Murray Shire Council
Planning Proposal to amend Murray LEP 2011
'Periodic Review of Murray LEP 2011'

Part 1 - Objectives or Intended Outcomes

Section 73 'Review of environmental planning instruments' of the *Environmental Planning and Assessment Act 1979* states that;

> *councils shall keep their local environmental plans and development control plans under regular and periodic review for the purpose of ensuring that the objects of this Act are, having regard to such changing circumstances as may be relevant, achieved to the maximum extent possible*

The Murray Local Environmental Plan (LEP) 2011 was made on the 16 December 2011. Murray Shire has recently undertaken a periodic review of the instrument and identified a number of minor issues/errors which need to be rectified.

The primary objective of this planning proposal is to;

- Rectify the minor issues/errors identified in the periodic review of the Murray LEP 2011

Part 2 - Explanation of Provisions

The proposal seeks a number of minor amendments to the Murray LEP 2011.

These are summarised below and explained in more detail in Attachment 2. Changes have been grouped as per the part of the LEP they relate;

Land Zoning Map

1. Deep Creek (waterway) be rezoned from RU1 Primary Production to W2 Recreational Waterways. Refer to Figures 1 and 2.
2. Lot 44 DP 756303 be rezoned from part E1 National Parks and Nature Reserves, part RU1 Primary Production to E3 Environmental Management. Refer to Figure 3 and 4.

Lot Size Map

3. Minimum lot size not be applied to part of Moama residential. Refer to Figures 5 and 6.
4. Minimum lot size increased from 4000sqm to 8000sqm to part of Moama as defined in Figure 8

Land Use Tables

5. 'Boat building and repair facility' be a permissible land use within the RU1 Primary Production zone.
6. 'Biosolids treatment facility' be prohibited within the R1 General Residential zone

7. 'Attached dwellings' be prohibited within the R2 Low Density Residential zone
8. 'Boarding Houses' be prohibited within the R2 Low Density Residential zone
9. 'Dual Occupancies' including Dual Occupancy (attached) and Dual Occupancy (detached) be prohibited within the R2 Low Density Residential zone.
10. 'Seniors Housing' be prohibited within the R2 Low Density Residential zone.
11. 'Dual Occupancies' including Dual Occupancy (attached) and Dual Occupancy (detached) be prohibited within the R5 Large Lot Residential zone.
12. 'Seniors Housing' be prohibited within the R5 Large Lot Residential zone
13. 'Secondary dwellings' be made a permissible land use within the R5 Large Lot Residential, RU1 Primary Production and E3 Environmental Management zones.
14. 'Vehicle Sales and Hire Premises' be made a permissible land use within the B6 Enterprise Corridor zone and IN1 General Industrial zone.
15. The following land uses be made permissible in the SP3 Tourist zone;
    a. building identification sign
    b. business identification sign
    c. environmental protection works
    d. jetty
    e. marina
    f. water recreation structure
16. 'Advertising structures' be made permissible in RE1 Public Recreation and RE2 Private Recreation.

<u>Heritage Conservation</u>

17. A heritage conservation area be created over part of 'old Moama' in Chanter St, Moama. Refer to Figure 9.
18. The property description and heritage map for Item of Environmental Heritage I63- Mathoura Station be amended to refer to Lot 2 DP 756272. Refer to Figure 10.
19. The property description and heritage map for Item of Environmental Heritage I4- 8 Simms Street be amended to refer to Lot 1 DP 514180.
20. The property description for Item of Environmental Heritage I8- 72 Chanter St, Moama be amended to remove reference to 'former gaol and police station' and to be referred to as 'residence'.
21. The property description for Item of Environmental Heritage I43- 27 Conargo Street, Mathoura be amended to refer to Lot 3 DP Section 65 DP 758656.
22. I24- Timber Federation Regency style dwelling at 9 Simms St, Moama be removed from Council's 'Items of Environmental Heritage' listed under Schedule 5 Murray LEP 2011. Refer to Figure 11.
23. 'McLaurin Cemetery', Millewa Road, be added as an item of environmental heritage. Refer to Figure 12.
24. 'Perricoota Woolshed', Lot 1, DP 521210, Perricoota Road, Moama be added as an item of environmental heritage. Refer to Figure 13.

<u>Additional Local Provisions</u>

25. The 'Edward River' be inserted into Clauses 7.4, 7.5, 7.6 and the riverfront land definition
26. Recreation Facility (Outdoor) be removed from permissible uses within 'river front areas' under Clause 7.4(2)(e)
27. The area to which the' river front area' applies to in RU1 Primary Production, Zone RU3 Forestry and Zone E3 Environmental Management zones be amended from 100m to 60m
28. Clause 5.4(9)(b) be revised from 50% to 20% of the total floor area of the principal dwelling.

Schedule 2 Exempt Development

29. Removal of exempt provisions for 'advertisements and advertising structures'.
30. Exempt provisions for 'business identification signage' be inserted into Schedule 2. Refer to Attachment 3 in respect to proposed clause.

Part 3 - Justification

Section A - Need for the planning proposal.

1. Is the planning proposal a result of any strategic study or report?
The 'planning proposal' is not the result of any strategic study. The 'planning proposal' is the result of periodic review of the Murray LEP 2013 required as per section 73 of the EP&A Act 1979.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?
Yes, the intended outcome requires an amendment to Murray LEP 2011 to ensure that the errors in the LEP are rectified and the minor issues are addressed.

3. Is there a net community benefit?
Yes, there is a net community benefit achieved by amending the LEP to ensure that the objects of the Act are, having regard to such changing circumstances as may be relevant, achieved to the maximum extent possible. The changes will ensure the instrument is accurate and will remove minor issues that are inhibiting development that would otherwise be consistent with the objects of the Act and other relevant planning considerations.

Section B - Relationship to strategic planning framework.

4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?
The planning proposal is not inconsistent with the draft Murray Regional strategy. No other strategies apply.

5. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

Yes, the proposal is consistent with Murray Shire's Community Strategic Plan and Strategic Land Use Plan (SLUP). The amendments including the removal of minimum lot sizes in certain residential areas in Moama are consistent with the land uses identified and principles contained within the SLUP.

6. Is the planning proposal consistent with applicable state environmental planning policies?

The following state environmental planning policies are considered applicable to this planning proposal and are summarised below.

Murray REP 2- Riverine Land (deemed SEPP)- The 'planning proposal' is consistent with the aims, objectives and principles of this plan. The only component of the planning proposal that will specifically impact on riverine land is the proposed reduction of the land to which 'Clause 7.4 Development on river front areas' applies to within the RU1 Primary Production zone and E3 Environmental Management zone. The relevant provisions under Murray REP is Clause 10 and Clause 14.

Clause 10: Specific Principles

Access	The planning proposal will not further restrict public access to the River Murray. The amendment to the river setback has no impact on public access.
Bank Disturbance	The planning proposal will not create any further disturbance to the bank. The amendment to the river setback retains a 60m setback from the bank of the river. In locations where it is suitable to erect a dwelling such as on flood free land; riparian vegetation has generally been cleared to within close proximity to the river bank.
Flooding	The planning proposal will have no impact on flooding and will not be affected by flooding constraints. Land subject to flooding will remain appropriately zoned. Flood related controls will not be affected.
Land Degradation	The planning proposal will not directly result in land degradation. Applications are required to consider these effects in accordance with these principles. The amendment to the river setback retains a 60m setback which is considered adequate to provide for a vegetated riparian corridor, protect the river from water quality and erosion issues.
Landscape	No impact. The amendment to the river setback retains a 60m setback which is considered adequate to provide for a riparian corridor.
River Related Use	The planning proposal is consistent with this principle. The proposal removes outdoor recreational facilities from river front areas and requires non river related development to be set well back (minimum 60m) from the bank of the river.
Settlement	The planning proposal is consistent with this principle.
Water Quality	The planning proposal will not impact upon water quality.
Wetlands	The planning proposal does not affect wetland mapping

	and controls under the Murray LEP 2011.

Clause 14: Building Setbacks of *Murray REP 2- Riverine Land* states;

(2) Building setback

All buildings outside land zoned for urban purposes under a local environmental plan should be set well back from the bank of the River Murray. The only exceptions are buildings dependent on a location adjacent to the River Murray.

