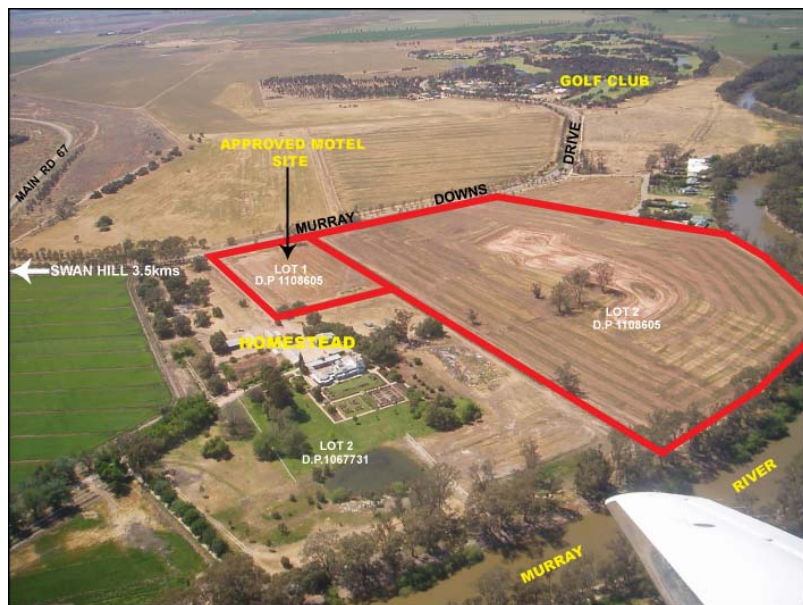




town planners



Murray Downs Rezoning

Lot 1 and 2 DP 1108605
Murray Downs Drive, Murray Downs

Prepared for: Wariat Nominees
Project No: 5540A
Date: January 2008



Murray Downs Rezoning – Wariat Nominees

Lot 1 and 2 DP 1108605 Murray Downs Drive, Murray Downs

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- F. Wakool Shire Council Development Consent No. 95/01 for Motel on Lot 1 DP 1108605 dated 13 November 2003
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- I. Submission to Murray Downs Land Use Planning Workshop prepared by DFP dated 13 December 2004

1 Executive Summary

Wariat Nominees has commissioned Don Fox Planning Pty Ltd (DFP) to prepare a town planning submission for Wakool Shire Council's consideration in response to the Murray Downs Planning Workshop meeting held on 11 October 2007 regarding Council's future rezoning of Murray Downs as part of its shire wide LEP review.

In particular, this submission outlines reasons that justify inclusion of land owned by Wariat Nominees at Lot 1 and 2 DP 1108605 Murray Downs Drive, Murray Downs (the subject site) within the 2(v) Village or Urban zone under Wakool Local Environmental Plan 1992.

In the opinion of DFP, the proposed rezoning of the subject site is appropriate within the Murray Downs locality and warrants support by both Council and the Department of Planning for the following reasons:

- a) The subject site is no longer part of the Murray Downs Homestead heritage precinct which adjoins the site on Lot 2 DP 1067731, as verified during the State Heritage listing of the Homestead in 2000 and in the Murray Downs Historic Precinct Swan Hill Conservation Management Plan prepared by Freeman Randell Conservation Architects and Planners dated November 2002;
- b) The subject site is now flood free, having achieved levels at or above RL 68.5 AHD following Council's issue of Development Consent No. 19/03 for laser levelling works;
- c) Further to point (b) above, the Environmentally Sensitive Land and Flood Liable Land classifications which currently burden the subject site under WLEP 1992 are obsolete and are therefore able to be removed;
- d) The Local Environmental Study (LES) review prepared by Habitat Planning Consultants dated April 2002 confirms that land previously known as Lot 1 DP 1067731 (which now comprises Lot 1 and 2 DP 1108605) is suitable for residential purposes;
- e) Based on our review of past studies, present planning policies and sound planning practice, there is no reason for WSC to exclude the subject site from rezoning for urban (i.e. residential) purposes;
- f) The proposed rezoning of Lot 1 and 2 DP 1108605 will:
 - i. contribute to the economic and orderly development of land within Murray Downs;
 - ii. be consistent with the Minister's S.117 directions;
 - iii. be consistent with Wakool Shire Council's strategic planning direction and approach to date;
 - iv. create minimal impact on the surrounding built and natural environment;
 - v. result in positive social and economic impacts;
 - vi. be suitable for the subject site given that it contains minimal environmental constraints and already adjoins land to the south east that can be developed for urban purposes pursuant to Clause 37 of WLEP 1992; and
 - vii. be in the public interest given that future development will provide for a greater variety of housing choice in an

appropriate location with the potential for improved public access to the foreshore of the Murray River.

DFP recommends that Lot 1 and 2 DP 1108605 be rezoned from the 1(a) General Rural Zone to the 2(v) Village or Urban zone under Wakool Local Environmental Plan 1992 to permit urban (i.e. residential) development with subsequent removal of the Environmentally Sensitive Land and Flood Liable Land classifications that are now obsolete on this site.

It is anticipated that as part of the NSW Standard LEP Template, alternative formatting will apply to the new LEP, resulting in an "R" classification to residential land within Wakool Shire.

2 Introduction

2.1 Commission

Wariat Nominees has commissioned Don Fox Planning Pty Ltd (DFP) to prepare a town planning submission for Wakool Shire Council's consideration in response to the Murray Downs Planning Workshop meeting held on 11 October 2007 regarding Council's future rezoning of Murray Downs as part of its shire wide LEP review.

2.2 Objective

The objective of this report is to provide a town planning opinion and outline reasons that justify inclusion of land owned by Wariat Nominees at Lot 1 and 2 DP 1108605 Murray Downs Drive, Murray Downs (the subject site) within the 2(v) Village or Urban zone under Wakool Local Environmental Plan 1992.

In providing our town planning opinion, DFP has had regard to:

- a) The provisions of applicable environmental planning instruments and controls including (but not limited to):
 - Wakool Local Environmental Plan 1992;
 - Wakool Development Control Plan No. 2 – Murray Downs Development Area;
 - Murray Regional Environmental Plan No. 2 – Riverine Land; and
 - State Environmental Planning Policy (Housing for Seniors or People with a Disability).
- b) The State Heritage Listing of the adjoining Murray Downs Homestead and whether the subject site is included within the heritage precinct;
- c) The extent to which the subject site is flood affected and whether the Environmentally Sensitive Land/Flood Liable Land Classifications which currently burden the site are obsolete;
- d) Liaison with Council Officers, relevant sub-consultants and a review of Council's strategic planning policies (inclusive of Local Environmental Studies and Council's 2007 Draft Issues Paper) and whether the proposed rezoning for urban purposes will be consistent with these provisions; and
- e) The suitability of the site for the proposed rezoning having regard to matters for consideration pursuant to Section 79C and Section 117 of the Environmental Planning and Assessment Act 1979;

2.3 Background

Wakool Shire Council (WSC) is undertaking a review of its Local Environmental Plan (LEP) to ensure consistency with the NSW Department of Planning Standard LEP Template and will undertake formatting amendments (inclusive of new “R” zone references for residential zones) to coincide with this review. In doing so, we note that Collie Pty Ltd (formerly Ratio Consultants Pty Ltd) has been engaged by Council to provide town planning assistance in this regard.

The following background information is relevant to the rezoning of Lot 1 and 2 DP 1108605 Murray Downs Drive, Murray Downs:

18 September 1992

- Wakool Local Environmental plan 1992 gazetted;

19 October 1992

- Wakool Shire Council Development Control Plan No. 2 – Murray Downs Development Area approved by Council, later becoming effective on 6 November 1992;

27 June 1996

- Deposited Plan 859813 registered indicating that the Murray Downs Homestead originally comprised Lot 15 in DP 859813, containing an area of 61.43 hectares. This allotment was located within the 1(a) General Rural zone under WLEP 1992 and includes the subject site which has since been subdivided;

10 November 2000

- The Heritage Office advised Council that:

“The Heritage Council has considered the heritage significance of Murray Downs Homestead and its precinct and has resolved, on 17 October 2000, to recommend to the Minister that the homestead and its precinct be listed on the State Heritage Register.

The precinct is described as proposed Lot 2 in the subdivision plan attached, prepared by Freeman & Freeman, surveyors.”

The proposed plan of subdivision, as referred to above, comprised resubdivision of Lot 15 DP 859813 into two allotments, namely, Lot 1 comprising 19.93 hectares, being the southern-most and vacant portion of the site, and Lot 2 comprising 41.43 hectares, being the northern portion of the site containing the historic homestead and outbuildings. Lot 2 is the precinct described as having heritage significance, which is the subject of State Heritage Listing No. 1438.

Consequently, the subject site is no longer part of the Murray Downs heritage precinct.

13 December 2000

- Council resolved to undertake an amendment to the Wakool LEP 1992 (Draft Amendment No. 6 – Rezoning of Land at Murray Downs for Residential Purposes) to allow residential developments within the Murray Downs development area to be considered in areas previously not considered in Council’s strategic plan and development control plan for the area.

The amendment proposed was to introduce a 2(v) Village or Urban zone over the area proposed for future residential, tourist and commercial development. The then Department of Planning advised Council that prior to the issue of a Section 65 Certificate to place the draft amendments on public exhibition, a review of the original Local Environmental Study was required.

Council obtained quotations for the review of the LES on the basis that the costs would be shared amongst property owners. Habitat Planning was engaged with both Wariat Nominees and Murray Downs Pastoral Company proportionately contributing financially to the cost of the review on the basis of the land area owned by each company.

18 April 2001

- Development Consent No. 28/01 for subdivision of Lot 15 into Lot 1 and 2 issued by Wakool Shire Council;

April 2002

- Local Environmental Study review of Murray Downs completed by Habitat Planning.

The review study, in part, referred to the heritage precinct of the Murray Downs Homestead and the need for its preservation. The review of the LES confirmed development constraints identified in the original LES, which are addressed in Section 6 of this report.

It is imperative to note that the site, the subject of this report, is no longer part of the Murray Downs Homestead heritage precinct and is above the 1 in 100 year flood level of RL 68.5 AHD.

29 May 2003

- DFP attend meeting in Deniliquin with Council Officers and Council's sub-consultants to discuss a range of issues including matters relating to the rezoning of the subject site.

22 October 2003

- DFP attend on-site conference with Council Officers and discuss status of rezoning proposals for the Murray Downs area. Council acknowledges that the subject site would be included as part of the proposed residential area with Council's mapping to be amended accordingly as part of a broader review of its policies.

28 October 2003

- DFP submit a rezoning request to Wakool Shire Council for the subject site (then known as Lot 1 in DP 1067731 prior to subdivision) from the 1(a) General Rural Zone to the 2(v) Village or Urban zone.

Council opted to include the subject site as part of its shire wide LEP review, thereby resulting in delays which have been to the detriment of Wariat Nominees' development opportunities. This is particularly so as in our view, Council could have resolved to include the subject site in Clause 37(1) of WLEP 1992 (which describes the lands to which Clause 37 applies), by adding the subject site in the description.

Council would then only have needed to amend DCP 2 to show the subject site as Residential land to enable development of the subject site by Wariat Nominees.

13 November 2003

- Development Consent No. 19/03 granted by Wakool Shire Council for laser levelling work inclusive of irrigation layout and pump and pipe work installation. This consent has been commenced and all works have been completed such that all of Lot 1 is now flood-free and above RL 68.5 AHD.

13 November 2003

- Development Consent No. 95/01 granted by Wakool Shire Council for an 18 room Motel on approximately 2.493 hectares of land comprising Part Lot 1 DP 1067731 with a 10-metre right of way to the Murray River. This consent is not due to expire until 15 November 2008.

26 May 2004

- Deposited Plan No. 1067731 registered with the Land Titles Office indicating the subject site as Lot 1 with the remaining Lot 2 comprising the Murray Downs Homestead and heritage precinct;

30 September 2004

- Minister for Urban Affairs and Planning issues a statement advising Wakool Shire Council of a new comprehensive reform for Planning in NSW, in particular a review of formats for LEP's and DCP's. This reform further delays Council's comprehensive review of WLEP 1992.

20 October 2004

- DFP attend further on-site meeting with Council Officers regarding the rezoning of the subject site and other development issues.

21 October 2004

- DFP submit request to Wakool Shire Council to amend DCP 2 as it applies to Lot 1 in DP 1067731 from Historic Precinct to Residential. DFP reiterates that such area (comprising the subject site) was excluded from the heritage precinct area identified by the NSW Heritage Office and as such, the historic precinct only applies to the homestead lot, being Lot 2.

28 October 2004

- DFP writes to Council to acknowledge that Lot 1 in DP 1067731 could be developed for aged care residential dwellings pursuant to the then SEPP 5 as the Environmentally Sensitive Land/Flood Liable Land classifications were obsolete due to the land being flood free and the site adjoined land that could be developed for urban purposes pursuant to Clause 37 of WLEP 1992.

13 December 2004

- DFP prepare submission to Murray Downs Land Use Planning Workshop requesting consideration of the subject site to be rezoned for residential purposes.

16 February 2005

- Wakool Shire Council Meeting held for Councillors to consider report on rezoning of Murray Downs.

4 April 2005

- DFP writes to Wakool Shire Council confirming verbal advice received from Council Officers that *Lot 1 in DP 1067731 forms part of the area to be*

considered for rezoning and, further, the “environmentally sensitive land” classification would be removed from Lot 1 subject to the land being flood free and it being rezoned;

19 April 2005

- Subdivision Certificate No. 13/04 issued by Wakool Shire Council for subdivision of Lot 1 DP 1067731 into two lots. Lot 1 comprises the approved Motel site (currently vacant) with Lot 2 comprising the remainder of the vacant land.

24 October 2006

- Wakool Shire Council advises DFP of Council’s intentions to adopt the NSW Department of Planning’s advice and include the Murray Downs rezoning as part of the Shire wide LEP review and utilise Melbourne company, Ratio Consultants (now known as Collie Pty Ltd) to provide town planning assistance.

