

Deniliquin - Kyalite Stables - Rural Residential Rezoning

Proposal Title : **Deniliquin - Kyalite Stables - Rural Residential Rezoning**

Proposal Summary : **AMENDED PLANNING PROPOSAL (September 2016):**

The amended planning proposal seeks to rezone land from RU1 Primary Production to R5 Large Lot Residential and reduce the minimum lot size (MLS) from part 40ha part 1ha to a range of MLS of between 1ha and 2ha. The proposal seeks to create a 7 lot subdivision for the purpose of residential development along the Edward River.

The proposal also seeks to insert additional local provisions and a flood planning map to guide future residential development along the site's river frontage. Council has provided additional supporting information and specialist reports to satisfy original Gateway conditions (dated 25 October 2012). Council is seeking a revised Gateway determination to proceed to community consultation based on the amended scope of the planning proposal and all supporting material.

ORIGINAL PLANNING PROPOSAL (March 2012):

The Planning Proposal will rezone 3 lots (approximately 13.6 ha) from 1(a) General Rural Zone to 1(c) Rural Small Holding Zone with a lot yield of 13 lots.

PP Number : **PP_2012_DENIL_001_00**

Dop File No :

12/01723-1

Proposal Details

Date Planning
Proposal Received : **28-Mar-2012**

LGA covered : **Deniliquin**

Region : **Western**

RPA : **Edward River Council**

State Electorate : **MURRAY**

Section of the Act : **55 - Planning Proposal**

LEP Type : **Spot Rezoning**

Location Details

Street : **21701-21703 Riverina Highway**

Suburb : **Deniliquin**

City : **Deniliquin**

Postcode : **2710**

Land Parcel : **Lot 1 DP1121183**

Street : **21701-21703 Riverina Hwy**

Suburb : **Deniliquin**

City : **Deniliquin**

Postcode : **2710**

Land Parcel : **Lot 2 DP562598**

Street : **21701-21703 Riverina Hwy**

Suburb : **Deniliquin**

City : **Deniliquin**

Postcode : **2710**

Land Parcel : **Lot 3 DP562598**

DoP Planning Officer Contact Details

Contact Name : **Deniz Kilic**
Contact Number : **0268412180**
Contact Email : **Deniz.Kilic@planning.nsw.gov.au**

RPA Contact Details

Contact Name : **Julie Rogers**
Contact Number : **0358983111**
Contact Email : **julie.rogers@edwardriver.nsw.gov.au**

DoP Project Manager Contact Details

Contact Name : **Wayne Garnsey**
Contact Number : **0268412180**
Contact Email : **wayne.garnsey@planning.nsw.gov.au**

Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	N/A	Consistent with Strategy :	N/A
MDP Number :		Date of Release :	
Area of Release (Ha)	13.30	Type of Release (eg Residential / Employment land) :	Residential
No. of Lots :	13 7 lots	No. of Dwellings (where relevant) :	7
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment : **No known contact with lobbyists.**

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment : **No known contact with lobbyists.**

Supporting notes

Internal Supporting Notes : **AMENDED PLANNING PROPOSAL (September 2016)**

Background

An amended planning proposal was submitted on 26 September 2016 seeking an alteration to Gateway determination dated 25 October 2012 (as since altered to extend timeframes) with supporting specialist reports to address Gateway conditions prior to proceeding to community consultation. The amended planning proposal with supporting material now seeks to progress to community consultation.

The original planning proposal had sought to rezone the subject site from the then zone

1(a) General Rural to the 1(c) Rural Small Holding Zone to facilitate a 13 lot community title subdivision under the Deniliquin LEP 1997. The original planning proposal was issued a Gateway determination (dated 25 October 2012) to proceed, subject to conditions prior to proceeding to community consultation.

The amended planning proposal now seeks to rezone land from RU1 Primary Production to R5 Large Lot Residential and reduce the minimum lot size (MLS) from part 40ha and part 1ha to a range of MLS of between 1ha and 2ha. The proposal seeks to create a 7 lot subdivision for the purpose of residential development along the Edward River.

The proposal also seeks to insert additional local provisions in the Deniliquin LEP 2013 for site specific planning controls, to provide provisions along the river front setback area for the 5 lots proposed along the Edward River. The remaining 2 lots are not proposed to have a river frontage, instead facing the Riverina Highway and a proposed access road.

The proposal also seeks to introduce a Flood Planning Map, to identify the subject site as flood prone land and also identify a flood planning level (FPL) under clause 6.2 (flood planning) of the Deniliquin LEP 2013.

The amended planning proposal is supported by the following additional information and supporting specialist work:

- Preliminary results of consultation with agencies (Appendix 3)
- Revised proposed 7 lot subdivision layout plan (Appendix 4)
- Flood Study and Flood Impact Assessment (Appendix 6)
- Extract from draft Deniliquin Floodplain Risk Management Study and Plan (Appendix 7)
- Aboriginal Heritage Due Diligence Assessment (Appendix 8)
- Biodiversity Assessment (Appendix 9)

Council seeks a revised Gateway determination based on the amended scope of the planning proposal with all supporting material and also seeks to proceed to community consultation.

Assessment

The amended planning proposal applies to the same 3 lots (approx. 13.6ha) as the original planning proposal, namely Lot 1 and 2 DP1121183, and Lot 3 DP562598, known as 21701-21703 Riverina Highway. The site is collectively known as "Kyalite Stables" and has been used for grazing purposes, cropping and as a horse stud.

The amended planning proposal is substantially consistent with the original planning proposal as its objectives and intended outcomes are similar, that is, to develop the site for residential purposes. The original planning proposal had sought to rezone land from 1(a) General Rural Zone to 1(c) Rural Small Holding Zone to facilitate a 13 lot community title subdivision under the Deniliquin LEP 1997. The amended planning proposal now seeks to rezone the site from zone RU1 Primary Production to zone R5 Large Lot Residential and amend the MLS to 1ha and 2ha, to facilitate a 7 lot residential subdivision and development with consent.

Thus, the planning proposal submitted on 26 September 2016 is assessed as an 'amended' planning proposal (rather than a 'new' planning proposal) seeking to satisfy original Gateway conditions in order to proceed to community consultation.

The amended proposal provides satisfactory additional information and specialist reports to address inconsistencies with several section 117 Directions and SEPPs. The amended proposal also sets out proposed site specific provisions and additional mapping to resolve outstanding matters identified in the original Gateway determination dated 25 October 2012 (as since altered to extend timeframes).

Each of these matters are discussed and assessed below:

- Agency consultation requirements prior to public exhibition to address consistency or justify any inconsistencies with several Section 117 Ministerial Directions (original Gateway 25/10/2012 condition No. 7):

- Department of Primary Industries: The original Gateway determination (dated 25 October 2012) required Council to consult with the Department of Primary Industries – Minerals and Petroleum due to the inconsistency with Section 117 Direction 1.3 Mining, Petroleum Production and Extractive Industries. The amended planning proposal states that Council wrote to DPI on 20 November 2012 requesting comments in relation to the original planning proposal and no response was received.

Direction 1.3 is deemed relevant in this case as the proposal seeks to rezone land from RU1 Primary Production to R5 Large Lot Residential, having the effect of prohibiting the mining of minerals and other resources. It is likely that due to the limited scope of the proposal, any inconsistencies would be deemed to be of minor significance.

Nonetheless, it is recommended Council consult with DPI for the amended planning proposal as part of agency consultations during the public exhibition process. Council should address the result of all agency and community consultations in the section 59 submission report.

- Commonwealth Civil Aviation Safety Authority (CASA): The amended planning proposal includes evidence of past formal consultations with CASA as per requirements of Section 117 Direction 3.5 Development Near Licenced Aerodromes. There are no outstanding matters in this regard, while CASA has made recommendations relating to the use of cladding materials and lighting design in the future residential development. These matters can be resolved at the development application and assessment stage.

Nonetheless, it is recommended Council consult with CASA for the amended planning proposal as part of agency consultations during the public exhibition process. Council should address the result of all agency and community consultations in the section 59 submission report.

- NSW Rural Fire Service (RFS): The original Gateway determination (dated 25 October 2012) required Council to consult with RFS as per the requirements of Section 117 Direction 4.4 Planning for Bushfire Protection. The amended planning proposal includes a response from RFS for the original planning proposal, advising that any future lot created that includes land within the riparian corridor must have sufficient area where bushfire hazard reduction is permissible in order to achieve a complying Asset Protection Zone.

Clause 5.11 of the Deniliquin LEP 2013 states that bushfire hazard reduction is permissible without development consent on any land. Any development application for the land will be required to consider bushfire issues based on a BAL assessment.

