



planning consultants

Planning Proposal



Rezoning of Lot 1 and Lot 2 DP 1144152 Murray Downs Drive, Murray Downs

Prepared for: Murray Downs Homestead Pty Limited
Project No: 5540A
Date: September 2010



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Attachments

- A. Land Application Map.
- B. Proposed Zoning Map.
- C. Land Use Strategy Report prepared by Collie Pty Limited, Ivey ATP, Geolyse and Groupwork dated April 2009 as adopted 15 April 2009.
- D. Consideration of Environmental Matters Supporting the Wakool Land Use Strategy and Draft Wakool Principal Local Environmental Plan report prepared by Collie Pty Limited dated 13 May 2010.
- E. Murray Downs Rezoning report prepared by DFP for Wariat Nominees dated January 2008.
- F. Deposited Plan No. 1144152 registered 28 October 2009.

1 Part 1 – Objectives or Intended Outcomes

The purpose of this planning proposal is to enable future residential development on 19.94ha of land adjacent to the Murray River owned by Murray Downs Homestead Pty Limited within the Wakool Shire Local Government Area which is known as Lot 1 and Lot 2 DP 1144152.

The planning proposal intends to rezone the site from 1(a) General Rural Zone under Wakool Local Environmental Plan (WLEP) 1992 to 2(v) Village or Urban Zone.

The land to which this planning proposal applies is shown at **Attachment A**.

2 Part 2 – Explanation of Provisions

Amend WLEP 1992 as follows:

- Amend the Wakool LEP 1992 Land Zoning Map to identify the site within Zone No. 2(v) (Village or Urban Zone) as illustrated at **Attachment B**.
- Insert after Clause 37 the following:

37A. Murray Downs Homestead Development – Murray Downs

- (1) This clause applies to land in Murray Downs, being Lot 1 and Lot 2 DP 1144152 off Murray Downs Drive.
 - (2) For the purposes of subclause (1), Clause 37 does not apply to land to which this clause applies.
 - (3) The Council shall not consent to the erection of a dwelling, on land to which this clause applies:
 - a) below the Australian Height Datum of RL68.5 metres.
 - b) within 30 metres of any bank of a river.
 - (4) Notwithstanding any other provision of this plan, development may be carried out on land to which this clause applies for the purposes of an integrated housing development with consent but only if the land contains a minimum area of 3ha.
- Remove from the Environmentally Sensitive Land and Flood Liable Land Classification Map:
 - Lot 1 and Lot 2 DP 1144152

3 Part 3 – Justification

3.1 Section A – Need for the Planning Proposal

1. Is the planning proposal a result of any strategic study or report?

Yes. The planning proposal is consistent with the Land Use Strategy Report adopted by Wakool Shire Council on 15 April 2009. This report identifies the site for future residential use as part of the Strategic Framework for Murray Downs as noted from **Figure 1**.

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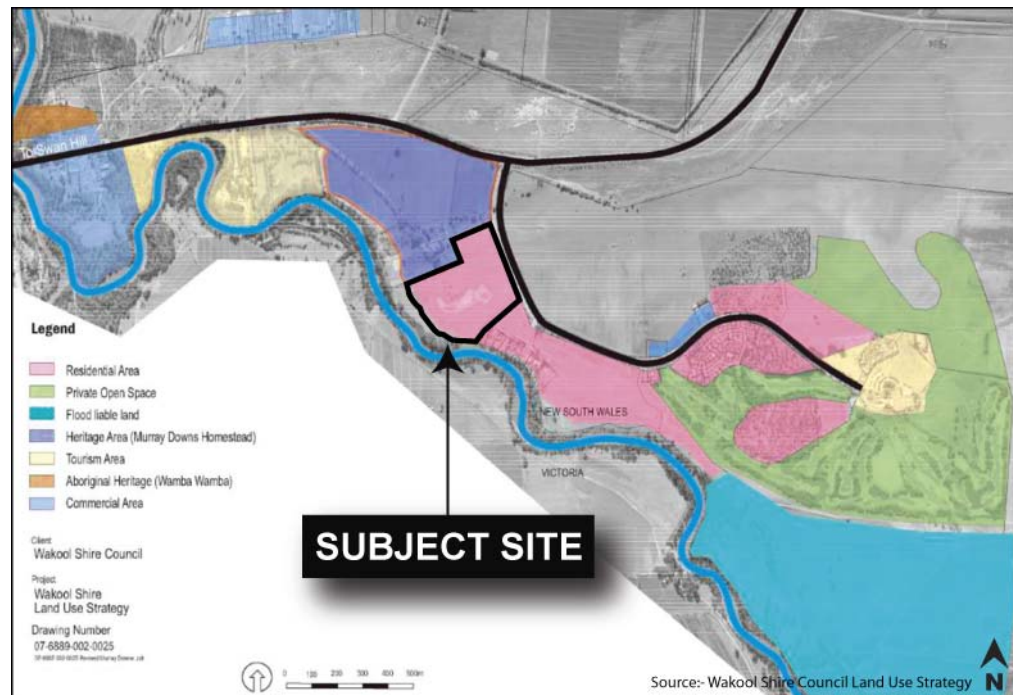


