

Murray LEP 2011 (Amendment 3)

Proposal Title : **Murray LEP 2011 (Amendment 3)**

Proposal Summary : **To amend clause 7.4(2) Development on river front areas to make it a development standard rather than a prohibition, and insert references to the 'Edward River' into relevant clauses and the Dictionary of the Murray LEP 2011.**

PP Number : **PP_2013_MURRA_001_00** Dop File No : **12/16648**

Proposal Details

Date Planning Proposal Received : **21-Dec-2012**

LGA covered : **Murray**

Region : **Western**

RPA : **Murray Shire Council**

State Electorate : **MURRAY DARLING**

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

LEP Type : **Policy**

Location Details

Street :

Suburb :

City :

Postcode :

Land Parcel : **Whole LGA**

DoP Planning Officer Contact Details

Contact Name : **Anna Cumberland**

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RPA Contact Details

Contact Name : **Liam Wilkinson**

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DoP Project Manager Contact Details

Contact Name : **Ashley Albury**

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Land Release Data

Growth Centre : **N/A**

Release Area Name : **N/A**

Regional / Sub Regional Strategy : **N/A**

Consistent with Strategy : **N/A**

Murray LEP 2011 (Amendment 3)

MDP Number :

Date of Release :

Area of Release (Ha)

Type of Release (eg

:

Residential /

Employment land) :

No. of Lots : 0

No. of Dwellings : 0

(where relevant) :

Gross Floor Area : 0

No of Jobs Created : 0

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

If No, comment :

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

If Yes, comment :

Supporting notes

Internal Supporting Notes :

External Supporting Notes :

Adequacy Assessment

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

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

Comment : **The objectives are to:**

a) To change clause 7.4 (2) 'Development on river front building areas' ('the clause') from a prohibition to a development standard to enable consideration of development where strict compliance with the standard is unreasonable or unnecessary.

b) Ensure that the Edward River is also a defined river in the Murray LEP 2011.

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

Is an explanation of provisions provided? **No**

Comment : **In relation to objective a) - It is not clear how the RPA would like the clause to be reworded to make it a development standard rather than a prohibition. It is also not clear what types of development the RPA would like the clause/development standard to apply to, to enable the flexibility they are seeking.**

Objective b) - the explanation of provisions is acceptable.

Justification - s55 (2)(c)

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

b) S.117 directions identified by RPA :

1.2 Rural Zones

1.5 Rural Lands

* May need the Director General's agreement

2.1 Environment Protection Zones

- 2.3 Heritage Conservation
- 2.4 Recreation Vehicle Areas
- 3.1 Residential Zones
- 3.2 Caravan Parks and Manufactured Home Estates
- 3.3 Home Occupations
- 3.4 Integrating Land Use and Transport
- 6.1 Approval and Referral Requirements
- 6.2 Reserving Land for Public Purposes

Is the Director General's agreement required? No

c) Consistent with Standard Instrument (LEPs) Order 2006 : Yes

d) Which SEPPs have the RPA identified?

SEPP No 1—Development Standards
SEPP (Rural Lands) 2008
Murray REP No. 2 - Riverine Land

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

Have inconsistencies with items a), b) and d) being adequately justified? No

If No, explain :

*** Section 117 Direction 2.1 Environmental Zones applies because the clause 'Development in riverfront areas' referred to in Objective a) of the Planning Proposal creates an environmental 'subzone' in that it specifies the type of development permitted in the area of its application.**

In addition, the Direction applies because the clause applies to the 'river front area' which is classified as an 'environmentally sensitive area' for the purposes of clause 3.3 of the Murray LEP 2011.

The Planning Proposal is inconsistent with the Direction because it is likely to reduce the environmental protection standards that apply to the land.