Further, the amended planning proposal seeks to insert a 'river front area' provision and supporting mapping under the Deniliquin LEP 2013 to restrict development along the site's river front area. There are 5 proposed lots with frontage along the Edward River. The proposed 'river front area' provision is likely to address concerns raised by RFS relating to the APZ around future proposed residential dwellings. As stated above, the matter of maintaining APZ buffers can also be resolved at the development application and assessment stage.

Nonetheless, it is recommended Council consult with the NSW RFS for the amended planning proposal as part of agency consultations during the public exhibition process. Council should address the result of all agency and community consultations in the section 59 submission report.

- Office of Environment and Heritage (OEH): The original Gateway determination (dated 25 October 2012) required Council to consult with OEH as the site was identified to be below

the 1:100 flood planning level (FPL) and known to be in the high hazard floodway. Council was required to demonstrate consistency with the requirements of s117 Direction 4.3 Flood Prone Land given the original planning proposal's inconsistencies with the 'NSW Flood Prone Land Policy' and the principles of the 'Floodplain Development Manual'.

Council has consulted with OEH since 2012 to resolve concerns over flooding and development along the site's river front area. OEH has also raised concerns about impacts on the adjoining National Park and the potential for Aboriginal cultural heritage on the site. The amended planning proposal includes supporting information and specialist reports to address outstanding concerns about flooding, Aboriginal heritage, impact on the adjoining National Park, biodiversity and wetlands.

Flooding

Council has undertaken a flood study for the subject site and confirmed that the site experiences widespread inundation in large flood events. The entire site is inundated in the 1:100 year flood event with a maximum flood level of 92.97mAHD on the south east boundary, near the Riverina Highway. The site is affected by a mix of low and high hazard flow in the 1:100 year event and also contains a section of floodway.

The site specific flood study also includes a flood modelling assessment of impacts caused by proposed access roads, culverts and building envelopes on flood behaviour across the site and neighbouring properties. The site specific flood study concludes no adverse impacts are expected on or adjacent to the site during a 1:100 flood event, based on the proposed location of access roads, culverts and building envelopes.

Council has also prepared a draft Deniliquin Floodplain Risk Management Study and Plan (FRMP) for the former Deniliquin LGA. The Plan recommends a flood planning level (FPL) of 1:100 + 500mm for land within the floodway and a FPL of 1:100 + 300mm for land within the balance of the flood planning area (FPA). These FPLs have been determined in consultation with the OEH. Extracts from the draft Deniliquin FRMP detailing the proposed FPLs are included under Appendix 7 of the amended planning proposal.

The amended planning proposal seeks to insert a model flood planning clause into the DLEP 2013 to apply specifically to the subject site. The proposed flood planning clause is stated to include a FPL of 1:100 + 300mm and a FPL of 1:100+500mm for the section of floodway across the site. A flood planning map (FPM) is also proposed to be prepared to support the flood planning clause. A draft indicative FPA map has been included at Appendix 11 identifying the entire site as flood prone land.

The site specific flood study, including a flood modelling assessment, relies on specific tolerances to yield the conclusion of no adverse flooding impacts. The flood modelling relies on a specific development occurring on the site, that is, a 7 lot residential subdivision with pre-determined location for access roads and 600m2 building envelopes, as presented in the indicative 'river front area' map in Appendix 12. The amended planning proposal seeks to include site specific provisions to identify a model clause and supporting mapping for a 'river front area' (RFA) with building envelopes and access roads. It is recommended the proposed RFA clause make reference to the RFA map to restrict development within the area identified as RFA. The proposed RFA clause should make reference to the flood study and site specific flood modelling as grounds for consideration in granting development consent. However, the identification of site specific building envelopes and access roads should not be included in the proposed RFA clause and mapping, as these are deemed unsuitable for an LEP. Such site specific planning controls (building envelopes and access corridors) should occur in a DCP or masterplan document. Any site specific references to the details of a future proposed development (including building envelopes and access roads) would also be inconsistent with part (5) of section 117 Direction 6.3 Site Specific Provisions.

Council should be required to submit a draft model 'river front area' clause (under Part 6 Additional local provisions of the Deniliquin LEP 2013) in the section 59 submission report.

It is recommended Council formally consult with OEH regarding the FPL in the amended planning proposal as part of agency consultations during the public exhibition process. Council should address the result of all agency and community consultations in the section 59 submission report.

Lastly, in terms flood emergency response, the site has significant evacuation constraints as it can be completely inundated and cut off during a major flood event. The amended planning proposal states that in major flood events the future residents of the residential subdivision would rely on prior evacuation and broader flood awareness to mitigate impacts on emergency management. Council should consult with Fire and Rescue NSW and SES to gauge whether this is an acceptable response to the site's flood affectation.

Aboriginal Cultural Heritage

OEH required an on ground cultural heritage survey of the area to be conducted to inform the proposed rezoning from cultural heritage viewpoint. Council engaged specialist consultants who prepared an Aboriginal Heritage Due Diligence report for the site, and is included with the amended proposal (Appendix 8). The report concludes that 'the subject site was assessed as having negligible potential to contain Aboriginal objects and no Aboriginal artefacts were identified'.

Impact on adjoining National Park

The amended planning proposal addresses concerns raised by OEH regarding visual impacts on the adjoining Murray Valley Regional Park. It is stated that the establishment of the proposed 'river front area' provision in the LEP would create a buffer between the regional park and the proposed residential development. The proposed 'river front area' provisions will restricts development within this area and the river itself provides a buffer between the subject site and Regional Park with the majority of the development will be confined to the building and access envelopes. It is stated that Council considers the development will have minimal impact on the Murray Valley Regional Park.

Impact on Biodiversity and Wetlands

During initial consultations in 2012, OEH required an assessment of the potential impacts on threatened species of the rezoning to be undertaken. Council engaged specialist consultants to prepare a biodiversity assessment report (Appendix 9). The report concludes that the impacts to biodiversity would be minor as a result of the proposed rezoning and any impacts can be mitigated. The subject site is within a modified landscape that has previously been used for agriculture.

The amended planning proposal also acknowledges OEH's concerns regarding domestic water rights and the provision of sewer at the site. The amended proposal states that additional domestic water rights will be created and that sewer is available and it is the intention of the proponent to extend it to the development. Council supports the extension of sewer to the site.

- **Road and Maritime Services:** The original Gateway determination (dated 25 October 2012) required Council to consult with RMS in relation to road widening identified for land adjoining the Riverina Highway, and address requirements of the s117 Direction 6.2 Reserving Land for Public Purposes. During initial consultations in 2012, RMS made recommendation regarding access, road connectivity and the prospect of future road widening.

The northern strip of the site zoned SP2 Special Infrastructure has been identified as being required for future road widening purposes and may be acquired by RMS in the future. This strip of land should therefore remain zoned SP2 and continue to be identified in the Land Reservation Acquisition Map – Sheet LRA_005 under the Deniliquin LEP 2013. Council should consult with RMS further during the development application and assessment stage to resolve the matter of landscape buffers, traffic generation and intersections and improved road connectivity.

Nonetheless, it is recommended Council consult with the RMS for the amended planning proposal as part of agency consultations during the public exhibition process. Council should address the result of all agency and community consultations in the section 59 submission report.

• **Consistency with section 117 Directions:** The original Gateway determination (dated 25 October 2012 – Condition No. 1) deemed the original planning proposal to be inconsistent with section 117 Directions 1.2 Rural Zones, 1.5 Rural Lands, and 2.1 Environmental Protection Zones. The amended planning proposal provides a response to demonstrate consistency and where possible justify any inconsistencies.

The amended proposal states that despite inconsistency with Directions 1.2 and 1.5, the inconsistency should be deemed to be of minor significance, given the minor extent of the proposed rezoning of rural land for residential purposes. It is stated the subject area has limited agricultural value and capability. An assessment against the 7 rural planning principles is outlined to support the justification for the inconsistency.

The amended proposal does not consider Direction 2.1 to be relevant in this case, given the specialist studies for flooding, biodiversity and cultural heritage do not identify the site to be environmentally sensitive land that requires protection by environmental protection zones. The amended proposal does acknowledge the flooding sensitivity of the land and outlines that the proposed LEP flood planning provisions that would address these issues.

The amended proposal's justifications to address inconsistencies with the section 117 Direction are deemed adequate and no further work is required.

In order to address requirements of the following section 117 Directions, Council should be required to consult with relevant agencies based on the amended planning proposal. These agency consultations should occur during the community consultation period and the result of all agency and community consultations should be addressed in the section 59 submission report.

