

13.4 BOUNDARY ROAD PLANNING PROPOSAL**File Number:** -**Author:** Simon Arkinstall, Director Planning & Environment**Authoriser:** Simon Arkinstall, Director Planning & Environment**RECOMMENDATION**

1. That the Council endorse the amended Planning Proposal to rezone Part Lot 52 DP 1220883, Boundary Road, Moama from E3 Environmental Zone to R2 Low Density.
2. That Council refer the amended Planning Proposal to Rezone Lot 52 DP 1220883, Boundary Road, Moama to the Department of Planning & Environment requesting an amended Gateway Determination be issued.
3. That the Council approve undertaking all applicable tasks required by an amended Gateway Determination to progress this LEP amendment to completion.
4. That staff provide progress reports to Council during the amendment process.

BACKGROUND

Council considered a report at its meeting of 22 January 2019 in relation to the abovementioned planning proposal and resolved:

That the Boundary Road Planning proposal be deferred pending an onsite inspection by Council. Director of Planning and Environment to organise suitable date and time with Councillors.

A site inspection of the Boundary Road property was arranged for the 12 January 2019 and as a result the following report, unaltered is presented for Council's consideration.

On 28th June 2016, Council endorsed the original Planning Proposal seeking to amend Schedule 1 of the Murray LEP 2011 to add an additional permitted affecting part Lot 26 DP 751152 and part Lot 2 DP 509954. The original Planning Proposal sought to achieve a six (6) lot subdivision to accommodate the erection of one dwelling house on each newly created lot. The Gateway Determination for the Planning Proposal was issued 3 August 2016 by the Department of Planning & Environment (DPE) which required:

- Amendment of the Planning Proposal to expand the affected land to include the northern strip of part Lot 1 DP 509954;
- Amendment of the Planning Proposal to achieve the intended outcomes through rezoning of the subject sites from E3 Environmental Management to R2 Low Density Residential, and amendment of the minimum lot size from 120 hectares to 1000m².
- Complete a number of studies including:
 - Flood Study and Flood risk management plan (to accord with Direction 4.3 Flood Prone Land);
 - Bushfire Assessment Report (to accord with Direction 4.4 Planning for Bushfire Protection);
 - Biodiversity study (to accord with Direction 2.1 Environmental Protection Zones);
 - Assessment and address of inconsistency with Direction 1.3 Mining, Petroleum Production and extractive Industries.

The amended Planning Proposal was required to be forwarded to the DPE once received for approval prior to commencement of public consultation. The original Gateway (Annexure: Original Gateway) also required the LEP amendment to be completed by 19 August 2017. The Gateway has been amended on two occasions to extend the completion period. The amended LEP is currently required to be completed by 19 February 2019.

DISCUSSION

In November 2017, an amended Planning Proposal was supplied to Council by the applicant (Annexure: Amended Planning Proposal). The Planning Proposal was forwarded to DPE for comment on 25 January 2018, however there has been no progression since this date. In accordance with recent discussions held between DPE and staff, Council seeks an amended Gateway Determination, as required. The amended Planning Proposal addresses the requirements of the original Gateway, as set out below. In addition, the finalisation of a subdivision of land to accommodate the incoming bridge alignment has also changed the folio identifiers and lot layout affecting this land. The Planning Proposal still affects the same area of land (the norther strip of land in the lot formally identified as Lot 26 DP 751152) however is now identified as Lot 52 DP 1220883. The Planning Proposal has been amended to reflect the change in folio identifiers, the existing lot configuration and map coverage. No other aspect of the Planning Proposal has been changed.

Expansion of proposal to include the northern strip of part Lot 1 DP 509954

The Department's request to include the northern strip of part Lot 1 DP 509954 was not feasible as this land has been acquired by NSW Roads & Maritime Services to accommodate the incoming Moama/Echuca bridge alignment. In summary, the Planning Proposal has been amended to include only part Lot 52 DP 1220883. Part Lot 2 DP 509954 has also been removed from the Planning Proposal.