(3) Objectives of building setback

The objectives of siting buildings away from the River Murray are to:

- *maintain and improve water quality,*
- *minimise hazard risk and the redistributive effect on floodwater associated with the erection of buildings on the floodplain,*
- *protect the scenic landscape of the riverine corridor,*
- *improve bank stability, and*
- *conserve wildlife habitat.*

The 'planning proposal' is consistent with these controls as it seeks to maintain a setback for development from the Murray River. The 'planning proposal' will ensure that development is still set 'well back' from the bank of the River Murray. The 'planning proposal' will ensure greater consistency with this clause by ensuring development along the Edward River is also required to comply with this provision.

SEPP 44- Koala Habitat Protection- The planning proposal is consistent with this SEPP. The planning proposal will not affect or impact upon koala habitat.

SEPP 55 Remediation of Land- The planning proposal is consistent with this SEPP. The land to which the zoning will change has not known to be used for any land use that may have caused contamination nor will be rezoned to a zone that permits more intensive development.

SEPP 64 Advertising and Signage- The inclusion of advertising signage as a permissible land use within the recreation zones is not inconsistent with this SEPP.

SEPP (Rural Lands) 2008- The rural planning principles are as follows;

(a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,

(b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,

(c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,

(d) in planning for rural lands, to balance the social, economic and environmental interests of the community,

(e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,

(f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,
(g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,
(h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.

The planning proposal is consistent with the principles contained within the SEPP and will not detrimentally impact upon rural land. Land uses to be made permissible in the RU1 Primary Production zone are appropriate for rural land. The reduction in the land to which the river front areas clause applies provides greater flexibility for development within rural zones whilst providing for a riparian corridor along rivers.

SEPP (Exempt and Complying Development Codes) 2008- The planning proposal is consistent with this SEPP. The addition of exempt provisions for 'advertising and signage' into the SEPP means the provisions within the LEP are no longer required and are therefore proposed to be removed. However, the provisions do not permit any 'business identification signs' to be exempt provisions. Therefore, it is proposed that exempt provisions similar to the 'building identification signage' contained within the SEPP be inserted into Schedule 2 of the Murray LEP 2011 for 'business identification signage'.

7. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The following ministerial directions are considered applicable to this planning proposal and are summarised below.

Employment and Resources	
1.1 Business and Industrial Zones	The planning proposal is consistent with this direction
1.2 Rural Zones	The planning proposal is consistent with this direction
1.3 Mining, Petroleum Production and Extractive Industries	This direction does not apply
1.4 Oyster Aquaculture	This direction does not apply
1.5 Rural Lands	The planning proposal is consistent with this direction. The planning proposal is consistent with the SEPP (Rural Lands) 2008
2. Environment and Heritage	
2.1 Environment Protection Zones	This direction applies. The planning proposal is inconsistent with this direction as it will reduce the area as to

	which 'river front areas' applies within the RU1 Primary Production and E3 Environmental Management zone from 100m to 60m where measured from the bank of the river. It is considered that this is of 'minor significance'. Justification of the reduction is provided in Attachment 5.
2.2 Coastal Protection	This direction does not apply
2.3 Heritage Conservation	The planning proposal is consistent with this direction. The planning proposal increases heritage conservation by proposing two additional items of environmental heritage and a heritage conservation area. The removal of one existing heritage item will not result in an inconsistency as damage to the property caused by fire has affected the heritage significance of the subject building.
2.4 Recreation Vehicle Areas	The planning proposal is consistent with this direction.
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	The planning proposal is partly inconsistent with this direction in respect to the proposal to increase the minimum lot size in a rural residential area of Moama from 4000sqm to 8000sqm. The area is an existing estate that has been developed and residential dwellings constructed on each of the lots. With a minimum lot size of 4000sqm there is the potential for an additional 17 lots that could be subdivided from existing lots within the estate. This was not permissible under Murray LEP 1989. However, there are constraints in respect to providing sufficient water to service these additional lots. Therefore, it is proposed to increase the minimum lot size so lots that can not be appropriately services can not be subdivided.

	Two existing lots with sizes 1.723ha and 2.198ha respectively will still be able to be subdividing creating a maximum of two additional lots. Therefore the proposal will reduce the potential increase to residential density in the area by 15 dwellings. This is negligible impact to the residential density of Moama and therefore is considered to be of minor significance. The proposal is consistent with the adopted Murray Shire Land Use Strategy (SLUP) which identifies the land for low density residential/ rural residential land use. The planning proposal will increase the residential density of a significant part of Moama by removing the minimum lot size for the core residential area. This will reflect the existing residential form of the area. The area contains a mixture of dwelling types but contains a significant number of unit/townhouse developments on small lots which are less than the current minimum lot size. The area is an appropriate location for this type of housing as the land is not constrained, well serviced and is located in close proximity to amenities and services. The reduced minimum lot size will reflect the existing controls in the Murray DCP 2012 which encourages higher density residential development in this area. The DCP outlines that this is the area where units and townhouse developments are encouraged. The proposal will increase the overall residential density of the Moama urban area in accordance with these existing controls and development. This part of the proposal is consistent with this ministerial direction as it will; • *broaden the choice of building types and locations available in the housing market, and* • *make more efficient use of*

	existing infrastructure and services, and • *reduce the consumption of land for housing and associated urban development on the urban fringe* This is also consistent with the SLUP which recognises the residential use of the land, the need to provide for further residential development and identifies the need to provide for a range of types of housing. However, it should be noted that the SLUP does not identify the location of these various housing types.
3.2 Caravan Parks and Manufactured Home Estates	The planning proposal is consistent with this direction.
3.3 Home Occupations	The planning proposal is consistent with this direction.
3.4 Integrating Land Use and Transport	The planning proposal is consistent with this direction.
3.5 Development Near Licensed Aerodromes	This direction does not apply
3.6 Shooting Ranges	This direction does not apply
4. Hazard and Risk	
4.1 Acid Sulfate Soils	This direction does not apply
4.2 Mine Subsidence and Unstable Land	This direction does not apply
4.3 Flood Prone Land	The planning proposal is consistent with this direction. The proposal will not impact upon flooding. The land which zone will be affected are mapped as being subject to flooding however the proposed zones (E3 Environmental Management and W2 Recreation Waterway) are appropriate for flood prone land.
4.4 Planning for Bushfire Protection	The planning proposal is consistent with this direction. The planning proposal is consistent with *Planning for Bushfire Protection 2006*. No development is proposed as part of the planning proposal.
5. Regional Planning	

5.1 Implementation of Regional Strategies of the Metropolitan Plan for Sydney 2036	This direction does not apply
5.2 Sydney Drinking Water Catchments	This direction does not apply
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	This direction does not apply
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	This direction does not apply
5.8 Second Sydney Airport: Badgerys Creek	This direction does not apply
6. Local Plan Making	
6.1 Approval and Referral Requirements	The planning proposal is consistent with this direction.
6.2 Reserving Land for Public Purposes	The planning proposal is consistent with this direction.
6.3 Site Specific Provisions	The planning proposal is consistent with this direction.
7. Metropolitan Planning	
7.1 Implementation of Metropolitan Plan for Sydney 2036	This direction does not apply

Section C - Environmental, social and economic impact.

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The 'planning proposal' is not likely to have an impact on critical habitat or threatened species, populations or ecological communities, or their habitats. The 'planning proposal' rectifies minor issues/errors in the existing instrument which will not affect critical habitat or threatened species, populations or ecological communities, or their habitats. There is no critical habitat in Murray Shire. Land affected by the reduction of building line setback predominantly has been cleared or contains red gum forest which is not considered an endangered ecological community.

9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?
The 'planning proposal' is not expected to have any further detrimental environmental effects. Changes to land uses are minor and will not encourage developments which are inappropriate for their zones.

The reduction in the building line setback from the bank of rivers in rural areas is not considered to have any significant environmental effects. The amended setback ensures consistency with the previous LEP instrument and greater consistency with exempt development within the Codes SEPP. The 'planning proposal' still retains a significant setback of 60m from the bank of the river, for permitted development. As the reduction only affects the RU1 Primary Production zone and E3 Environmental zone, development that may benefit from the amendment is generally only minor developments such as rural dwellings. Farm buildings are already permitted as exempt development under the Codes SEPP within 50m of a watercourse. Further, native vegetation located further than 60m from the bank of the river has often been cleared for existing uses such as agriculture or is located on land that is generally unsuitable for development due to constraints such as flooding. Development requiring consent still must have regard for its environmental effects on the environment.

10. How has the planning proposal adequately addressed any social and economic effects?
The 'planning proposal' aims will have no detrimental social and economic effects in such circumstances. The removal of a minimum lot sixe in residential areas in part of Moama will have positive economic impacts as it will facilitate higher density residential development. The amendments to the 'items of environmental heritage' improve protection heritage items.