23 February 2007

- Deposited Plan 1108605 registered with the Land Titles Office indicating the subject site as Lot 1 and 2 DP 1108605. The adjoining homestead and heritage precinct retains its folio identifier as Lot 2 DP 1067731 and is not part of the subject site.

11 October 2007

- DFP attend Murray Downs Planning Workshop Meeting and accept an invitation from Wakool Shire Council to submit information on behalf of Wariat Nominees concerning future zoning of the subject site within Murray Downs.

14 December 2007

- WSC advises DFP that a response from the Wamba Wamba Local Aboriginal Council (to confirm the absence of any significant Aboriginal Cultural Heritage in the Murray Downs locality) remains outstanding.

24 January 2008

- DFP prepare a town planning submission on behalf of Wariat Nominees reaffirming our opinion that the subject site should be included in the 2(v) Village or Urban zone under WLEP 1992 as part of Council’s shire wide LEP review with removal of the obsolete Environmentally Sensitive Land/Flood Liable Land classifications.

2.4 Material Relied Upon

The following information has been relied upon for the purposes of this report:

- Site inspections of the subject site and surrounding Murray Downs locality on 22 October 2003 and 11 October 2007;
- Information provided to land owners (and their representatives) at Wakool Shire Council’s Planning Workshop Meeting on 11 October 2007;
- Wakool Shire Council Draft Issues Paper prepared by Ratio Consultants dated March 2007.

In addition, liaison with the following personnel in relation to the rezoning of the subject site at Murray Downs has occurred prior to completion of this report.

- Chris Chapman Manager, Planning and Environment and Acting General Manager, Wakool Shire Council
- Sarah Wain Environmental Officer, Wakool Shire Council
- Jeff Wolinski Collie Pty Ltd – consultants engaged by Wakool Shire Council
- Liz Mackevicius Collie Pty Ltd – consultants engaged by Wakool Shire Council
- Phillip Gall (Former) Director of Environmental Services, Wakool Shire Council
- Mark Williams (Former) Manager, Health & Building Services
- David Mitchell (Former) Director of Environmental Services
- Craig C Moffatt (Former) General Manager, Wakool Shire Council
- Geoff Barker Senior Health & Building Surveyor, Wakool Shire Council
- Geoff Smith (Former) Acting Manager & Consultant Wakool Shire Council
- Bill Warne (Former) Acting General Manager, Wakool Shire Council
- Kevin Kropinyeri (Former) Chairman, Wamba Wamba Local Aboriginal Land Council
- Catherine Wright Co-ordinator, NSW Aboriginal Land Council Southern Zone Office
- Bernie Noonan Planright, Civil Engineers, Irrigation Designers and Licensed Surveyors
- Brian Mitsch Consultant Town Planner/Surveyor acting on behalf of Wakool Shire Council
- Warwick Horsfall Habitat Planning – consultants engaged by Wakool Shire Council
- Rob Merritt Price Merrett Consulting Pty Ltd
- M, J and D Lewis Wariat Nominees

2.5 Assumptions

DFP has assumed that:

- Demand for public amenities and services generated by new residential development is able to be addressed through Section 94 of the Environmental Planning and Assessment Act 1979;
- Murray Downs Homestead on Lot 2 DP 1067731 (which adjoins but is not part of the subject site) will be maintained as an item of Heritage Significance in Schedule 1 of WLEP 1992 to reflect the State Heritage Significance listing of the homestead and its surrounds, in a consistent format with the NSW Standard LEP Template; and
- All matters associated with Land and Environment Court Orders have been resolved.

3 Context

3.1 Subject Site

An aerial view of the subject site is provided in **Illustration 1**.



Illustration 1 – Subject Site

The subject site has the following characteristics:

- a) Located within Wakool Shire LGA;
- b) Legally identified as:
 - Lot 1 and 2 within Deposited Plan (DP) 1108605, registered 23 February 2007
 - Parish of Yellymong / County of Wakool;
- c) Single ownership by Wariat Nominees;
- d) Area:
 - Lot 1 DP 1108605: 2.49ha
 - Lot 2 DP 1108605: 17.44ha
 - Total site area: 19.93ha;
- e) Located on the northern side of the Murray River with direct river frontage;
- f) 377 metre total road frontage to Murray Downs Drive;
- g) Adjoins Lot 2 DP 1067731 which has an area of 41.497ha and contains the State Heritage Listed Murray Downs Homestead and heritage precinct;
- h) Adjoins Lot 14 DP 859813 which is the subject of DA No. 53/07 for Subdivision into 16 residential lots (pending determination by Wakool Shire Council);

- i) Adjoins existing low density residential development on the Murray River in Kidman Reid Drive, Murray Downs;
- j) Located opposite Lot 60 DP 813520 in Murray Downs Drive which has been the focus of a 2(v) Village or Urban zone pursuant to Draft Amendment to Wakool Local Environmental Plan 1992;
- k) Vacant land (previously used for agriculture) which contains a gentle fall from Murray Downs Drive to the Murray River and a large dam constructed in the middle of the site;
- l) Flood free (i.e. above RL 68.5 AHD as defined by DLWC) and generally cleared of vegetation with the exception of a few central shade trees; and
- m) Contains minimal environmental site constraints although a riparian corridor exists along the Murray River which contains river gums and a flood levy bank.

Illustration 2 is an extract from Deposited Plan 1108605 which was registered on 23 February 2007.

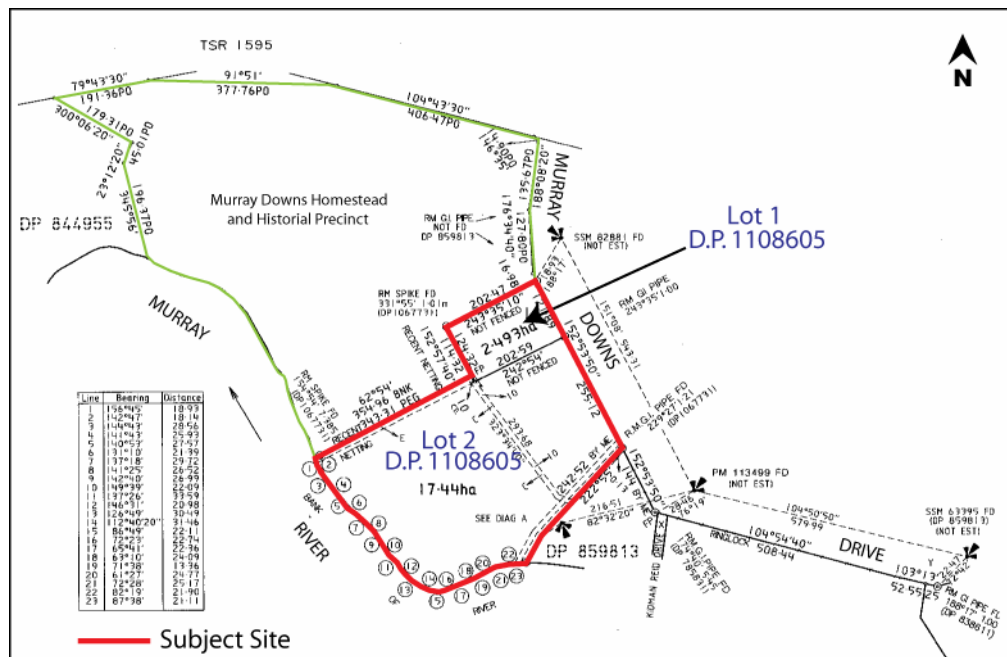


Illustration 2 – Deposited Plan 1108605 Extract

3.2 Murray Downs Locality

The location of the subject site within the Murray Downs locality is shown in **Illustrations 3, 4 and 5**.



Illustration 5 - Subject Site and Adjoining Murray River – Local Context

The Murray Downs locality is characterised by predominantly interspersed low density residential development, a golf course and associated resort facilities and surrounding rural/agricultural land, north of the Murray River with good access to nearby Swan Hill.

The Murray River is a geographical constraint, which acts as a natural buffer between future urban development on the subject site and existing agricultural pursuits to the south. Surrounding development within the Murray Downs locality to the south east of the subject site comprises in part residential development. To the north west, the Murray Downs Homestead and heritage precinct are screened mostly by existing vegetation. To the east, rural agricultural pursuits are prominent whilst to the south, the Murray River and associated riparian band of river gums exists.

4 Proposal

4.1 Murray Downs Rezoning

In December 2000, Council resolved to amend Wakool LEP 1992 to allow residential developments within the Murray Downs development area to be constructed in areas previously not considered in the strategic and development control plan for the area. Amendments include the introduction of a 2(v) Village or Urban zone over the area proposed for future residential, tourist and commercial development.

In the past, the subject site has been largely omitted from urban development areas (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. 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 subject site to be independent of the adjoining heritage item and the surrounding heritage precinct contained within Lot 2 DP 1067731.

The subject site is also burdened by an Environmentally Sensitive Land classification, which related to flood risk. The subject site is also classified as Flood Liable Land. Following subsequent development approvals from Council, the subject site now contains levels at or above RL 68.5 AHD and is therefore flood free. Accordingly, the Environmentally Sensitive/Flood Liable Land classifications are now obsolete and able to

be removed from the subject site by Council. The removal of these classifications is associated with the rezoning process as they are shown on Council's LEP map.

The existing and proposed urban areas within close proximity of the subject site are shown in **Illustration 6**.

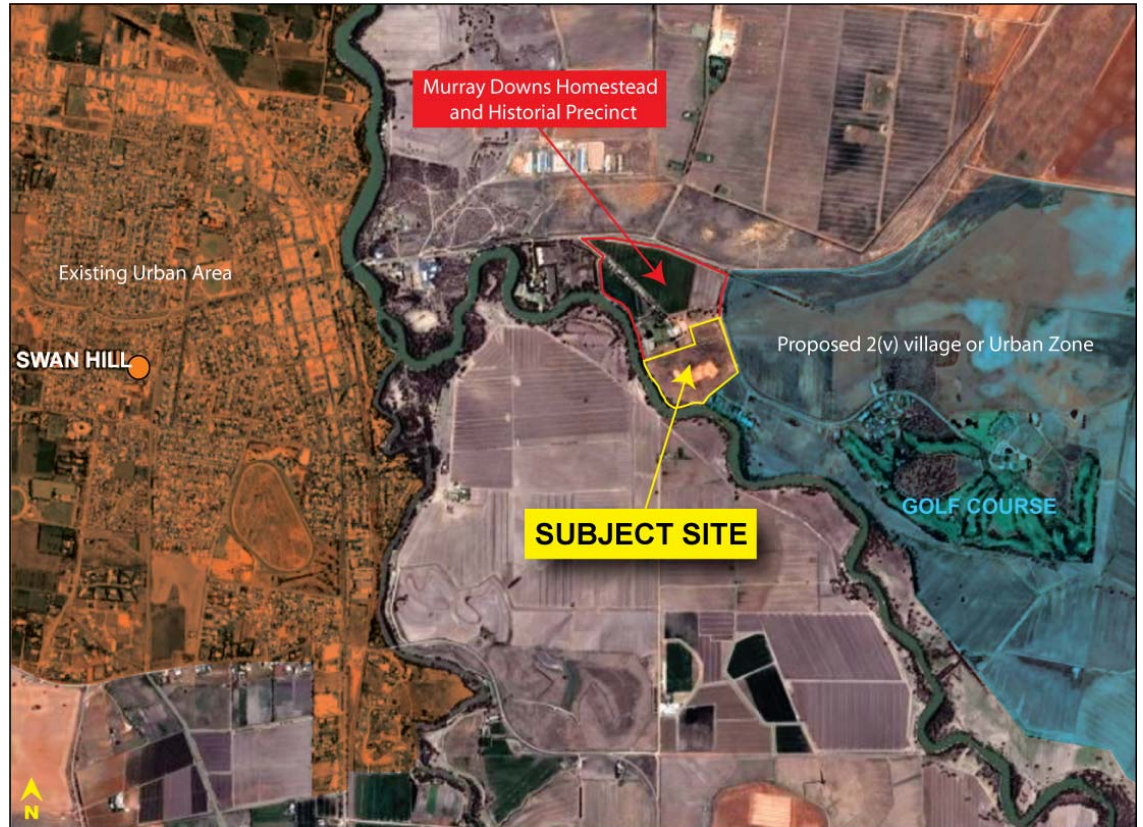


Illustration 6 - Existing and Proposed Urban Areas

DFP recommends that Lot 1 and 2 DP 1108605 be rezoned from 1(a) General Rural to 2(v) Village or Urban under Wakool Local Environmental Plan 1992 to permit urban (i.e. residential) development with subsequent removal of the Environmentally Sensitive/Flood Liable Land Classifications that are now obsolete on this site. Moreover, it is anticipated that as part of the NSW Standard LEP Template, alternative formatting will apply to the new LEP, resulting in an “R” classification to residential land within Wakool Shire as indicatively shown in **Illustration 7**.