Figure 1 – Murray Downs Strategic Framework Extract

In addition, the site is identified as part of Site No. 10 within the Consideration of Environmental Matters Supporting the Wakool Land Use Strategy and Draft Wakool Principal Local Environmental Plan report prepared by Collie Pty Limited on behalf of Wakool Shire Council dated 13 May 2010 as shown in **Figure 2**. This report provides an analysis of sites proposed for urban release and considers Section 117 Directions together with the environmental effects of the proposal.

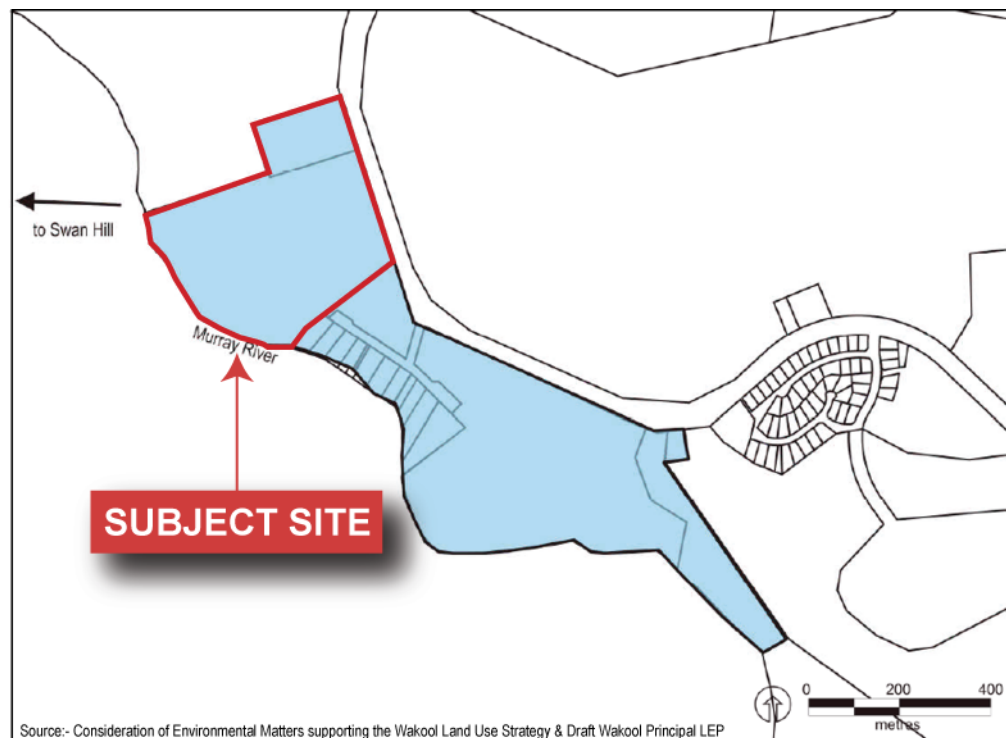


Figure 2 – Consideration of Environmental Matters Extract of Site No. 10

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The site is currently located within the 1(a) General Rural Zone under WLEP 1992 which primarily supports rural pursuits and large agricultural lots.

The site has previously been largely omitted from urban development areas under Clause 37 of WLEP 1992 due to an overly broad classification of the heritage precinct associated with Murray Downs Homestead which is an item of State Heritage significance located to the north west of the site. During the process of State Heritage Listing, the extent of the heritage precinct was clarified and adopted by the NSW Heritage Council. Subsequent subdivisions have allowed the site to be independent of the adjoining heritage item and the surrounding heritage precinct contained within Lot 2 DP 1067731.

