

Tab B – Western Region Response to Western JRPP Recommendation

The rationale for this amendment is to provide consistency between the land located in River Gums Estate, Maiden Smith Drive, Moama residential developments in Moama with regard to land zoning and size which have been identified within the Murray Strategic Land Use Plan.

From a practical and strategic planning perspective, the proposal:

- provides for logical housing options closer to the existing town centre compared to other land located a further distance away;
- will play a role in reducing urban sprawl, by providing land close to existing services and facilities;
- does not seek to significantly intensify development along the river, as lots facing the river are separated by a public Council maintained reserve;
- is not affected or constrained by flooding, biodiversity, native vegetation or other identified hazard;
- rationalises land use zones and minimum lot sizes across the Moama area;
- makes zoning consistent with surrounding zoning; and
- makes more efficient use of existing services and infrastructure.

The Panel's recommendation to amend the Murray Local Environmental Plan 2011 (LEP) by including a new local provision that restricts development along the river does not provide adequate justification or reasoning for inclusion. It has been assessed that there are adequate controls in the LEP and Murray Regional Plan No. 2 – Riverine Land (MREP) to protect the river, in addition to the proposed local provision being inconsistent with Section 117 Direction 6.3 Site Specific Provisions – the inconsistency has not been justified at this time.

JRPP Recommendation & Justification**DP&E Response**

The provision of a new local provision within the Murray LEP 2011 to prevent intensification of development of land fronting the Murray River and Lot 24 DP 258661

The original recommendation was provided to the Department on 2 November 2016:

The panel agreed unanimously on 4 October 2016 to support the progression of the planning proposal, subject to the following amendments:

- a) Amend Part 7 of the Murray LEP 2011 to include a new local provision (clause 7.9):**

7.9 Maiden Smith Drive, Moama

- (1) This clause applies to certain land at Maiden Smith Drive, Moama, being Lots 1-12 DP 258661.**
- (2) The objective of this clause is to prevent intensification of development on land directly fronting the Murray River and Lot 24 DP 258661.**
- (3) Despite any other provision of this Plan, development consent must not be granted to the subdivision of land or the erection of a dwelling on land to which this clause applies unless:
 - (a) no additional lots are created that adjoin Lot 24 DP 258661 (Council Reserve), and**
 - (b) a dwelling house is not erected within 40 metres of any bank of a river.****
- (4) Despite subclause (3), development consent may**

The intention of the planning proposal is to reduce the minimum lot size from 5,000m² to 3,000m² and to change the zone of the precinct from zone R5 Large Lot Residential to zone R2 Low Density Residential.

Clause 7.9(4) intends to allow subdivision of development of Lot 11 DP 258661. Secondary dwellings are permissible with development consent in the existing R5 Large Lot Residential zone. Secondary dwellings are prohibited within the proposed zone R2 Low Density residential.

Council has confirmed that a second dwelling has not been constructed on Lot 11 DP 258661. Council advised that the development on Lot 11 was approved as 'alterations and additions' to an existing dwelling. For all intents and purposes, this is a habitable dwelling, containing a kitchen, bathrooms and laundry (approved plans attached).

This dwelling is connected to the principle dwelling by a covered walkway. It appears that the covered walkway was included in the design plans as the dwelling could not be considered as a 'secondary dwelling' for the purposes of the MLEP 2011 as it exceeded the maximum floor area requirements within Clause 5.4 of the LEP.

Lot 11 has an area 7291m² which contains the original dwelling and the extension, could be subdivided currently, however, the existing minimum lot size of 5,000m² prohibits subdivision of the land unless the development standard is varied using Clause 4.6.

The subdivision of the existing dwelling on

be granted for the subdivision of land into 2 lots, each adjoining Lot 24 DP 258661, if there was an existing dwelling and secondary dwelling on the land at the commencement of this clause, and each of those dwellings will be situated on different lots resulting from the subdivision.

b) Amend the Urban Release Area Map (URA 006A) to include Lots 1-12 DP 258661 as an Urban Release Area.

the subject lot would intensify development along the river as new owners would be in possession of the dwelling. However, no additional riverfront development can be undertaken fronting the Council Reserve (Lot 24 DP 258661). The creation of an additional lot is inconsequential in that it will not directly front the Murray River.

The proposed clause 7.9(4) intends to allow for 'north south' subdivision to be undertaken on this lot only. The intent of the clause is to facilitate 'east west' subdivision along Lots 1-12 DP 258661, to create additional allotments that will front Maiden Smith Drive. However, as the dwelling on Lot 11 DP 258661 was not constructed as a 'secondary dwelling', the clause does not achieve its intent.

As well, Lots 1-12 DP 258661 are separated physically from the river Council Reserve (Lot 24 DP 258661), and are therefore technically not considered to be 'riverfront' areas. The on-river front setback also does apply.

It is the Department's view that Clause 7.4 and Clause 7.5 Development on Riverfront Areas protects the river from further intensification, and that development is able to be assessed on merit. In addition, the river front setback is 40m (as per Clause 7.5(2) (b)) in the Maiden Smith Drive precinct, which will also assist in the protection of the river.