Murray Downs Rezoning – Variat Nominees

Lot 1 and 2 DP 1108605 Murray Downs Drive, Murray Downs

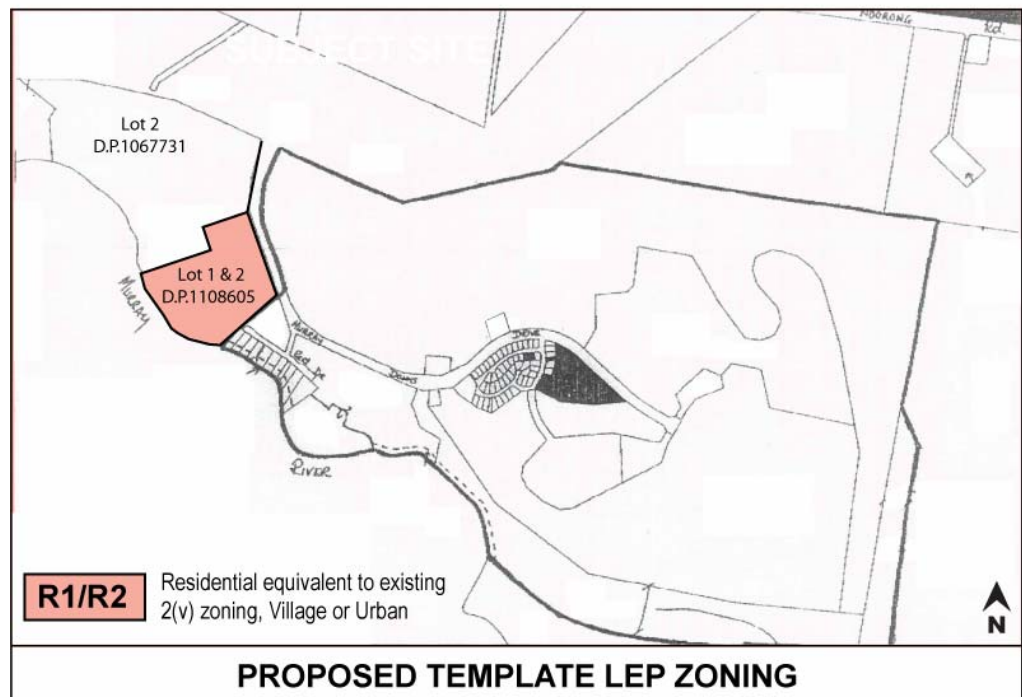


Illustration 7 - Proposed Rezoning

5 Environmental Planning Controls

5.1 Wakool Local Environmental Plan 1992

The subject site is located within the 1(a) General Rural Zone under Wakool Local Environmental Plan 1992 (WLEP 1992) as noted in **Illustration 8**.

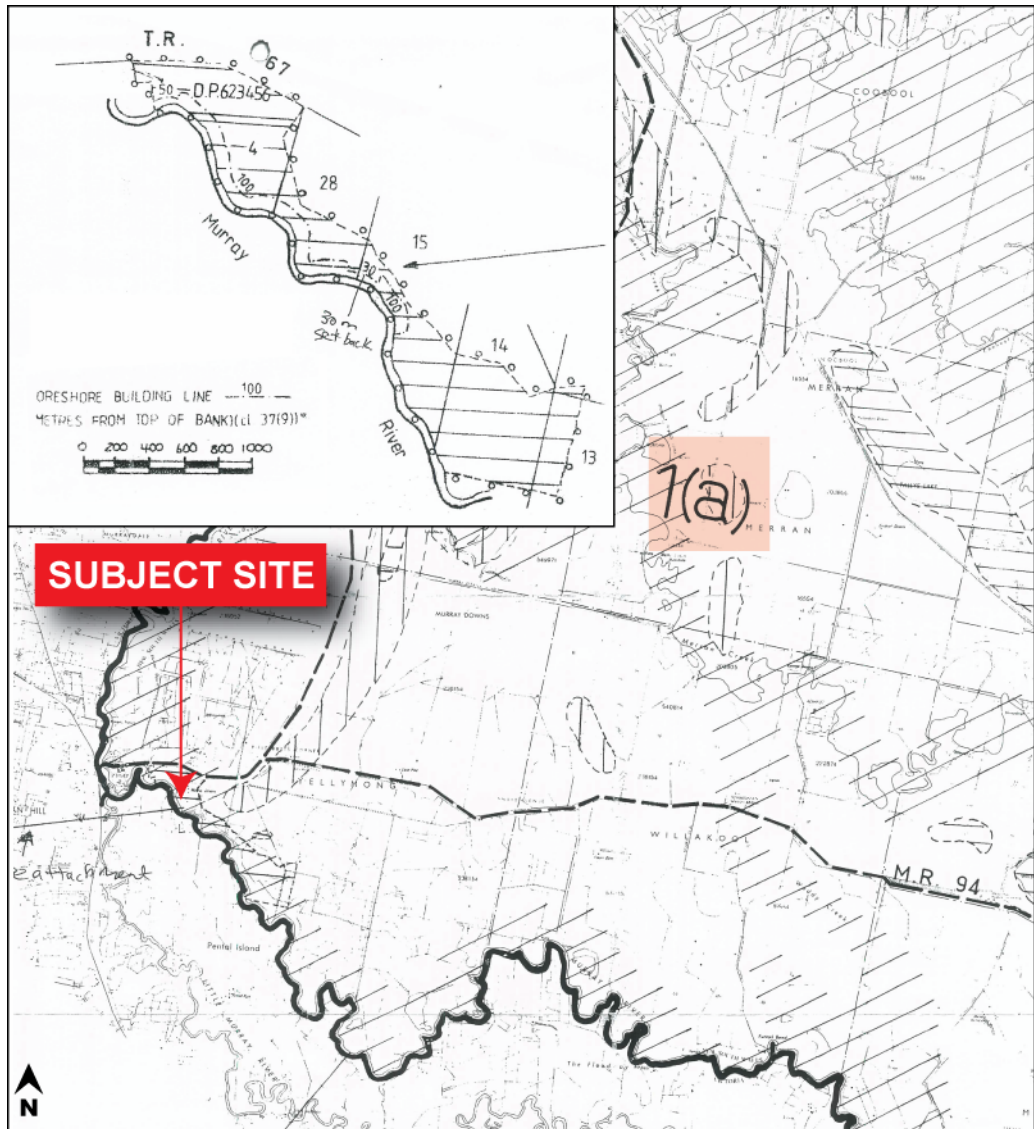


Illustration 8 – WLEP 1992 Zoning Extract

Illustration 8 indicates the Environmentally Sensitive Land classification (shown by horizontal cross-hatched lines adjoining the Murray River) and Flood Liable Land classification (shown by diagonally cross-hatched lines adjoining the Murray River) which affect the subject site but are now obsolete.

The objectives and permissible uses contained within the 1(a) General Rural Zone and 2(v) Village or Urban Zone are described in Section 5.1.1 and 5.1.2 respectively.

Section 5.1.3 addresses the relevant clauses within WLEP 1992.

5.1.1 1(a) General Rural Zone

The objective of the 1(a) General Rural Zone is to “to promote the proper management and utilisation of resources by:

- (a) protecting, enhancing and conserving:
 - (i) agricultural land in a manner which sustains its efficient and effective agricultural production potential,
 - (ii) soil stability by controlling and locating development in accordance with soil capability,

- (iii) *forests of existing and potential commercial value for timber production and of other value,*
- (iv) *valuable deposits of minerals, coal, petroleum and extractive materials by controlling the location of development for other purposes in order to ensure the efficient extraction of those deposits,*
- (v) *trees and other vegetation in environmentally sensitive areas where the conservation of the vegetation is significant to scenic amenity, recreation or wildlife habitat or is likely to control land degradation,*
- (vi) *water resources for use in the public interest,*
- (vii) *areas of significance for nature conservation, including areas with rare plants, wetlands and significant habitat, and*
- (viii) *places and buildings of archaeological or heritage significance, including the protection of aboriginal relics and places,*
- (b) *preventing the unjustified development of prime crop and pasture land for purposes other than agriculture,*
- (c) *facilitating farm adjustments,*
- (d) *minimising the cost to the community of:*
 - (i) *fragmented and isolated development of rural land, and*
 - (ii) *providing, extending and maintaining public amenities and services, and*
- (e) *providing land for future urban development, for rural residential development and for development for other non-agricultural purposes, in accordance with the need for that development.”*

The following uses are permitted without consent in the 1(a) General Rural Zone:

- *agriculture (other than ancillary dwellings, animal boarding and training establishments, intensive livestock keeping establishments and sandhill vegetation clearing); and*
- *forestry (other than ancillary dwellings and pine plantations).*

Any purpose (other than a purpose permitted without consent or a purpose which is prohibited), is permitted with consent in the 1(a) General Rural Zone.

The following uses are prohibited in the 1(a) General Rural Zone:

- *integrated housing development;*
- *motor showrooms;*
- *residential flat buildings;*
- *shops (other than general stores not exceeding 200 square metres in gross floor area); and*
- *villa units.*

The 1(a) General Rural Zone is currently restrictive but the zone objectives (together with Clause 37 of WLEP 1992) do recognise the potential for economic and orderly urban development to be achieved.

5.1.2 2(v) Village or Urban Zone

The objective of the 2(v) Village or Urban zone is “to promote development in existing towns and villages in a manner which is compatible with their urban function”.

No uses are permitted without consent in the 2(v) Village or Urban zone:

Any purpose (other than a purpose which is prohibited), is permitted with consent in the 2(v) Village or Urban zone.

The following uses are prohibited in the 2(v) Village or Urban zone:

- *extractive industries;*
- *integrated housing development;*
- *intensive livestock keeping establishments;*
- *mines;*
- *offensive and hazardous industries.*

The 2(v) Village or Urban zone permits *inter alia* low density detached dwellings and associated subdivision (with consent) similar to that currently permitted in the 1(a) General Rural Zone by Clause 37 on land adjoining the subject site. Therefore, in the opinion of DFP, the 2(v) Village or Urban zone would be a suitable zone for the subject site and much of the Murray Downs locality.

Notwithstanding, in our view, the land use table for the 2(v) Village or Urban zone should be amended to allow “integrated housing development” as a use permissible with consent in which to provide for a broader range of housing options.

5.1.3 Relevant Clauses

Clause 37 of WLEP 1992 pertains to Murray Downs development as follows:

- (1) *This clause applies to land near Swan Hill, being Portions 13, 14, 15, 26, 27, 28, and 39, and that Part of Portions 59 and 63 west of the prolongation of the eastern boundary of Portion 26, Parish of Yellymong, County of Wakool.*
- (2) *Notwithstanding any other provision of this plan, development may be carried out on land to which this clause applies, subject to subclause (3), with the consent of the Council, for any purpose except bulk stores, car repair stations, junk yards, liquid fuel depots, motor showrooms, industries, mines, roadside stalls, timber yards and warehouses.*
- (3) *Development may be carried out on land to which this clause applies without the consent of the Council for the purposes of agriculture (other than agriculture within 20 metres of the bank of the Murray River).*
- (4) *For the purpose of subclause (3), agriculture does not include the erection of a dwelling-house or subdivision.*
- (5) *The Council shall not consent to development on land to which this clause applies unless it has made an assessment of:*
 - (a) *the extent to which the carrying out of the development would affect the historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of any part of the land that is environmentally sensitive land, and*
 - (b) *the degree to which the development:*
 - (i) *exhibits a high architectural standard,*
 - (ii) *is sympathetic to the existing landscape features, and*

- (iii) maintains an attractive view from the Murray River.*
- (6) The Council shall not consent to the erection of a building, other than a building to be used for caravan park amenities, on land to which this clause applies below the Australian Height Datum of 69 metres above sea level:*
- (a) unless the land is protected by a levee bank constructed to the requirements of the Department of Water Resources and the floor level of the proposed building is constructed to a level not less than the Australian Height Datum of 69 metres above sea level, or*
- (b) if in the opinion of the Council, the carrying out of the development would be likely to significantly increase:*
- (i) the area of the land to be protected by a levee bank, and*
- (ii) public expenditure on flood mitigation measures.*
- (7) The Council, before determining any application required by this clause for consent to carry out a subdivision or the development of land for the purpose of tourist facilities, shall consult with the Council of the City of Swan Hill and shall take into consideration any representations made by that Council in relation to the proposed development.*
- (8) The Council shall not consent to the carrying out of any development on land to which this clause applies unless and until arrangements satisfactory to the Council of the City of Swan Hill have been made for the provision to such land of services of water and sewerage (where such services are provided by that Council).*
- (9) A person shall not erect a building on land to which this clause applies between the banks of the Murray River and the foreshore building line shown by a broken black line on the map and marked "foreshore building line", except for a building which, in the opinion of the Council:*
- (a) is ancillary to development for the purposes of a tourist facility (other than holiday accommodation, caravan park, holiday cabins, hotel or motel), or*
- (b) is for the purposes of fisheries, irrigation works including the pumping and treatment of water for private domestic consumption), marina, utility installation or the servicing of vessels or sea planes.*

The subject site formerly comprised part of Portion 29 and a small part of Portion 28. However, apart from a small triangular section, Lots 1 and 2 are outside the provisions of Clause 37 as shown in **Illustration 9**.

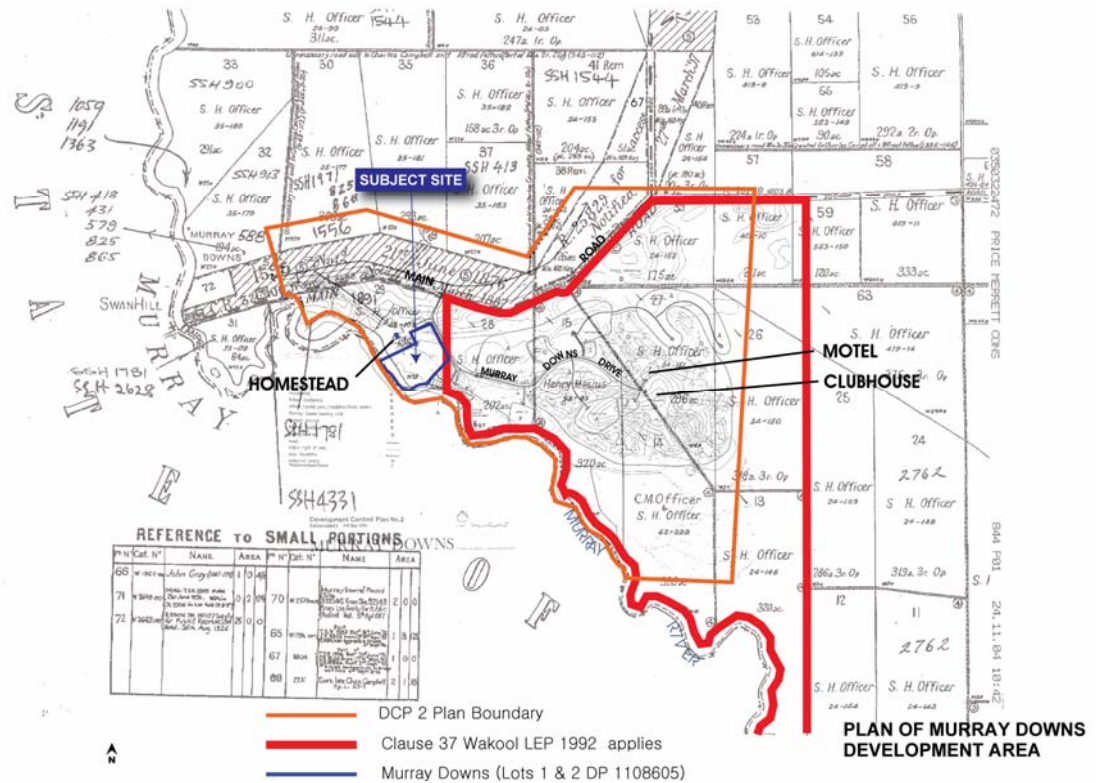


Illustration 9 – Clause 37 of WLEP 1992 and Relationship with DCP No. 2

Under Clause 10(1)(g) of Wakool LEP 1992, an assessment of a proposal's impact on riparian lands is required and it is likely that any application within or near the foreshore of the Murray River would be Integrated Development as defined under the EP&A Act 1979.