- Civil Aviation Safety Authority (s117 Direction 3.5 Development Near Licensed Aerodromes)
- NSW Department of Primary Industries – Resources and Energy (s117 Direction 1.3 Mining, Petroleum and Extractive Industries)
- Office of Environment and Heritage (s117 Direction 4.3 Flood Prone Land)
- Roads and Maritime Services (s117 Direction 6.2 Reserving Land for Public Purposes)
- NSW Rural Fire Service (s117 Direction 4.4 Planning for Bushfire Protection)

Formal consultations are recommended with the following agencies, based on matters raised during initial consultations.

- NSW Department of Primary Industries – Agriculture (loss of rural land adjoining the Edward River)
- Local Land Services – Murray (loss of rural land adjoining Edward River)
- NSW Office of Water (creation of additional domestic water rights)
- Fire and Rescue NSW (flood emergency response and access)

• **Murray Regional Environmental Plan (REP) No. 2 – Riverine Land (REP 2):** The original Gateway determination (dated 25 October 2012 – Condition No. 3) requires the proposal to address specific principles of Murray REP No.2 – Riverine Land.

- Bank disturbance
- Flooding
- Land degradation
- River related uses
- Settlement
- Wetlands

The amended planning proposal addresses the specified principles of the Murray REP2 based on a consideration of potential impacts and mitigation measures. The amended proposal is supported by site-specific flood modelling and a broader flood study to determine flood planning levels and associated mapping. The proposed establishment of site specific (river front area) provisions in the LEP to restrict residential development along the river front area also addresses principles of the Murray REP2.

The proposed rezoning and residential subdivision pattern does not include public access to the Edward River foreshore. While this type of river front subdivision pattern is generally not supported, Council has resolved (15 September 2016) to proceed with the amended planning proposal upon consideration of principles of the Murray REP 2. It is noted that the original planning proposal had indicated the potential dedication of river front land for public purposes, however the amended planning proposal makes no reference to this.

Nonetheless, Council should consult with relevant agencies identified in the altered Gateway determination based on the amended planning proposal and address the result of all agency and community consultations in the section 59 submissions report.

• Consideration of State Environmental Planning Policy 55 – Remediation of Land (SEPP 55): The original Gateway determination (dated 25 October 2012 – Condition No. 2) requires the proposal to demonstrate that it satisfies the requirements of SEPP 55 and the 'Contaminated Land Planning Guidelines'. Condition No. 3 also requires Council to prepare an initial site contamination investigation to demonstrate the site's suitability for rezoning and include the report as part of public exhibition material.

Council has not provided an initial site contamination investigation report, and the amended proposal regards the need for such a report to be deferred to the development application stage. The amended proposal acknowledges the potential for contamination, as the site's historic uses includes agricultural activities, based on Table 1 'Managing Land Contamination Planning Guidelines' (Department of Urban Affairs and Planning/Environment Protection Authority, 1998) under clause 6(4)(b) of SEPP 55.

It is recommended Council be required to justify why an initial site contamination investigation under SEPP 55 considerations should be deferred to the development application stage, rather than considered as part of the planning proposal process. This matter should be further addressed following agency and community consultations, in the section 59 submission report.

Mapping

An indicative proposed zoning map is not provided, however the amended planning proposal states that it is proposed to rezone the subject site from RU1 Primary Production to R5 Large Lot Residential. Refer to Figure 1 (pp. 6) of the amended planning proposal document.

An indicative proposed Minimum Lot Size (MLS) map has been provided. The map identifies 4 proposed lots to be assigned a MLS of 1ha, while 3 proposed lots are identified with a MLS of 2ha.

An indicative Flood Planning Area (FPA) map has been provided, based on the 'Edward River at Deniliquin Flood Study 2014'. The FPA map identifies the entire subject site as flood prone land. The FPA map is proposed to support a proposed site specific flood planning clause under the Deniliquin LEP (DLEP) 2013. Currently, the DLEP 2013 does not contain any FPA mapping.

An indicative 'River Front Area' (RFA) map has been provided. The map identifies a buffer

area along the Edward River in which development is proposed to be restricted. The RFA map supports the proposed site specific (river front area) clause under the Deniliquin LEP 2013.

Recommendations

The amended proposal provides adequate additional supporting information to satisfy most original Gateway conditions in order to proceed to community consultation. However, it is recommended Council be required to resolve the following outstanding matters prior to proceeding to community consultation:

- Site specific (flood planning) provisions: Council should be required to formally consult with the Office of Environment and Heritage (OEH) prior to community consultation to confirm whether the proposal's inconsistency with section 117 Direction 4.3 Flood Prone Land can be adequately justified based on 4.3(9)(a) (planning proposal is in accordance with a FRMP) or 4.3(9)(b) (inconsistency is of minor significance). Council should be required to forward the formal response from OEH to the Department prior to proceeding to community consultation.

Council should also confirm the most suitable flood planning level (FPL) across the site through formal consultation with OEH. The proposed site specific flood planning clause and supporting flood planning area (FPA) mapping are broadly supported. Council should continue to work with OEH to establish a mutually acceptable flood planning level (FPL) across the subject site. The intent of the proposed site specific flood planning clause under Part 6 (Additional local provisions) of the Deniliquin LEP 2013 should be drafted and submitted to the Department for endorsement in the section 59 report.

- Site specific (river front area) provisions: The intent of the proposed 'river front area' (RFA) model clause under Part 6 (Additional local provisions) of the Deniliquin LEP 2013 should be drafted and submitted to the Department for endorsement. It is recommended the proposed RFA clause make reference to the RFA mapping to restrict development within the area identified as 'river front area'. The proposed RFA clause should make reference to the 'Deniliquin Flood Study' and the site specific flood modelling work as grounds for consideration in granting development consent. The identification of site specific building envelopes and access roads is not supported in the proposed RFA clause, as this is deemed unsuitable in a Standard Instrument LEP. Such site specific planning controls should occur in a DCP or masterplan document. However, the intent of the proposed RFA clause in the DLEP 2013 should clearly outline that any future development occurs in accordance with the outcomes of the site specific flood modelling. That is, any future development occurs as intended, and enforced through conditions of consent, within pre-determined building envelopes and road on pre-determined access corridors. The proposed site specific RFA clause should work together with the proposed flood planning clause (including a FPL and FPA mapping), to ensure any future residential development occurs as intended and in accordance with the Deniliquin flood study, site specific flood modelling work, and adheres to recommendations from the specialist reports (Biodiversity and Aboriginal Heritage Due Diligence).

- Consideration of SEPP 55 Remediation of Land: Council is required to demonstrate that the amended planning proposal satisfies the requirements of SEPP 55 and the 'Contaminated Land Planning Guidelines'. Council is required to justify why a detailed site investigation should be deferred to the development application stage, rather than considered as part of the planning proposal process under clause 6 of SEPP 55.

In summation, while the rezoning of flood prone land for residential purposes is generally discouraged on planning grounds, in this case Council is stated to have consulted extensively with OEH and specialist consultants. The flood study and site specific flood modelling work confirms the flood affectation of the site during a major (1:100 year) flood event. Despite the proposed site specific LEP clauses (flood planning and RFA) intended to

guide development and mitigate flood risks, the amended proposal is not deemed to be based on sound planning practices. Despite these shortcomings, the proposal is recommended to proceed with conditions, due to the precedent set by the procession of the original proposal to Gateway determination with conditions as recommended by an LEP Panel on 19 April 2012.

Thus, it is recommended the Minister's delegate endorse the amended planning proposal to proceed to community consultation, subject to conditions. It is further recommended the Minister's delegate alter the original Gateway determination dated 25 October 2012 (as since altered to extend timeframe) to revise the description of the planning proposal and amend the Gateway conditions.

Further, Council should be encouraged to finalise the 'Deniliquin Rural Residential Strategy' as soon as possible and submit it to the Department for endorsement. Council should also be encouraged to consider any future planning proposals that rezone rural land based on sound planning practices, based on an assessment of flood affectation, environmental impacts and overall strategic merit.

Council resolved on 15 September 2016 to request delegations in order to complete this plan. Council was not given authorisation to exercise delegations for the original planning proposal in the original Gateway determination dated 25 October 2012. In the absence of an endorsed land use strategy and the outstanding flooding and RFA matters, it is recommended Council not be authorised to exercise delegations in this instance.

The timeframe for completing the LEP remains as extended and should be completed no later than 2 May 2017.

ORIGINAL PLANNING PROPOSAL (March 2012):

The Planning Proposal is required to achieve Council's resolution to apply the 1(c) Rural Small Holdings Zone to the area identified as Kyalite Stables.

Council submitted it's original Planning Proposal on the 21st of December 2011 seeking a Gateway Determination. The Department wrote to Council 31 January 2012 advising that the Planning Proposal was incomplete in accordance with the Department's "Guide to preparing planning proposals", and additional information was required to assess the Planning Proposal.