The proposed clause is also considered to be inconsistent with Section 117 Direction 6.3 Site Specific Provisions. The inconsistency has not been justified by the Panel.

The amendment of the Urban Release Area Map to include Lots 1-12 DP 258661 is also not considered to be necessary to obtain State Public Infrastructure for the following reasons.

The reduction of the minimum lot size in

	the precinct will generate an additional 99 allotments. Given the existing development pattern of Lots 1-12, it is unlikely that all lots would be developed – and if so, would represent only a maximum addition of 12 lots to the precinct. The inclusion of Lots 1-12 DP 258661 would activate Part 6 Urban Release Areas of the Murray LEP 2011. The threshold for satisfactory arrangements for state public infrastructure requirements is required where the development potential of the land is increased. From experience, State public infrastructure would not apply to this area with or without the inclusion of lots 1-12 DP 258661. However the identification of Urban Release Area allows Council to require a Development Control Plan under the provisions of Clause 6.3 of the MLEP which is reasonable and appropriate. The URA should be included for this reason.
The provision of a new local provision within the Murray LEP 2011 restricting the subdivision of land on the River, without exceptions for existing or proposed secondary dwelling/dual occupancy development. A revised recommendation from the Panel was received on 22 November 2016 (Tab A), amending the initial recommendation, following the receipt of revised information from Council: a) Amend Part 7 of the Murray LEP 2011 to include a new local provision (clause 7.9): 7.9 Maiden Smith Drive, Moama (1) This clause applies to certain land at Maiden Smith Drive, Moama, being Lots 1-12 DP 258661. (2) The objective of this clause is to prevent intensification of development on land	The Department office sought clarification from the Panel regarding the original recommendation, particularly in relation to the inclusion of proposed Clause 7.9(4). On 22 November 2016, the Panel after receiving additional information about development on Lot 11 DP 258661, provided a revised recommendation, which removed the provisions providing an exception for the subdivision of existing 'secondary dwellings'. Council confirmed that as the additional dwelling on Lot 11 DP 258661 was not approved as a secondary dwelling/dual occupancy (as detailed above), but rather as an Alteration and Addition to an existing dwelling. Subclause 7.9(4) was subsequently

directly fronting the Murray River and Lot 24 DP 258661. (3) Despite any other provision of this Plan, development consent must not be granted to the subdivision of land or the erection of a dwelling on land to which this clause applies unless: (a) no additional lots are created that adjoin Lot 24 DP 258661 (Council Reserve), and (b) a dwelling house is not erected within 40 metres of any bank of a river. b) Amend the Urban Release Area Map (URA 006A) to include Lots 1-12 DP 258661 as an Urban Release Area.	removed and the recommendation revised. The revised clause does not permit any additional allotments to be created which adjoin the Council Reserve (Lot 24 DP 258661). As previously discussed, Lots 1-12 DP 258661 adjoin a Council reserve and are physically separated from the river. The riverfront setback also applies to these lots. The intensification of development on the river can be assessed by Council on merit through the use of clause 7.5 – Riparian Land and Murray River and other water courses – general principles of the MLEP 2011. The inclusion of a specific clause for the precinct is not justified. The existing development pattern of Lots 1-12 DP 258661 shows only one additional lot at Lot 11 DP 258661 can be created, by subdividing the extension to the primary dwelling which has been constructed as a separate domicile (adjoined to the principal dwelling by a covered walkway which can be removed). The remaining lots in the precinct would be required to create additional lots which front Maiden Smith Drive. It is possible for Lots 1-12 DP 258661 to demolish and rebuild to enable subdivision fronting Council Reserve Lot 24 DP 258661. The proposed clause is also considered to be inconsistent with Section 117 Direction 6.3 Site Specific Provisions. The inconsistency has not been justified by the Panel. As previously discussed, the inclusion of Lots 1-12 DP 258661 is not necessary, given the precinct would not meet the threshold for the provision of state public infrastructure contributions, however, may be required to ensure a Development Control Plan is prepared.
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Final Position

The proposed zone R2 Low Density Residential does not permit development for the purposes of dual occupancies. Secondary dwellings are permissible with development consent.

It is considered that the proposed restriction of subdivision to the Council Reserve which adjoins the river is not appropriate for the reasons outlined above as Lot 11 DP 258661 does not have direct frontage to the Murray River.

It is recommended that the proposed local provision Clause 7.9 not be adopted, and the amendments to the Urban Release Area map be supported in respect to Clause 6.3 Development Control Plan of the MLEP 2011.

The subdivision of land in the precinct is a local operational matter and the impact of intensification on the river can be considered on a case-by-case matter by Council using the provisions of Clause 7.5 to protect and maintain the Murray River.

In addition, proposed Clause 7.9 is inconsistent with section 117 Direction 6.3 Site Specific Provisions that has not been justified by the Panel, and is tantamount to a subzone prohibition which should not be supported in a Standard Instrument LEP

The Panel's recommendation to amend the proposal for finalisation does not provide sound planning arguments or detailed justification for the post-exhibition amendment.