Schedule 1 of WLEP 1992 identifies the following applicable heritage items to which Clauses 5(1) and 26 apply:

- Murray Downs Homestead and Outbuildings; and
- Murray Downs Homestead and environs, being that Part of Portions 13, 14, 15 and 28, Parish of Yellmong, County of Wakool, shown as environmentally sensitive land on the map.

In addition, Clause 27 pertains to development in the vicinity of heritage items as follows:

The Council shall not grant consent to an application to carry out development on land in the vicinity of a heritage item unless the Council has made an assessment of the effect which the carrying out of that development will have on the heritage significance of the item and its setting.

Future development of the subject site for residential purposes is unlikely to result in any adverse effect on the heritage significance of Murray Downs Homestead or the foreshore of the Murray River. As noted previously in this report, the heritage precinct associated with the Murray Downs Homestead is contained entirely within Lot 2 DP 1067731.

Clause 23 of WLEP 1992 pertains to Environmentally Sensitive Land. As noted previously in this report, this classification is no longer applicable to the subject site. Likewise, Clause 24 of WLEP 1992 pertains to Flood Liable Land. This classification is also no longer applicable to the subject site.

Clause 32 of WLEP 1992 pertains to Development along Rivers and includes the requirement for consent to be obtained from Council for certain types of development within close proximity to the Murray River on non-urban land.

5.2 Regional Environmental Plans

5.2.1 Murray Regional Environmental Plan No. 2 – Riverine Land

Murray Regional Environmental Plan No. 2 – Riverine Land (REP No.2) was gazetted on 31 March 1994 to conserve and enhance the riverine environment of the River Murray for the benefit of all users and applies to riverine land of the River Murray within Wakool LGA.

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.*

The general planning principles that apply during preparation of an LEP as prescribed by REP No. 2 include:

- (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.*

The proposed rezoning of Lot 1 and 2 DP 1108605 for inclusion in the 2(v) Village or Urban Zone will be consistent with the objectives of REP No. 2 and will not conflict with above general planning principles.

5.3 State Environmental Planning Policies

5.3.1 SEPP (Housing for Seniors or People with a Disability) 2004

SEPP (Housing for Seniors or People with a Disability) 2004 was recently amended by the Department of Planning to include the introduction of a site compatibility test to enable the moratorium on SEPP Seniors Living Developments which has effected rural lots since December 2005, to be lifted.

The amended SEPP excludes certain areas affected by bushfire from seniors living housing but includes provision for seniors living developments on State heritage significant sites together with registered club sites. The subject site is not within a bushfire hazard map area.

The subject site is above the 1:100 year flood level and adjoins existing land within Clause 37 of the LEP which permits development for urban purposes. However, we understand that the only constraint in proceeding with an aged persons' housing development on this allotment is the classification of the site as Environmentally Sensitive/Flood Liable Land. These classifications are now obsolete as the subject site is above RL 68.5 AHD and is not adversely affected by a 1 in 100 year average recurrence interval storm event.

Council's correspondence dated 22 October 2004 advises that in respect to aged care accommodation on the subject site, it would be necessary to apply for DCP 2 to be amended. DFP submitted a formal application to Council on 21 October 2004 to amend DCP 2 as it applies to Lot 1 to enable residential purposes. Notwithstanding, in our opinion, DCP No. 2 does not need amending (as advised) to permit aged care accommodation on Lot 1, as the land is subject to SEPP (Housing for Seniors or People with a Disability) 2004, which overrides the provision of any DCP.

Accordingly, in our view, the subject site already contains the potential to support residential development in the form of aged care dwellings subject to removal of the Environmentally Sensitive/Flood Liable Land classifications, which are now obsolete.

5.3.2 State Environmental Planning Policy No. 55 – Remediation of Land

There is no evidence of contamination on the subject site and therefore, remediation is not required under State Environmental Planning Policy No. 55 – Remediation of Land.

5.4 Wakool Shire Council Development Control Plan No. 2 – Murray Downs Development Area

DCP No. 2 applies to the 1(a) General Rural Zone under WLEP 1992 including the subject site.

The aims and objectives of DCP No. 2 ensure that development approved under the provisions of WLEP 1992 is carried out in such a way that:

- (a) *The objectives of the Local Environmental Plan are achieved;*
- (b) *The environment of the Historic Precinct and of the Murray River bank is protected and preserved;*
- (c) *The environment of the area proposed for the Country Club, tourist facilities and residential purposes and enhanced;*
- (d) *Public access to the Murray River and its bank is facilitated;*
- (e) *The water quality of the river is protected;*
- (f) *A high standard of public utility services is provided;*
- (g) *The various proposed developments are designed in such a way that they compliment one another;*
- (h) *The expansion of the tourist industry in the region is encouraged;*
- (i) *The development is complementary rather than competitive with that of the City of Swan Hill;*
- (j) *The productive capacity of agriculture is protected; and*
- (k) *No unreasonable burden is imposed upon the financial and other resources of Council.*

DCP No. 2 includes the entire Murray Downs Homestead site as an historic precinct as shown in **Illustration 10**.

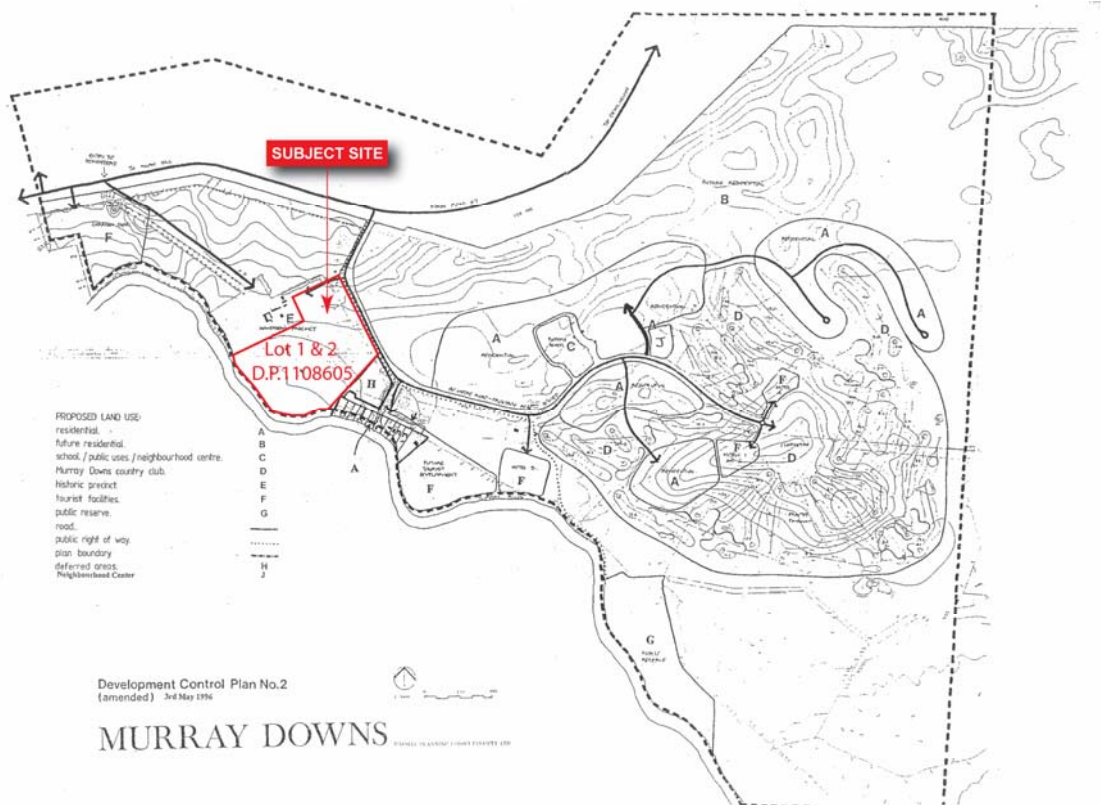


Illustration 10 - DCP No. 2 Precincts

As noted previously in this report, the overly broad classification of the heritage precinct associated with Murray Downs Homestead was clarified during the process of State Heritage Listing. As such, the extent of the heritage precinct was adopted by the NSW Heritage Council as being entirely contained within Lot 2 DP 1067731 and not the whole of Lot 15 DP 859813 as originally recognised by DCP No. 2.

Lands immediately to the southeast of the subject site and extending generally along the Murray River are identified for tourist, residential and country club purposes as noted in **Illustration 11**. Much of this area has been developed for these purposes already and indeed, there are applications pending for further development.

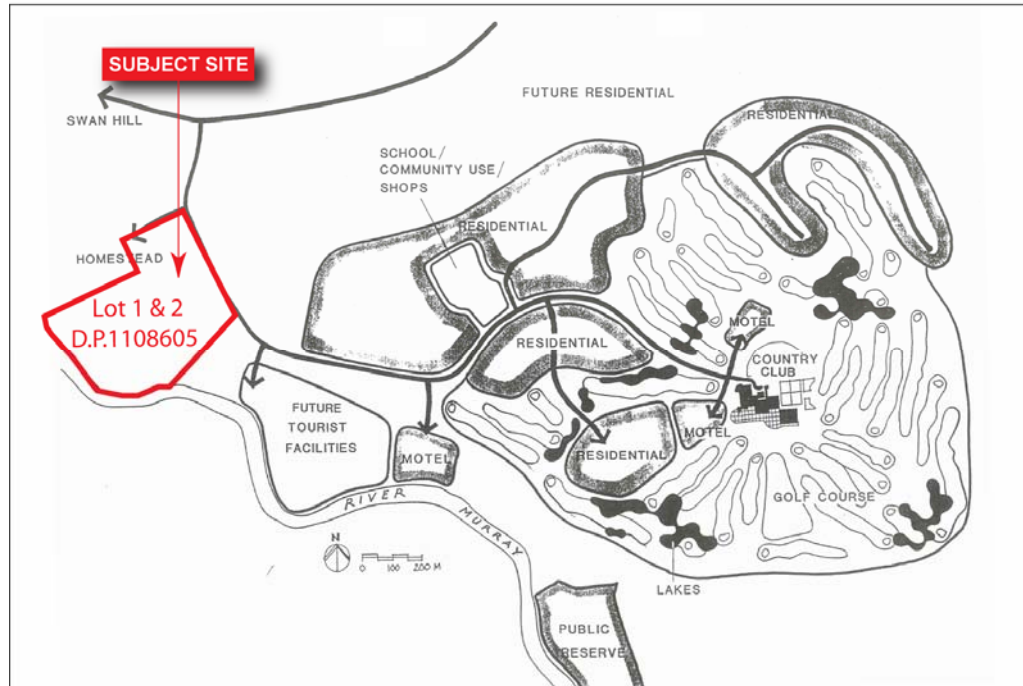


Illustration 11 – DCP No. 2 – Land Use Map

DCP 2 depicts a wide range of urban land uses in the area to which Clause 37 of WLEP 1992 applies but also including Portion 29 adjoining to the west, which comprises the subject site (Lot 1 and 2 DP 1108605) and Murray Downs Homestead on Lot 2 DP 1067731. Land uses include residential, future residential, schools, public uses, neighbourhood centres, country club, historic precinct, tourist facilities, public reserve, roads, public rights of way and deferred areas.

Lot 2 DP 1108605 (part of the subject site), partly (albeit marginally) falls within the provisions of Clause 37 of WLEP 1992, which permits a wide range of urban land uses. Furthermore, this lot adjoins land shown as ‘residential, future residential or deferred areas’.

5.5 Section 117(2) Directions

In our opinion, any future rezoning of the subject site would need to address the Minister’s S.117(2) Directions which were amended on 14 June 2007. Our assessment of the rezoning on the subject site within the Murray Downs locality, having regard to the applicable S.117(2) Directions is provided in **Table 1**.

Table 1 - Section 117(2) Directions

DIRECTION NO.	DESCRIPTION	COMMENT
1	Employment and Resources	
1.1	<p>Business and Industrial Zones</p> <p>An objective of Direction 1.1 is to protect employment land in Business and Industrial zones. Accordingly, a Draft LEP shall retain the areas and locations of existing</p>	Not applicable.