Council resolved to prepare this Planning Proposal prior to commencement of the Comprehensive Deniliquin LEP 2012. Council is advancing it's draft principal LEP but is yet to receive a S65 certificate.

External Supporting
Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **AMENDED PLANNING PROPOSAL (September 2016):**

The amended planning proposal provides the following objective / intended outcome: 'The objective of the planning proposal is to allow the subject site to be developed for rural residential purposes'.

ORIGINAL PLANNING PROPOSAL (March 2012):

Council has adequately identified the intention of the Planning Proposal.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **AMENDED PLANNING PROPOSAL (September 2016):**

The amended planning proposal seeks to achieve the proposed outcomes by:

- 'Amending the LEP 2013 Land Zoning Map – LZN_005 for the subject site to rezone the land currently zoned RU1 Primary Production to R5 Large Lot Residential.

- Amending the LEP 2013 Lot Size Map – Sheet LSZ_005 for the subject site so that proposed lots 12-15 will have a minimum lot size of 1.2ha and proposed lot 16 will have a minimum lot size of 2ha. Appendix 10 shows the proposed minimum lot size map.

- Amending the LEP 2013 by inserting a clause relating to flood planning that will identify the flood planning area as it applies to this land and the flood planning level for this land will be as agreed by OEH. Appendix 11 is a map showing the flood planning area.

- Amending the LEP 2013 by inserting a clause relating to a river front area (similar to the clause the Murray Local Environmental Plan 2011) and creation of a map showing the river front area. Appendix 12 is a map showing the proposed river front area.

- Inserting provisions into LEP 2013 (map or clauses and in addition to the river front area) that prevents the movement of the building and access envelopes as determined in consultation with the Department.

In addition to the LEP changes, Council is proposing to amend Deniliquin Development Control Plan 2016 so that clause 5.9 (preservation of trees or vegetation) of the LEP 2013 applies to this land'.

ORIGINAL PLANNING PROPOSAL (March 2012):

Despite not specifically addressing the 'Explanation of provisions' it is evident in the Planning Proposal how Council intends to achieve its Statement of Objectives.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.2 Rural Zones

1.3 Mining, Petroleum Production and Extractive Industries

1.5 Rural Lands

2.1 Environment Protection Zones

2.3 Heritage Conservation

3.1 Residential Zones

3.2 Caravan Parks and Manufactured Home Estates

3.3 Home Occupations

3.4 Integrating Land Use and Transport

3.5 Development Near Licensed Aerodromes

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

6.2 Reserving Land for Public Purposes

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **No**

d) Which SEPPs have the RPA identified? **SEPP No 55—Remediation of Land
SEPP (Rural Lands) 2008**

e) List any other matters that need to be considered :

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain : **AMENDED PLANNING PROPOSAL (September 2016):**

Consistency with section 117 Directions:

The original Gateway determination (dated 25 October 2012 – Condition No. 1) deemed the original planning proposal to be inconsistent with section 117 Directions 1.2 Rural Zones, 1.5 Rural Lands, and 2.1 Environmental Protection Zones. The amended planning proposal provides a response to demonstrate consistency and where possible justify any inconsistencies.

The amended proposal states that despite inconsistency with Directions 1.2 and 1.5, the inconsistency should be deemed to be of minor significance, given the minor extent of the proposed rezoning of rural land for residential purposes. Council states that the subject area has limited agricultural value and capability. An assessment against the 7 rural planning principles is outlined to support the justification for the inconsistency.

The amended proposal does not consider Direction 2.1 to be relevant in this case, given the specialist studies for flooding, biodiversity and cultural heritage do not identify the site to be environmentally sensitive land that requires protection by environmental protection zones. The amended proposal does acknowledge the flooding sensitivity of the land and outlines that the proposed LEP flood planning provisions that would address these issues.

The Acting Director Regions, Western can be satisfied that the amended proposal's justifications to address inconsistencies with section 117 Direction 1.2 Rural Zones and 1.5 Rural Lands and 2.1 Environment Protection Zones are deemed adequate and no further work is required.

In order to address requirements of the following section 117 Directions, Council is required to consult with relevant agencies based on the amended planning proposal. These agency consultations should occur during the community consultation period and the result of all agency and community consultations should be addressed in the section 59 submission report.

- Civil Aviation Safety Authority (s117 Direction 3.5 Development Near Licensed Aerodromes)
- NSW Department of Primary Industries – Resources and Energy (s117 Direction 1.3 Mining, Petroleum and Extractive Industries)
- Office of Environment and Heritage (s117 Direction 4.3 Flood Prone Land)
- Roads and Maritime Services (s117 Direction 6.2 Reserving Land for Public Purposes)
- NSW Rural Fire Service (s117 Direction 4.4 Planning for Bushfire Protection)

Formal consultations are recommended with the following agencies, based on matters raised during initial consultations.

- NSW Department of Primary Industries – Agriculture (loss of rural land adjoining the Edward River)
- Local Land Services – Murray (loss of rural land adjoining Edward River)
- NSW Office of Water (creation of additional domestic water rights)
- Fire and Rescue NSW (flood emergency response and access)

Murray Regional Environmental Plan (REP) No. 2 – Riverine Land (REP 2):

The original Gateway determination (dated 25 October 2012 – Condition No. 3) requires the proposal to address specific principles of Murray REP No.2 – Riverine Land.

- Bank disturbance
- Flooding
- Land degradation
- River related uses
- Settlement
- Wetlands

The amended planning proposal addresses the specified principles of the Murray REP2 based on a consideration of potential impacts and mitigation measures. The amended proposal is supported by site-specific flood modelling and a broader flood study to determine flood planning levels and associated mapping. The proposed establishment of site specific (river front area) provisions in the LEP to restrict residential development along the river front area also addresses principles of the Murray REP2.

The proposed rezoning and residential subdivision pattern does not include public access to the Edward River foreshore. While this type of river front subdivision pattern is generally not supported, Council has resolved (15 September 2016) to proceed with the amended planning proposal upon consideration of principles of the Murray REP 2. It is noted that the original planning proposal had indicated the potential dedication of river front land for public purposes, however the amended planning proposal makes no reference to this.

Nonetheless, Council should consult with relevant agencies identified in the altered Gateway determination based on the amended planning proposal and address the result of all agency and community consultations in the section 59 submissions report.

Consideration of State Environmental Planning Policy 55 – Remediation of Land (SEPP 55):

The original Gateway determination (dated 25 October 2012 – Condition No. 2) requires the proposal to demonstrate that it satisfies the requirements of SEPP 55 and the 'Contaminated Land Planning Guidelines'. Condition No. 2 also requires Council to prepare an initial site contamination investigation to demonstrate the site's suitability for rezoning and include the report as part of public exhibition material.

Council has not provided an initial site contamination investigation report, and the amended proposal regards the need for such a report to be deferred to the development application stage. The amended proposal acknowledges the potential for contamination, as the site's historic uses includes agricultural activities, based on Table 1 'Managing Land Contamination Planning Guidelines' (Department of Urban Affairs and Planning/Environment Protection Authority, 1998) under clause 6(4)(b) of SEPP 55.

It is recommended Council be required to justify why an initial site contamination investigation under SEPP 55 considerations should be deferred to the development application stage, rather than considered as part of the planning proposal process. This matter should be further addressed following agency and community consultations, in the section 59 submission report.

ORIGINAL PLANNING PROPOSAL (March 2012):

The Planning Proposal is inconsistent with the following directions 1.2 Rural Zones, 1.3 Mining, Petroleum Production and Extractive Industries, 1.5 Rural Lands, 2.1 Environment Protection Zones, 3.1 Residential Zones, 3.3 Home Occupations, 3.5 Development near Licensed Aerodromes and 4.3 Flood Prone Land.

1.2 Rural Zones

The subject land is zoned 1(a) General Rural under the Deniliquin LEP 1997. The Planning Proposal is deemed to be inconsistent with the terms of this Direction as it seeks to rezone land from a rural zone to a residential zone increasing the permissible density of land within the rural zone. Council has sought to justify the inconsistency as of minor significance due to the minimal loss of agricultural land and proximity to town. If the Planning Proposal was to proceed, the inconsistency would need to be justified.

The inconsistency can also be justified by a Strategy or Study, both of which have not been prepared by Council. However, it is noted that Council has recently employed a consultant to prepare a 'rural residential strategy'. An option would be to wait until Council has finished its Strategy to support the rezoning.

1.3 Mining, Petroleum Production and Extractive Industries

The Planning Proposal is inconsistent with this Direction as consultation with the Director-General of the Department of Primary Industries (DPI) has not yet occurred. If the Planning Proposal is issued a Gateway Determination, Council will be required to undertake the consultation with the Director – General of DPI prior to making the Plan to justify the inconsistency.