Section D - State and Commonwealth interests.

11. Is there adequate public infrastructure for the planning proposal?
The planning proposal does not require any public infrastructure.

12. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?
Council will take into account the views of any public authorities required to be consulted.

Part 4 – Mapping

FIGURE 1: Existing Zoning, Deep Creek Marina

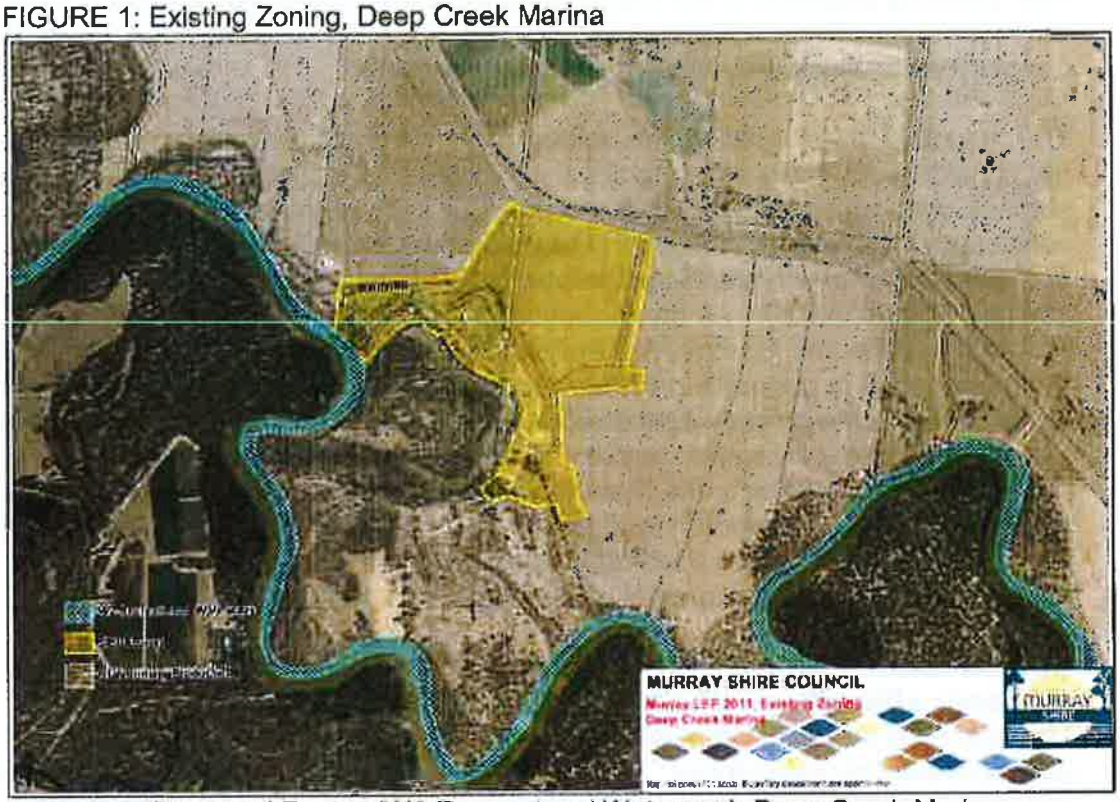


FIGURE 2: Proposed Zoning (W2 Recreational Waterway), Deep Creek Marina

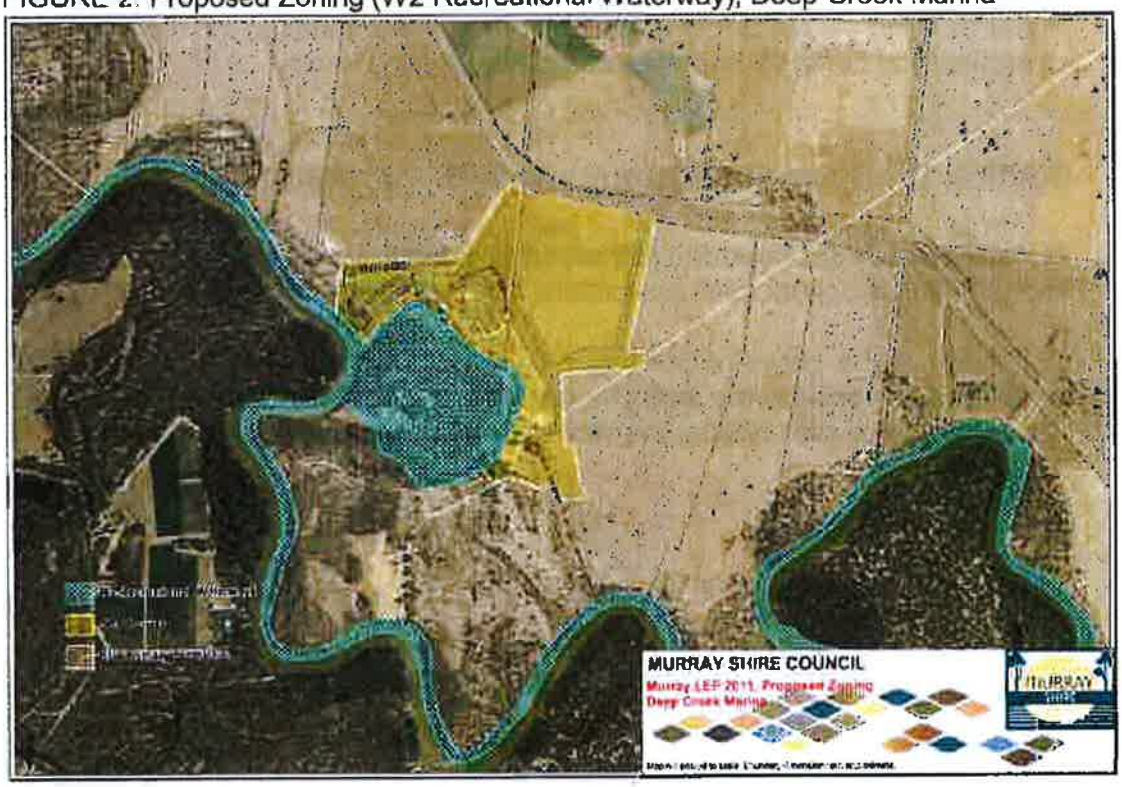


FIGURE 3: Existing Zoning, Lot 44, DP 756303

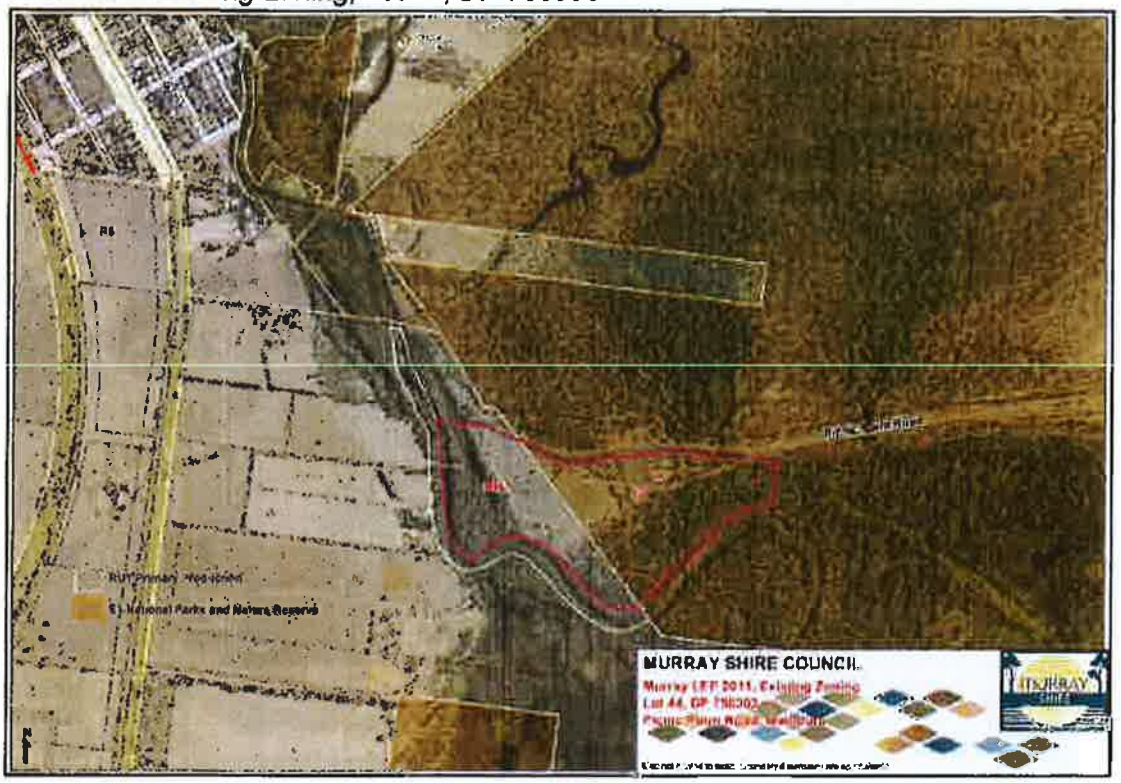


FIGURE 4: Proposed Zoning (E3 Environmental Management), Lot 44, DP 756303

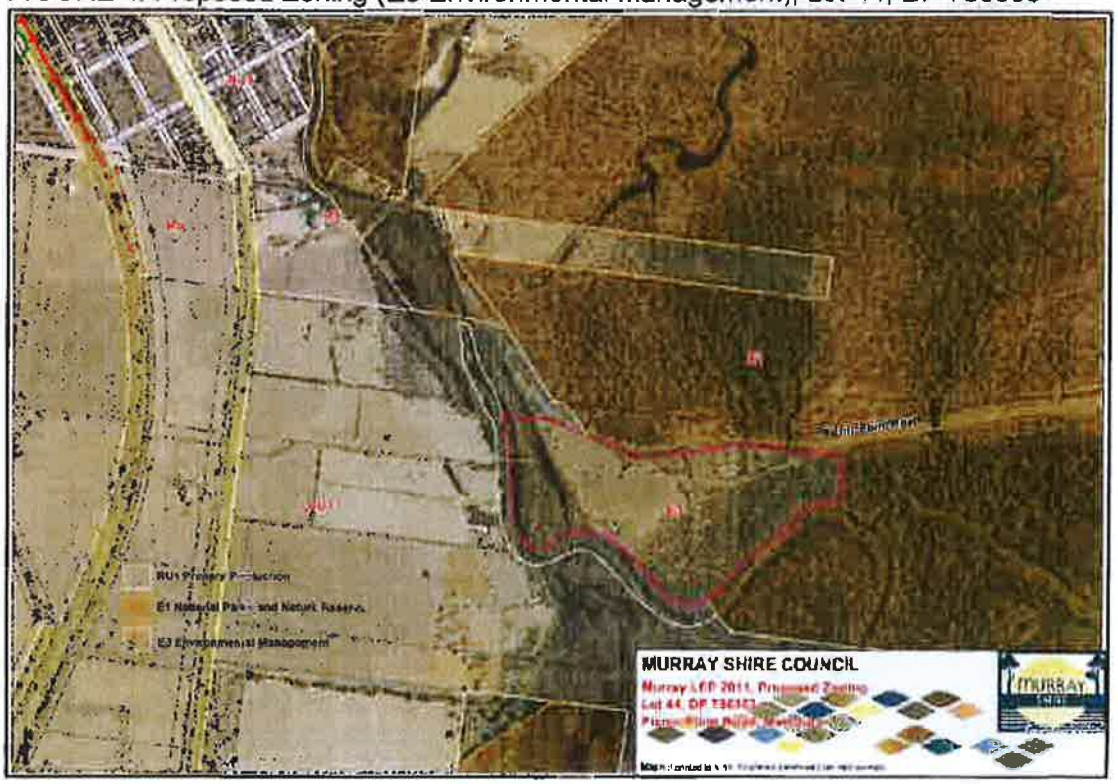


FIGURE 5: **Existing** Minimum Lot Sizes, Moama

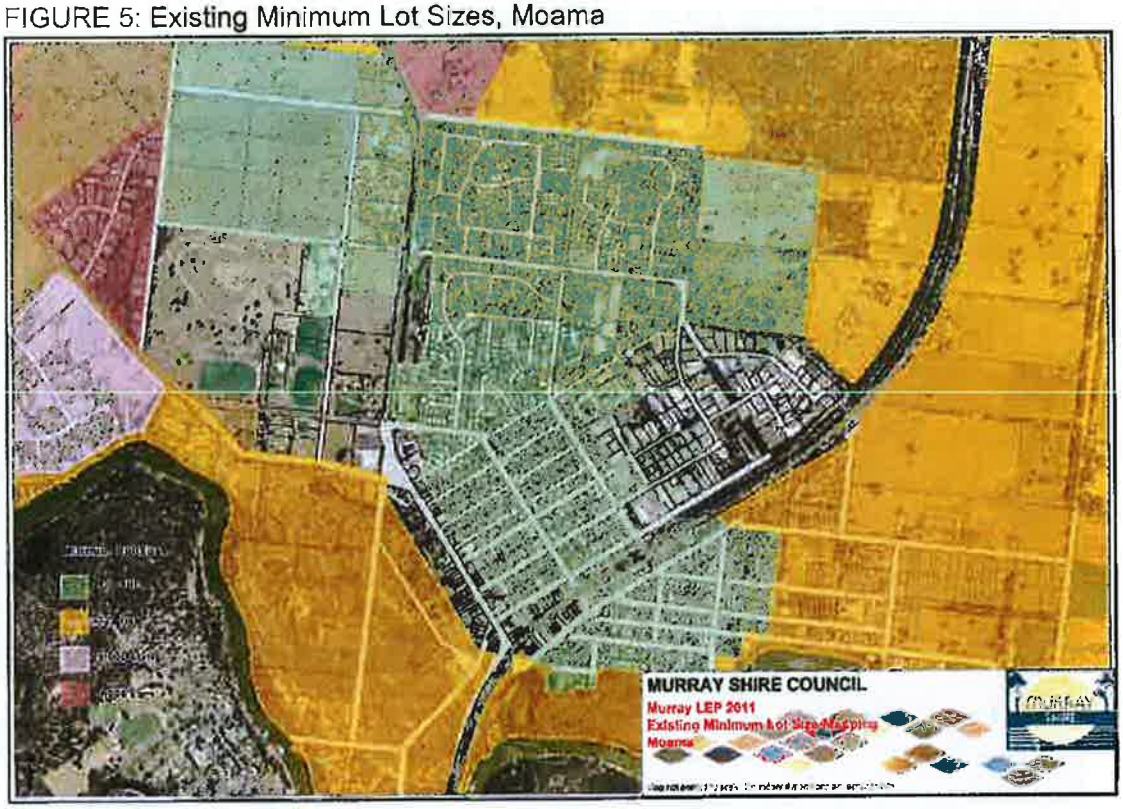


FIGURE 6: **Proposed** Minimum Lot Sizes, Moama

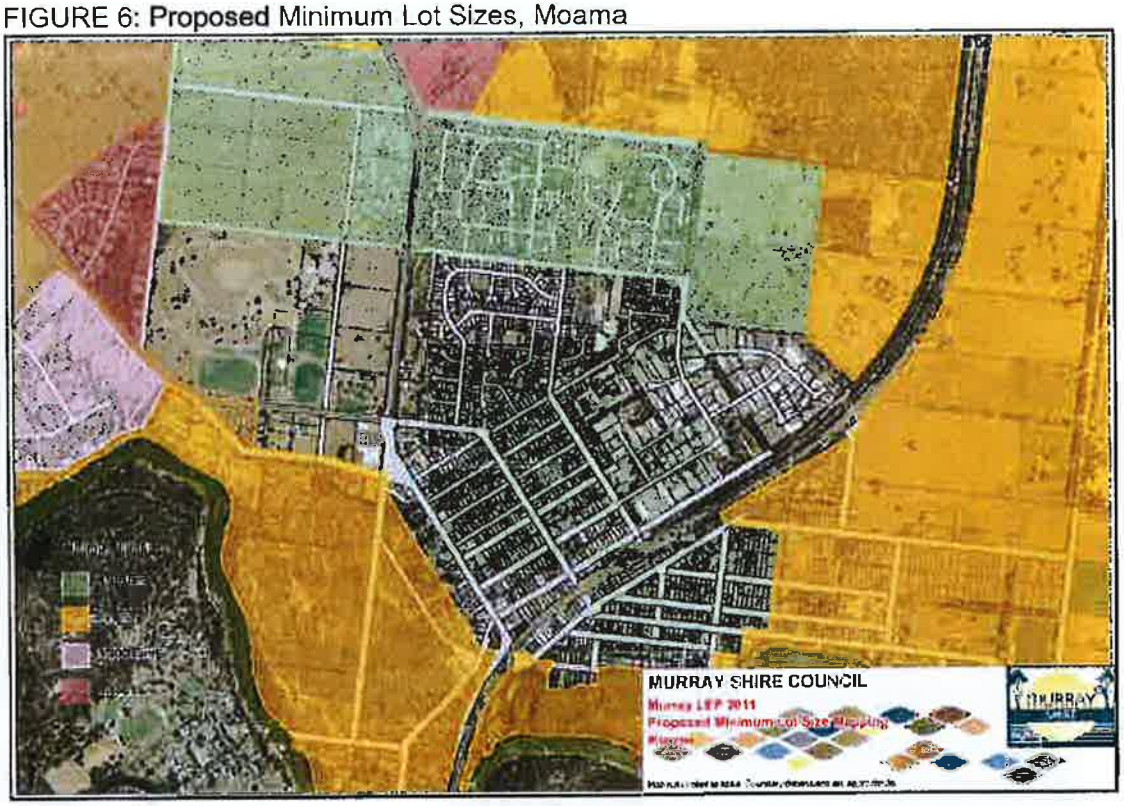


FIGURE 7: Existing Minimum Lot Size, Kilkerrin Estate, Moama

FIGURE 8: Proposed Minimum Lot Size, Kilkerrin Lakes Estate, Moama

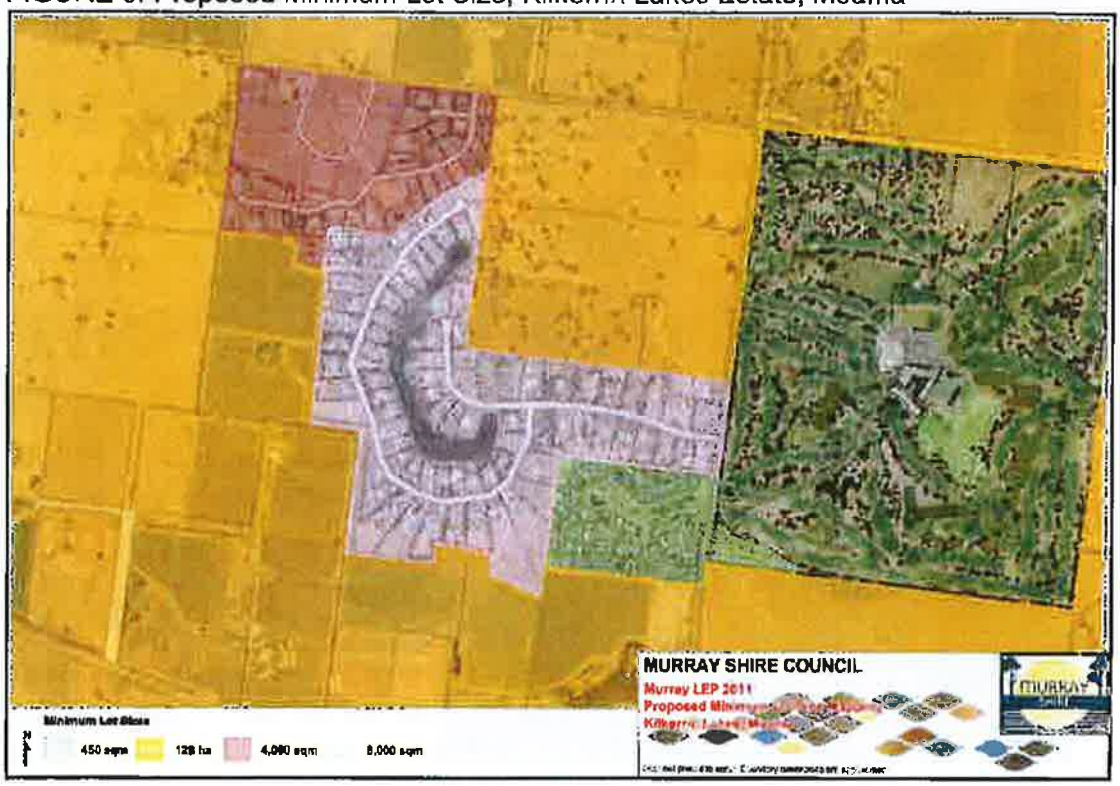


FIGURE 9: Proposed Heritage Conservation Area, Chanter St, Moama

FIGURE 10: Item of Environmental Heritage I63, Mathoura Station

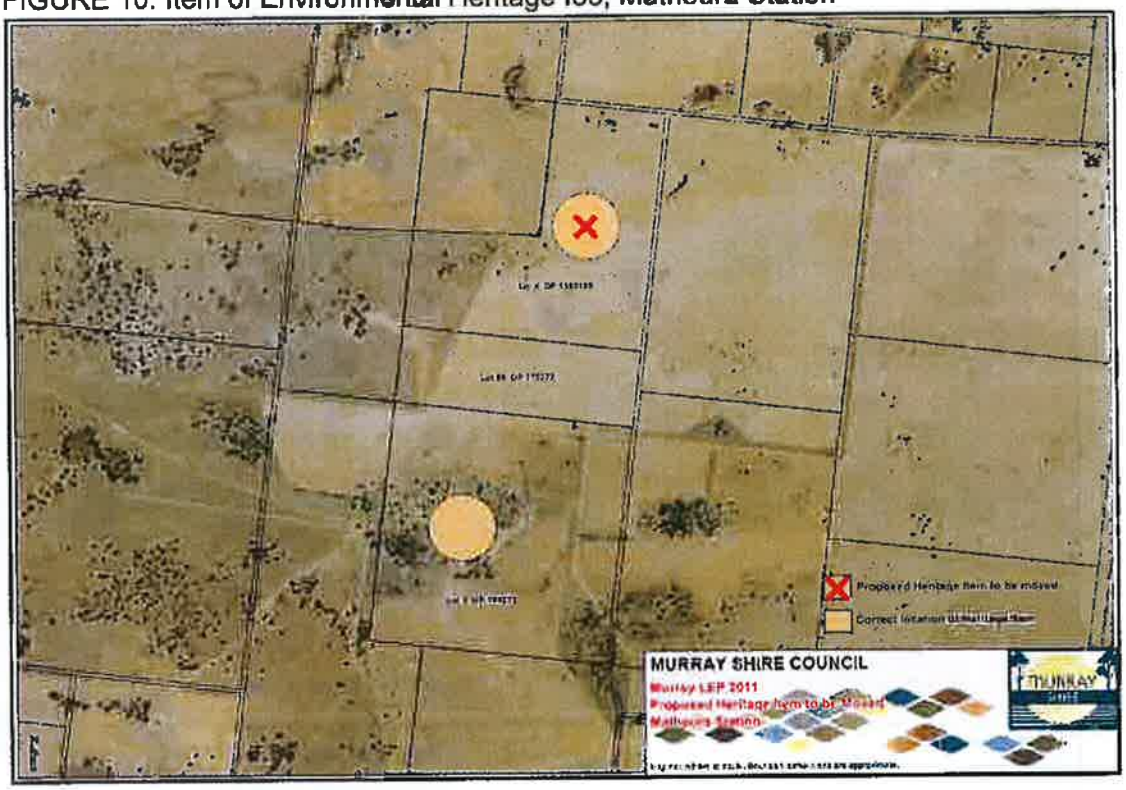


FIGURE 11: Item of Environmental Heritage I24 to be removed, 9 Simms St, Moama