DIRECTION NO.	DESCRIPTION	COMMENT
	Business and Industrial zones and not reduce the total potential floor space area for industrial uses in Industrial zones.	
1.2	<p>Rural Zones</p> <p>Draft LEP's shall not rezone land from a Rural zone to a Residential, Business, Industrial, Village or Tourist zone, in which to protect the agricultural production value of rural land.</p>	<p>The subject site does not contain prime crop or pasture lands. It is noted that the agricultural production value of rural land contained within the subject site would not necessarily prevent the Director-General of DoP from considering an amendment to the 1(a) General Rural Zone.</p> <p>No objection has been received from NSW Agriculture with respect to the rezoning of lands within the Murray Downs Locality.</p>
1.3	Mining, Petroleum, Production and Extractive Industries	Not applicable.
1.4	Oyster Aquaculture	Not applicable.
2 Environment and Heritage		
2.1	<p>Environmental Protection Zones</p> <p>Draft LEP's shall include provisions that facilitate the protection and conservation of environmentally sensitive areas.</p>	<p>Environmentally Sensitive Land classification shown on WLEP 1992 zoning map is obsolete as the subject site is above RL 68.5 AHD and is therefore, flood free.</p> <p>Minimal impact on Murray River foreshore.</p> <p>Council's Mayor has met with previous Ministers regarding the setback to the river but it is noted that no setback to the river applies to land zoned for village development.</p>
2.2	<p>Coastal Protection</p> <p>Draft LEP's shall include provisions that give effect to and are consistent with NSW Coastal Policies, Design Guidelines and Legislation.</p>	Not applicable.
2.3	<p>Heritage Conservation</p> <p>Draft LEP's to contain provisions to facilitate the conservation of heritage significance associated with a site.</p>	Heritage Item and associated precinct (Murray Downs Homestead) on Lot 2 DP 1067731 (adjoining) is unlikely to

DIRECTION NO.	DESCRIPTION	COMMENT
		be adversely affected by proposed rezoning of the subject site.
2.4	Recreation Vehicle Areas	Not applicable.
3 Housing, Infrastructure and Urban Development		
3.1	<p>Residential Zones</p> <p>Draft LEP's to broaden the choice of housing, increase the efficiency of existing infrastructure and services, be appropriately designed and reduce the consumption of land for housing and associated urban development on the urban fringe.</p> <p>Draft LEP's shall also contain requirements that residential development is not permitted until the land is adequately serviced and shall not contain provisions which will reduce the permissible residential density of land.</p>	<p>The proposed rezoning is able to be consistent with this Direction and will result in orderly and economic development.</p> <p>Each lot will be adequately serviced and the proposed rezoning will assist with creating additional variety and housing choice.</p>
3.2	Caravan Parks and Manufactured Home Estates	Not applicable.
3.3	Home Occupations	Not applicable.
3.4	<p>Integrating Land Use and Transport</p> <p>Draft LEP's shall locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of:</p> <p>(a) Improving transport choice – Guidelines for Planning & Development (DUAP) 2001; and</p> <p>(b) The Right Place for Business & Services – Planning Policy (DUAP) 2001.</p>	Noted.
3.5	<p>Development Near Licensed Aerodromes</p> <p>Draft LEP's shall not rezone land for residential purposes, nor increase residential densities in areas where the ANEF as from time to time advised by that Department of the Commonwealth exceeds 25.</p> <p>A Draft LEP that rezones land for</p>	Nearest licensed aerodrome (Swan Hill) is located a significant distance from the subject site and therefore, rezoning within the Murray Downs locality is unlikely to breach ANEF standards.

DIRECTION NO.	DESCRIPTION	COMMENT
	residential purposes, or to increase residential areas in areas where the ANEF is between 20 and 25 shall include a provision to ensure that development meets AS 2021 regarding interior noise levels.	
4 Hazard and Risk		
4.1	Acid Sulfate Soils Draft LEP's to avoid significant adverse environment impacts from the use of land which has a probability of containing acid sulfate soils.	Not applicable.
4.2	Mine Subsidence and Unstable Land	Not applicable.
4.3	Flood Prone Land Draft LEP's to ensure that development on flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 and to ensure that an LEP on flood prone land is commensurate with flood hazard provisions and includes consideration of the potential flood impacts both on and off the subject land.	Subject site adjoins Murray River but is above RL 68.5 AHD and is therefore, flood free, having regard to standards adopted by DLWC and will have no adverse flood impacts on or off the site.
4.4	Planning for Bushfire Protection Draft LEP's to protect life, property and the environment from bushfire hazards by discouraging the establishment of incompatible land uses in bushfire prone areas and to encourage sound management of bushfire prone areas. Draft LEP's shall introduce controls that avoid placing inappropriate developments in hazardous areas.	Not applicable.
5 Regional Planning		
5.1	Implementation of Regional Strategies Draft LEP's to be consistent with a regional strategy released by the Minister for Planning.	Draft LEP for Murray Downs is able to be consistent with REP No. 2.

DIRECTION NO.	DESCRIPTION	COMMENT
5.2	Sydney Drinking Water Catchments	Not applicable.
5.3	Farmland of State and Regional Significance on the NSW Far North Coast Direction 5.3 applies when a Draft LEP affects state significant farmland, regionally significant farmland or significant non-contiguous farmland.	Not applicable.
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	Not applicable.
5.5	Development in the Vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	Not applicable.
5.6	Sydney to Canberra Corridor	Not applicable.
5.7	Central Coast	Not applicable.
5.8	Second Sydney Airport (Badgerys Creek)	Not applicable.
6 Local Plan Making		
6.1	Approval and Referral Requirements Draft LEP's to minimise provisions which require concurrence, consultation or referral of development applications to a Minister or public authority and to avoid identifying development as designated development unless it is likely to have a significant impact on the environment.	Noted
6.2	Reserving Land for Public Purposes	Future DA for subdivision is able to provide for public access to the Murray River.
6.3	Site Specific Provisions Draft LEP's to discourage unnecessarily restrictive site specific planning controls.	Noted.

Table 1 indicates that the proposed rezoning on the subject site and Murray Downs locality would be consistent with the applicable Section 117 Directions.

6 Assessment

An assessment of each of the potential land use issues associated with the proposed rezoning of the subject site in the broader context of Council's shire wide LEP review and the Murray Downs locality is provided below:

6.1 Flood Risk

The majority of the subject site is now above RL 68.5 AHD, being the flood level defined by DLWC. These levels are confirmed by reference to a plan prepared by Plan Right Civil Engineers, Irrigation Designers and Licensed Surveyors dated 19 September 2003 (submitted to Council on 24 September 2003) and form part of amended details associated with DA No. 19/03 which was approved by Council on 13 November, 2003.

Condition 1 of Development Consent No. 19/03 referred to amended survey details submitted on 24 September 2003.

The above plan shows all land to be graded to RL 68.5 AHD and above. Indeed, all land is shown to be graded so that there is a fall to the dam which is central to the site, with the minimum levels around the bank being RL 68.5 AHD. All works associated with this consent have been completed.

Accordingly, all of the subject lands can be considered flood-free and given that the Environmentally Sensitive Land classification pertained to flooding on the site, this encumbrance together with the Flood Liable Land classification is now obsolete and can be removed from Council's LEP zoning map.

6.2 Potential Loss of Agricultural Land

The Local Environmental Study (LES) review for Murray Downs prepared by Habitat Planning in April 2002 supports the continued development of the Murray Downs locality for residential, tourism and recreational purposes subject to appropriate controls. In addition, the 2(v) Village or Urban zone was identified as the most appropriate zone for the Murray Downs locality.

The NSW Department of Agriculture did not respond to the exhibition of the Local Environmental Study, nor did it respond to the exhibition of the proposed motel. On this basis, we can only assume that the deletion of a small area of agricultural lands (i.e. less than 20 ha) such as that proposed, did not pose any concerns to the NSW Department of Agriculture.

The potential loss of agricultural land proposed is insignificant, having regard to the availability of surrounding prime agricultural land that is likely to be more productive and located in areas where agriculture would be more economically viable and less likely to result in potential land use conflicts with nearby surrounding residential development.

6.3 Impact on Murray Downs Homestead and Heritage Precinct

The Murray Downs Homestead and associated heritage precinct has been identified in a number of studies and indeed, is contained entirely within the adjoining property at Lot 2 DP 1067731. The heritage precinct is largely screened by vegetation and studies indicate that this precinct will not be compromised by adjoining residential development. The relationship between the Murray Downs Homestead and surrounding heritage precinct is shown in **Illustration 12**.

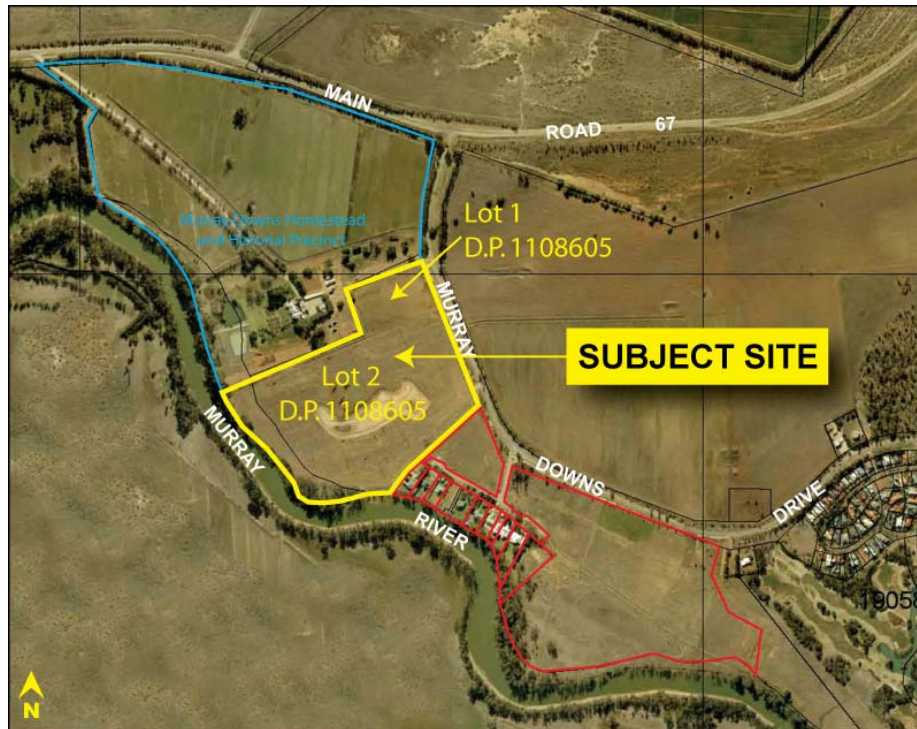


Illustration 12 - Relationship between Murray Downs Homestead/Heritage Precinct and Subject Site

In particular, heritage issues and likely impacts associated with the approved motel buildings on the adjoining Murray Downs Homestead have been addressed in a report by Freeman Randall, Conservation Architects and Planners dated November 2002. This report notes that the site will undergo extensive tree planting consisting of native and deciduous trees, (approximately 1,500 in number) and as such will be in keeping with the homestead, including the Norway Pines, English Oaks, Pine Oaks, Turkey Oaks, and Plane trees.

As part of the Motel proposal (which comprised both single storey and two storey development), trees were proposed to be planted along the 3 sides of the motel site, including abutting the Murray Downs historic precinct. From the homestead precinct itself, the motel site is well screened by the large Peppercorn trees flanking the southern fence to the homestead yard and the view from the homestead yard gate up to the motel is also able to be screened.

All approved buildings are traditional in form with perimeter verandahs and pitched/hipped roofs and the materials chosen are muted in tone and intended to merge with the dull earthy tones of the historic riverside setting. The approved buildings are scattered along the motel access road with adjacent screened parking and because of the modest scale of the motel buildings and screen planting, the development is unlikely to be seen from the Murray Downs Homestead heritage precinct.

Freeman Randall are satisfied that the impacts of the proposed motel development (as approved on the subject site) on the Murray Downs Homestead heritage precinct will be minimal. Consequently, similar treatment and design is able to be incorporated on the subject site immediately adjoining the heritage precinct if deemed necessary.

Furthermore, it is noted that future development on the subject site would require development consent from Council and therefore, pursuant to Section 79C of the EP&A Act 1979, such matters are able to be appropriately addressed at the DA stage.

6.4 Aboriginal Cultural Heritage

The subject site contains no known examples of Aboriginal Cultural Heritage.

Council's correspondence dated 12 December 2007 indicates that the Wamba Wamba Local Aboriginal Land Council (LALC) is yet to complete their Cultural Heritage Survey for the Murray Downs Development Area (as required by the Department of Environment and Conservation) despite Council's acceptance of the quotation for this task in October 2005.

We understand that this assessment is pending completion and will confirm that the subject site is suitable for residential development due to minimal (if any) affectation on aboriginal cultural heritage.

6.5 Proximity of Development to the Murray River

The proximity of future development to the Murray River and the subsequent impact on water quality and views is usually the subject of consideration under Clause 10(1)(g) of Wakool LEP 1992. This Clause requires an assessment of the affect of any development on the riparian lands of the river bank if such development site is within 400 metres of the said river bank.

There will be minimal impact on views either from the Murray River due to the vegetated riparian band, or from any other area. Furthermore, the site is able to be extensively landscaped with trees commonly found within the adjoining Murray Downs heritage precinct.

6.6 Potential Land Use Conflict

The potential for land use conflict particularly between rural and residential land uses is likely to reduce should the subject site be rezoned and included in the 2(v) Village or Urban zone.

Agricultural pursuits adjoining residential development are known to cause a number of conflicts including noise, dust, spray drift, pests and the like. The nearest potential source of rural conflict to the subject site is located on the opposite side of the Murray River to the south. Given the extensive buffer provided by the Murray River, the extent to which the subject site will be adversely affected by the rural activities is considered minimal.

The conclusions of the 2002 Habitat LES review indicate (in part) that:

- *The 2(v) zone is the most appropriate zone for the type of development proposed for the subject land;*
- *The future development of the land will not affect the heritage significance of the Murray Downs Homestead and curtilage;*
- *There is no need to include proposed Lot 2 (containing the Murray Downs Homestead) within the 2(v) zone;*
- *That 68.5 AHD be adopted as the 1 in 100 year flood level for the subject land, unless DLWC endorses an alternate level;*
- *Only land above the 1 in 100 year flood level should be zoned 2(v).*
- *The proposed rezoning will create minimal potential for land use conflicts as it adjoins residential development.....Murray River acts as a buffer.*

Consequently, the proposed rezoning of the subject site is unlikely to result in a land use conflict between rural and residential land uses in the Murray Downs locality.