The site is also unnecessarily burdened by an Environmentally Sensitive Land/Flood Liable Land classification which relates to flood risk despite the subject site containing levels at or above RL 68.5 AHD which confirm that it is flood free. Accordingly, the Environmentally Sensitive/Flood Liable Land classifications are obsolete and able to be removed from the site. The removal of these classifications is associated with the rezoning process as they are shown on Council's LEP map.

The extensive history associated with the proposed rezoning of the site is noted within the Murray Downs Rezoning report prepared by DFP provided at **Attachment E**.

The site was to be included within the Standard Instrument Local Environmental Plan as noted from the Wakool Landuse Strategy Plan adopted on 15 April 2009 and associated Consideration of Environmental Matters Supporting the Wakool Landuse Strategy and Draft Wakool Principal Local Environmental Plan report prepared by Collie Pty Limited dated May 2010.

However, ongoing delays with the Standard Instrument LEP process and concerns regarding uncertain timeframes have resulted in the need for a planning proposal to be prepared to facilitate the rezoning of the land. The planning proposal offers the most transparent, effective and efficient means of changing the controls on development associated with the site. As such the planning proposal will assist in achieving the objects contained within Section 5 of the Environmental Planning and Assessment Act 1979 pertaining to the economic and orderly development of land and will also assist with the implementation of strategic planning policies that have previously anticipated a residential zoning on the site.

3. Is there a net community benefit?

The planning proposal is likely to result in a positive community benefit with subsequent residential development leading to increased housing choice with high quality amenity (being adjacent to the Murray River) and convenience (given the close proximity of the site to the township of Swan Hill and nearby Golf course and associated facilities). The relationship between the site, Swan Hill, Murray River and the golf club is shown in **Figure 3**.



Figure 3 – Aerial Photograph of Lot 1 and Lot 2 DP 1144152 Murray Downs Drive, Murray Downs

Any minor environmental impacts will be outweighed by community benefits particularly as the planning proposal enables the implementation of land use zoning controls that are consistent with the proposed land uses identified within strategic studies for Murray Downs undertaken on behalf of Council.

Short term benefits associated with the proposal include employment within the building construction sector.

3.2 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 Draft Murray Regional Strategy was exhibited from 30 October 2009 to 11 December 2009 and provides a guideline for development to accommodate the region's growth over the next 25 years. Murray Downs is identified within the Draft Murray Regional Strategy as a Village with nearby Swan Hill identified as a Major Town, albeit outside the strategy area.

The planning proposal is consistent with the draft strategy as the proposed rezoning will:

- accommodate additional population growth within an area that is generally well serviced and identified as a village;
- not result in the loss of significant agriculturally productive land; and
- protect and manage the high quality foreshore lands of the Murray River.

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

Two strategic plans have been prepared on behalf of Wakool Shire Council for the local community as follows:

- Land Use Strategy Report adopted 15 April 2009.

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- Consideration of Environmental Matters Supporting the Wakool Land Use Strategy and Draft Wakool Principal Local Environmental Plan report dated 13 May 2010.

As noted within Section A of this report, the planning proposal is consistent with the local strategic plans that have been developed to guide future development at Murray Downs within Wakool Shire.

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

Relevant State Environmental Planning Policies and their relationship with the planning proposal are outlined in the table below:

SEPP	Comment
State Environmental Planning Policy No 1 – Development Standards	Consistent
State Environmental Planning Policy No 4 – Development Without Consent and Miscellaneous Exempt and Complying Development	Not applicable
State Environmental Planning Policy No 6 – Number of Storeys in a Building	Consistent
State Environmental Planning Policy No 15 – Rural Landsharing Communities	Not applicable
State Environmental Planning Policy No 19 – Bushland in Urban Areas	Not applicable
State Environmental Planning Policy No 21 – Caravan Parks	Consistent
State Environmental Planning Policy No 22 – Shops and Commercial Premises	Not applicable
State Environmental Planning Policy No 30 – Intensive Agriculture	Not applicable
State Environmental Planning Policy No 32 – Urban Consolidation (Redevelopment of Urban Land)	Not applicable
State Environmental Planning Policy No 33 – Hazardous and Offensive Development	Not applicable
State Environmental Planning Policy No 36 – Manufactured Home Estates	Not applicable
State Environmental Planning Policy No 44 – Koala Habitat Protection	Consistent – The site does not currently support koalas. It is also noted that no trees are required to be removed as part of the planning proposal or any subsequent subdivision.
State Environmental Planning Policy No 50 – Canal Estate Development	Not applicable
State Environmental Planning Policy No 52 – Farm Dams and Other Works in Land and Water Management Plan Areas	Not applicable
State Environmental Planning Policy No 55 – Remediation of Land	Consistent - No known contamination exists on the site.
State Environmental Planning Policy No 60 – Exempt and Complying Development	Not applicable
State Environmental Planning Policy No 62 – Sustainable Aquaculture	Not applicable
State Environmental Planning Policy No 64 – Advertising and Signage	Not applicable
State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development	Not applicable
State Environmental Planning Policy No 70 – Affordable Housing (Revised	Not applicable