This is likely because:

- it will enable discretionary flexibility in the clause's application.
- the decision making authority will be the local Council who may not have geomorphology expertise which may be needed to consider necessary studies which should support any application to vary the provisions of this clause. It is noted that under clause 4.6 of the Standard Instrument, Council would have the Director General's assumed concurrence to determine any application in relation to clause 7.5.
- The RPA has indicated that enabling flexibility in the clause may lead to better environmental outcomes because in each case, Council would consider whether the development standard is unreasonable and unnecessary in the particular circumstance. It is acknowledged individual applications would be considered on their merits, however, the environmental issues which need to be considered as part of any such application are of State and regional significance and may require additional technical expertise which may not be available in Council.
- Following, the environmental issues currently being managed through the provisions of clause 7.5, are not only flooding, bushfire and protection of riparian vegetation, but river migration and bank stability which are technical areas of expertise.
- It has been previously advised by relevant NRM agencies that 'any reduction of the setbacks identified in the draft Murray Regional Strategy should be justified through an appropriate geomorphological investigation which demonstrates that river migration and bank stability issues can be avoided or minimised. Essentially demonstrate that houses are not constructed in the path of a migrating river'. It is considered that the development and assessment of such a study requires specific technical expertise and may need to be referred to a State government agency such as NOW or OEH.
- It is likely that modifying the clause in this instance will create a precedent for other LGAs along the Murray River who are covered by the draft Murray Regional Strategy. This would allow significant discretion in the application of Murray river building setbacks which is an issue of State and regional significance.

The inconsistency of the Planning Proposal with this Direction remains unjustified.

* Section 117 Direction 4.3 Flood prone land also applies because much of the land within the 'River front area' is flood prone.

The inconsistency of the Planning Proposal with this Direction has not been considered.

* Section 117 Direction 4.4 Bushfire protection also applies because some of the land within the 'River front area' is bushfire prone.

The inconsistency of the Planning Proposal with this Direction has not been considered.

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment : **Not required**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **28 days**

Additional Director General's requirements

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

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **No**

If No, comment : **As discussed, the RPA has not provided an adequate 'explanation of provisions' in relation to Objective a) of the Planning Proposal. It is unclear how the RPA want the clause to be changed to a development standard and which development types they want to include in the clause.**

Proposal Assessment

Principal LEP:

Due Date : **December 2011**

Comments in relation to Principal LEP : **The principal LEP was notified on 16/12/2011**

Assessment Criteria

Need for planning proposal : **The RPA has the following alternative options to address this issue, other than proceeding with this Planning Proposal:**

The RPA may plan strategically and justify a reduction in the riverfront building setback for certain areas through additional studies such as a geomorphological investigation. This would alleviate the need to consider setbacks on a case by case basis as is being proposed. Once these studies have been prepared, Council would be supported by the Department to implement a 'river front building line' through a Planning Proposal and subsequently an amendment to the LEP. The riverfront building line would designate the appropriate setback from the River for all land within the investigation area.

In addition, a draft Practice Note is currently being developed by the Department in consultation with relevant Government agencies including OEH, following the exhibition of

the draft Murray Regional Strategy and consultation with Murray regional councils. The Practice Note is being prepared to address circumstances where the default riverfront building setbacks could be varied and will provide specific guidance and the mechanism for varying the default setback. As this is a technical area, consultation will occur with the key NRM agencies such as NOW and OEH as well as the Murray regional councils.

Consistency with strategic planning framework :

Discussion of the background to this issue and clause 7.5, and consistency of the Planning Proposal with the strategic planning framework is provided below:

*** Background to Murray River setbacks:**

The intent of applying a building setback to Rivers is to establish a limit to the extent to which development is able to adjoin and thereby adversely affect the environment along the Murray River. The amenity of the River, which is adjoined predominantly by native forest or broad scale rural landscapes, is considered to be a key asset of State and regional significance in its appeal for tourism. Maintenance of a setback also contributes to the conservation of biodiversity, control of water quality, maintains bank stability and provides a buffer for river migration. Furthermore, it controls the risk of soil erosion, land degradation, the loss of scenic and visual amenity, and the loss of important vegetation systems.

Over the past 20 years, the Department has consistently sought to restrict development along the Murray River through the introduction of the Murray REP 1 and REP 2 and through the inclusion of river setback clauses in LEPs.

In particular, the Murray REP 2 contains a requirement that buildings be 'set well setback' from the bank of the river. It also includes objectives for the setback and matters for consideration in assessing development applications (Clause 14(3) – maintain and improve water quality).

The Department, in conjunction with other NRM agencies has further recognised the significance of the issue at a regional level by developing the draft Murray Regional Strategy which contains a model clause which has adopted by most Councils along the Murray River including Murray Shire.

*** Background to the 'Development on river front areas' model clause in the draft Murray Regional Strategy:**

The content of this clause aims to ensure infrastructure and buildings, that may destabilise the bed and banks of waterways or require expensive stabilisation by local councils in the foreseeable future when natural river migration put this infrastructure at risk are not developed within the 'river front area'.

