

Amend Albury LEP 2010 - Revise Clause 7.5 - Development on or near the Murray River

Proposal Title : **Amend Albury LEP 2010 - Revise Clause 7.5 - Development on or near the Murray River**

Proposal Summary : **Albury City Council seeks to amend the Albury LEP 2010 by replacing clause 7.5 - 'Development on or near the Murray River' with a new clause that is consistent with the Department's Model Clause for 'Development on river front areas' contained in the 'exhibited draft Murray Regional Strategy', and other recently published or exhibited LEPs within the Murray Region.**

Clause 7.5 currently applies to the 'river front area' that is defined as land within 400 metres of the high bank of the Murray River within an RU1 Primary Production Zone, RU2 Rural Landscape Zone, E2 Environmental Conservation Zone and E3 Environmental Management Zone. The 400 metre river development setback standard is considered excessive by Council.

The main intent of the PP is to change the definition of 'river front area' so that clause 7.5 only applies to land within;

- 40 metres from the high bank of the Murray River in an R5 Large Lot Residential Zone or an urban release area;**
- 100 metres of the high bank of the Murray River within an RU1 Primary Production Zone, RU2 Rural Landscape Zone, RU4 Primary Production Small Lots Zone, E2 Environmental Conservation Zone and E3 Environmental Management Zone.**

The clause will no longer apply to the RE1 Public Recreation Zone or the RE2 Private Recreation Zone or to land between 100 metres and 400 metres of a rural or environmental zone.

PP Number : **PP_2012_ALBUR_001_00** Dop File No : **11/22657**

Proposal Details

Date Planning Proposal Received :	21-Dec-2011	LGA covered :	Albury City
Region :	Southern	RPA :	Albury City Council
State Electorate :	ALBURY	Section of the Act :	55 - Planning Proposal
LEP Type :	Housekeeping		

Location Details

Street :	N/A		
Suburb :	N/A	City :	N/A
		Postcode :	N/A
Land Parcel :	Land within 400 metres of the high bank of the Murray River zoned RU1 Primary Production Zone, RU2 Rural Landscape Zone, E2 Environmental Conservation Zone, E3 Environmental Management Zone,		
Street :			
Suburb :		City :	
		Postcode :	
Land Parcel :	Land within 40 metres of the high bank of the Murray River zoned RE1 Public Recreation Zone or RE2 Private Recreation Zone		

Street :

Suburb :

City :

Postcode :

Land Parcel : **Land within 40 metres of the high bank of the Murray River in an urban release area identified on the Albury LEP 2010 Urban Release Area Map.**

DoP Planning Officer Contact DetailsContact Name : **Graham Judge**Contact Number : **0262297906**Contact Email : **graham.judge@planning.nsw.gov****RPA Contact Details**Contact Name : **Matt Johnson**Contact Number : **0260238173**Contact Email : **mjohnson@alburycity.nsw.gov.au****DoP Project Manager Contact Details**Contact Name : **Mark Parker**Contact Number : **0242249468**Contact Email : **Mark.Parker@planning.nsw.gov.au****Land Release Data**Growth Centre : **N/A**Release Area Name : **N/A**Regional / Sub
Regional Strategy : **N/A**Consistent with Strategy : **N/A**

MDP Number :

Date of Release :

Area of Release (Ha) **0.00**Type of Release (eg
Residential /
Employment land) : **N/A**No. of Lots : **0**No. of Dwellings
(where relevant) : **0**Gross Floor Area : **0**No of Jobs Created : **0**

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

If No, comment :

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

If Yes, comment :

Supporting notes

Internal Supporting Notes : **The Murray River, including Hume Lake, is zoned W2 Recreation Waterways under Albury LEP 2010.**

The 'exhibited draft Albury LEP 2009' contained a Murray River clause drafted by Council that triggered development consent for development within and near the Murray River.

The Department replaced Council's draft clause with the Department's model river front area clause as part of finalising the 'Albury LEP 2010' (published 13/8/2010). The final clause applies to rural, environmental and open space zones, but not to any urban areas.

The Department defined the river front area under the Albury LEP 2010 as land within 400 metres of the Murray River, to be consistent with the numerical standard in Council's draft clause. However, the model clause operated as a sub-zone prohibiting certain types of development, which is not supported by the Standard LEP template.

The Department's adopted model clause uses 100 metres to define the river front area, not 400 metres.

Albury City Council subsequently raised concerns with the Department and the Minister regarding the post exhibition changes to the exhibited SI LEP, including the replacement of the Council's draft river front area clause with the Department's model clause that prohibits certain types of development on rural land within 400 metres of the Murray River.