SEPP	Comment
Schemes)	
State Environmental Planning Policy No 71 – Coastal Protection	Not applicable
State Environmental Planning Policy (Affordable Rental Housing) 2009	Not applicable
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	Consistent - BASIX is able to be complied with at the DA stage.
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	Not applicable
State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004	Not applicable
State Environmental Planning Policy (Infrastructure) 2007	Not applicable
State Environmental Planning Policy (Major Development) 2005	Not applicable
State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007	Not applicable
State Environmental Planning Policy (Rural Lands) 2008	Consistent – Refer to comments below.
State Environmental Planning Policy (Temporary Structures) 2007	Not applicable
Murray Regional Environmental Plan (REP) No. 2 – Riverine Land. Note: MREP No. 2 is a deemed SEPP.	Consistent. – Refer to comments below.

SEPP (Rural Lands) 2008

Clause 7 of SEPP (Rural Lands) 2008 contains the following rural planning principles that require consideration as part of this planning proposal:

- (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 addresses the above rural planning principles as follows:

- The site does not contain State significant agricultural land and is not located within an area of regional farming significance;

- The proposal achieves an appropriate balance between social, environmental and economic interests of the community by providing opportunities for additional housing choice on a site that is not adversely affected by any significant constraints;
- Short and long term social and economic benefits are likely to benefit both the village of Murray Downs and the nearby town of Swan Hill;
- The site is located within close proximity to the Murray Downs development area and is able to be well serviced by infrastructure with suitable spare capacity available;
- The planning proposal is consistent with the provisions contained within the Draft Murray Regional Strategy; and
- The planning proposal is consistent with strategic studies including the Wakool Landuse Strategy Plan and Consideration of Environmental Matters Supporting the Wakool Landuse Strategy and Draft Wakool Principal Local Environmental Plan report prepared on behalf of Council for the Murray Downs locality.

Murray REP No. 2 – Riverine Land

Murray REP No. 2 – Riverine Land is a deemed SEPP that was gazetted on 31 March 1994 and applies to the Shire of Wakool.

Murray REP No. 2 seeks to conserve and enhance the riverine environment of the River Murray for the benefit of all users. In particular, the objectives of REP No. 2 are:

- (a) *to ensure that appropriate consideration is given to development with the potential to adversely affect the riverine environment of the River Murray, and*
- (b) *to establish a consistent and co-ordinated approach to environmental planning and assessment along the River Murray, and*
- (c) *to conserve and promote the better management of the natural and cultural heritage values of the riverine environment of the River Murray.*

Clause 9 of Murray REP No. 2 includes general principles that are required to be considered during the preparation of a local environmental plan as follows:

- (a) *the aims, objectives and planning principles of this plan,*
- (b) *any relevant River Management Plan,*
- (c) *any likely effect of the proposed plan or development on adjacent and downstream local government areas,*
- (d) *the cumulative impact of the proposed development on the River Murray.*

Clause 14 of Murray REP No. 2 pertains to building setbacks and notes that 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.

The main objectives contained within Clause 14 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.*

Also included within Clause 14 are provisions to address effluent disposal and landscaping.

