

Your ref: 12/01560



21 March 2012

Regional Director
Department of Infrastructure and Planning
PO Box 58
DUBBO NSW 2830

Attention: Mr Tim Deverell

Dear Tim

PLANNING PROPOSAL – KYALITE STABLES

I am writing in response to your letter received by Council on 2 February 2012. The following information is provided.

1 Outcomes

a **Introduction of the R5 zone into the LEP.**

Council was seeking to introduce the R5 zone into the existing LEP 1997 but on further consideration Council will use the existing 1(c) Rural Small Holdings zone under Deniliquin LEP 1997 (LEP 1997) for this land.

b **Minimum lot size**

It is intended that the minimum lot size will be in accordance with the provisions of clause 14(1) of LEP 1997. It states:

'14 Subdivision for the purpose of dwelling-houses within Zone No 1 (c)

(1) *The Council must not grant an application for consent to subdivide land within Zone No 1 (c) unless:*

- (a) *where provision is to be made for the off-site disposal of sewage, the area of each allotment to be created as a result of the subdivision is not less than 5 000 square metres, and*
 - (b) *where no provision is to be made for off-site disposal of sewage:*
 - (i) *each allotment to be created as a result of the subdivision has an area of not less than 5 000 square metres, with the average area of the resultant lots being not less than 1 hectare, and*
 - (ii) *arrangements satisfactory to the Council have been made for the provision of a permanent water supply to that land, and*
 - (iii) *the number of allotments having an area of less than 1 hectare which will be created as a result of the subdivision is not more than 65 per cent (rounded to the nearest whole number) of the maximum number of allotments which could be*
- "Achievement through Action"**



All correspondence to
be directed to the
General Manager

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Civic Place
PO Box 270
Deniliquin NSW 2710

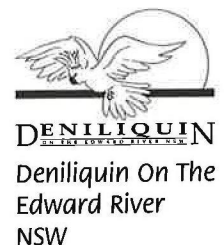
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created from that land without contravening subparagraph (i).

- (2) *Nothing in subclause (1) (b) (i) prevents the Council from consenting to the subdivision of land within Zone No 1 (c) so as to create an allotment having an area of less than the prescribed area if it is satisfied that the allotment has adequate provision for effluent disposal.*
- (3) *If:*
- (a) *land is to be provided and developed for the communal use of future owners of allotments created by a subdivision referred to in subclause (1), and*
 - (b) *the Council is satisfied that the resultant development will enhance the amenity of the locality,*
the area of that land may be included in calculating the average lot size of that subdivision.
- (4) *The Council must not grant consent to the subdivision of land within Zone No 1 (c) unless it has taken into consideration:*
- (a) *the land capability (including soil resources and soil stability), natural constraints and hazards of the land to be subdivided, in relation to the density of the allotments proposed to be created, and*
 - (b) *the desirability of providing a range and mixture of allotment sizes, and*
 - (c) *whether the design of each allotment to be created by the subdivision is satisfactory for the economic provision of services, and*
 - (d) *the physical suitability of the land for on-site disposal of wastes.'*

c Zone map

A copy of this map is in Appendix 1.

d Level of servicing

Council's Policy 4.9 – Water and Sewer Limits does not currently allow for the extension of water and sewer infrastructure to the land as it is outside the 2 Urban zone and there is no infrastructure which is adjacent to the property or within the adjacent road reserve. A copy of the policy and a map showing the location of the existing infrastructure are attached for your information in Appendix 2.

Council has discussed this issue with the owner of the land who wishes to extend water and sewer to the land. Council staff would support the extension of services to the land and would therefore recommend to Council that the policy be varied to allow for the extension of the infrastructure. It is noted that the plan of subdivision submitted by the owner shows a minimum lot size of 5000m² and this is based on services being extended to the site.

However the Department should note that if services are not extended to the land, clause 14 of the DLEP 1997 still allows for the subdivision of the land if it was to be zoned 1(c) Rural Small Holdings (ie on site effluent disposal could be used).



e Mapping anomaly

It is not proposed to correct the mapping anomaly of the draft LEP 2011. This has previously been discussed with the Department.

2 Justification

a Supply and demand analysis

The planning proposal states that there is approximately 961ha zoned for rural residential purposes and approximately 85% of this land has subdivision potential under the Deniliquin LEP 1997.

A further analysis of the supply and demand for rural residential land has been undertaken. Council has mapped the current 1(c) Rural Small Holdings showing the patterns of subdivision approvals from 2000 to present and the areas of 1(c) land where there is demand for land based on the subdivision approvals and anecdotal advice from Council's town planning staff. The map is attached for your information in Appendix 3.