1.5 Rural Lands

The Planning Proposal has not adequately addressed this S117 direction. Council has considered this Direction. However, Council has not provided an adequate assessment of the 'rural planning' or 'rural subdivision' principles listed in SEPP (Rural Lands) 2008. An assessment of consistency with the SEPP(Rural Lands) 2008 Rural Planning Principles has been undertaken in the SEPPs assessment section of the report.

It is noted Council has commenced a Rural Residential Strategy to identify and assess suitable rural residential land. Inconsistency with this Direction can be satisfied when a Planning Proposal is supported by a Strategy that takes consideration of this Direction.

2.1 Environment Protection Zones

The Planning Proposal has inadequately addressed this Direction. The Planning Proposal states that other than the floodplain wetland, no other portion of the site has been identified as of environmental sensitivity. However, the draft Deniliquin Biodiversity map, Planning proposal Appendix 8 and aerial photography identifies a large portion of the site also having biodiversity value. The Planning Proposal is inconsistent with this Direction as it fails to facilitate the protection and conservation of the environmentally sensitive areas. If Gateway determines the Planning Proposal

proceed, Council will need to justify inconsistency with this Direction.

3.1 Residential Zones

This Direction applies as the Planning Proposal proposes to affect land within a proposed residential zone or where significant residential development is permitted. The Planning Proposal is inconsistent with this Direction as it contains provisions that will increase the consumption of land for housing and associated urban development on the urban fringe. The zoning will change the minimum lot size of proposed area from 40ha to 5000sqm. Despite being named the 1(c) Rural Small Holding zone, the purpose of the zone is to provide for residential dwellings. The inconsistency is not justified as the land is not the subject of a strategy or study endorsed by the Director General of the Department. Council has not addressed this inconsistency and will need to justify the inconsistency.

3.3 Home Occupations

The Planning Proposal is inconsistent with this Direction as Home Occupations are required with consent in the 1(a) General Rural and 1(c) Rural Small Holding zones. Inconsistency with this Direction may be justified as of minor significance. The inconsistency is considered to be of minor significance as Council is currently preparing the draft Deniliquin 2012 Principal LEP that will allow Home Occupations without consent in both the aforementioned zones.

3.5 Development Near Licensed Aerodromes

The Deniliquin Obstacle Limitation Surface Map identifies the subject land in the Planning Proposal. The Planning Proposal is inconsistent with this Direction until consultation with the the Commonwealth Civil Aviation Safety Authority has occurred. Council identified in it's Planning Proposal that consultation with the Commonwealth Civil Aviation Safety Authority will be undertaken during exhibition.

4.3 Flood Prone Land

Council has provided limited assessment of Direction 4.3 Flood Prone Land. The Planning Proposal is inconsistent with this Direction as consistency with the Floodplain Development Manual 2005 has not been proven. The Planning Proposal is inconsistent with this Direction as it contains provisions that will apply to the flood planning area which:

- Permit development in a floodway area.
- Permit development that may result in significant flood impacts to or from other properties.
- Permits increased development of flood prone land.

Council's flood planning maps identify that the subject land lies below the 1:100 flood planning level with part of the site being located in high hazard flood way. Noting that Council's 1:100 FPL is derived from a 1984 study.

The Planning Proposal must therefore give effect to and be consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual, including "Guidelines on development controls on low flood risk areas – Floodplain Development Manual". The latter Guidelines specify that residential development should be defined by a 100 year flood planning level and an appropriate freeboard (usually 0.5m). The proposed use is of a residential nature.

The Planning Proposal is inconsistent with the Guidelines as it seeks to allow

development at the 1% FPL with a reduced freeboard (100mm). Council has sought to justify the reduced freeboard on the basis that the Floodplain Development Manual (2005) does not mandate the 500mm freeboard. However, the Guidelines on development controls on low flood risk areas state that a 500mm must be included unless exceptional circumstances are justified.

It is noted Council are justifying the Planning Proposal based on the 1984 1:100 flood planning level. Due to the age of the flood planning level, the accuracy of the flooding behaviour becomes questionable. Council has used the 1984 1:100 to identify part of the subject land is slightly above the 1:20 year flood however has not accurately identified the location of the 1:20 or the extent of the flooding or impacts. The Planning Proposal has not assessed the impact of additional houses or from existing houses on existing flood behaviour.

Appendix 7 to the Planning Proposal contains a map identifying the spot levels of flooding depth across the site. The spot levels range from 90.2m at the lowest point to 92.5m. The 1:100 (1984) is approx. identified at 92.84m which means the entire site is completely under the 1:100 Flood Planning Level (let alone the 1:100 + 500mm) and that in order to satisfy the Guidelines the lower dwellings of the proposed rezoning would need to be relocated, filled or elevated to be above the Flood Planning Level (1:100 + 500mm).

The Planning Proposal has not adequately assessed the impact on emergency services and how evacuation procedures would take place.

The Planning Proposal should not proceed due to the significant impacts of flooding upon the subject land. If Gateway determine the flooding impacts are not significant, Council will need to justify that the inconsistencies with this Direction are of minor significance.

4.4 Planning for Bushfire Protection

The Planning Proposal is inconsistent with this Direction until consultation with the Commissioner of the NSW Rural Fire Service has been undertaken. Consultation has not yet been undertaken. The Planning Proposal acknowledges that if a Determination is issued it will be required to undertake consultation.

Note: The subject land has been identified as bushfire prone.

6.2 Reserving Land for Public Purpose

This Direction applies as Council advises that the Roads and Maritime Services (RMS) agency has identified a need for road widening along adjoining the Riverina Highway. If Gateway determines the Planning Proposal should proceed, further assessment with this Direction will occur once RMS has been consulted.

SEPP (Rural Lands) 2008

-Rural Planning Principles

The significance or potential of the area for agricultural production is given little consideration due to the former small scale agriculture being undertaken on the land.

The loss of agricultural potential of the land (Class 1 and/or 2 Agricultural Land Classification) is not considered in detail. Known constraints have only been discussed to a limited extent. Council's proposed Rural Residential Strategy would assist in identifying the suitability of the land identified in the Planning Proposal and other various locations surrounding Deniliquin.

-Rural Subdivision Principles

The Planning Proposal states that additional subdivision of the subject area (already fragmented) would be a positive outcome as it is no longer of a feasible agricultural size. The Planning Proposal has not outlined agricultural potential on the subject land. Council has inferred that the Planning Proposal will not adversely impact on agricultural potential, however this has not been justified.

Land use conflict with remaining agricultural uses in the locality has not been discussed.

The Planning Proposal's assessment of the proposed increase in settlement density against the principles of the SEPP (Rural Lands) 2008 is considered inadequate and currently inconsistent.

SEPP 55 Remediation of Land

The SEPP is applicable as the site has a history of agricultural use and could have potential land contamination. The Planning Proposal is inconsistent as it hasn't provided sufficient information identifying if the land could potentially be contaminated or remediated to a standard suitable for future use in accordance with Clause 6 of SEPP55. If Gateway determines the Planning Proposal should proceed, an assessment in accordance with SEPP55 will need to be undertaken.

Murray Regional Environmental Plan No 2 – Riverine Land (MREP)

The MREP applies as Council is preparing a Local Environmental Plan (Planning Proposal) that will affect the riverine environment of the River Murray (identified on the map). Note River Murray includes the Edward River.

When the MREP applies the 'principles' must be taken into account:

- Access: The MREP supports public access to the waterway and foreshore of the River Murray. The Planning Proposal does not provide continuous access to the Edward River. However, a community title reserve is proposed, which may or may not be dedicated to Council as a public reserve.
- Bank disturbance: The MREP outlines that riparian vegetation disturbance should be kept to a minimum in any development of riverfront land. Due to the proposed subdivision layout, it is likely to cause significant disturbance of riverfront land.
- Flooding: The Planning Proposal has not adequately taken into consideration a number of the flooding principles of the MREP. As previously discussed in S.117 Direction 4.3 analysis, the Planning Proposal will: cause significant risks in developing the land, may cause redistribution effects of the proposed development, inadequately provides flood free access for essential facilities and services, potential pollution threat by development in flood events, may cause cumulative effects based on changes to floodwater behaviour and may increase costs of providing emergency services in the event of a flood.
- Land degradation / Landscape: The Planning Proposal has identified a significant portion of the site being subject to biodiversity constraints. The Planning Proposal has not addressed how to avoid land degradation processes and ensure the preservation of the landscape in accordance with the requirements of the MREP.
- River related uses: The MREP supports uses which have a demonstrated essential relationship with the River Murray, with other development being set back from the

river. The Planning Proposal subdivision plan identifies a number of lots directly adjoining the River Murray. Dwellings do not have an essential relationship to the River.