6.7 Retention and Enhancement of Existing Vegetation

Agricultural pursuits have resulted in clearing of most vegetation, except for the riparian band along the Murray River and a small number of trees which adjoin the existing dam central to the site. These trees are able to be retained as part of any future residential subdivision.

Studies by Peter Freeman Pty Ltd, conservation architects and planners, have nominated as part of their review of the historic precinct and the proposed motel development, further plantings that are considered a benefit to the Murray Downs locality. It is likely that any residential development of the subject site would also attract further planting.

6.8 Infrastructure Capacity

The Murray Downs Locality is currently serviced with electricity, telephone, reticulated water and sewerage services.

It is understood that Council's membrane filtration plant for the Murray Downs Area has the capacity to service the subject site together with capacity for 100 additional homes and the potential to add modules to the plant (to service future residential development) as the need arises.

The plan prepared by Plan Right for laser levelling indicates that all of the subject site drains to the central dam and water is to be collected and reused. Consequently, most of the existing runoff from the subject site will not reach the Murray River. The disposal of stormwater is able to be directed to the road stormwater system and future residential development on the subject site is able to be connected to Council's sewerage services.

Accordingly, the capacity of utility services is considered to be adequate having regard to the small scale of development associated with the subject site.

6.9 Social and Economic Viability

The proposed rezoning of the subject site will have minimal impact on the social and economic viability of the Murray Downs locality and nearby Swan Hill township.

Notwithstanding, through the provision of greater housing choice and higher density living opportunities within close proximity to existing services and facilities, the rezoning of the subject site for residential purposes is likely to provide a social benefit and be economically viable for these reasons.

6.10 Alternative Sites for the Proposed Rezoning

Having regard to the small scale of the subject site and likely associated future development, the subject site will provide for appropriate in-fill residential development between Swan Hill and the existing residential area of Murray Downs that is currently within the 1(a) General Rural zone yet included within the provisions of Clause 37 of WLEP 1992.

No known alternative sites exist in the Murray Downs locality that are superior to the subject site for the purposes of rezoning to address future residential needs.

6.11 Suitability of the Site for Proposed Rezoning

The subject site is considered suitable for the proposed rezoning, having regard to matters for consideration pursuant to Section 79C and Section 117 of the Environmental Planning and Assessment Act 1979 as previously addressed in this report.

6.12 Flora/Fauna and Habitat

No known species of critical or endangered flora and fauna (or associated habitat) exist on the subject site.

6.13 Potential Site Contamination

There is no evidence of site contamination.

7 Conclusion and Recommendations

7.1 Conclusion

DFP has prepared this town planning submission for Wakool Shire Council's consideration in response to the Murray Downs Planning Workshop meeting held on 11 October 2007 regarding Council's future rezoning of Murray Downs as part of its shire wide LEP review.

In particular, this submission outlines reasons that justify inclusion of land owned by Wariat Nominees at Lot 1 and 2 DP 1108605 Murray Downs Drive, Murray Downs (the subject site) within the 2(v) Village or Urban zone under Wakool Local Environmental Plan 1992.

In the opinion of DFP, the proposed rezoning of the subject site is appropriate within the Murray Downs locality and warrants support by both Council and the Department of Planning for the following reasons:

- (a) The subject site is no longer part of the Murray Downs Homestead heritage precinct which adjoins the site on Lot 2 DP 1067731, as verified during the State Heritage listing of the Homestead in 2000 and in the Murray Downs Historic Precinct Swan Hill Conservation Management Plan prepared by Freeman Randell Conservation Architects and Planners dated November 2002;
- (b) The subject site is now flood free, having achieved levels at or above RL 68.5 AHD following Council's issue of Development Consent No. 19/03 for laser levelling works;
- (c) Further to point (b) above, the Environmentally Sensitive Land/Flood Liable Land classifications which currently burden the subject site under WLEP 1992 are obsolete and are therefore able to be removed;
- (d) The Local Environmental Study (LES) review prepared by Habitat Planning Consultants dated April 2002 confirms that land previously known as Lot 1 DP 1067731 (which now comprises Lot 1 and 2 DP 1108605) is suitable for residential purposes;
- (e) Based on our review of past studies, present planning policies and sound planning practice, there is no reason for WSC to exclude the subject site from rezoning for urban (i.e. residential) purposes;
- (f) The proposed rezoning of Lot 1 and 2 DP 1108605 will:
 - i. contribute to the economic and orderly development of land within Murray Downs;
 - ii. be consistent with the Minister's S.117 directions;
 - iii. be consistent with Wakool Shire Council's historical strategic planning direction;
 - iv. create minimal impact on the surrounding built and natural environment;

- v. result in positive social and economic impacts;
- vi. be suitable for the subject site given that it contains minimal environmental constraints and already adjoins land that can be developed for urban purposes pursuant to Clause 37 of WLEP 1992; and
- vii. be in the public interest given that future development will provide for a greater variety of housing choice in an appropriate location with the potential for improved public access to the foreshore of the Murray River.

7.2 Recommendations

DFP recommends that Wakool Shire Council:

- 1) Rezone Lot 1 and 2 DP 1108605 from 1(a) General Rural to 2(v) Village or Urban under Wakool Local Environmental Plan 1992 to permit urban development;

It is noted that, as part of the NSW Standard LEP Template alternative formatting will apply to the new instrument, resulting in an “R” classification to residential land within Wakool Shire.

- 2) Remove the Environmentally Sensitive Land/Flood Liable Land classifications from the subject site as it is now flood free, having achieved levels at or above RL 68.5 AHD following Councils Development Consent No. 19/3 for laser levelling works; and
- 3) Produce a Draft Land Use Strategy to reflect the above recommendations prior to exhibition of the shire wide Draft LEP consistent with the NSW Standard LEP Template.



town planners

APPENDIX A

DP 859813

Registered: 21/01/1996

C.A. NP 06/195 OF 10/5/1996

This System: TORRENS

Sub-Division: SUBDIVISION

Ref No.: PARISH

Last Plan: D.F. 785891 #

PLAN OF SUBDIVISION OF LOT 7 ON DP 785891

and the aid in entries. Reduction Rate 100%

Lot: 14

Locality: MURRAY DOWNS

Parish: YELLYMONG

County: WAKODD

This is sheet 1 of 2 sheets in 2 sheets (check if inapplicable)

1. PHILIP BEVERIDGE STREET SWAN HILL 4935

is a power easement under the 2nd, 3rd and 4th sections of the Land Act 1933 as amended, hereby granted for the roadway represented in this plan, AS REGARDS ACT 10 14

and the aid in entries. Reduction Rate 100%

and the aid in entries. Reduction Rate 100%

Plans used in preparation of survey: none

DP 785891

DP 83861

EASEMENT FOR WATER SUPPLY 20 M.WIDE

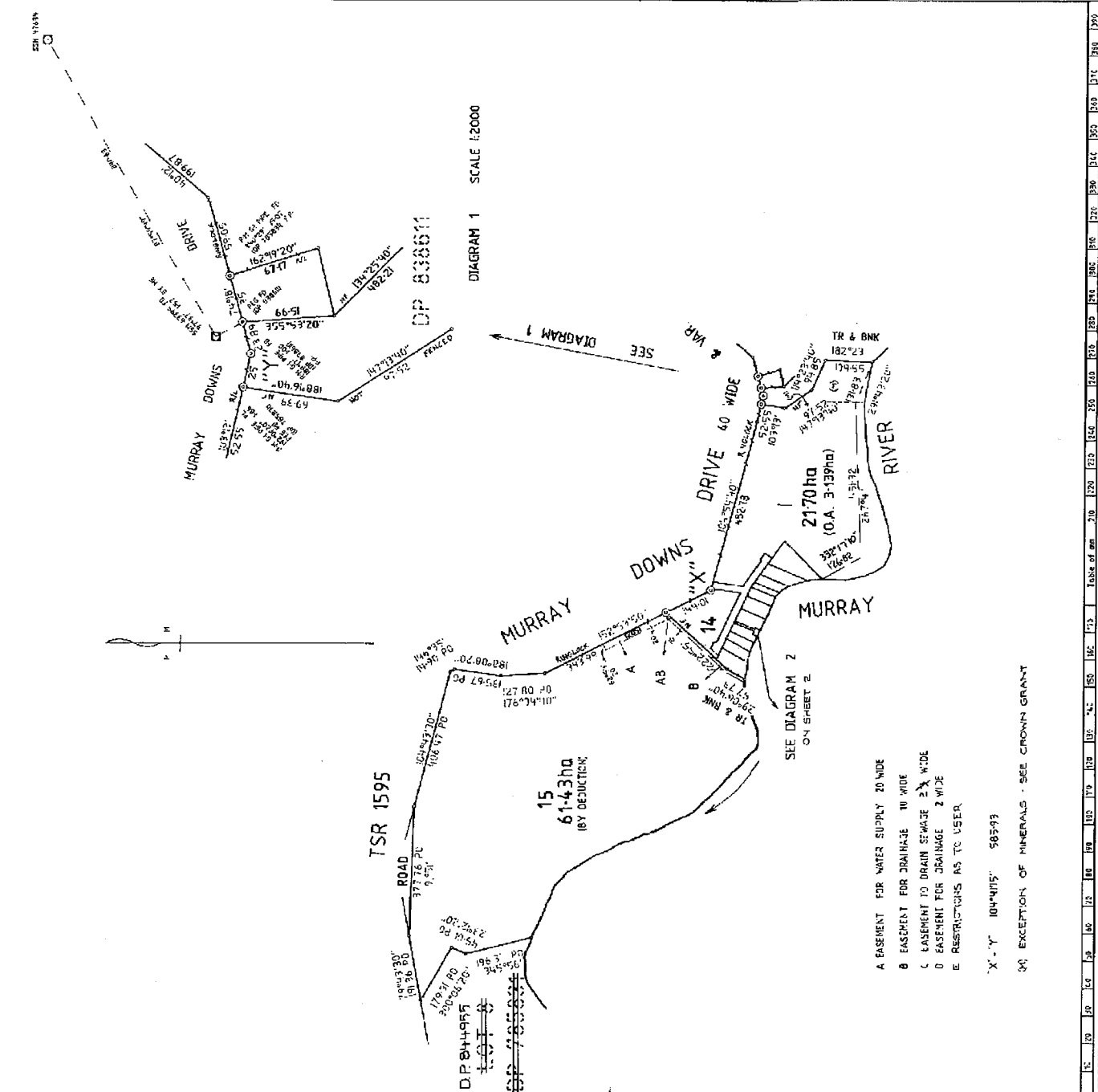
EASEMENT FOR DRAINAGE 10 WIDE

EASEMENT TO DRAIN SEWAGE 3 M.WIDE

EASEMENT FOR DRAINAGE 2 WIDE

RESTRICTIONS AS TO USER.

IT IS INTENDED TO DEDICATE ROAD 20 M.WIDE AND VARIABLE AS PUBLIC ROAD.



Signature and Seals Only

Council Clerk's Certificate

I hereby certify that the above is a true and correct copy of the original plan as submitted to me for registration.

Proposed by:

Approved by:

Station No.: 06-95

Scale: 1:2000

Sheet: 1 of 2

DP: 859813

Lot: 14

Locality: MURRAY DOWNS

Parish: YELLYMONG

County: WAKODD

Sub-Division: SUBDIVISION

Ref No.: PARISH

Last Plan: D.F. 785891 #

PLAN OF SUBDIVISION OF LOT 7 ON DP 785891

and the aid in entries. Reduction Rate 100%

Lot: 14

Locality: MURRAY DOWNS

Parish: YELLYMONG

County: WAKODD

This is sheet 1 of 2 sheets in 2 sheets (check if inapplicable)

1. PHILIP BEVERIDGE STREET SWAN HILL 4935

is a power easement under the 2nd, 3rd and 4th sections of the Land Act 1933 as amended, hereby granted for the roadway represented in this plan, AS REGARDS ACT 10 14

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Plans used in preparation of survey: none

DP 785891

DP 83861

EASEMENT FOR WATER SUPPLY 20 M.WIDE

EASEMENT FOR DRAINAGE 10 WIDE

EASEMENT TO DRAIN SEWAGE 3 M.WIDE

EASEMENT FOR DRAINAGE 2 WIDE

RESTRICTIONS AS TO USER.

IT IS INTENDED TO DEDICATE ROAD 20 M.WIDE AND VARIABLE AS PUBLIC ROAD.



town planners

APPENDIX B



town planners

APPENDIX C



town planners

APPENDIX D

Form 4



Notice of determination of a development application

issued under the *Environmental Planning and Assessment Act 1979*
Section 81(1)(a)

development application
no

28/01

development application
applicant name
applicant address

Mr M Lewis

PO Box 716 Swan Hill VIC 3585

land to be developed:
address

Lot 15 DP 859813

proposed development

Two (2) Lot Rural Subdivision under Clause 12(l) of
Wakool LEP 1992

**Building Code of
Australia building
classification**

determination
made on (date)

18/04/2001

determination

consent granted subject to conditions described
below

consent to operate from
(date)

18/04/2001

see note 1

consent to lapse on (date)
details of conditions
(including section 94
conditions)

18/04/2006

see note 2

reasons for conditions

See Attached

Page 2

other approvals

list *Local Government Act*
1993 approvals granted
under s 78A(5)

general terms of other
approvals integrated as part
of the consent

(list approvals)

right of appeal

If you are dissatisfied with this decision section 97 of the *Environmental Planning and Assessment Act 1979* gives you the right to appeal to the Land and Environment Court within 12 months after the date on which you receive this notice

**section 97 of the Environmental Planning and Assessment Act 1979 does not apply to the determination of a development application for State significant development or local designated development that has been the subject of a Commission of Inquiry.*

signed

on behalf of the consent authority

signature

name

date


Phillip Gall
Director of Environmental Services

18/04/2001

Note 1

where the consent is subject to a condition that the consent is not to operate until the applicant satisfies a particular condition the date should not be endorsed until that condition has been satisfied.

Note 2

clause 69A of the Regulation contains additional particulars to be included in a notice of determination where a condition under section 94 of the Environmental Planning and Assessment Act 1979 has been imposed.