Council believes that the following area of land can be discounted from the supply and the reasons for this are explained below the table.

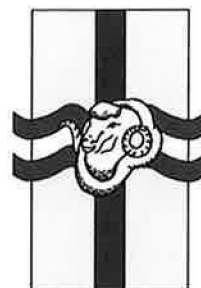
Land	Area
North Deniliquin	
North Deniliquin	102ha
	48ha
Billabong	10ha
Rose St	10ha
Dahwilly	52ha
South Deniliquin	
Riverview	81ha
Caravan Park (Paringa)	8ha
Ochertyre Street	71ha
Bradleys Lane	56ha
Old Racecourse Rd	26ha
Wakool Rd	68ha
STP/Industrial Area	38ha
McCrabb Rd	70ha
Conallin Lane	22ha
Barham Rd	18ha
Lawson Syphon	130ha
Total	680ha

Note: Refer to attached map to reference areas in the table.

i Established Rural Residential Areas

The established rural residential estates includes Billabong Estate, Dahwilly, Riverview, Old Racecourse Road, McCrabb Road, Barham Road and Lawson Syphon.

The demand for further lots within these areas is limited. Since 2000 to present there have been no subdivisions in Dahwilly, Old Racecourse Road, McCrabb Road and Barham Road. There has been three subdivisions at Riverview being DA2006/06 to complete



the final stage of Riverview, DA2003/05 to excise the caravan park off a larger lot and the subdivision of this larger lot (2005/16) into five rural residential lots. Since DA 2005/16 was approved in 2005 there has been no further subdivisions in the 'Riverview' area.

There have been four subdivisions within the Lawson Syphon area of which two have proceeded (DA 2004/02 and DA200612), one consent that appears to have lapsed (2003/11) and one which is yet to commence (DA1210).

Council is of the opinion that there is very little demand for subdivision within the established rural residential areas. This opinion is supported by anecdotal advice from Council's planning staff that indicates that there is very little or no inquiries for further subdivision within these established areas.

ii Sewerage Treatment Plant/Industrial Land and Caravan Park
Land occupied by the sewerage treatment plant, industrial land and an existing caravan park are all on land zoned 1(c). This land is proposed to be rezoned to reflect the use of the land by the draft LEP 2011 (standard instrument) that Council is currently preparing.

iii North Deniliquin

There is no demand for land in the areas marked North Deniliquin. Council receives no inquiries to subdivide this land.

iv Ochertyre Street, Bradleys Lane, Wakool Road and Conallin Lane

There is little demand for land in this area. There are two development applications for subdivision of this land that are yet to be determined by Council. There are servicing issues with these subdivisions which need to be resolved. Whilst there has been some demand in the past for subdivision this has been low. Into the future, Council would expect that if there was to be demand in this area that it would occur in the Ochertyre Street where it has frontage to the river.

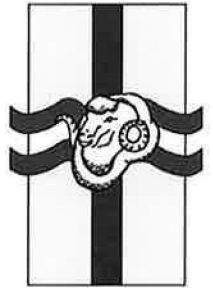
v Dahwilly

There is no demand for the subdivision of this land. Council has received three inquiries in the last nine months for rezoning of land from 1(a) General Rural to 1(c) Rural Small Holdings. This will be considered as part of the rural residential strategy.

Council is of the opinion (and this is supported by anecdotal evidence from planning staff) that there is demand for land that has river frontage. This opinion is also supported by the amount of subdivision which has occurred in the north west sector of South Deniliquin and the River Street area. This land is highly desirable due to its proximity to the river, the views that are available and stands of native vegetation.

b Net community benefit

Council strongly supports the proposed rezoning and considers that it will be a positive for Deniliquin. It seeks to release land that is



highly sought after and provides a desirable living environment. Council believes that any negatives aspects of the planning proposal would be accepted by the community in return for the release of rural residential land in a highly desirable location. Council believes that this planning proposal represents an aspirational target for the town.



In terms of the 'negative' aspects of the planning proposal that have been raised in your letter, the following comments are provided.

i Loss of agricultural land

It is considered that the loss of agricultural land will have a minimal impact on total land available for agricultural uses. The subject site has an area of 13.5ha and due to its size is not considered a viable agricultural holding. Any opportunities for agriculture are limited by its proximity to existing 1(c) and 2 Urban zoned land.

ii Environmental impacts

Environmental impacts will be given further consideration once this planning proposal proceeds beyond gateway. Any impacts can potentially be dealt with via conditions of consent for any subdivision of the land.

iii Public access to riparian land

The subject site does not currently provide for public access to the river. If the planning proposal was to proceed and the land was subsequently subdivided, part of the land with river frontage will be dedicated to Council as a public reserve.