- **Settlement:** The MREP states 'new or expanding settlements should be located: (a) on flood free land. As previously discussed the subject land is flood prone and considerably constrained.
- **Water quality – N/A**
- **Wetlands:** The subject land has an identified floodplain wetland. The MREP requires management decisions affecting wetlands, should provide a hydrological regime appropriate for the maintenance/restoration of the wetland, consider potential impacts, control human and animal access and conserve native plants and animals.

If Gateway determines that the Planning Proposal should proceed Council will need to undertake further analysis to ensure consistency with the MREP wetlands principle.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

AMENDED PLANNING PROPOSAL (September 2016):

Mapping

An indicative proposed zoning map is not provided, however the amended planning proposal states that it is proposed to rezone the subject site from RU1 Primary Production to R5 Large Lot Residential. Refer to Figure 1 (pp. 6) of the amended planning proposal document.

An indicative proposed Minimum Lot Size (MLS) map has been provided. The map identifies 4 proposed lots to be assigned a MLS of 1ha, while 3 proposed lots are identified with a MLS of 2ha.

An indicative Flood Planning Area (FPA) map has been provided, based on the 'Edward River at Deniliquin Flood Study 2014'. The FPA map identifies the entire subject site as flood prone land. The FPA map is proposed to support a proposed site specific flood planning clause under the Deniliquin LEP (DLEP) 2013. Currently, the DLEP 2013 does not contain any FPA mapping.

An indicative 'River Front Area' (RFA) map has been provided. The map identifies a buffer area along the Edward River in which development is proposed to be restricted. The RFA map supports the proposed site specific (river front area) clause under the Deniliquin LEP 2013.

The amended planning proposal has provided adequate indicative mapping to proceed to community consultation.

ORIGINAL PLANNING PROPOSAL (March 2012):

The Planning Proposal has provided sufficient mapping to accurately identify the subject land. It is noted that the maps have not been prepared in accordance with the Department Standards technical requirements for preparing LEP maps - it is noted this is not required for amending LEPs.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

AMENDED PLANNING PROPOSAL (September 2016):

Deniliquin - Kyalite Stables - Rural Residential Rezoning

The amended planning proposal states that 'in accordance with section 57 of the Environmental Planning and Assessment Act, it is proposed to exhibit the planning proposal for 28 days in the local media and on Council's website. Adjoining property owners will also be notified'.

ORIGINAL PLANNING PROPOSAL (March 2012):

Council has proposed to exhibit the Planning Proposal for 28 days if issued a Gateway Determination. It is however recommended that the Planning Proposal does not proceed. If Gateway determines that the Planning Proposal should proceed, 28 days is deemed a sufficient exhibition period.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date : **December 2012**

Comments in relation to Principal LEP : **AMENDED PLANNING PROPOSAL (September 2016):**

The Deniliquin LEP 2013 was notified on 23 December 2013.

ORIGINAL PLANNING PROPOSAL (March 2012):

Council are still preparing it's Comprehensive LEP. Council rejected the LEP at s64 (7/12/11) and are seeking variations and legal opinions. Council resolved on 14/3/12 to defer the LEP till mid Apr 12 for further consideration and new LEP timeframe.

Assessment Criteria

Need for planning proposal : **AMENDED PLANNING PROPOSAL (September 2016):**

The amended planning proposal is required in order to achieve the proposed objectives and intended outcomes for a 7-lot residential subdivision at the site.

ORIGINAL PLANNING PROPOSAL (March 2012):

The Planning Proposal (PP) is an appropriate means of delivering the planning outcomes that Council is seeking. However it is noted that Council is concurrently preparing a Comprehensive LEP and a Rural Residential Strategy. Council initiated the Planning Proposal prior to commencement of the Comprehensive LEP and Rural Residential Strategy. In hindsight, with the Comprehensive LEP and Rural Residential Strategy imminent, it is logical to wait before considering a Planning Proposal for amended zoning on the subject land.

Supply and Demand

The Planning Proposal provided a brief supply and demand analysis for rural lifestyle development within Deniliquin. The analysis discredited the existing established Rural Residential Areas based on a limited recorded subdivisions, environmental considerations, availability of infrastructure and perceived demand. The Planning Proposal did not undertake sufficient analysis to adequately determine if the subject land was a suitable location for Rural Residential development in Deniliquin. Completion of the Rural Residential Strategy would justify Council's, at present, anecdotal evidence justifying the need for the additional Rural Residential land.

Net Community Benefit

The Planning Proposal includes a basic Net community benefit analysis which lists a number of costs and benefits that would arise from further subdivision of the subject land.

In terms of Net Community Benefit, the notable advantages and disadvantages of the PP include:

Allowing the subdivision of the additional 1(c) land to 5000sq.m will provide additional housing choice. However, it is not justified that the subject land is suitable or the best use for that type of land use.

The subject rural residential land would provide additional rural residential housing opportunities however at a significant cost. There has been insufficient analysis to calculate the costs to the community of infrastructure extensions. The Planning Proposal states that the 'community would be willing to accept [the costs]', yet hasn't provided analysis of the expected costs being passed onto the community. If Gateway determines that the Planning Proposal should proceed, consultation will be required with government agencies to determine the need for additional funding/infrastructure etc.

The site is known to be significantly constrained with environmental issues. Costs will be transferred onto the community through flooding issues, properties potentially suffering water damage, increased demand for emergency services, costs to community services, increase risk of harm to residents, environmental impacts and a loss of agricultural land.

Deniliquin - Kyalite Stables - Rural Residential Rezoning

Consistency with strategic planning framework :

AMENDED PLANNING PROPOSAL (September 2016):

Council has not completed the 'Deniliquin Rural Residential Strategy' to inform the strategic planning framework in this case. The Strategy has been ongoing since 2012. It is recommended Council be encouraged to finalise its Strategy and submit it to the Department for endorsement as soon as possible.

The draft Murray Riverina Regional Plan applies to the subject site, providing a snapshot of key economic and social drivers in the region as well as goals, directions and actions to deliver key NSW Government policies. The draft Plan identifies that there are settlement pressures in and around Deniliquin town centre. Once finalised the Plan will replace the previous Draft Murray Regional Strategy (2009).

ORIGINAL PLANNING PROPOSAL (March 2012):

The land is subject to the draft Murray Regional Strategy. The draft Murray Regional Strategy does not significantly impact on the subject land.

Council does not have an adopted Strategic Land Use Plan endorsed by the Director General. Council has employed a consultant to prepare a Rural Residential Strategy to determine suitability, adequacy and locations for future rural residential development. The Strategy hasn't advanced far enough to provide guidance in determining the appropriateness of the subject Planning Proposal.

Environmental social economic impacts :

AMENDED PLANNING PROPOSAL (September 2016):

The amended planning proposal has addressed a number of potential environmental impacts that may arise due to the proposed rezoning. Refer to 'Internal Supporting Notes' for further details.

The amended planning proposal has addressed the following matters identified in the assessment of the original planning proposal, supported by specialist reports and further information and justifications.

- Flooding
- Biodiversity
- Public Open Space/Reserve
- Riparian Access
- Wetlands
- Groundwater
- Contamination

(Refer to 'Internal Supporting Notes' for further details)

While it is acknowledged that residential development is generally discouraged on flood prone land, in this case Council has liaised with OEH and supporting specialist consultants (flooding, biodiversity, Aboriginal cultural heritage) to justify rezoning for limited residential subdivision. The proposed site specific flood planning clause and site-specific 'river front area' clause under the Deniliquin LEP 2013 will provide statutory provisions to ensure future residential subdivision and development includes mitigation measures for potential impacts during major flooding events.

The main economic benefit is stated to arise from increased residential (R5 Large Lot Residential) zoned land supply, in this case contributing to a proposed 7 lot residential subdivision.

The main social benefit is stated to arise from an increase in additional population within the Deniliquin LGA. The creation of additional housing choice is also described as a desirable outcome.

ORIGINAL PLANNING PROPOSAL (March 2012):

-Flooding

As previously discussed in the S.117 Directions analysis, the site is notably constrained by flooding. The entire area subject of the Planning Proposal is below the 1:100 FPL and parts are also in the high hazard floodway. The "Guidelines on development controls on low flood risk area – Floodplain Development Manual" recommends that Councils should not encourage residential development on land below the 1:100 FPL.

Council's FPL of 1:100 (1984) +100mm is inconsistent with the Flood Plain Development Manual and Guidelines, for S117 Direction 4.3 Flood Prone Land.

The Office of Environment and Heritage has not been consulted regarding flooding issues and their view is not known on whether they would support the proposed zoning amendments.