The issue of the Murray River clauses was also considered at the Department's SI Project Control Group at its meeting 9 November 2010. The SI PCG determined that a planning proposal to minimise 400m setback in Albury would be supported. Albury City Council has therefore been advised that a planning proposal to amend the 400m setback in the definition of river front area in the Albury LEP 2010 to 100 metres will be supported by the Department.

The replacement of the current river front area clause with the Department's Model Clause will;

- reduce the river front area from 400 metres to 100 metres in rural and environmental zones. Areas zoned RU1 Primary Production Zone, RU2 Rural Landscape Zone, E2 Environmental Conservation and E3 Environmental Management Zone between 100 metres and 400 metres of the Murray River will no longer be affected by the 'river front area' provisions under clause 7.5.

- amend the definition of river front area to include land within 100 metres from the Murray River on land zoned RU4 Primary Production Small Lots. There is currently no land zoned RU4 Primary Production Small Lots that is within 100 metres of the Murray River therefore the change will have no affect.

- remove all reference to recreation zones in the definition of river front area. Areas zoned RE1 Public Recreation and Private Recreation fronting the Murray River will no longer be affected by the 'river front area' provisions under clause 7.5.

- amend the definition of river front area to include land within 40 metres from the Murray River on land zoned R5 Large Lot Residential and on land identified as an 'urban release area' on the Urban Release Area Map. There is currently no land zoned R5 Large Lot Residential or land mapped as an urban release area that is within 40 metres of the Murray River therefore the change will have no affect.

External Supporting
Notes :

The Planning Proposal amends the provisions in Albury LEP 2010 to reduce the application of "river front area" to within 100m of the Murray River for rural and environmental zones; 40 m for large lot residential zone and urban release areas; and not to apply to recreation zones.

Adequacy Assessment

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

Is a statement of the objectives provided? Yes

Comment :

The Objectives in the PP clearly outline Council's intent to amend clause 7.5 - Development on or near the Murray River by replacing the clause with the Department's model 'river front area' clause.

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

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

Comment : **The PP contains a draft clause to be used to replace clause 7.5. The proposed clause is consistent with the Department's model 'river front area' clause.**

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

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

6.1 Approval and Referral Requirements

Is the Director General's agreement required? **N/A**

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

d) Which SEPPs have the RPA identified?

SEPP No 30—Intensive Agriculture

SEPP No 44—Koala Habitat Protection

SEPP No 55—Remediation of Land

SEPP No 62—Sustainable Aquaculture

SEPP (Rural Lands) 2008

Murray REP No. 2 - Riverine Land

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

The revised 'river front area' clause is consistent with the recommended 'river front area' clause contained in the Exhibited Draft Murray Regional Strategy and as applied to other recently approved LEPs within the Murray Region.

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

If No, explain :

s117 Direction 3.1 Residential Zones

The amended definition of 'river front area' will now include land zoned R5 Large Lot Residential Zone and land identified as an urban release area on the Urban Release Area Map. Section 117 Direction 3.1 only applies to a PP that will affect land within an existing or proposed residential zone and any zone where significant residential development is permitted.

There are currently no urban release areas or R5 Large Residential Zones within 40 metres of the Murray River. The PP will therefore not affect land within an existing or proposed residential zone and Council has indicated that s117 Direction 3.1 Residential Areas does not apply to the PP.

s117 Direction 2.1 Environmental Protection Zones

The PP will reduce the environmental protection standards that apply to certain land within 400 metres of the Murray River by reducing the definition of river front area from 400 metres to 100 metres from the Murray River on land zoned rural and environmental. The Director General must be satisfied that the PP is in accordance with item (6) of s117 Directions 2.1 Environmental Protection Zones.

The inconsistency with s117 Direction 2.1 is justified on the basis that Council is inserting a new 'river front area' clause that is consistent with the Department's Model 'river front area' clause as contained in the draft Murray Regional Strategy.

