of the Murray River.</p>
Buildings and structures are to utilise building materials and colours that blend with the natural environment. Bright or reflective colours (unless necessary for safety reasons) and materials will not be supported by Council.	Complies	<p>The proposed materials and finishes of the pontoon will blend and be sympathetic to the natural environment of the area.</p> <p>The structure has been professionally designed and installed, “built to engineering specifications using Corrosive resistant 50x50x2.5mm Duragal Marine grade steel suitable for a marine environment in a Truss Style framework” (Refer to engineers specification)</p>
Landscaping of native riparian vegetation is to be used to soften visual amenity impacts but not used as a substitute for appropriate siting of buildings and structures in the river environment	Noted	No works will be undertaken as part of this development application. .
10.2 Boat Ramps		N/A

Standard	Compliance	Comment
10.3 Pontoons & Walkways		
Pontoons, walkways and jetties for private recreational use are not permitted.	Complies	The subject development involves the retrospective approval of a floating pontoon associated with a private property.
Pontoons and walkways will be assessed on their merits where they are fundamental and ancillary to large scale tourist developments.	Complies	The proposed floating pontoon and associated walkway is considered appropriate in this instance as it provides a role in water supply for the landowner.
Pontoons and walkways may still be permissible within private waterways/marinas and to provide safe access to approved mooring sites.	Not applicable	The land does not adjoin a private waterway or marina.
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	Noted	None
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.	Complies	The proposed walkway and landing is hinged to the bank to allow the float to rise and fall with the water level of the Murray River.

Standard	Compliance	Comment
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.	Not applicable	No earthworks or construction will be undertaken as part of this development application as it seeks retrospective approval for its existing condition only.
Pontoons and walkways are to be fitted with reflective markers for the purposes of river navigation.	Complies	The pontoon is fitted with a reflective marker/strip around the outside of the structure to assist with navigational purposes as per RMS requirements.
10.4 Retaining Walls		N/A
10.5 Stairs		N/A
If cut into the river bank the stairs are to be at an angle greater than 90 degrees to the downstream flow	Complies	Not applicable. No stairs are proposed.
Steps cut into the bank are only to be approved where no other acceptable method is viable.	Complies	Not applicable. No stairs are proposed.
Cut steps are not to be approved on outside bends or eroding banks.	Complies	Not applicable. No stairs are proposed.

Standard	Compliance	Comment
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.	Complies	Not applicable. No stairs are proposed.
10.6 Moorings		
Moorings cannot be transferred from private marinas to the Murray River.	Complies	The structure is existing and is considered 'additional' in the context of this control rather than 'transferred'. Therefore, the proposal complies with this control.
The mooring is to be constructed at a stable point in the river i.e. at a site not prone to erosion or an outside bend of a river.	Complies	The proposed walkway and landing is hinged to the bank which is not susceptible to erosion, having regard to the site being on an outside bend. Construction techniques have been utilised in the placement of the anchor points on top of the bank and there has been no sediment transfer to the river via stormwater or bank collapse.
Moorings are to be hinged to the high bank of the waterway and floating so they can rise and fall with the water levels.	Complies	As above, the proposed structure is constructed is hinged to the bank to allow the float to rise and fall with the water level of the Murray River.

Standard	Compliance	Comment
Deep water or weir pools are the preferred location for moorings.	Noted	This control is noted, however the proposal is considered to be an appropriate site responsive design that complies with the intent of the development control.
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.	Complies	No disturbance to existing conditions will result from the proposal as it seeks a retrospective approval only. No new works are proposed. The areas previously impacted by anchor points are now rehabilitated with the bank is returned to its previous undisturbed status.
All mooring locations are to be situated at a safe and appropriate location in consultation with relevant agencies.	Complies	The pontoon and access walkway is at an appropriate location along the river bank and it is expected this will be endorsed by referral authorities.
<p>Applications are to detail compliance with the Mooring Management Plan. Council will use the following criteria in assessing applications for moorings:</p> <ul style="list-style-type: none"> • If the mooring or mooring structure is located within the Murray River, whether it is located in a NSW Maritime designated mooring zone. • No more than one mooring or mooring structure per lot or holding is permitted (this does not apply to a marina). • Site analysis and design response given location and site specific constraints. 	Complies	<p>Council has adopted a Mooring Management Plan (MMP) to manage the allocation and installation of moorings in the Murray and Edward Rivers. The MMP specifies a number of matters that must be addressed in a development application for a mooring.</p> <p>The following response is made for the purposes of satisfying the MMP:</p> <ul style="list-style-type: none"> • Written consent of NSW Crown Lands Division has been obtained. • A Statement of Environmental Effects is provided in the following section of this report.

Standard	Compliance	Comment
<ul style="list-style-type: none"> Written referral comments from relevant government departments and agencies 		<ul style="list-style-type: none"> A Statement of Environmental Effects is provided in the following section of this report. Plans for the development are included at Attachment 'A'. Photographs of the site are included in this report. A range of vessels associated with the landowner may utilise the mooring at the pontoon.
10.7 Liability & Public Safety		
All pontoons or walkways are to be provided with an engineer's certificate validating the structural integrity	Complies	An engineer's certificate validating the structural integrity of the structure will be issued prior to the issue of an occupation certificate.
All private structures are to have restricted access and appropriate signage to prohibit unauthorised use.	Complies	Appropriate signage will be installed prohibiting unauthorised use.
Owners of public facilities are to supply Council with a copy of their public liability insurance.	Not applicable	The development does not represent a public facility.
10.8 Landscaping		

Standard	Compliance	Comment
All development applications are to include a landscaping plan.	Complies	No substantial landscaping is proposed as the application is for retrospective approval and does not involve any new works or disturbance which requires landscape works.
Landscaping must utilise indigenous species of riparian vegetation.	Not applicable	None proposed or required.
Where land is degraded, landscaping shall include measures to rehabilitate these areas	Not applicable	None proposed or required. It is noted that the bank has been able to regenerate to previous natural conditions.
Landscaping must be designed to screen or at least soften the appearance of buildings and structures.	Not applicable	None proposed or required.
10.8 Unauthorised Structures		
All unauthorised structures must be removed from the watercourse. No retrospective development approvals will be issued on existing structures.	Not applicable	Noted
All removal of structures and remediation work is at the expense of the land owner.	Not applicable	Noted, this is not a control.

Standard	Compliance	Comment
Any disturbance to the bank of the watercourse or surrounding area shall be rehabilitated at the land owner's expense and undertaken to the satisfaction of Council.	Not applicable	Noted, this is not a control.