-Biodiversity

The subject site was assessed against the existing Natural Resource Maps in the draft Deniliquin LEP 2012. The subject land was identified on the Natural Resource Biodiversity map and it is evident from aerial photography that significant vegetation is present on the front half of the block adjoining the Edward River.

Council stated it was not aware of the site having biodiversity significance. Council has inadequately addressed biodiversity concerns relating to the subject land and provided insufficient information to suggest adequate environmental management will be undertaken.

-Bushfire Prone

The subject land has been identified as bushfire prone. If the Gateway determines the Planning Proposal proceed, consultation with the NSW Rural Fire Service will need to occur to ensure consistency with S.117 Direction 4.4 Bushfire Prone Land and development of appropriate conditions to support residential development.

-Public Open Space/ Reserve

The Planning Proposal identifies that a portion of the land will be dedicated as public reserve via a condition of development consent. The provision of public open space was previously considered when assessing the access and bank disturbance principles of the MREP. It is considered that the Planning Proposal would limit riparian access and the only access provided would be made through an existing wetland.

-Riparian Access

The Planning Proposal indicates four lots will be created with direct frontage to the Edward River. These properties will be entitled to access stock and domestic water or 'riparian rights' under the Water Management Act 2000. Creation of new riparian rights is generally discouraged to avoid diverting scarce water resources from environmental or economic functions. Consultation with NSW Office of Water would be required if Gateway determines that the Planning Proposal should proceed.

-Wetlands

The Planning Proposal identifies the presence of a floodplain wetland on part of the subject land. Insufficient environmental assessment of the management, maintenance, restoration and impacts on the wetland has been undertaken. Further assessment is required to ensure the preservation and consistency with environmental and MREP principles.

-Groundwater

The Planning Proposal stated there is no groundwater vulnerability mapping for Deniliquin. Despite the absence of mapping, the potential of groundwater vulnerability is high. Further consultation with the Office of Environment and Heritage/Department of Primary Industries is required to ensure adequacy.

-Contamination

The sites prior history of agricultural use identifies that there is potential for land contamination but did not address the issue of contamination, a need for remediation or an assessment of SEPP55. The Planning Proposal has not adequately addressed this issue.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	28 Days
Timeframe to make LEP :	6 months	Delegation :	DG
Public Authority Consultation - 56(2)(d)	Murray Catchment Management Authority Office of Environment and Heritage NSW Department of Primary Industries - Agriculture NSW Department of Primary Industries - Minerals and Petroleum Office of Environment and Heritage - NSW National Parks and Wildlife Service NSW Rural Fire Service Transport for NSW - Roads and Maritime Services Other		

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons : **AMENDED PLANNING PROPOSAL (September 2016):**

The amended planning proposal is recommended to proceed to community consultation and resolve any outstanding matters through agency and community consultations and reflect the result of these consultations in the section 59 report.

The amended proposal provides additional supporting information and specialist reports that are deemed adequate to proceed to community consultation. The proposed rezoning will provide limited opportunities for residential subdivision and development, with potential environmental impacts mitigated by proposed site specific flood planning and 'river front area' clauses in the Deniliquin LEP 2013.

The original planning proposal was issued a Gateway determination to proceed subject to conditions prior to community consultation on 25 October 2012 by the then A/Director General, as delegate of the Minister.

The original planning proposal was recommended to not proceed to Gateway determination on 13 April 2012 by the then assessing planning officer.

ORIGINAL PLANNING PROPOSAL (March 2012):

The Planning Proposal should be refused for the following reasons:

- 1) The Planning Proposal provided an unsubstantiated supply and demand analysis for rural lifestyle within Deniliquin. The analysis discredited the existing established Rural Residential Areas based on a limited recorded subdivisions, environmental considerations, availability of infrastructure and perceived demand. The evidence in the Planning Proposal does not validate sufficient demand for additional Rural Residential development.
- 2) Council is currently preparing a Rural Residential Strategy to determine suitable and adequate locations for future rural residential development. The Planning Proposal should be deferred until completion of that Strategy.
- 3) The Planning Proposal is inconsistent with S117 Direction 1.2 Rural Zones, 1.3 Mining, Petroleum Production and Extractive Industries, 1.5 Rural Lands, 2.1 Environment Protection Zones, 3.1 Residential Zones, 3.3 Home Occupations, 4.3 Flood Prone Land, SEPP55 Remediation of Land and the Murray Regional Environmental Plan No 2 – Riverine Land.

The key constraints are:

- i) Flooding - The entire area subject of the Planning Proposal is below the 1:100 + 500mm FPL and parts are also in the high hazard floodway. The "Guidelines on development controls on low flood risk areas" recommends that residential development on land below the 1:100 FPL is undesirable. The key concerns are:
 - a) the extent and nature of the flooding in the location is not known,
 - b) Council's intention to develop within the high hazard floodway,
 - c) Council's intention to reduce the freeboard to a level placing residents and properties at risk (100mm freeboard versus required 500mm),
 - d) planning best practice of avoiding flood prone lands for sensitive development (dwellings) where ever possible,
- ii) Biodiversity - The land has been identified on the draft Deniliquin LEP 2012 Natural Resource Biodiversity Map with vegetation present on the front half of the block adjoining the Edward River.
- iii) Bushfire Prone - The subject land has been identified as bushfire prone.
- iv) Wetlands - The subject land identifies the presence of a Wetland.
- v) Groundwater Vulnerability - There is a high potential of groundwater vulnerability on the subject land.
- vi) Riparian Access - The Planning Proposal will create undesirable riparian rights along the Edward River.
- vii) The site has a prior history of agricultural uses and is potentially contaminated.

Therefore the Planning Proposal is not supported.

Resubmission - s56(2)(b) : No

If Yes, reasons :

Identify any additional studies, if required. :

Other - provide details below

Deniliquin - Kyalite Stables - Rural Residential Rezoning

If Other, provide reasons :

AMENDED PLANNING PROPOSAL (September 2016):

The amended planning proposal is supported by the following additional specialist reports and supporting additional information:

- Preliminary results of consultation with agencies (Appendix 3)
- Revised proposed 7 lot subdivision layout plan (Appendix 4)
- Flood Study and Flood Impact Assessment (Appendix 6)
- Extract from draft Deniliquin Floodplain Risk Management Study and Plan (Appendix 7)
- Aboriginal Heritage Due Diligence Assessment (Appendix 8)
- Biodiversity Assessment (Appendix 9)

The additional information provided is deemed adequate at this time for the amended proposal to proceed to community consultation. Any outstanding matters are to be addressed in the section 59 submissions report prior to finalisation of the plan.

ORIGINAL PLANNING PROPOSAL (March 2012):

If Gateway determine to support the Planning Proposal the following investigations would be recommended:

Flooding, Contamination, Flora/fauna (Threatened Species), Groundwater, Wetlands and minerals potential.

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Planning Proposal - Additional Information.pdf	Proposal	Yes
Planning Proposal.pdf	Proposal	Yes
PP Appendix 1.pdf	Proposal	Yes
PP Appendix 2.pdf	Proposal	Yes
PP Appendix 3.pdf	Proposal	Yes
PP Appendix 4.pdf	Proposal	Yes
PP Appendix 5.pdf	Proposal	Yes
PP Appendix 6.pdf	Proposal	Yes
PP Appendix 7.pdf	Proposal	Yes
PP Appendix 8.pdf	Proposal	Yes
PP Appendix 9.pdf	Proposal	Yes
PP Appendix 10.pdf	Proposal	Yes
PP Appendix 11.pdf	Proposal	Yes
PP Appendix 12.pdf	Proposal	Yes
1. Deniliquin Gateway.pdf	Determination Document	Yes
2. Deniliquin PR Report.pdf	Determination Document	Yes
1.01 Deniliquin Planning Team Report.pdf	Determination Document	Yes
Deniliquin Extension..pdf	Determination Document	Yes
2 June 2014 Deniliquin Council letter advising no further work on PP.pdf	Determination Document	Yes
Extension letter - 2 May 2014.pdf	Determination Document	Yes
Extension of Time Letter & Amended Gateway Determination.pdf	Determination Document	Yes
Extension of Time Letter & Amended Gateway Determination.pdf	Determination Document	Yes

Deniliquin - Kyalite Stables - Rural Residential Rezoning

Deniliquin - Kyalite stables - 19 July 2016 extension of time and Alteration of Gateway Determination until 2 May 2017.pdf	Determination Document	Yes
18 July 2016 - Deniliquin Council request for timeframe extension.pdf	Determination Document	Yes
1. Amended Planning Proposal.pdf	Proposal	Yes
2. Council Report - 15 September 2016.pdf	Proposal	Yes
3. Council Minute Resolution 15 September 2016.pdf	Proposal	Yes
4. Cover Letter 15 September 2016.pdf	Proposal Covering Letter	Yes
5. Request for Initial Gateway Determination.pdf	Proposal	Yes
6. Evaluation Criteria for the Delegation of Plan Making Functions.pdf	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