Achievement of intended outcomes via rezoning and minimum lot size reduction

The Planning Proposal has been amended to accord with the Gateway requirement to achieve the intended outcomes via rezoning of the subject site from E3 Environmental Management to R2 Low Density Residential, and amend the minimum lot size from 120 hectares to 1000m².

Required studies

The amended Planning Proposal includes the following studies and information:

- Bushfire assessment report;
- Biodiversity study; and
- Assessment of inconsistency with Direction 1.3 Mining, Petroleum Production and extractive Industries.

A Flood Planning study was not included as the land is not covered by the Murray LEP 2011 Flood Prone Land Mapping. The flood impact assessment is based on the 1999 Moama Floodplain Management Study (the current report informing Council's flood mapping). The applicant considers it unreasonable to address flood prone land considerations until such time that the land is identified as flood prone.

Request for 12 month extension of time to complete LEP amendment

As a result of the delays associated with this Planning Proposal, staff do not anticipate to have the LEP amendment finalised by the required date of 19 February 2019. As such, staff will request a 12 month extension of time to complete the amendment. Staff have discussed this matter with DPE, who have not objected to a request for extension.

Request to amend the Gateway determination to reflect current proposal

Staff will request the DPE issue an amended Gateway Determination reflecting the new folio identifiers and proposal area, together with the new date for completion.

STRATEGIC IMPLICATIONS

4 - Strategic Theme 4: Economic Growth

4.1 - Encourage and support economic development across a range of sectors

4.1.1 - Promote our advantages to visit, live, work and invest

BUDGETARY IMPLICATIONS

Nil anticipated at this stage.

POLICY IMPLICATIONS

Nil anticipated at this stage.

LEGISLATIVE IMPLICATIONS

If the amended Planning Proposal is supported, the Murray LEP 2011 will be amended to rezone the subject land from E3 Environmental Management to R2 Low Density and amend the minimum lot size provisions from 120 hectares to 1000m².

RISK ANALYSIS

- What can happen? Planning proposal not proceed
- How can it happen? Required process not adhered to
- What are the consequences of the event happening? Planning proposal expires
- What is the likelihood of the event happening? Low
- Adequacy of existing controls? High
- Treatment options to mitigate the risk? Implement staff recommendations

CONCLUSION

The subject amended Planning Proposal would achieve the same outcomes as the original Planning Proposal which was supported by Council, however would do so via a different LEP mechanism (the rezoning of land and reduction of minimum lot size vs Schedule 1 Additional Permitted Use). The amended Planning Proposal is a suitable outcome for the Council. The amended Planning Proposal is consistent with the objects of the *Environmental Planning and Assessment Act 1979* and will allow for the sustainable and economic use and development of the land within Murray River Council. It is therefore recommended that Council proceed with the proposal in accordance with the recommendations at the start of this report.

ATTACHMENTS

1. Original Gateway Determination  
2. Amended Planning Proposal (under separate cover) 



Planning & Environment

MURRAY RIVER COUNCIL

Ms Margot Stork
Interim General Manager
Murray Shire Council
PO Box 21
Mathoura NSW 2710

Date Rec: 19/08/16
Doc id: X Ref:
Retention Period: 10 16/09476
File: L:\Planning\2016
Ref to: LS For: info
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Ack'ment Letter: ☐ Sent:

Attention: Ms Llyan Smith, Planning Support Officer

Dear Ms Stork,

Planning Proposal (PP_2016_MRIVE_003_00) to amend Schedule 1 of the Murray LEP 2011 to identify subdivision into 6 lots and residential development as an Additional Permitted Use across the northern strip of part Lot 26 DP 751152 and part Lot 2 DP 509954, Boundary Road, Moama

I am writing in response to Council's request for a Gateway determination under section 56 of the *Environmental Planning and Assessment Act 1979* in respect of the planning proposal to amend Schedule 1 of the Murray LEP 2011 to identify subdivision into 6 lots and residential development as an Additional Permitted Use across the northern strip of part Lot 26 DP 751152 and part Lot 2 DP 509954, Boundary Road, Moama.