CONDITIONS OF DEVELOPMENT CONSENT NO 28/01

1. The provision of an additional access off Murray Downs Drive to proposed Lot 1 shall be constructed to the following standard:
 - a) 375mm diameter, Class Z concrete pipe or equivalent, with headwalls
 - b) Access to be minimum of 4.88 metres in width, uniformly bedded over it's whole length and filling is to be compacted around the pipes.
 - c) Minimum cover to pipe 300mm.

Culverts are to be installed where the roadside drainage is crossed and interrupted.

Reason: *To ensure access is provided to each newly created allotment and the roadside drainage is not impeded by the installation of the access crossing.*

2. The existing easements for drainage and water supply over Lot 15 are to be retained over proposed Lot 1 for the benefit of the Wakool Shire.

Any future access point to proposed Lot 1 off Murray Downs Drive shall be located clear of these easement areas.

Reason: *To ensure adequate easements for future developments in the area for water supply and drainage.*

3. Should the area of proposed Lot 1 be used for irrigation purposes then further approvals will be required for the following works:
 - a) Installation of any irrigation pump and earth works on the section of flood liable lands.
 - b) Water entitlements from the existing allocation for Lot 15 shall be proportioned to both titles.
 - c) Installation of any farm storage dam or recycling system with a surface area exceeding 1ha.
 - d) All drainage water is to be retained within the property.

Reason: *Statutory requirement under Wakool Local Environmental Plan 1992 and Murray Regional Environmental Plan No 2.*

Page 2

Development Consent No 28/01 Cont


4. Any further development of the allotments within 400 metres of the Murray River will require further approvals from Council.

Reason: Statutory requirements of Wakool Local Environmental Plan 1992, Clause 32.

5. Proposed Lot 1 is being created under Clause 12(I) of Wakool Local Environmental Plan 1992 and is being created for agriculture and does not have a dwelling right.

The plan of subdivision shall have a restriction as to user, placed over proposed Lot 1 under Section 88B of the Conveyancing Act 1919, indicating that the allotment has no dwelling right. The removal of this restriction shall only be with Council's consent.

Reason: To ensure that future purchasers of the title are made aware of the restriction on the title.



P B Gall
Director of Environmental Services

20th April 2001
Date



town planners

APPENDIX E



SUBDIVISION CERTIFICATE

issued under the *Environmental Planning and Assessment Act 1979*
Section 109C 4(A)

subdivision application

no 13/04

subdivision application

applicant name D Lewis

applicant address C/- Don Fox Planning
PO Box 230 PENNANT HILLS NSW 1715

Description of land to which certificate applies: address

Lot: 1 DP: 1067731

Rd/Street: Murray Downs Drive Parish: Yellymong

Owner/s Name

Wariat Nominees Pty Ltd

certificate

I certify that the provisions of S109J of the
Environmental Planning & Assessment Act 1979 have
been satisfied in relation to the proposed subdivision
Set out herein

Signature

MARK WILLIAMS
MANAGER OF HEALTH & BUILDING SERVICES
* Authorised Person

Consent authority

Council of the Shire of Wakool

Date of endorsement

19 / 4 /2005

Subdivision Certificate No:

13/04

File No:

P:1782.4

Development Consent No:

DA 95/01

Note:

When plan is to be lodged electronically in the Land Titles Office, it should include a signature in an electronic or digital format approved by the Registrar-General.



Wakool
Shire
Council

Moulamein Administration
Tualka Terrace,
Telephone: (03) 5887 5007
Facsimile: (03) 5887 5103
Email: mail@wakool.nsw.gov.au

Barham Branch Office
Murray Street,
Tel: (03) 5453 3200
Fax: (03) 5453 3122
Website: www.wakool.nsw.gov.au

Our Ref: I04/4557
Contact: M Williams
Your Ref:

*Address all correspondence to:
General Manager, Private Bag 40, Moulamein, N.S.W. 2733 - In replying to correspondence, please quote Councils Ref. No.*

19 April 2005

Price Merrett Consulting
PO Box 1172
SWAN HILL VIC 3585

Dear Sir

**SUBDIVISION CERTIFICATE No. 13/04 - BEING A REALIGNMENT OF
BOUNDARIES FOR LOT 1 DP 10677310 - MURRAY DOWNS DRIVE, PARISH
OF YELLYMONGOWNED BY WARIAT NOMINEES PTY LTD**

Please find enclosed the Subdivision Certificate, Linen Plan and four (4) copies of the subject plan suitably endorsed by Council.

The plan makes references to the following easements and carriageways created under Section 88B of the Conveyancing Act 1919.

- A Easement for Water Supply - 10m wide (DP 2667511)
- B Easement for Drainage - 10m wide (DP 859813)
- C Easement for Electricity Supply - 10m wide (DP 1067731)
- D Restrictions as to User of Lot 1 & 2
- E Easement for Carriageway 10 wide
- F

Upon completion of the Section 88B Instrument to accompany the certified plan of subdivision to the Land Titles Office please submit a copy to council's Moulamein Office.

Please find attached Council's receipt for the Subdivision Certificate fee.

Yours faithfully



MARK WILLIAMS
MANAGER OF HEALTH & BUILDING SERVICES

For **GENERAL MANAGER**
mw/jb



town planners

APPENDIX F

All correspondence is to be addressed to: The General Manager, Wakool Shire Council, Private Bag 40, Moulamein NSW

2733

Form 4



Notice of determination of a development application

Issued under the *Environmental Planning and Assessment Act 1979*
Section 81(1)(a)

Development application No	95/01
Development Application	
Applicant name	Matthew Lewis
Applicant address	PO Box 255, ESPERANCE WA 6450
Owners name	WARIAT NOMINEES PTY LTD
Owners address	PO Box 255, ESPERANCE WA 6450
Land to be developed: Address	Lot 15, DP 859813 Moulamein Road, Murray Downs
Proposed development	Motel Site
Building Code of Australia building classification	3 & 1(a)
Determination Made on (date)	13 th November 2003
Determination	* Consent granted subject to conditions described below
Consent to operate from (date)	15 th November 2003
Consent to lapse on (date)	15 th November 2008
Details of conditions (including section 94 conditions)	AS ATTACHED
Reasons for conditions	AS ATTACHED

./Continued

All correspondence is to be addressed to: The General Manager, Wakool Shire Council, Private Bag 40, Moulamein NSW 2733

Page 2
DA 95//01 Approval

Other approvals
List *Local Government Act 1993* approvals granted under Sect 68

N/A

General terms of other approvals integrated as Part of the consent

N/A

(list approvals)

Right of appeal

If you are dissatisfied with this decision section 97 of the *Environmental Planning and Assessment Act 1979* gives you the right to appeal to the Land and Environment Court within 12 months after the date on which you receive this notice

**section 97 of the Environmental Planning and Assessment Act 1979 does not apply to the determination of a development application for State significant development or local designated development that has been the subject of a Commission of Inquiry.*

Signed

on behalf of the consent authority

Signature
Name



GEOFF SMITH
ENVIRONMENTAL SERVICES OFFICER

Date

13TH November 2003

Note 1

Where the consent is subject to a condition that the consent is not to operate until the applicant satisfies a particular condition the date should not be endorsed until the condition has been satisfied.

Note 2

Clause 69A of the Regulation contains additional particulars to be included in a notice of determination where a condition under Section 94 of the Environmental Planning and Assessment Act 1979 has been imposed.

CONDITIONS ATTACHED TO CONSENT NO 95/01

1. Development being carried out generally in accordance with particulars and statements in the submitted Development Application received 11 September 2001, except where varied by the plans/information submitted to Council on 11 March 2002, 18 November 2002 and 26 August 2003, subject to the following conditions.
2. Prior to commencing any construction works, the following provisions of the Environmental Planning & Assessment Act, 1979 (the 'Act') are to be complied with:-
 - a) A Construction Certificate is to be obtained in accordance with Section 81A(2)(a) of the Act;
 - b) A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b) of the Act;
 - c) Council is to be notified at least two (2) days in advance of the intention to commence building works, in accordance with Section 81A(2)(c) of the Act.
3. A sample board indicating colours, texture and substance of all external components of the building and hard surfaced areas being submitted to Council for approval prior to issue of the Construction Certificate.
4. Stormwater drainage from the site being collected and disposed of to a lawful point of adequate capacity in a scheme designed to prevent contamination of receiving waters. The design shall:
 - (a) Be in accordance with Australian Standard 3500.3;
 - (b) Provide for drainage discharge to an existing Council drainage system;
 - (c) Ensure that the development either during construction or upon completion, does not impede or direct natural surface water runoff so as to cause a nuisance to adjoining properties.Details are to be included with the plans and specifications to accompany any Construction Certificate.
5. Prior to issue of a Construction Certificate, a detailed landscape plan (in duplicate) be submitted to Council for approval. Such plan shall indicate the location of services, the location and name of shrub and tree species to be planted, mature height of trees and the location of grassed and paved areas.




6. Provision being made for access, sanitary and other facilities for the disabled, in accordance with the provisions of the Building Code of Australia. Details to be submitted with the Construction Certificate application.
7. An adequate waste receptacle area being provided on-site to store all waste pending disposal. Such area shall be screened, regularly cleaned and accessible to collection vehicles in the interests of amenity, safety and public convenience.
8. A Water and/or Sewer Application for approval under Section 68 of the Local Government Act (Water, Sewer and Drainage) Regulation 1993 being applied for prior to commencement of work.
9. No sign that requires Council's approval being displayed until a consent is issued. All signs shall be designed to complement development on-site and be maintained at all times in good order and condition.
10. Driveways, manoeuvring areas and open carparking spaces being constructed with dark coloured concrete or bitumen, coloured patterned concrete, exposed aggregate, interlocking paving blocks, brick paving or similar so as to reduce the visual impact of large expanses of hard stand areas. Plain concrete is not permitted unless utilised in conjunction with one of the aforementioned materials.
11. The applicant shall provide an all-weather access from the edge of the existing road to the property boundary in accordance with Council's requirements. If roadside table drains are crossed by the access, a piped culvert of minimum diameter 375mm shall be installed to allow unimpeded stormwater flow.
12. A suitable builder's toilet is to be provided on-site before building work commences. Such facility is to either connect to Council's sewer or a suitable approved portable chemical closet is to be provided.
13. Work during construction being conducted in a manner so as to not cause nuisance, to protect and support any neighbouring buildings and not to be injurious to health and amenity by reason of noise, vibrations, smells, dust, stormwater runoff, sediment loss, placement of building materials, building refuse and wastes, rubbish, footway interference, traffic generated, hours of operation, and the like.
14. Council shall be notified for the following inspections of the structure during the course of erection. At least 48 hours notice must be given. Arrangements for inspections should be made with Council's Moulamein Office, on 03 58875007.
 - (a) All pier holes or footings excavations before pouring concrete;




- (b) Steel reinforcing for footings, slabs and other structural members before pouring concrete;
 - (c) All internal and external sanitary drainage prior to covering;
 - (d) Framework of structure before lining or cladding is installed;
 - (e) Wet areas treated before lining or tiling;
 - (f) Completion of works prior to occupation.
15. Run-off and erosion controls being implemented to prevent soil erosion, water pollution or the discharge of loose sediment to the Murray River and must involve the following:-
- (a) The diversion of uncontaminated run-off around cleared or disturbed areas;
 - (b) The erection of a silt fence to prevent debris escaping into drainage systems or waterways;
 - (c) The prevention of tracking of sediment by vehicles onto roads;
 - (d) The stockpiling of topsoil, excavated material, construction and landscaping supplies and debris within the site, and the removal or utilization (where appropriate) of that stockpile after completion of the building.
16. Bollard lighting is to be provided at ten (10) metre intervals alongside the internal vehicular accessway for the purposes of safety and security.
17. The building addition shall not be occupied or used until an Occupation Certificate is issued by the Principal Certifying Authority.

Reasons for Conditions

The above conditions have been imposed:-

- (a) to ensure compliance with the terms of the *Environmental Planning and Assessment Act 1979*;
 - (b) having regard to Council's duties of consideration under Section 79C and 80A of the Act;
 - (c) to ensure an appropriate level of provision of amenities and services occurs within the Shire and to occupants of sites;
 - (d) to improve the amenity, safety and environmental quality of the locality;
 - (e) having regard to environmental quality, the circumstances of the case, and the public interest..
- 

Date: 13TH November 2003



GEOFF SMITH
ENVIRONMENTAL SERVICES OFFICER
FOR

GENERAL MANAGER

NOTE:

RIGHT OF REVIEW: Upon application and payment of a fee within 28 days of the date of determination of this approval Council may review the conditions of approval.

RIGHT OF APPEAL: You are notified of your right of appeal against Councils determination of your application. Your right of appeal is to the Land and Environment Court, Section 109k, EP & A Act, 1979.

Attachments:

- (a) Stamped Plans



town planners

APPENDIX G

All correspondence is to be addressed to: The General Manager, Wakool Shire Council, Private Bag 40, Moulamein NSW
2733

Form 4



Notice of determination of a development application

Issued under the *Environmental Planning and Assessment Act 1979*
Section 81(1)(a)

Development application No	19/03
Development Application Applicant name	Matthew Lewis
Applicant address	PO Box 255, ESPERANCE WA 6450
Owners name	Wariat Nominees Pty Ltd
Owners address	PO Box 255, ESPERANCE WA 6450
Land to be developed: Address	Murray Downs Homestead DP 859813, Lot 15
Proposed development	Laser Levelling work for Irrigation layout & Pump & pipe work installation.
Building Code of Australia building classification	N/A
Determination Made on (date)	13 TH November 2003
Determination	* Consent granted subject to conditions described below
Consent to operate from (date)	15 th November 2003
Consent to lapse on (date)	15 th November 2008
Details of conditions (including section 94 conditions)	AS ATTACHED
Reasons for conditions	AS ATTACHED

../Continued

All correspondence is to be addressed to: The General Manager, Wakool Shire Council, Private Bag 40, Moulamein NSW 2733

Page 2
DA 19/03 Approval

Other approvals
List *Local Government Act 1993* approvals granted under Sect 68

N/A

General terms of other approvals integrated as Part of the consent

N/A

(list approvals)

Right of appeal

If you are dissatisfied with this decision section 97 of the *Environmental Planning and Assessment Act 1979* gives you the right to appeal to the Land and Environment Court within 12 months after the date on which you receive this notice

**section 97 of the Environmental Planning and Assessment Act 1979 does not apply to the determination of a development application for State significant development or local designated development that has been the subject of a Commission of Inquiry.*

Signed

on behalf of the consent authority

Signature



Name

GEOFF SMITH

ENVIRONMENTAL SERVICES OFFICER

Date

13TH November 2003

Note 1

Where the consent is subject to a condition that the consent is not to operate until the applicant satisfies a particular condition the date should not be endorsed until the condition has been satisfied.