The clause also aims to recognise that areas close to river banks are both environmentally sensitive and face greater development pressure. The clause seeks to set an additional level of control and consideration of development proposals in areas close to the River. These are set out in the objectives of the clause. Some forms of development that would normally be appropriate in a rural or urban zone may not be appropriate if located too close to a river bank, particularly an actively eroding or unstable river bank. These areas of physical constraint or sensitivity may not be picked up by other mapping that looks at biodiversity or flooding which is readily available for consideration as part of a normal development application process.

In consultation with Murray regional councils, and relevant NRM agencies, the Department carefully considered the specific types of development which should be permitted in the 'river front area', where a functional dependence on the River could be established. In addition, that these types of development are only permissible where they are carefully considered against the potential impacts on river health and riverine processes. Such developments are included as part of clause 7.4(2) and include boat building and repair facilities, boat ramps, marinas, water recreation structures. In addition, recognition was made that there are existing buildings/structures and agricultural development within the river front area, and these should reasonably be allowed to be modified. As such, alterations and additions to existing buildings, extensive and intensive agriculture are also permitted through the clause.

The clause was developed intentionally in this way to prohibit other forms of development which have been carefully considered as not being appropriate in the 'river front area'.

Flexibility to vary the clause on a case by case basis was not supported at the time of drafting the Strategy to ensure that the integrity of the Murray River, and its environs, together with and other major waterways are not undermined or compromised by urban development or riverine structures.

*** Consistency with the strategic planning framework**

The Planning Proposal is inconsistent with the draft Murray Regional Strategy which is the key strategic planning document which applies. Of relevance to this Planning Proposal is the following extract from the draft Murray Regional Strategy:

'Evidence from existing developments along the Murray River show that buildings near the river, particularly dwellings, often result in increased demand for other structures and works on or near the river (such as retaining walls, moorings, boat ramps, jetties and stairs). These structures usually require excavation of the river bank, which impacts on bank stability and the waterway itself and create the need for artificial stabilisation techniques such as retaining walls. Importantly, much of the Victorian side of the Murray River is held in Crown ownership and consequently has little riverfront development. The visual impact of private development in NSW is often most significant when viewed from the river itself and from the recreational areas on the Victorian side of the Murray River.

One planning response to this issue has been the use of building setbacks, ensuring that new development is separated from waterways. Building setbacks will allow the course of streams to naturally migrate over time and create opportunities for better management of riverine vegetation and water quality. Setbacks, particularly in towns and villages are also important to provide opportunities for greater public access to rivers for recreation.

The majority of existing environmental planning instruments along the Murray River require buildings and other forms of development to be set back from the River and setbacks have been in force along the Murray River for over 20 years. The consistent application of a building setback from the Murray River is considered important to achieve appropriate environmental and planning outcomes across the ten local government areas'.

Whilst the Planning Proposal does not seek to remove the requirement for riverfront building setbacks, it proposes to enable discretionary flexibility in their application.

Some examples given in the Planning Proposal (where flexibility in the application of the setback) is sought include:

- 1) a dwelling on a lot which meets the minimum requirements of the lot size map, however the lot is wholly within the river front area
- 2) a swimming pool within the river front area
- 3) minor structures including sheds, shelters, amenity structures, carports
- 4) a new building on land which may be less environmentally constrained than land outside the river front area
- 5) a new building behind existing infrastructure such as roads or buildings.
- 6) development for a change of use for an existing building which would not be covered by 'existing use' provisions.

Following from the discussion above, the intent of the clause is not to permit those types of structures/buildings listed in points 1) to 3) in the river front area as they may not be appropriate if located too close to a river bank, particularly an actively eroding or unstable river bank. If there are areas of known existing fragmentation where the lots are located wholly within the 'riverfront area', Council may consider preparing a study and developing a river front building line map (if it is appropriate for building envelopes to be located within the applicable default setback) which would be supported by the Department. Whilst it is acknowledged that there may be instances where Point 4) is the case, determining the level of physical constraint or sensitivity along the River is generally a technical area, and may not only be a consideration of issues such as biodiversity or flooding, it is also consideration of impact on bank stability, water quality, river migration

etc. Point 6) is acknowledged as a possible instance where varying the setback may be appropriate. However, it is considered that a precautionary approach should be taken to this issue, and it is being recommended that the clause should not be amended to cover this limited circumstance.