- S.117 directions:
- 1.2 Rural Zones
 - 1.3 Mining, Petroleum Production and Extractive Industries
 - 1.5 Rural Lands
 - 2.1 Environment Protection Zones
 - 2.3 Heritage Conservation
 - 3.1 Residential Zones
 - 3.2 Caravan Parks and Manufactured Home Estates
 - 3.3 Home Occupations
 - 3.4 Integrating Land Use and Transport
 - 3.5 Development Near Licensed Aerodromes
 - 4.3 Flood Prone Land
 - 4.4 Planning for Bushfire Protection
 - 6.2 Reserving Land for Public Purposes

Additional Information : **AMENDED PLANNING PROPOSAL (September 2016)**

It recommended the Acting Director Regions, Western alter the Gateway determination dated 25 October 2012 (as since altered) for the proposed amendment to the Deniliquin Local Environmental Plan 2013 as follows:

1. Change the description of the Planning Proposal

from "Planning proposal (Department Ref: PP_2012_DENIL_001_00): to rezone rural land on the Riverina Highway from 1(a) General Rural Zone to 1(c) Rural Small Holding Zone."

to "Amended planning proposal (Department Ref: PP_2012_DENIL_001_00): to rezone land at Lots 2 and 3 DP 562598 and Lot 1 DP 1121183 being 21701-21703 Riverina Highway, Deniliquin from zone RU1 Primary Production to zone R5 Large Lot Residential and reduce the Minimum Lot Size to part 1ha and part 2ha to facilitate a 7 lot residential development."

2. Delete:

"condition 5" Community consultation

and replace with:

new condition 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 (as amended) and relevant supporting material must be made publicly available for a minimum of 28 days;

(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 (Department of Planning & Infrastructure 2013).

3. Delete:

“condition 6” Consultation with public authorities

and replace with:

new condition 6. Consultation is required with the following public authorities under section 56(2)(d) of the Environmental Planning and Assessment Act 1979 and to comply with the requirements of relevant section 117 Directions:

- **Civil Aviation Safety Authority**
- **NSW Department of Primary Industries – Agriculture**
- **NSW Department of Primary Industries – Resources and Energy**
- **Office of Environment and Heritage**
- **Roads and Maritime Services**
- **Local Land Services - Murray**
- **NSW Office of Water**
- **Fire and Rescue NSW**
- **NSW Rural Fire Service**

Each public authority is to be provided with a copy of the amended planning proposal and relevant supporting material, and given at least 21 days to comment on the proposal.

4. Delete:

“condition 7” Consultation with public authorities to comply with section 117 Directions.

and replace with

new condition 7. Council is required to provide further information and justification to resolve the following outstanding matters, after consultation with agencies, in the section 59 submissions report:

(a) Site specific (flood planning) clause:

Council is required to confirm the most suitable flood planning level (FPL) across the subject site through formal consultation with the Office of Environment and Heritage (OEH). The information provided on the proposed site specific flood planning clause and flood planning area (FPA) mapping are suitable for consultation purposes. Council is required to consult with OEH to establish a mutually acceptable and justifiable flood planning level (FPL) across the subject site having regard to the preliminary consultations with OEH and information from the Deniliquin Flood Study and Floodplain Risk Management Plan (FRMP).

The proposed intent of the site specific flood planning clause is to be drafted and submitted to the Department for endorsement in the section 59 report. The section 59 report is to include the result of formal consultation with OEH.

(b) Site specific (river front area) clause:

The intent of the proposed site specific ‘river front area’ (RFA) clause is to be drafted to achieve the intended outcomes of the amended planning proposal, giving effect to the outcomes of the site specific flood modelling work and to ensure future development does not occur within the ‘river front area’, as illustrated in the proposed RFA mapping.

The intent of the proposed site specific RFA clause is to be submitted to the Department for endorsement in the section 59 report.

5. Delete:

"condition 9" Timeframe to complete LEP.

and replace with

new condition 9. The LEP is to be completed no later than 2 May 2017

6. Insert:

new condition 10. 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.

ORIGINAL PLANNING PROPOSAL (March 2012)

The Planning Proposal should be refused for the following reasons:

- 1) The Planning Proposal provided an unsubstantiated supply and demand analysis for rural lifestyle within Deniliquin. The analysis discredited the existing established Rural Residential Areas based on a limited recorded subdivisions, environmental considerations, availability of infrastructure and perceived demand. The evidence in the Planning Proposal does not validate sufficient demand for additional Rural Residential development.**
- 2) Council is currently preparing a Rural Residential Strategy to determine suitable and adequate locations for future rural residential development. The Planning Proposal should be deferred until completion of that Strategy.**
- 3) The Planning Proposal is inconsistent with S117 Direction 1.2 Rural Zones, 1.3 Mining, Petroleum Production and Extractive Industries, 1.5 Rural Lands, 2.1 Environment Protection Zones, 3.1 Residential Zones, 3.3 Home Occupations, 4.3 Flood Prone Land, SEPP55 Remediation of Land and the Murray Regional Environmental Plan No 2 – Riverine Land.**

The key constraints are:

i) Flooding - The entire area subject of the Planning Proposal is below the 1:100 + 500mm FPL and parts are also in the high hazard floodway. The "Guidelines on development controls on low flood risk areas" recommends that residential development on land below the 1:100 FPL is undesirable. The key concerns are:

- a) the extent and nature of the flooding in the location is not known,**
- b) Council's intention to develop within the high hazard floodway,**
- c) Council's intention to reduce the freeboard to a level placing residents and properties at risk (100mm freeboard versus required 500mm),**
- d) planning best practice of avoiding flood prone lands for sensitive development (dwellings) where ever possible,**

ii) Biodiversity - The land has been identified on the draft Deniliquin LEP 2012 Natural Resource Biodiversity Map with vegetation present on the front half of the block adjoining

the Edward River.

iii) Bushfire Prone - The subject land has been identified as bushfire prone.

iv) Wetlands - The subject land identifies the presence of a Wetland.

v) Groundwater Vulnerability - There is a high potential of groundwater vulnerability on the subject land.

vi) Riparian Access - The Planning Proposal will create undesirable riparian rights along the Edward River.

vii) The site has a prior history of agricultural uses and is potentially contaminated.

Therefore the Planning Proposal is not supported.

Supporting Reasons :

AMENDED PLANNING PROPOSAL (September 2016):

While the rezoning of flood prone land for residential purposes is generally discouraged on planning grounds, in this case Council has consulted extensively with OEH and specialist consultants. The flood study and site specific flood modelling work confirms the flood affectation of the site during a major (1:100 year) flood event. Despite the proposed site specific LEP clauses (flood planning and river front area provisions) that are intended to guide development and mitigate flood risks, the amended proposal is not deemed to be based on sound planning practices. Despite these shortcomings, the proposal is recommended to proceed with conditions, due to the precedent set by the procession of the original proposal to Gateway determination with conditions as recommended by an LEP Panel on 19 April 2012.

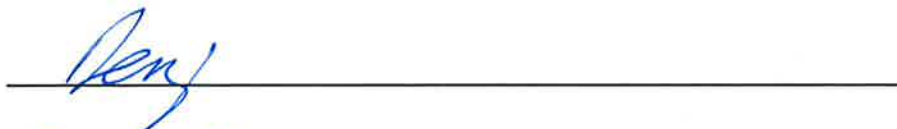
It is recommended the Minister's delegate endorse the amended planning proposal, subject to conditions prior to community consultation. It is further recommended the Minister's delegate alter the original Gateway determination dated 25 October 2012 (as since altered to extend timeframe) to revise the description of the planning proposal and amend the Gateway conditions.

The amended planning proposal has provided adequate additional information and supporting specialist reports to resolve matters identified as conditions to be addressed prior to community consultation in the original Gateway determination. Two (2) outstanding matters (flood planning provisions and adequate consideration of SEPP 55 clause 6) should be resolved prior to proceeding to community consultation.

Any further matters can be addressed in the section 59 submission report prior to finalisation of the plan.

The amended proposal will create an opportunity for a 7 lot residential subdivision near the Deniliquin town centre, with site specific provisions under the Deniliquin LEP 2013 to mitigate potential environmental impacts.

Signature:



Printed Name:

Deniz Kilitiz

Date:

18 Nov 2016.

Endorsed
W. Gamsey TLWR
18/11/2016