Note 2

Clause 69A of the Regulation contains additional particulars to be included in a notice of determination where a condition under Section 94 of the Environmental Planning and Assessment Act 1979 has been imposed.

CONDITIONS ATTACHED TO CONSENT NO 19/03

1. Development being carried out generally in accordance with particulars and statements in the submitted Development Application received on 7 February 2003, as amended by details submitted on 24 September 2003 and subject to the following conditions.
2. There is to be no clearing of vegetation other than that approved by the Department of Infrastructure, Planning and Natural Resources or in accordance with the provisions of the *Native Vegetation Conservation Act 1997*.
3. Any earthworks within 40 metres of the bank of the Murray River will require a Part 3a permit approval under the requirements of the *Rivers and Foreshores Improvement Act 1948*.
4. No materials shall be used that may pollute the adjacent waterway.
5. The drainage easement on the eastern boundary of the property is to have natural surface levels retained and/or reinstated and an outlet provided to allow escape of overland flows.

Reasons for Conditions

The above conditions have been imposed:-

- (a) to ensure compliance with the terms of the *Environmental Planning and Assessment Act 1979*;
- (b) having regard to Council's duties of consideration under Section 79C and 80A of the Act;
- (c) to ensure an appropriate level of provision of amenities and services occurs within the Shire and to occupants of sites;
- (d) to improve the amenity, safety and environmental quality of the locality;
- (e) having regard to environmental quality, the circumstances of the case, and the public interest..

Date: 13TH November 2003



GEOFF SMITH
ENVIRONMENTAL SERVICES OFFICER
FOR

GENERAL MANAGER

NOTE:

RIGHT OF REVIEW: Upon application and payment of a fee within 28 days of the date of determination of this approval Council may review the conditions of approval.

RIGHT OF APPEAL: You are notified of your right of appeal against Councils determination of your application. Your right of appeal is to the Land and Environment Court, Section 109k, EP & A Act, 1979.

Attachments:

- (a) Stamped Plans



town planners

APPENDIX H

03 9654 1071

Shire of Wakool

RIVERS, REDGUMS & PLAINS

Moulamein Administration

Barham Branch Office

Our Ref:

107/1867

Tualka Terrace

Murray Street

Contact:

C Chapman

Tel: (03) 5887 5007

Tel: (03) 5453 3200

Fax: (03) 5887 5103

Fax: (03) 5453 3122

Email: mail@wakool.nsw.gov.au

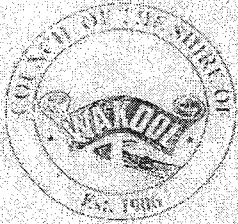
Your Ref:

Website: www.wakool.nsw.gov.au

Address all correspondence to:

General Manager, Private Bag 40, Moulamein, N.S.W. 2733

In replying to correspondence, please quote Councils Ref. No.



1 November 2007

Lewis Lewis Proerties P/L
PO Box 255
ESPERANCE WA 6450

Dear Sir/Madam

**RE: NOTIFICATION OF AMENDED DEVELOPMENT APPLICATION NO 53/07 FOR
SUBDIVISION (1 INTO 16 LOTS) ON LOT 14 DP 859813 - MURRAY DOWNS DRIVE &
KIDMAN REID DRIVE - PARISH OF YELLYMONG BY BRIAN MITSCH & ASSOCIATES**

I advise that Council has received amended plans for the above development application proposal.

The purpose of this letter

Council considers that your interests may be affected by the proposal; therefore we wish to give you an opportunity to comment on the above application.

If you have objections, or wish to comment

Any objection to the proposal must be in writing, and addressed to the **General Manager, Wakool Shire Council, Private Bag 40, Moulamein 2733**. It must reach Council no later than **4pm, 15th November 2007**.

If you do object to the proposal, you must give reasons for the objection/s, and these must be clearly stated. Details of any objection/s may be made available to the applicant under the provisions of the Freedom of Information Act.

If you wish to object, or make a comment, either for or against the proposal, enclosed is a response form, addressed to the General Manager. You are not obliged to use this form. You may also simply just write to us.

What if I do not respond

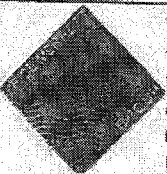
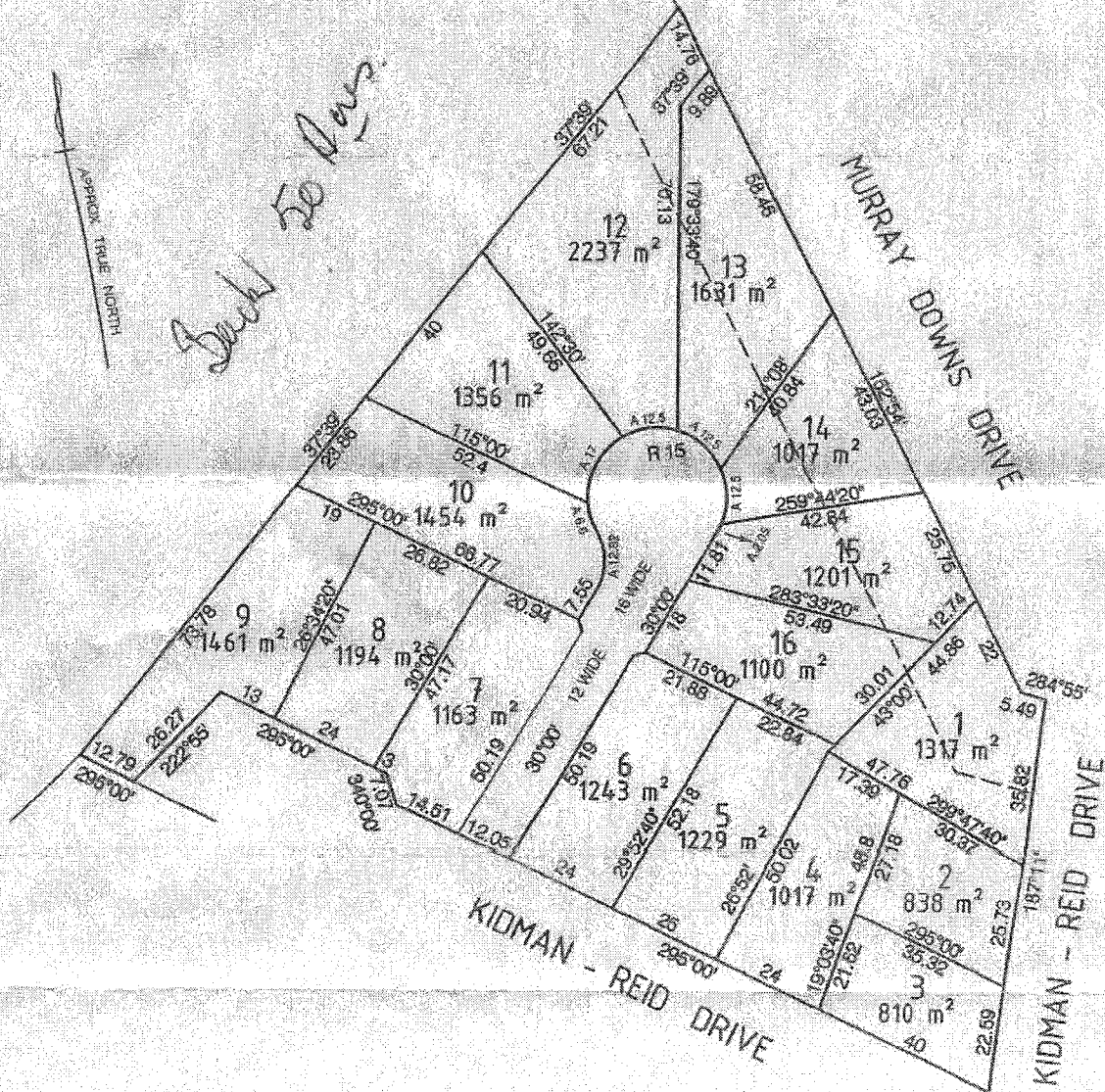
If you do not comment within the time indicated, Council will assume that you have no objections to the application. Even if you do not comment, Council must take into consideration any matters that may affect any adjoining properties.

Yours faithfully,

**GEOFF BARKER
SENIOR HEALTH & BUILDING SURVEYOR**

For ACTING GENERAL MANAGER

PLAN OF PROPOSED SUBDIVISION LOT 14 on DP859813 AT MURRAY DOWNS PARISH OF YELLYMONG



Price Merrett Consulting

CONSULTING SURVEYORS, ENGINEERS, MIGRATION DESIGNERS

69 BEVERIDGE STREET, SWAN HILL
PO BOX 1172 SWAN HILL 3585
PH (03) 5032 3685 FAX (03) 5032 2472

NOTES

1. PLAN IS SUBJECT TO APPROVAL OF STATUTORY AUTHORITIES
2. PLAN IS SUBJECT TO FINAL SURVEY
3. DIMENSIONS ARE APPROXIMATE ONLY

REF. NO. F5031V5

DRAWN RGM
SCALE 1: 1000
DATE 30/08/2007



town planners

APPENDIX I

13 December 2004
Our Ref: 5540.43DF:JW

SUBMISSION TO MURRAY DOWNS LAND USE PLANNING WORKSHOP

**Wednesday, 15 December 2004
Murray Downs Resort
on behalf of Wariat Nominees and Lewis Lewis Properties**

- The Murray Downs Homestead originally comprised Lot 15 in DP 859813, containing an area of 61.43 hectares and zoned Rural 1(a).
- Lot 15 has now been resubdivided into Lots 1 and 2 in DP 1067731, with Lot 1 being an area for agriculture and Lot 2 containing the Homestead and heritage listed.
- Development consent was granted by Council for an 18 room motel with manager's residence on approximately 2.85 hectares of Lot 1, with the remaining lands being subject to development consent for laser leveling, the construction of a dam, pump and irrigation works. Note that all of Lot 1 is now flood-free.
- The development of the Murray Downs area for urban purposes is permissible under the provisions of Clause 37 of WLEP 1992 and applies to Portions 13, 14, 15, 26, 27, 28 and 39, and part of Portions 59 and 63, west of the prolongation of the eastern boundary of Portion 26. The clause permits a wide range of urban development to be established, excepting for bulk stores, car repair stations, junk yards, liquid fuel depots, motor showrooms, industries, mines, roadside stalls, timber yards and warehouses. The clause also provides other development controls.
- Apart from a small triangular section, Lots 1 and 2 are outside the provisions of Clause 37.
- Council has prepared DCP 2 depicting a wide range of urban land uses of the area to which Clause 37 of WLEP 1992 applies. Land uses include residential, future residential, schools, public uses, neighbourhood centres, country club, historic precinct, tourist facilities, public reserve, roads, public rights of way and deferred areas.
- Council, on 13 December, resolved to undertake an amendment to WLEP 1992 to allow residential development within the Murray Downs development area to be considered in areas previously not considered in the strategic and development control plan for the area. The amendment proposes was to introduce a Village 2(v) zone over the area proposed for future residential, tourist and commercial development. DIPNR advised Council that a local environmental study was required and such was undertaken by Habitat Planning with both Wariat Nominees and Murray Downs Pastoral Company contributing financially to the cost on the basis of land area owned. The LES was completed by Habitat Planning in April 2002.

- We have made a number of submissions to Council including:
 - 28 October 2003 Rezoning request for Lot 1 in DP 1067731 from Rural 1(a) to Village 2(v).
 - 20 October 2004 Further on-site meeting with Council Officers regarding rezoning status and other development issues.
 - 21 October 2004 Request to amend DCP 2 as it applies to Lot 1 in DP 1067731 from Historic Precinct to Residential or Future Residential, as such area was excluded from the heritage area identified by the NSW Heritage Office, such only applying to the homestead lot, being Lot 2.
 - 28 October 2004 Advice to Council that Lot 1 in DP 1067731 could be developed for aged care accommodation, and Council's response sought.

Summary of Issues

Wariat Nominees and Lewis Lewis Properties are desirous of the development of Lot 1 and have sought rezoning to allow for its development for urban purposes similar to that contained in Clause 37 of WLEP 1992.

The overall review of Council's LEP has been ongoing for a number of years with requests from DIPNR for further studies, information and the like. It appears to us that these delays will be ongoing to the detriment of our client's development opportunities. We are of the view that to enable development of our client's land, being Lot 1, Council could resolve to include in Clause 37(1) of WLEP 1992 (such describing the lands to which Clause 37 applies), by adding Lot 1 in DP 1067731 in the description. Council would then need to amend DCP 2 to show Lot 1 as Residential A.

It seems to us that Council has, by means of Clause 37 and DCP 2, an opportunity to further develop urban land uses without the need for further studies, major amendments to its LEP and the like. The Habitat study has confirmed that Lot 1 is suitable for residential purposes and we understand that Council has included such a zone in its Shire-wide Draft LEP.

In our opinion, Council needs only to resolve to broaden the description of land affected by Clause 37 by the inclusion of Lot 1 in that description and also to resolve to amend DCP 2 to show Lot 1 as Residential. These changes could be affected without any significant cost, additional studies and the like, and allow development to proceed. Council may also, following the representations of other landowners, resolve to make other amendments to DCP 2 as well.