As delegate of the Minister for Planning, I have now determined that the planning proposal should proceed, subject to conditions in the attached Gateway determination (Attachment 1).

I have made this decision based on the merits of the proposal having regard to the locational advantage of the site, near existing services and facilities including the commercial core of Moama.

As discussed with Council planning staff on 27 July 2016, it is considered the appropriate mechanism to achieve the intended outcome of the proposal through a rezoning of the site from E3 Environmental Management to R2 Low Density Residential and reduce the Minimum Lot Size from 120ha to 1000m². It is also considered appropriate to extend the scope of the planning proposal to include the northern strip of part Lot 1 DP 509954, 17 Boundary Rd Moama. The planning proposal and accompanying maps are to be amended accordingly. (Refer to Condition No. 1 & 2 of the Gateway determination).

The proposal at this time, is inconsistent with section 117 Directions: 4.3 Flood Prone Land; 4.4 Planning for Bushfire Protection; 2.1 Environment Protection Zones; and 1.3 Mining, Petroleum Production and Extractive Industries. In order to address the

Department of Planning & Environment

188 Macquarie Street, Dubbo NSW 2830 | PO Box 58, Dubbo NSW 2830 | T 02 6841 2180 | F 02 6884 8483 | www.planning.nsw.gov.au

proposal's inconsistency with these Directions, the following additional studies are to be prepared prior to undertaking community consultation: a flood study and Floodplain Risk Management Plan (FRMP), a Bushfire Assessment Report, and a Biodiversity (Flora and Fauna) Study of the subject site. Council is to update the planning proposal to take into account the outcomes of this work and seek approval from the Department prior to undertaking community consultation. The outcomes of this work is to be placed on public exhibition with the planning proposal. (Refer to Condition No. 3 of the Gateway determination).

Prior to community consultation being undertaken, Council is to consult with the NSW Rural Fire Service (RFS) and obtain agreement of the Department's Secretary (delegate) to comply with requirements of section 117 Direction 4.4 Planning for Bushfire Protection. Council is to also consult with the Office of Environment & Heritage (OEH), the Roads and Maritime Service (RMS) and the Department of Industries – Resource and Energy, prior to undertaking community consultation. Council is to forward responses from these public authorities to the Department and seek approval to proceed to community consultation. (Refer to Condition No. 4 of the Gateway determination).

I note that Council's Murray Shire Strategic Land Use Plan 2010 - 2030 has not been endorsed by the Department. Council is advised to review its land use strategies and seek the endorsement of the Department. The Department is available to discuss the process to undertake this work.

The Minister delegated plan making powers to Councils in October 2012. It is noted that Council has requested to be issued with delegation for this planning proposal. I have considered the nature of Council's planning proposal and have decided not to issue an authorisation for Council to exercise delegation to make this plan in this case as it is not consistent with a Department endorsed strategy and there are environmental matters that require further work.

The amending Local Environmental Plan (LEP) is to be finalised within 12 months of the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request for the Department of Planning and Environment to draft and finalise the LEP should be made 10 weeks prior to the projected publication date. This request is to be forwarded to the Department of Planning and Environment's Western Region office (westernregion@planning.nsw.gov.au).

All related files for the LEP Amendment, including Maps, Map Cover Sheet, Planning Proposal document, section 59 Reporting and GIS data, if available, must be submitted to the Department via the Planning Portal Website at <https://www.planningportal.nsw.gov.au/planning-tools/online-submission-planning-data>. To submit the data, Council is required to create an account and log in using these details.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the

Environmental Planning and Assessment Act, 1979 if the timeframes outlined in this determination are not met.