This issue is discussed in greater detail below but it should be noted that Deniliquin Council has approximately 38km frontage to the Edward River (excluding the associated tributaries etc). Within this 38km there is approximately 14km of land that has frontage to the river providing public access to the river (Crown land and Council owned land). This equates to 558ha in land.

iv Cost to community of emergency services for physical hazards

In terms of potential flood impacts, the demand for additional emergency services is not considered significant in the context of the number of dwellings that are currently outside the flood levees and the number which would result from this planning proposal.

Council also has the 'Deniliquin – Conargo Local Flood Plan – a Subplan of the Deniliquin – Conargo Local Disaster Plan (DISPLAN)' June 2009 which details emergency arrangements for impending floods. A copy of this is attached for your information in Appendix 4.

In terms of bushfire, the Council is yet to consult with the NSW Rural Fire Service but upon receipt of a positive gateway determination Council would undertake this consultation. Previous consultations with the NSW Rural Fire Service in relation to bushfire



risk generally have not resulted in onerous requirements to reduce bushfire risk.

v Infrastructure

The provision of infrastructure to the land would be provided by the developer and he would be required to pay headworks charges on an equivalent tenement basis. Council believes that any cost to the community for the provision of infrastructure to the land is one which the community would be willing to accept in return for the release of rural residential land in a highly desirable location.

vi Land to north east

Council would be open to the consideration of the land to the east of the site being Lot 2 Section 25 DP758782 (between the subject site and the open space) for inclusion in the planning proposal. However, the Department should note that this land is part of a larger agricultural holding. A map showing the extent of the holding is attached in Appendix 5.

3 SEPPs

a **Rural Lands SEPP (s117 Direction 1.5)**

The planning proposal has addressed clause 4 of the direction (s4.2 p10-11). The planning proposal states that *'on balance, the planning proposal is considered to satisfy the Rural Planning Principles as the benefits outweigh the loss of a small amount of average quality agricultural land'*.

However, if the Department considers that the planning proposal is inconsistent with this direction then Council considers the planning proposal to be of minor significance given the following (and as noted in s4.2 p10-11 of the planning proposal):

- In the absence of irrigation the land is considered to be category IV land and is not prime agricultural land.
- The total land area is 13.5ha and therefore is not a viable agriculture holding.
- Any opportunities for agriculture are limited by its location to existing 1(c) and 2 Urban zoned land.

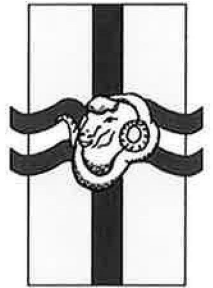
b **Murray REP 2**

i Flooding

Firstly it is noted that your letter states that *'new rural residential development should be on flood free land'* and that a similar statement has been made in the planning proposal. Council would like to clarify these statements with the Department. The *'Deniliquin Flood Plain Management Study'* (Rankine Hill Pty Ltd 1984) has mapped the area affected by the 1%AEP flood and a copy of the relevant map from the Study is attached for your information in Appendix 6. You will note that in the absence of the north and south flood levees the majority of the town is affected by the 1%AEP flood. A view that *'new rural residential development should be on flood free land'* would effectively sterilise a significant



amount of land in Deniliquin and I would expect, for many other Council's with similar topographical characteristics along the Murray River system.



In terms of flood impacts, the purpose of the planning proposal is to identify issues rather than resolve them at this stage. Council's understanding of the planning proposal is that detailed in depth studies are not required at this stage rather than can be undertaken should the planning proposal progress beyond gateway determination.

However, the information provided in the planning proposal indicates the following:

- There is land that is located outside the 5%AEP.
- Flood free access can be provided to site subject to engineering design.
- The demand for additional emergency services is not considered significant in the context of the number of existing dwellings that are outside the existing flood levees. Council also has the 'Deniliquin – Conargo Local Flood Plan – a Subplan of the Deniliquin – Conargo Local Disaster Plan (DISPLAN) June 2009 which details emergency arrangements for impending floods.
- Increased pollution – this can be addressed during the assessment of a development application. The development of this land will occur at a low density and there will not be significant increases in pollution resulting from the development that would be detrimental to river health.

ii Landscaping

- Council is of the opinion that there is adequate land on site to place a dwelling with minimal disturbance to vegetation.
- The developer has indicated to Council that he will dedicate the land shown as 'association property' as a public reserve which will be under the management of Council. You will note that this land contains a significant area of vegetation. A copy of the letter advising Council of this is attached in Appendix 7.

iii River related uses

Deniliquin Council has approximately 38km frontage to the Edward River (excluding the associated tributaries etc). Within this 38km there is approximately 14km land that has frontage to the river which provides public access to the river (Crown land and Council owned land). This equates to 558ha in land. This access includes a public walkway/cycleway, boat ramps, sporting fields, nature reserve, beaches for swimming, picnic areas and land for informal access.