FIGURE 12: Proposed Item of Environmental Heritage, McLaurin Cemetery

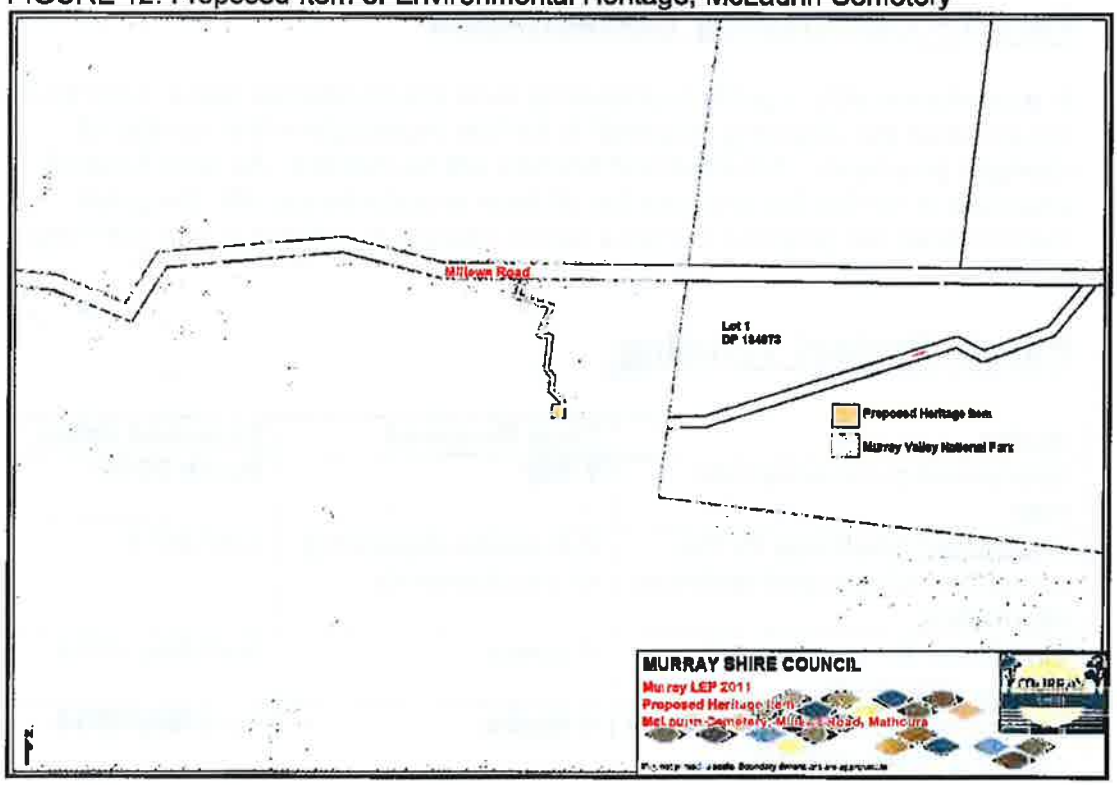
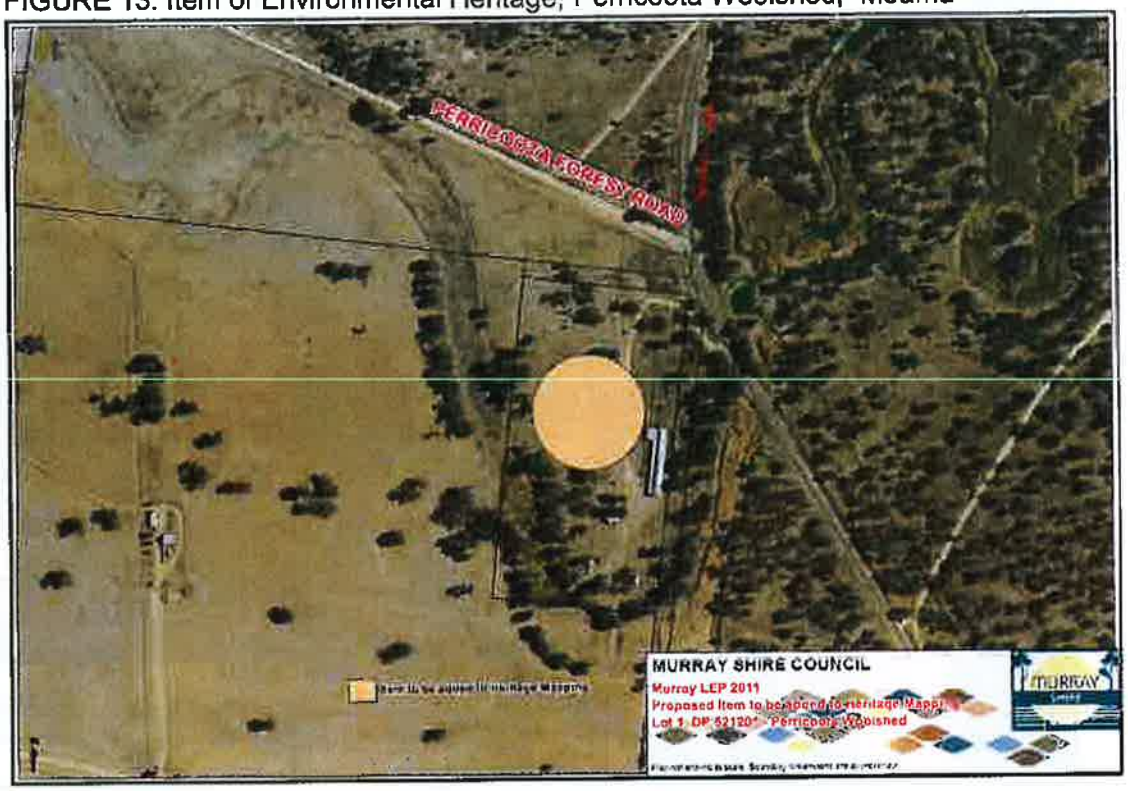


FIGURE 13: Item of Environmental Heritage, Perricoota Woolshed, Moama



Part 5 – Community Consultation

In accordance with *'a guide to preparing local environmental plans'*, Council does not consider the 'planning proposal' to be low impact given the number of changes proposed. Affected land holders will be notified. As such Council proposes to exhibit the proposal for 28 days in accordance with the guide. Council does not propose to hold a public hearing in respect to this 'planning proposal'.

Part 6- Project Timeline

Action	Time Required	Expected dates
Anticipated commencement date	1 day	March 2014
Anticipated timeframe for the completion of required technical information	2-4 weeks depending on requirements	April 2014
Timeframe for government agency consultation	4 weeks	April-May 2014
Commencement and completion dates for public exhibition	4 weeks	April-May 2014

Timeframe for consideration of submissions	2 weeks	June 2014
Timeframe for the consideration of a proposal post exhibition	1 week	June 2014
Date of submission to the department of finalise LEP	1 week	June 2014
Anticipated date RPA will make the plan	2 weeks	July 2014
Anticipated date RPA will forward to department for notification	1 week	August 2014