The planning proposal satisfactorily addresses Murray REP No. 2 as follows:

- The site is not affected by a River Management Plan;
- The aims, objectives, planning principles and potential cumulative impacts have been given consideration as part of the Wakool Land Use Strategy Report which supports future residential use of the site despite its proximity to the Murray River as the site is above RL68.5 AHD and is therefore flood free;
- Future residential development will not adversely affect land within surrounding Local Government Areas or result in the redistribution of flood waters;
- Appropriate foreshore setbacks are able to be adopted to ensure that the aesthetic quality and high amenity value of the Murray River is maintained;
- Residential development on the site will not restrict any public view of the Murray River from Murray Downs Drive or other surrounding areas within the public domain;
- Future residential development on the site will not compromise the integrity of the riverbank or require the removal of any existing vegetation established along the Murray River;
- Any future interface development between the site and the Murray River would need to be the subject of a development application and if approved, is likely to be accompanied by appropriate conditions of consent;
- Effluent from future development is able to be treated off site via an approved waste water facility; and
- Water Sensitive Urban Design Principles are able to be adopted for future development to ensure that the water quality of the Murray River is not adversely affected by future development.

The planning proposal is not inconsistent with any State Environmental Planning Instrument.

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

The relevant Section 117 Directions contained within the Environmental Planning and Assessment Act 1979 are outlined in the table below:

1 Employment and Resources

	Direction	Applicable	Consistent
1.1	Business and Industrial Zones	No	N/A
1.2	Rural Zones	Yes	No
1.3	Mining, Petroleum Production and Extractive Industries	No	N/A
1.4	Oyster Aquaculture	No	N/A
1.5	Rural Lands	Yes	Yes

Justification

Direction 1.2 applies to planning proposals which affect land within an existing or proposed rural zone and states that a planning proposal must not rezone land from a rural zone to a residential zone.

The inconsistency is justified in this instance as the site is identified for future residential use within the Wakool Land Use Strategy Report and the Consideration of Environmental Matters Supporting the Land Use Strategy and Draft Wakool Principal LEP report.

The planning proposal is consistent with Direction 1.5 as the proposed residential use is consistent with the strategic policies adopted by Wakool Shire Council whereby the social and environmental benefits associated with rezoning rural land to residential land such as additional housing choice and opportunities are recognised.

2 Environmental and Heritage

	Direction	Applicable	Consistent
2.1	Environmental Protection Zones	Yes	Yes
2.2	Coastal Protection	No	N/A
2.3	Heritage Conservation	Yes	Yes
2.4	Recreation Vehicle Areas	No	N/A

Justification

Provisions already exist in the Wakool LEP for the protection and conservation of environmentally sensitive areas and the conservation of all heritage items, areas, objects, and places of heritage significance. Notwithstanding, no residential development is proposed below RL68.5 AHD or within 30 metres of the Murray River to protect and conserve this riverine environment. Accordingly, the planning proposal is consistent with Direction 2.1.

The site does not contain any known items of European or Aboriginal heritage. Furthermore, the planning proposal respects the adjacent item of State Heritage significance located at Lot 2 DP 1067731 known as Murray Downs Homestead. Future residential development on the site will not create an adverse impact on the adjoining item of heritage significance and in any event, will most likely be assessed under Section 79C of the Environmental Planning and Assessment Act 1979 as part of a future development application to Wakool Shire Council.

3 Housing, Infrastructure and Urban Development

	Direction	Applicable	Consistent
3.1	Residential Zones	Yes	Yes
3.2	Caravan Parks and Manufactured Home Estates	No	N/A
3.3	Home Occupations	Yes	Yes
3.4	Integrating Land Use and Transport	Yes	No
3.5	Development near Licensed Aerodromes	No	N/A

Justification

In response to Direction 3.1, the planning proposal will broaden the choice of building types and locations available within the Wakool Shire and will assist with the efficient use of infrastructure and services. Accordingly, the planning proposal will enable the development of land consistent with the objects contained within Section 5 of the Environmental Planning and Assessment Act, 1979 and therefore reflects evolving lifestyle and demographic trends.

Home occupations will be able to be carried out in a dwelling without the need for development consent, consistent with Direction No. 3.3.

Whilst the planning proposal is inconsistent with Direction No. 3.4 pertaining to integrating land use and transport, the inconsistency is justified on the basis that the site has been the subject of comprehensive investigations and as such, has been identified for residential development within the Wakool Land Use Strategy Report and the Consideration of Environmental Matters Supporting the Land Use Strategy and Draft Wakool Principal LEP report.

4 Hazard and Risk

	Direction	Applicable	Consistent
4.1	Acid Sulphate Soils	No	N/A
4.2	Mine Subsidence and Unstable Land	No	N/A
4.3	Flood Prone Land	Yes	Yes
4.4	Planning For Bushfire Protection	No	N/A

Justification

Direction 4.3 seeks to ensure that the provisions of an LEP on flood prone land are commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the site.