Further, given the regional application of the clause, the potential for the Planning Proposal to create a precedent for the other LGAs covered by the draft Murray Regional Strategy is of importance and its widespread change may undermine the integrity of the Strategy and its effectiveness.

The implications of this Planning Proposal are considered to be of State and regional significance. As such, it is appropriate for the matter to be considered in the review of the draft Murray Regional Strategy which is currently in progress. A Discussion Paper is currently being prepared by the Department which identifies all of the issues which have arisen from the public exhibition and consultation on the draft Murray Regional Strategy and proposes a way forward for future discussion and consultation.

Environmental social
economic impacts :

The Planning Proposal's intention to enable discretionary flexibility in the application of riverfront building setbacks has the potential to create significant environmental, social and economic impacts.

Maintenance of the integrity of riparian corridors provides a range of environmental benefits such as stabilising banks, maintaining water quality, providing habitat for native species and ecological communities and contributing to the scenic amenity of the area. As discussed, the amenity of the River is also considered to be a key economic and social asset of State and regional significance in its appeal for tourism.

As also discussed, land use intensification along the River and its tributaries is highly likely to lessen the ability of this area to act as a filter between land and water, destabilise parts of the riverbank and reduce public access to the river for recreation which is an key social issue.

Parts of the Region are subject to natural hazards and processes that can pose risks to life, property and the natural environment, namely flooding, bushfires and impacts of climate change.

The river is utilised for a variety of reasons and activities. The increasing number of activities undertaken along the river, however, has introduced change into the landscape that has the potential to impact on the health of the river and its environmental, social and economic importance to not only the region, but the nation.

The river front area in many instances contains large tracts of River Red Gum forests, threatened fauna and is significant in some parts for international migratory birds and internationally recognised wetlands. In addition, it is home to some major indigenous cultural assets, which are generally found in greater numbers in proximity to the River.

It is important to ensure that development occurs in a way that safeguards and enhances the existing environmental, biodiversity, cultural, and scenic assets of the Region and ensures that adverse impacts on the riverine environment from development fronting the Murray River and its tributaries are minimised.

Without proper strategic consideration of this matter on a regional basis, in consultation with appropriate Government agencies and the Murray regional Council's and their communities, it would not be appropriate to enable discretionary flexibility in the application of river setbacks which is a matter of State and regional significance.

Assessment Process

Proposal type :	Precinct	Community Consultation Period :	Nil
Timeframe to make LEP :	3 Month	Delegation :	DG
Public Authority Consultation - 56(2)(d) :	Murray Catchment Management Authority Office of Environment and Heritage NSW Department of Primary Industries - Fishing and Aquaculture Department of Trade and Investment Office of Environment and Heritage - NSW National Parks and Wildlife Service NSW Rural Fire Service Adjoining LGAs		
Is Public Hearing by the PAC required?	No		
(2)(a) Should the matter proceed ?	No		
If no, provide reasons :	Objective a) of the Planning Proposal should not proceed for the following reasons: * The RPA has alternative means to address this objective other than progressing the Planning Proposal. As discussed, the RPA may plan strategically and justify a reduction in the riverfront building setback for certain areas through the development of appropriate studies such as a geomorphological investigation. The RPA could then implement a 'river front building line' through a Planning Proposal and subsequently an amendment to the LEP. In addition, a draft Practice Note is currently being developed by the Department following the exhibition of the draft Murray Regional Strategy and consultation with Murray regional councils. The Practice Note is being prepared to address circumstances where the default riverfront building setbacks could be varied and will provide specific guidance and the mechanism for varying the default setback. * The current model clause in the draft Murray Regional Strategy provides for the specific types of development which should be permitted in the 'river front area', where a functional dependence on the River could be established. The clause was developed intentionally in this way to prohibit other forms of development which have been carefully considered as not being appropriate in the 'river front area'. Flexibility to vary the clause on a case by case basis is not supported to ensure that the integrity of the Murray River, and its environs, together with and other major waterways are not undermined or compromised by urban development or riverine structures. * The examples of where the RPA is seeking to vary the clause are not supported by the Department and are not consistent with the objectives/recommendations of the draft Murray Regional Strategy. There may be limited circumstances where it may be appropriate to vary the clause, however given the Murray River and its environs' importance at a State and regional level, it is considered that a precautionary approach should be taken to this issue, and it is being recommended that the clause should not be amended to cover only limited circumstances. * the Planning Proposal has the potential to create a precedent for the other LGAs covered by the draft Murray Regional Strategy, and its widespread amendment may undermine the integrity of the Strategy and its effectiveness. * The implications of this Planning Proposal are considered to be of State and regional significance. As such, it is appropriate for the matter to be considered in the review of the draft Murray Regional Strategy which is currently in progress. A Discussion Paper is currently being prepared by the Department which identifies all of the issues which have arisen from the public exhibition and consultation on the draft Murray Regional		