The owner of the subject site has advised Council that he is intending to dedicate to Council as a public reserve the land identified as 'association property' on the proposed subdivision plan. This will mean that there will be an additional 3.75ha of public



reserve with river frontage available within the Deniliquin Council area.

iv Water quality

In the context of the development that is likely to occur on the land and at a relatively low density, it is unlikely that there would be a significant increase in pollution resulting from the development that would be detrimental to river health.

The issue of servicing has been addressed elsewhere in this letter.

v Building setbacks and effluent disposal

Council would consider identifying building envelopes for the land that would define building setbacks. In terms of effluent disposal, issues will only arise if Council does not agree to the extension of services to the site.

4 s117 Directions

a 1.2 Rural Zones

The planning proposal states that it is inconsistent with this direction and that this inconsistency is of minor significance (p14). It also states that the inconsistency is justified on the following grounds:

- The planning proposal will result in a minimal loss of agricultural land. The total area of the site is 13.5ha.
- The land to be rezoned will have a minimal impact on the agricultural industries in Deniliquin due to the small size of land to be removed.
- The land has limited agricultural significance (refer to previous comments in this letter and in the planning proposal re without irrigation the land has limited agricultural capacity).
- Close proximity of the land to existing residential development and the potential for land conflicts.

b 1.3 Mining, Petroleum and Extractive Industries

Comments are noted. The Department should be aware that Council is currently preparing a new LEP in the standard instrument format. Consultation has been undertaken in accordance with this direction (being those that apply to pending LEPs at 30 June 2009). Council did not receive a response from the relevant Department.

c 1.5 Rural Lands

This direction applies to this planning proposal as it affects land within an existing rural zone and proposes to change the existing minimum lot size applying to the land.

The planning proposal has made statements in relation to the rural planning principles listed in SEPP (Rural Lands) 2008. As previously stated the rezoning of this land from rural to rural residential purposes is justified on the following grounds:

- The planning proposal will result in a minimal loss of agricultural land. The total area of the site is 13.5ha.



- The land to be rezoned will have a minimal impact on the agricultural industries in Deniliquin due to the small size of the subject site.
- The land has limited agricultural significance (refer to previous comments in this letter and in the planning proposal re without irrigation the land has limited agricultural capacity).
- Close proximity of the subject land to existing residential development and the potential for land conflicts.



In relation to the rural subdivision principles listed in the SEPP, the following advice is provided:

- The subject site consists of three titles and is a small agricultural holding of 13.5ha. It is not part of larger agricultural holding and could already be considered to be fragmented from other agricultural land in the Council area.
- It is within close proximity to other existing rural residential and residential development and there is potential for land conflicts.
- The subject site is not part of a larger agricultural holding. The issue of future supply of rural residential land has been addressed elsewhere in this letter.
- Natural and physical constraints have also been addressed elsewhere in this letter.
- Council believes that any future development of this land should identify building envelopes that take account of any possible constraints of the land.

Based on the above considerations, any inconsistency with this direction is considered to be of minor significance given the size and location of the existing agricultural holding and the rezoning of this land will not overall significantly decrease the availability of agricultural land in the Council area.

d 2.1 Environmental Protection Zones

The planning proposal states that part of the land has been identified as a floodplain wetland. This is considered to be a small portion of the site and the majority of this part of the site will fall within the proposed public reserve. The biodiversity mapping provided to Council by the Office of Environment and Heritage has not identified any other part of the site as having biodiversity significance for the purposes of the draft LEP 2011. A copy of the draft LEP map is attached for your information as Appendix 8.

e 2.3 Heritage

This direction requires a planning proposal to contain provisions that facilitate the conservation of heritage items and Aboriginal objects or places. There are existing clauses in the DLEP 1997 (cl 22-26) that meets these requirements.

f 3.3 Home Occupations

In the 1(c) zone, home occupations require development consent. However, the Codes SEPP allows a home occupation as exempt



development. Therefore any inconsistency of the planning proposal with this direction is considered to be of minor significance.



g 3.5 Aerodromes

This direction states that it applies when 'a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to land in the vicinity of a licensed aerodrome'. This land is not considered to be within the vicinity of a licensed aerodrome. The aerodrome is approximate 3.3km 'as the crow flies' from the subject site. A map showing the location of the aerodrome and the subject site is attached in Appendix 9.

