

Clause 4.6

Variation Application

Specific Principle 5.9

Land opposite 1027 Swan Hill Road, Murray Downs
Lot 6 Sec 81 DP756534

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Introduction

This Clause 4.6 variation application has been prepared to seek approval for the following development opposite land at 1027 Swan Hill Road, Murray Downs (the site), legally described as Lot 6 Sec 81 DP756534. The proposal includes a single private berthing facility including two pine post poles for two mooring sites to secure two boats which will be sited along the Murray River, below the high bank and alongside DEECA managed land.

The Environmental Planning Instruments that applies to the land and development includes:

- ♦ State Environmental Planning Policy (Biodiversity and Conservation) 2021
- ♦ Wakool Local Environmental Plan 2013
- ♦ Development Control Plan



Zoning and Objectivise

Zoning

In accordance with the Wakool LEP zoning maps the land is contained within zone RU1 and W1 Zone – Waterways.

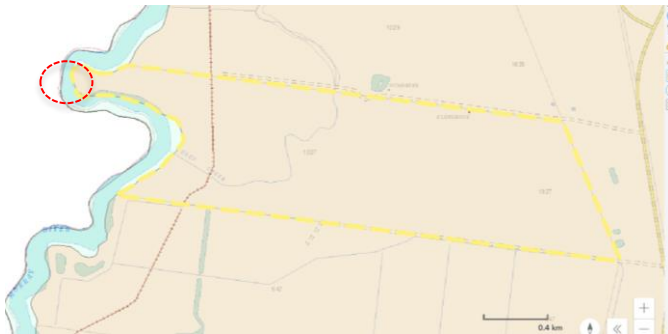


Figure 1 Zone map

The objectives of zone W1 is:

To protect the ecological and scenic values of natural waterways.

To prevent development that would have an adverse effect on the natural values of waterways in this zone.

To provide for sustainable fishing industries and recreational fishing.

Development consent is required under zone W1 for a boating facility.



Development Standard being varied

Section 5.9 “Specific principles” of Chapter 5 ‘River Murray lands’ of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 outlines:

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.

Having the boating facility in the proposed location will not hinder or alienate the resource for the public to access and enjoy the Murray River, as the land immediately adjoining the river is managed by DEECA and a Crown Water Frontage Licence exists (a renewal was issued late 2024 for a further 5 years, expiring in September 2029) and public access permissible.

Public access to this specific area of river from NSW is by boat only. The proposal is for two mooring poles and two mooring sites, below the high bank of the river and will be positioned to ensure the optimum operation to secure the boats for private use. The development will have no negative impact upon the public access available to the river or the ability to traverse the bank of the river.

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.

No practical off-river mooring in the immediate area of the property is offered. The proponent’s property has direct access to the Murray River, via the Crown Water Frontage Licence and has suitable waterbody for the vessels wishing permanent private mooring. The securing of the vessels will not result in permanent occupation of the vessel.

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 land that adjoins the site of the proposed mooring is public land, managed by DEECA and is subject to a Crown Water Frontage Licence issued to the adjoining landowner and the landowner’s friend; proponents to this application. The land is readily accessible in its current form for human access and the proposed mooring sites seek to identify a specific area capable of accommodating the storage of two private vessels only, ultimately controlling access to the site.

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, 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.*

Providing grounds for variation to development standards

In providing justification to varying the development standard, with reference to Appendix 3: Application Form to vary a development standard,

How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

Land owners consent has been granted by NSW Crown Land, and a Crown Water Frontage Licence is in place as issued to the proponent by DEECA (as attached). It is unreasonable for land that has been granted a water frontage licence, to be prohibited from utilizing land below the highbank for private purposes when all other considerations for protecting the significant natural environment of the River Murray has been demonstrated and acted upon.

This section of the River Murray is considered an appropriate space to provide for private leisure and recreation, given the proximity of the location to the proponents home. The expectation that it is to be for short stay occupation only, where the landowner resides and upholds the tenure of the Crown Water Licence is unreasonable; the primary purpose of submitting for a mooring is for a permanent purpose to ensure safe surveillance of the vessel.

The Wakool Shire Development Control Plan 2013 requires maintenance of the river corridor and waterway by restricting the use of permanent moorings for houseboats and other commercially operated vessels in certain key areas of the water course. The proposal for a boating facility is not for commercial vessel use, and is not located within the exclusion zone as detailed at Appendix 6 – maps of the DCP and rather is utilised for recreation and leisure by our clients.

The 'five part test'

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*

Access to the river and bank from NSW is private access only, currently for the natural vantage the Murray River affords.

Both Land owners consent from NSW Crown Land and consent from DEECA has been granted. With the minimalist construction design as specified in the architectural plans, the impact and disturbance to the bank by the proposed works on the Murray River is considered negligible.

For these reasons, the objectives of the standard are considered to be achieved notwithstanding non-compliance with the standard.

2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

The 'specific principles' in question relate to the foreshore of the River Murray being a public resource and the River Murray being for public purposes. In this instance, for this specific parcel of land where access to the site is via boat only and is intrinsically linked with the public land in Victoria where a Crown Water Frontage licence exists in the proponents name, use of the land for two private moorings is considered appropriate and relevant.

3. *The underlying objective of the purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

Not applicable.

4. *The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

Not applicable.

5. *The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

Not applicable.



Conclusion

In conclusion, it is considered for reasons outlined above a variation to development standards can be considered and the development is generally consistent with the relevant provisions.

The proposal is considered appropriate for the site for the following reasons:

- ♦ The variation of development standards have been well considered with negligible impact on the natural environment.
- ♦ There is minimal change to the existing conditions of the land as a result of the variation.
- ♦ The proposal is consistent with Wakool LEP and DCP.
- ♦ The proposal is consistent with State Environmental Planning Policy (Biodiversity and Conservation) 2021.
- ♦ The land is identified to be accessed by river only from NSW, and where a long term Crown Water Frontage licence is in place from Victoria.
- ♦ There will be no loss of vegetation.
- ♦ The boating facility responds to the site characteristics and opportunities and has considered the potential impacts upon the locality and that, particularly of the River Murray.



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