Murray LEP 2011 (Amendment 3)

Strategy and proposes a way forward for future discussion and consultation.

Objective b) is supported to proceed.

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

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

If Yes, reasons :

Documents

Document File Name

DocumentType Name

Is Public

Planning Team Recommendation

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

S.117 directions:

- 1.2 Rural Zones**
- 1.5 Rural Lands**
- 2.1 Environment Protection Zones**
- 2.3 Heritage Conservation**
- 2.4 Recreation Vehicle Areas**
- 3.1 Residential Zones**
- 3.2 Caravan Parks and Manufactured Home Estates**
- 3.3 Home Occupations**
- 3.4 Integrating Land Use and Transport**
- 6.1 Approval and Referral Requirements**
- 6.2 Reserving Land for Public Purposes**

Additional Information :

Objective a) of the Planning Proposal to change clause 7.5 (2) 'Development on river front building areas' ('the clause') from a prohibition to a development standard should not proceed.

Objective b) of the Planning Proposal in relation to inserting the term 'Edward River' into the relevant clauses and Dictionary of the Murray LEP 2011 should proceed subject to the following conditions:

- 1. Community consultation is not required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act"),**
- 2. Consultation is not required with any public authorities under section 56(2)(d) of the EP&A Act,**
- 3. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).**
- 4. The timeframe for completing the LEP is to be 3 months from the week following the date of the Gateway Determination.**

Supporting Reasons :

Objective a) of the Planning Proposal to change clause 7.5 (2) 'Development on river front building areas' ('the clause') from a prohibition to a development standard is not supported for the following reasons:

*** The RPA has alternative means to address this objective other than progressing the Planning Proposal. As discussed, for example, the RPA may plan strategically and justify a reduction in the riverfront building setback for certain areas through the development of an appropriate geomorphological investigation. The RPA could then implement a 'river front building line' through a Planning Proposal and subsequently an amendment to the LEP.**

In addition, a draft Practice Note is currently being developed by the Department following the exhibition of the draft Murray Regional Strategy and consultation with Murray regional councils. The Practice Note is being prepared to address circumstances where the default riverfront building setbacks could be varied and will provide specific guidance and the mechanism for varying the default setback.

*** The current model clause in the draft Murray Regional Strategy provides for the specific types of development which should be permitted in the 'river front area', where a functional dependence on the River could be established. The clause was developed intentionally in this way to prohibit other forms of development which have been carefully considered as not being appropriate in the 'river front area'. Flexibility to vary the clause on a case by case basis is not supported to ensure that the integrity of the Murray River, and its environs, together with and other major waterways are not undermined or compromised by urban development or riverine structures.**

*** The examples of where the RPA is seeking to vary the clause are not supported by the Department or the objectives/recommendations of the draft Murray Regional Strategy. There may be limited circumstances where it may be appropriate to vary the clause, however given its importance at a State and regional level, it is considered that a precautionary approach should be taken to this issue, and it is being recommended that the clause should not be amended to cover only limited circumstances.**

*** the Planning Proposal has the potential to create a precedent for the other LGAs covered by the draft Murray Regional Strategy, and its widespread amendment may undermine the integrity of the Strategy and its effectiveness.**

*** The implications of this Planning Proposal are considered to be of State and regional significance. As such, it is appropriate for the matter to be considered in the review of the draft Murray Regional Strategy which is currently in progress. A Discussion Paper is currently being prepared by the Department which identifies all of the issues which have arisen from the public exhibition and consultation on the draft Murray Regional Strategy and proposes a way forward for future discussion and consultation.**

Signature:



Printed Name:

Ashley Aisling

Date:

11/1/2013