ATTACHMENTS

1. Council Resolutions to endorse 'planning proposal'
2. Council Reports discussing proposed 'planning proposal
3. Proposed Schedule 2
4. S64 and S68 Correspondence to Department of Planning
5. Response to s117 Ministerial Direction 2.1 Environmental Protection

ATTACHMENT 3- Proposed Schedule 2

Schedule 2 Exempt Development

Business identification signs

1. The construction or installation of a business identification sign on a premises for the purpose of identifying or naming a business is exempt development if;

(a) it is not constructed or installed on a heritage item or draft heritage item, in a heritage conservation area or draft heritage conservation area, and

(b) there is only one sign displayed on each street frontage, and

(c) It is not be more than 0.75m² in a residential zone, and

(d) it is not more than 2.5 m² in any other zone, and

(e) it is not more than 3m above ground level (existing), and

(f) it is does not include any advertising of goods, products or services, and

(h) the sign is illuminated:

(i) its means of illumination, including any associated cables, concealed or integrated within the frame of the sign, and

(ii) it is not be animated, flashing or moving, and

(iii) it complies with AS 4282—1997, *Control of the obtrusive effects of outdoor lighting*, and

(i) the sign is on a building on land that is within a residential, rural or environment protection zone, or is within 50m of and faces toward land that is within one of those zones—only be illuminated:

(i) if the hours of operation of the business identified on the sign have been approved—during those hours, or

(ii) if the hours of operation of the business identified on the sign have not been approved – between 7.00am and 10.00pm on any day

ATTACHMENT 4- Murray LEP 2011 correspondence to Dept of Planning

Correspondence to:
The General Manager
PO Box 21
Mathoura NSW 2710
Administration / General Enquiries:
☎ (03) 5884 3302
(03) 5884 3417
Engineering / Building & Planning:
☎ (03) 5884 3400
(03) 5884 3417
email:
admin@murray.nsw.gov.au
website:
www.murray.nsw.gov.au

Head Office:
21-25 Conargo Street
Mathoura NSW 2710

Branch Office:
6 Meninya Street
Moama NSW 2731

22 June 2011

Draft Murray LEP 2011

Department of Planning and Infrastructure
Western Region
P O Box 717
DUBBO NSW 2830

Attention: Lois Gray

Dear Lois,

DRAFT MURRAY LOCAL ENVIRONMENTAL PLAN 2010
SECTION 68 SUBMISSION

Murray Shire Council is pleased to formally submit the draft *Murray Local Environmental Plan 2011* ("the draft LEP") to the Department of Planning and Infrastructure under (former) s68 of the Environmental Planning and Assessment Act (EP&A) 1979 in order for the new Local Environmental Plan to be made.