The established flood level is RL 68.5 AHD. It is not proposed to develop the site for residential purposes below the established flood level. Furthermore, on-site water sensitive urban design is able to be adopted as part of any future subdivision for residential purposes so that downstream properties and local government areas remain unaffected by the proposal. Accordingly, the planning proposal is considered to be consistent with Direction 4.3.

5 Regional Planning

	Direction	Applicable	Consistent
5.1	Implementation of Regional Strategies	No	N/A
5.2	Sydney Drinking Water Catchments	No	N/A
5.3	Farmland of State and Regional Significance on NSW Far North Coast	No	N/A
5.4	Commercial and Retail Development along the Pacific Hwy, North Cost	No	N/A
5.5	Development in the vicinity of Ellalong, Paxton and Millfield	No	N/A
5.8	Second Sydney Airport: Badgerys Creek	No	N/A

Justification

There is no regional strategy that applies to the site that would otherwise require consideration under Direction No. 5.1. Notwithstanding, the provisions of the Draft Murray Regional Strategy have been addressed within Section 3.2 of this report.

6 Local Plan Making

	Direction	Applicable	Consistent
6.1	Approval and Referral Requirements	Yes	Yes
6.2	Reserving Land for Public Purposes	Yes	Yes
6.3	Site Specific Purposes	Yes	Yes

Justification

Pursuant to Direction No. 6.1, the LEP provisions encourage the efficient and appropriate assessment of development.

Consistent with Direction No. 6.2, the planning proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.

The planning proposal does not impose unnecessarily restrictive site specific planning controls and therefore is consistent with Direction No. 6.3.

7 Metropolitan Planning

	Direction	Applicable	Consistent
7.1	Implementation of the Metropolitan Strategy	No	N/A

Justification

NIL

The planning proposal has addressed the S.117 Directions prescribed by the Minister contained within the Environmental Planning and Assessment Act 1979.

3.3 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?

No critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the planning proposal.

The vegetation corridor along the Murray River will not be affected by the planning proposal and all future residential development will be required to maintain a 30 metre buffer from the Murray River.

9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

General constraints associated with development are able to be addressed at the development application stage when Council is obliged to consider Section 79C of the Environmental Planning and Assessment Act, 1979. Likewise, impacts on the built environment such as overshadowing, height, bulk and scale and streetscape presentation are also able to be determined at the DA stage.

In general, the site is flood free (above RL 68.5 AHD) and is conducive to being able to support future residential development without creating any significant adverse environmental impact.

10. How has the planning proposal adequately addressed any social and economic effects?

The proposal will result in a minor, albeit positive social and economic impact on the locality through the provision of wider housing choice and employment associated with building construction activity and commercial enterprises.

Residential development on the site is likely to support existing businesses within the town of Swan Hill and promote the village of Murray Downs.

The planning proposal will not result in any adverse impact on the adjoining item of heritage significance known as Murray Downs Homestead.

All other social and economic effects have been considered as part of the Wakool Land Use Strategy and the Consideration of Environmental Matters Supporting the Wakool Land Use Strategy and Draft Wakool Principal Local Environmental Plan report prepared on behalf of Wakool Shire Council for land at Murray Downs.

3.4 Section D – State and Commonwealth Interests

11. Is there adequate public infrastructure for the planning proposal?

Existing roads (including Murray Downs Drive which currently provides convenient access to the site), public utilities and other essential services such as health, education and

emergency services exist within the Wakool Local Government Area and are generally adequate to serve and meet the needs of the proposal. In particular, Swan Hill is a major town that is able to service the incoming population of Murray Downs.

In addition, public authorities are able to be involved through consultation as part of the gateway determination process.

12. What are the views of State and Commonwealth Public Authorities consulted in accordance with the gateway determination, and have they resulted in any variations to the planning proposal?

The views of State and Commonwealth public authorities will be known once consultation has occurred as part of the gateway determination of the planning proposal.

4 Part 4 – Community Consultation

Community consultation is proposed in accordance with Section 57 of the Environmental Planning and Assessment Act 1979.

A period of 28 days is appropriate for the exhibition of the planning proposal as its 'low impact' status is recognised within A Guide to Preparing Local Environmental Plans prepared by the Department of Planning dated 2009.

Notification is able to be conducted by way of direct correspondence to the surrounding owners, publication within the local press and information on Wakool Shire Council's website.