

Clause 4.6

Variation Application

Specific Principle 6.7

Land opposite 1027 Swan Hill Road, Murray Downs

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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 NSW (the site), legally described as Lot 6 DP756534. The proposal includes two single private berthing facilities including two pine post poles for securing of boats which will be sited along the River Murray, below the high bank and alongside Parks Victoria 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 Objective

Zoning

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



Figure 1 Zone map

Source: Wakool Local Environmental Plan, 2013

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

As outlined in *Clause 6.7* of the Wakool LEP 2013:
Development on riverbeds and banks:

- (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:*
- (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*

Boat and mooring facilities along the river are common within the Murray Downs and Swan Hill area and along the Murray River environs. This variation seeks approval for two mooring sites sharing one berthing facility (two pine posts of minimal construction). It is considered that two owners will utilise a mooring site each. A Crown Water Frontage Licence is in place as issued to the proponent by DEECA and the proposal is not considered to create a proliferation of moorings.

The objectives of the Chapter are:

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



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?

The proposed mooring sites are for two different vessels and two different owners, however will share a single birthing facility – two pine posts that will secure the vessels by rope – for the one parcel of land. It is not considered that there will be any great impact upon the land as a result of two moorings on the one lot and therefore strict compliance is unnecessary.

The ‘five part test’

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

The proposal is for two mooring poles only to be shared by two vessels, which are of small scale and for private use only, thus resulting in the protection of the environmental values and stability of the bank and river environs. The two pine post mooring poles will not have an adverse effect on the natural values of the Murray River allowing water to flow as the vessels are hinged and designed to float with the rise and fall of the water. Management of the vessels during variation of river levels will also be undertaken through the alteration of the lengths to the tether which will ensure minimal movement of the vessel on the bank.

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 relates to multiple mooring sites within the one ownership/one lot. In this instance, for this specific parcel of land, it is unreasonable for land that has been granted a water frontage licence, 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. All other requirements and regulations are complied with. It is therefore considered the minimal effect on the natural environment and stability of the waterfront, bank and river has been considered and compliance is unnecessary.

- 3. The underlying object of 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 proposal is consistent with the adopted Mooring Zone.
- ♦ 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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