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment : **No mapping required.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council have recommended that the PP be placed on public exhibition for 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? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date : **August 2010**

Comments in relation to Principal LEP : **The Albury LEP 2010 was published and notified on the 13 August 2010.**

Assessment Criteria

Need for planning proposal :	Council considers that the 400 metre standard contained in the current river front area clause to identify land within the river front area is excessive because the clause acts as a subzone and was inserted into the LEP after public exhibition of the draft LEP without consultation with the Council or the community. The PP is the only means by which Council can replace the current 'river front area' clause in the Albury LEP 2010 with a revised river front clause that is consistent with the wording and numerical standards contained in the Department's model clause and in the draft Murray Regional Strategy.
Consistency with strategic planning framework :	The PP is consistent with the Department's model 'river front area' clause contained in the draft Murray Regional Strategy and as recently adopted in approved LEPs within the Murray Region.
Environmental social economic impacts :	The replacement of the current river front area clause with the Department's model clause will; - reduce the definition of river front area from 400 metres to 100 metres in rural and environmental zones. The areas zoned RU1 Primary Production Zone, RU2 Rural Landscape Zone, E2 Environmental Conservation and E3 Environmental Management Zone between 100 metres and 400 metres of the Murray River will no longer be affected by the provisions of clause 7.5. - amend the definition of river front area to include land within 100 metres from the Murray River on land zoned RU4 Primary Production Small Lots. There is currently no land zoned RU4 Primary Production Small Lots that is within 100 metres of the Murray River therefore the change will have no affect. - remove all reference to recreation zones in the definition of river front area. Areas zoned RE1 Public Recreation and RE2 Private Recreation will no longer be affected by the 'river front area' provisions under clause 7.5. Although substantial areas of land are zoned RE1 Public Recreation are within 400 metres of the Murray River the amendment to clause 7.5

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is unlikely to have a significant adverse environmental impact because the RE1 Public Recreation Zone permits only a limited number of land uses and these areas are, or are proposed to be, managed by Council for recreation.

- amend the definition of river front area to include land within 40 metres from the Murray River on land zoned R5 Large Lot Residential and on land identified as an 'urban release area' on the Urban Release Area Map. There is currently no land zoned R5 Large Lot Residential or land mapped as an urban release area that is within 40 metres of the Murray River therefore the change will have no affect.

Recommend that the DG approve of the inconsistency with s117 Direction 2.1. The inconsistency is justified on the basis that Council is inserting a new 'river front area' clause that is consistent with the Department's Model 'river front area' clause as contained in the draft Murray Regional Strategy.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	28 Days
Timeframe to make LEP :	9 Month	Delegation :	DDG
Public Authority Consultation - 56(2)(d) :	Murray Catchment Management Authority Office of Environment and Heritage NSW Department of Primary Industries - Fishing and Aquaculture		

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

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

If no, provide reasons :

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
Cover Letter - Albury Planning Proposal - Clause 7.5.pdf	Proposal Covering Letter	Yes
Planning Proposal - Clause 7.5Development on or Near the Murray River.pdf	Proposal	Yes
Council Meeting Minutes - December 2011.pdf	Proposal	Yes
Planning & Development Committee Minutes - 12 December 2011.pdf	Proposal	Yes

Planning Team Recommendation

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

S.117 directions:

- 1.2 Rural Zones
- 1.5 Rural Lands
- 2.1 Environment Protection Zones
- 2.3 Heritage Conservation
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 6.1 Approval and Referral Requirements

Additional Information : That the Deputy Director General, Plan Making & Urban Renewal as delegate of the Minister for Planning, determine under section 56(2) of the EP&A Act, that an amendment to the Albury Local Environmental Plan 2010 to amend clause 7.5 should proceed subject to the following conditions:

1. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:

(a) the planning proposal must be made publicly available for 28 days; and
(b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 4.5 of A Guide to Preparing LEPs (Department of Planning 2009).

2. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:

- Office of Environment and Heritage
- Murray Catchment Management Authority
- NSW Department of Primary Industries - Fishing and Aquaculture

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that it will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.

3. No public hearing is required to be held into the matter under section 56(2)(e) of the EP&A Act. This does not have any bearing on the need to conduct a public hearing under the provisions of any other legislation.

4. The timeframe for completing the LEP is to be 9 months from the week following the date of the Gateway Determination.

s117 Direction 2.1 Environmental Zones
Recommend that the DG can be satisfied:

5. that the inconsistency with s117 Direction 2.1 Environmental Protection Zones is justified on the basis that Council is inserting a new 'river front area' clause that is in accordance with the Department's Model 'river front area' clause as contained in the draft Murray Regional Strategy; and

6. that the planning proposal is consistent with all other s117 Directions or any inconsistencies are only of minor significance.

7. No further referral is required in relation to s117 Directions for the planning proposal in its current form.

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Supporting Reasons : 1.The PP is considered routine, consistent with policy and exhibited regional strategy and requires public consultation because the amendment will alter land affected by the provisions of clause 7.5.

Signature:



Printed Name:

MARK PARKER
Local Planning Manager

Date:

30 January 2012