Should you have any queries in regard to this matter, I have arranged for Jenna McNabb of the Department's Western Region office to assist you. Ms McNabb can be contacted on (02) 68412180.

Yours sincerely

A. W. Albury 12-8-2016

Ashley Albury
Director Regions, Western
Planning Services

Encl:
Attachment 1 – Gateway determination



Planning & Environment

Gateway Determination

Planning proposal (Department Ref: PP_2016_MRIVE_003_00): to amend the Murray Local Environmental Plan 2013 to rezone land from E3 Environmental Management to R2 Low Density Residential and amend the Minimum Lot Size from 120ha to 1000m2, at part Lot 26 DP 751152, part Lot 2 DP 509954 and part Lot 1 DP 509954, Boundary Road, Moama

I, the Director Regions, Western at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the *Environmental Planning and Assessment Act 1979* that the amendment to the Murray Local Environmental Plan 2013 (LEP) to rezone land from E3 Environmental Management to R2 Low Density Residential and amend the Minimum Lot Size from 120ha to 1000m2, at part Lot 26 DP 751152, part Lot 2 DP 509954 and part Lot 1 DP 509954, Boundary Road, Moama, should proceed subject to the following conditions:

1. Prior to undertaking community consultation, Council is to amend the planning proposal and accompanying maps to advise that the proposal will be expanded to include the northern strip of part Lot 1 DP 509954, 17 Boundary Rd Moama. Approval of the landowner of Lot 1 DP 509954 is to be sought and provided to the Department.
2. Prior to undertaking community consultation, Council is to amend the planning proposal to achieve the intended outcomes through a rezoning of the subject site from zone E3 Environmental Management to zone R2 Low Density Residential and amend the Minimum Lot Size across the site from 120ha to 1000m2. This amended planning proposal is to be submitted to the Department for approval.
3. Prior to undertaking community consultation, a flood study and Floodplain Risk Management Plan are to be prepared to address the proposal's inconsistency with section 117 Direction 4.3 Flood Prone Land; a Bushfire Assessment Report is to be prepared to address the proposal's inconsistency with section 117 Direction 4.4 Planning for Bushfire Protection and consultation is required with NSW Rural Fire Service in this regard; a Biodiversity Study is to be prepared to address the proposal's inconsistency with section 117 Direction 2.1 Environment Protection Zones; and the proposal's inconsistency with section 117 Direction 1.3 Mining, Petroleum Production and Extractive Industries is required to be addressed.

Council is to update the planning proposal to take into account the outcomes of this work and seek approval from the Department prior to undertaking community consultation.

4. Consultation is required prior to public exhibition with the following public authorities under section 56(2)(d) of the *Environmental Planning and*

Assessment Act 1979 and/or to comply with the requirements of relevant section 117 Ministerial Directions:

- NSW Rural Fire Service (section 117 Direction 4.4 Planning for Bushfire Protection)
- Office of Environment and Heritage
- Roads and Maritime Services
- Department of Industries – Resources and Energy

Each public authority is to be provided with a copy of the planning proposal (as amended) and any relevant supporting material, and given at least 21 days to comment on the proposal. Council is to forward public authority responses to the Department and seek approval to proceed to community consultation.

5. Community consultation is required under sections 56(2)(c) and 57 of the *Environmental Planning and Assessment Act 1979* as follows:
 - (a) The planning proposal is required to be made publicly available on exhibition for 28 days as described in A Guide to Preparing LEPs (Department of Planning and Infrastructure 2013).
 - (b) The relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs.
6. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the *Environmental Planning and Assessment Act 1979*. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
7. Prior to submission of the planning proposal under section 59 of the *Environmental Planning and Assessment Act 1979*, the final LEP maps must be prepared and be compliant with the Department's 'Standard Technical Requirements for Spatial Datasets and Maps' 2015.
8. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

Dated 12 day of August 2016.


Ashley Albury
Director Regions, Western
Planning Services
Department of Planning and
Environment

Delegate of the Minister for Planning