It follows the issuing of the s65 certificate from the Department of Planning on the 18 October 2010. Since then Council has exhibited the draft Local Environmental Plan (LEP) under (former) s66 of the EP&A Act 1979 has received a number of submissions under (former) s67 of the EP&A Act 1979 which Council has considered under (former) s68 of the EP&A 1979.

Please find attached a s68 report prepared by Council responding to the requirements of (former) s68(4) of the EP&A Act. This report includes a number of attachments including the submissions received during the exhibition period and Councils consideration of such submission.

Please also find attached a data disk containing the draft LEP and supporting documents. The draft LEP has been prepared in accordance with the 'Standard Instrument' and in accordance with the Department's guidelines. Council has concerns with a number of provisions in the draft LEP including the 'river front area' definition, the land uses excluded from the RU1 Primary Production zone and the urban release clauses. Council requests if permitted that Clause 6.3 be omitted from the final LEP. Council has proceeded with the draft LEP considering the importance of finalising a new LEP for Murray Shire.

As such, Council now submits the draft LEP and respectfully requests the Director-General to furnish a report to the Minister and for the Minister to make the LEP in accordance with (former) s70 (1)(a) of the EP&A Act 1979.

Further, Council requests that the Governor approves the inclusion of Clause 1.9A in the new LEP and the Department of Planning and Infrastructure issues its assumed concurrences in respect to Clause 4.6 of the new LEP.

If you have any queries, please contact Council's Town Planner Mr Liam Wilkinson at Council on 03 58843400.

Yours faithfully,

Greg Murdoch
General Manager

Encl.

Section 68 Report with the following attachments

A. A copy of Submissions Received under s67 of EP&A Act
B. Council's Consideration of Submissions
C. Councils resolved changes under s68 of EP&A Act
D. Reclassification of Public Land
E. Section s65 Certificate
F. Councils Response to Outstanding Issues in s65 notification letter
G. Councils adoption of draft Murray LEP 2011
H. Draft Murray LEP 2011 Instrument
I. Draft Murray LEP 2011 Mapping
J. Murray Shire Strategic Land Use Plan

Data disc containing the following documents:

1. Draft Murray Local Environmental Plan 2011
2. Draft Murray LEP mapping
3. Completed Land Use matrix
4. Local Environmental Study (LES) documents
5. Murray Shire Strategic Land Use Plan
6. Preliminary assessments of land for potential land contamination
7. s68 Report and attachments
8. Council resolution to endorse draft LEP

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Draft Murray LEP 2010

Department of Planning
Western Region
P O Box 717
DUBBO NSW 2830

Attention: Anna Patton

Dear Anna,

DRAFT MURRAY LOCAL ENVIRONMENTAL PLAN 2010
SECTION 64 SUBMISSION

Murray Shire Council is pleased to formally submit the draft *Murray Local Environmental Plan 2010* ("the draft LEP") to the Department of Planning for authorisation to undertake its public exhibition.

It follows a pre-section 64 submission lodged in October 2009. Since then Council has responded to issues raised by the Department in correspondence dated 2nd December 2009, a meeting on 1st and 2nd March 2010 (followed by correspondence dated 1st April 2010) and a further meeting on 9th June 2010. Only information not previously submitted or updated since these communications, is contained within this submission.

In making this request, Council has had regard to the (former) Section 64 of the *Environmental Planning and Assessment Act 1979*, Planning Circular PS 09-011 and the Department's Section 64 checklist. The following information is provided in accordance with those requirements.

Electronic copy of the draft LEP

See attached data disc.

Electronic copy of all LEP maps

See attached data disc.

Assessment of the consistency of the draft plan with, the following, including justification of any inconsistencies against the specific terms of relevant directions/sustainability criteria

- ***Section 117 directions***

See Local Environmental Study on attached data disc.

- ***Any regional or sub-regional strategies***

There are no adopted regional or sub-regional strategies relevant to the draft LEP

A report on the draft LEP and an explanation of the intent of the additional local provisions

The following local provisions are included in the draft LEP:

Clause 1.8A Savings provision relating to development applications – Directed to be included by DoP.

Clause 1.9A Suspension of covenants, agreements and instruments – Directed to be included by DoP.

Clause 2.6C Earthworks - Directed to be included by DoP.

Clause 4.2A No strata or community title subdivisions in certain rural zones - Directed to be included by DoP. Please note, Council requests advice from the Department as to whether the SP3- Tourism zone should be listed under this clause.

Clause 4.2B Erection of dwellings or secondary dwellings on land in certain rural and environmental zones – This local clause is included to address the permissibility of rural dwellings. It is a Model clause from DoP. Council requests confirmation as to the application of 3(b) and 3(c). Council has removed 'existing holding' provisions however Council has concerns that these subclauses will allow 'existing holdings' and other standards under Murray LEP 1989 to be considered under this clause.

Clause 4.2C Rural worker's dwellings - This local clause is included to allow for rural workers dwellings, which are necessary for some forms of labour intensive agriculture. It is a Model clause from DoP.

Clause 6.1 Arrangements for State public infrastructure – Necessary for urban release areas. It is a Model clause from DoP.

Clause 6.2 Public utility infrastructure - Necessary for urban release areas. It is a Model clause from DoP.

Clause 6.3 Development control plan - Necessary for urban release areas. It is a Model clause from DoP.

Clause 6.4 Relationship between Part and remainder of Plan - Necessary for urban release areas. It is a Model clause from DoP.

Clause 7.1 Biodiversity – Specifies matters Council must consider applications against in areas mapped as significant in terms of biodiversity. It is a Model clause from DoP.

Clause 7.2 Riparian Land and Waterways – Specifies matters Council must consider applications against in areas mapped as significant in terms of riparian land and waterways. It is a Model clause from DoP.

Clause 7.3 Land – Specifies matters Council must consider applications against in areas mapped as significant in terms of vulnerable land. It is a Model clause from DoP.

Clause 7.4 Public utility infrastructure availability in Zone RU5 Village - Directed to be included by DoP. This clause satisfies the requirement of Ministerial Direction 3.1 Residential Zones.

Clause 7.5 Flood planning - Specifies matters Council must consider applications against in areas mapped as flood prone. It is a Model clause from DoP. Council has adopted a 0.3m freeboard as part of its flood planning level which is consistent with Council's current policy which was development as a result of the Moama Floodplain Management Study.

Clause 7.6 *Development on river front areas* – Controls development along the Murray, Edward and Wakool Rivers. Council has adopted a definition for 'river bank land' that 'means land within 100 metres of the high bank of the Murray, Edward and Wakool Rivers in the RU1 Primary Production Zone and E3 Environmental Management Zone and 40 metres of the Murray River in all other zones' In order to not hold up the progression of the draft LEP, Council's preference has always been to roll over its existing river setback of 60 metres to rural areas to the new LEP. Council requests to be able to amend this clause prior to certification if the policy of the Department of Planning changes to enable such an amendment.

A statement under section 64 of the EPAA as to the public authorities consulted, including a copy of the responses received

The public authorities consulted in the preparation of the draft LEP were:

- Department of Planning
- Department of Primary Industry (now I&I)
- Department of Water & Energy (now NSW Office of Water)
- Department of Environment & Climate Change (now DECCW)
- Moama Local Aboriginal Land Council
- Cummergunja Local Aboriginal Land Council
- Murray Catchment Management Authority
- NSW Roads & Traffic Authority
- NSW Rural Fire Service
- NSW Maritime
- NSW Heritage Office (now part of DoP)
- Riverina Region Department of Education
- Greater Southern Area Health
- Goulburn-Murray Water
- Deniliquin Council
- Wakool Shire Council
- Berrigan Shire Council
- Conargo Shire Council
- Gannawarra Shire Council
- Moira Shire Council
- Campaspe Shire Council

Details of the Section 62 referral to agencies have previously been submitted to DoP in October 2009. Copies of correspondence from agencies since that time are on the attached data disc.

Council resolution to formally adopt the draft LEP (version #) and maps and request certification of the draft LEP and Mapping

See attached data disc.

A completed Land Use Matrix

See attached data disc.

Additional advice on the draft LEP.

In addition to the requirements of Section 64, Council makes the following comments in regards to the draft LEP.

Land Use Table

Tourist and Visitor Accommodation – Council prefers that the group term 'Tourist and Visitor Accommodation' be 'permitted with consent' in the RU1- Primary Production and E3- Environmental Management Zones. Council has agreed to include this land use term as 'prohibited' in these zones only in order not to hold up the progression of the LEP to exhibition. Council requests that DoP reconsider its position on this issue prior to the finalisation of the LEP for the Minister's approval.