However, there is an Obstacle Limitation Surface (OLS) applying to the land and Council is prepared to consult with the Department of the Commonwealth responsible for aerodromes in relation to the proposed planning proposal. Council is the owner of the aerodrome and therefore would not need to consult with the lessee of the aerodrome. Council also has a separate height limitation plan but the subject site is not affected by this plan. Council is of the opinion that it is unlikely that the future development of the land will encroach above the OLS.

Council does not have an Australian Noise Exposure Forecast (ANEF) for the aerodrome.

h 3.6 Shooting Ranges

There are no existing shooting ranges adjacent to and/or adjoining the subject site.

i 4.3 Flood Prone Land

Council's Policy 5.9 states that the flood planning level for Deniliquin is 1%AEP + 100mm and a copy of this Policy is attached in Appendix 10. The Floodplain Development Manual (2005) does not mandate that a flood planning level must be 1%AEP + 500mm.

j 4.4 Bushfire Prone Land

It is noted in your letter that you state that the planning proposal is inconsistent with this direction. You should note that subclause (4) states that:

'In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 56 of the Act, and prior to undertaking community consultation in satisfaction of section 57 of the Act, and take into account any comments so made.'

In addition to this, subclause (7) states:



'A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the council has obtained written advice from the Commissioner of the NSW Rural Fire Service, to the effect that, notwithstanding the non-compliance, the NSW Rural Fire Service does not object to the progression of the planning proposal.'



The planning proposal states that the land has been identified as bushfire prone and that Council will consult with the NSW Rural Fire Service upon receipt of a positive gateway determination. Consistency or otherwise with this direction cannot be determined until such time as Council has undertaken the consultation with the NSW Rural Fire Service.

k 6.2 Reserves

The Roads and Traffic Authority have identified the need for road widening along this section of the Riverina Highway as part of the section 62 consultation for the draft LEP 2011 (standard instrument). It is therefore highly likely that the Roads and Traffic Authority will identify this issue when Council undertakes consultation following a positive gateway determination and where necessary the appropriate clauses can be inserted into the LEP 1997 as part of this planning proposal.

It is also the intention of the owner of the land to dedicate land to Council as a public reserve via a condition of development consent.

5 Environmental Assessment

a Flood liable land

Refer to comments above.

b High Biodiversity Significance

Your letter states that the land along the river is in an area of high biodiversity significance. Council is not aware of how the Department has formed this opinion. As stated above, the biodiversity mapping that has been prepared for the draft LEP 2011 identified a small proportion of the site as having biodiversity significance. The planning proposal states the following a positive gateway determination a threatened species assessment would be done.

c Bushfire Prone Land

The planning proposal has identified that part of the site is bushfire prone. As stated in this letter and the planning proposal, Council will consult with the RFS upon receipt of a positive gateway determination.

d Cultural Heritage



A search of the Aboriginal Heritage Information Management System has been undertaken and no Aboriginal objects or places have been record in or near the location of this site.

e Wetland

Refer to comments above.

f Servicing/Infrastructure

Refer to comments above.

g Groundwater Vulnerability

Council has spoken to the Office of Water and there is no groundwater vulnerability mapping for Deniliquin.

6 State Interests

a Highway access/efficiency

There are currently three lots containing dwellings. These dwellings are serviced by one access point off the Riverina Highway. The indicative subdivision layout shows that there will be only one access road off the Riverina Highway. Two of the proposed lots have frontage to Riverina Highway but also have frontage to the proposed road. It is expected that the planning proposal will be referred to the Roads and Traffic Authority upon receipt of a positive gateway determination.

b Potential for road widening

The issue of road widening has been overlooked. It is noted that the Roads and Traffic Authority have identified the need for road widening along this section of the Riverina Highway. A copy of the draft Land Acquisition Map from draft LEP 2011 is attached for your information in Appendix 11. This issue will be addressed again with the Roads and Traffic Authority upon receipt of a positive gateway.

Finally please find attached in Appendix 12 the political donations declaration from the owner of the subject site.

Should you have any further inquiries in relation to this matter, please do not hesitate to contact Julie Rogers, Manager Environmental Services on (03) 5898 3111.

Yours sincerely,



Mark Dalzell
DIRECTOR TECHNICAL SERVICES

cc
Mr Rob Wilson