Forestry – Council has permitted forestry in the E3- Environmental Management Zone to reflect existing and continuing forestry uses outside of State Forests. The E3 zone has been applied on the basis of flooding rather then biodiversity constraints.

SI Options Paper

Eco Tourism and Camping Ground – Council wishes to use the terms 'eco-tourism' and 'camping ground' from the SI Options Paper as 'permitted with consent' in the RU1- Primary Production and E3- Environmental Management Zones. Council requests to have these terms included in the draft LEP when they are finalised.

Development on river bed and banks

Bed and bank definition- Council understands that these definitions will be inserted into the draft LEP.

Moorings- Council has also omitted the clause referring to moorings as the approval of moorings in Murray Shire will be controlled via a Mooring Management Plan which will be a chapter of Councils DCP. This Mooring Plan will introduce a priority waiting list to ensure compliance with the Management of Water and Waterside Lands Regulations. The ability for each allotment to have a mooring means the potential for 170 additional moorings that will create boating safety and environmental management issues. There is a question as to how the clause would apply to Council and Crown land which separates private property from the river and the Victorian bank where the majority of land fronting the river is owned by the Crown. The clause also restricts the ability for commercial marinas to be approved in suitable locations and for existing marinas such as the Port of Echuca to expand.

Subdivision for purposes other the agriculture

Council believes that there needs to be the flexibility of being able to approve subdivisions for purposes other then agriculture for legitimate rural land uses such as 'rural industries' in the RU1- Primary Production zone. Council is disappointed that this clause is not supported and requests that should

another similar clause be adopted then Council is able to include it or otherwise the Rural Lands SEPP 2008 be amended to allow subdivision below the minimum allotment size for rural industries as well as primary production.

Mapping

W2: Recreational Waterways – This zone has been applied for a large section of the Murray River to reflect the existing recreational use of the river

Minimum Allotment Sizes in Rural Areas – Council's position is to 'roll over' existing minimum lot sizes in rural areas into the new LEP. Consequently Council has applied a 120ha minimum lot size to irrigation districts and the 500ha minimum lot size to dryland farming areas.

NRM Clause

Council has only just recently been notified that it must adopt new NRM clause despite them being only in draft form. Due to this late notification Council requests that the inclusion of these revised clause and relevant amendments to LEP mapping be a condition of the Section 65 certificate.

Land reclassification

There are six small parcels of land in Moama owned by Council that are proposed to be reclassified as 'operational' as part of the new LEP process. Council understands there are additional requirements such as a mandatory public hearing required as part of this process.

If you have any queries, please contact Council's Town Planner Mr Liam Wilkinson at Council on 03 58843400.

Yours faithfully,

29-7-10

Greg Murdoch

General Manager

Encl. Data disc containing the following documents:

1. draft Murray Local Environmental Plan 2010
2. draft LEP maps
3. completed Land Use matrix
4. Local Environmental Study
5. reviewed LES for Deep Creek
6. preliminary assessments of land for potential land contamination
7. Murray Shire Strategic Land Use Plan 2010-2030
8. Council resolution to request DoP's authorisation for public exhibition of draft LEP
9. copies of agency correspondence post-October 2009 (i.e. since previous S64 submission)

ATTACHMENT 5- Response to s117 Direction 2.1 Environmental Protection

This direction applies. The direction states;

> *(4) A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.*
>
> *(5) A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 "Rural Lands".*

The planning proposal is generally consistent with the above. The proposal;

- Maintains existing provisions to facilitate the protection and conservation of environmentally sensitive areas.
- Maintains and increases land zoned for Environmental Protection
- Maintains the amount of land identified via mapping for environmental protection purposes
- Increases the number of items of environmental heritage

However, the planning proposal does reduce the land to which 'river front areas' applies within the RU1 Primary Production and E3 Environmental Management zone from 100m to 60m where measured from the bank of the river. This is considered to be inconsistent with this direction as it reduces the environmental protection standards applied to the land.

Clause 7.4(2) of Murray LEP 2011 prohibits certain development from being erected on river front land and provides for matters that must be considered in respect to application permissible on river front land. Under Murray LEP 2011 'river front areas' means;

> *(a) in Zone RU5 Village, Zone R1 General Residential, Zone R2 Low Density Residential, Zone R5 Large Lot Residential, Zone SP3 Tourism and Zone B2 Local Centre—the land within 40m of the top of the bank of the Murray or Wakool River, or*
>
> *(b) in Zone RU1 Primary Production, Zone RU3 Forestry and Zone E3 Environmental Management—the land within 100m of the top of the bank of the Murray or Wakool River.*

Council are proposing to amend this definition to be;

> *(a) in Zone RU5 Village, Zone R1 General Residential, Zone R2 Low Density Residential, Zone R5 Large Lot Residential, Zone SP3 Tourism and Zone B2 Local Centre—the land within 40m of the top of the bank of the Murray, Edward or Wakool River, or*
>
> *(b) in Zone RU1 Primary Production, Zone RU3 Forestry and Zone E3 Environmental Management—the land within 60m of the top of the bank of the Murray, Edward or Wakool River.*

The direction 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 provisions of the planning proposal that are inconsistent are:
(a). justified by a strategy which:
i. gives consideration to the objectives of this direction,
ii. identifies the land which is the subject of the planning proposal (if the planning
proposal relates to a particular site or sites), and
iii. is approved by the Director-General of the Department of Planning, or
(b) justified by a study prepared in support of the planning proposal which gives consideration to the objectives of this direction, or
(c) in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or
(d) is of minor significance.

No strategy or study has been prepared in support of this planning proposal as Council seeks to provide consistency with previous development standard contained under Murray LEP 1989. The proposal is inconsistent with the draft Murray Regional Strategy which states;

where a building setback line has not been designated in an non urban zone, local environmental plans will establish a 100 metre building setback from the bank of the river

Murray Shire was required to comply with this draft strategy despite its preference to retain existing development standards. Within the s64 submission it was stated;

Council's preference has always been to roll over its existing river setback of 60 metres in rural areas to the new LEP. Council requests to be able to amend this clause prior to certification if the policy of the Department of Planning changes to enable such an amendment.

Since then a number of other Council's have finalised their LEP's without this standard being inserted into the new plan. It has also been announced that the draft regional strategy will be reviewed.

It is considered that the proposed reduction of the area to which the 'river front area' clause applies in rural areas is of 'minor significance' for the following reasons;

<u>Consistency with Murray LEP 1989-</u> Murray LEP 1989 did not permit buildings to be erected *within 60 metres of any bank of the river*. The proposed amendment would ensure consistency between the LEP instruments. Therefore, the impact of the amendment is minor.

<u>Consistency with Existing Development</u>- River front development in Murray Shire has been developed in accordance with the applicable standards which has meant the majority of development is setback 60 metres or less (if it was developed prior to 1990) from the bank of the river. The proposed amendment

provides greater consistency with existing development. Therefore, the impact of the amendment is minor.

Consistency with Murray REP2- Murray REP2 requires buildings to be *set well back from the bank of the River Murray.* The amendment is consistent with this plan. Applications on land within the Murray REP2 are subject to the principles outline under this plan. Therefore, the environmental impact is of minor significance.

Greater consistency with the SEPP (Exempt and Complying Development Codes) 2008- This SEPP enables many developments prohibited within a river front area under Murray LEP 2011 to be erected as exempt development within a river front area. Examples include;

- Balconies, decks, pergolas and verandahs
- Garden sheds, gazebo's up to 50m²
- Carports up to 50m²
- Farm buildings further than 50m from a watercourse up to 200m²
- Tennis courts

The proposed amendment provides greater consistency by permitting these structures which do not satisfy the exempt provisions at 60 metres from the bank of the river as opposed to 100 metres.

Consistency with Water Management Act 2000- The proposed amendment is not inconsistent with the definition of 'waterfront land' definition under this Act which applies to land within 40 metres of the bank of a river.

Consistency with NSW Fisheries guidelines- The NSW Fisheries 'policy and guidelines for fish habitat conservation and management' stipulates a 'riparian buffer zone' of 50 metres for type 2 and 10-50 metres for type 3. The proposed amendment is consistent with these recommendations. Therefore, the impact of the amendment is minor. Note: there is no type 1 in Murray Shire that adjoins private land.

Application of clause to Edward River- The planning proposal increases environmental protection by applying it to the Edward River.

Retention of Environmental Protection Mapping- The planning proposal does not amend environmental protection mapping in respect to issues such as; 'biodiversity', flood planning' and 'wetlands'. Applications on this environmentally sensitive land are subject to the considerations of these clauses. Therefore, the environmental impact is of minor significance.