

CLAUSE 3.

**PLANNING PROPOSAL TO AMEND MURRAY
LOCAL ENVIRONMENTAL PLAN 2011
PP_2017_MRIVE_001_00
AMENDMENT OF MURRAY LEP 2011 TO
INCLUDE 'RESTAURANT' AS AN ADDITIONAL
PERMITTED USE IN SCHEDULE 1**

REPORT PREPARED BY: PLANNING ASSISTANT, Georgia McMurdo

RECOMMENDATION

That:

1. Council proceed with the Planning Proposal and send the Planning Proposal to the NSW Parliamentary Counsel's Office (PCO) requesting Parliamentary Counsel's opinion and drafting of a new Murray Local Environmental Plan 2011 (Murray LEP 2011), in accordance with Planning Proposal PP_2017_MRIVE_001_00;
2. Once PCO Opinion is received, the General Manager exercise the Minister's functions under Section 3.36 of the *Environmental Planning and Assessment Act 1979* and make (signs) the new Murray LEP 2011;
3. Council forward the new Murray LEP 2011 to NSW Department of Planning and Environment (DPE) for gazettal and online notification on the NSW Legislation Website.

BACKGROUND:

At Murray River Council's Ordinary Meeting held on Tuesday 8 August 2017, Council resolved that the subject 'Planning Proposal' be submitted to the NSW Department of Planning and Environment (DPE) with a request for Gateway Determination to amend the Murray Local Environmental Plan 2011 (Murray LEP 2011). The subject planning proposal seeks to amend the Murray LEP 2011 to include 'Restaurant' as an additional permitted use in Schedule 1. The subject land is currently identified as NSW crown waterway (Victorian side of the Murray River) at the current location of Commercial Licence cl 6224, Crown Reserve: r56146, Opposite: Lot 1 DP 903914, Forbes Street, Moama NSW 2731, Adjacent: Echuca Wharf, Echuca VIC 3564, Owner: NSW Department of Industry – Lands (NSW Crown Lands).

Council submitted the Planning Proposal to DPE on 18 August 2017 requesting a Gateway Determination be made. Council received a response from DPE dated 8 September 2017 requesting that the submitted Planning Proposal be amended prior to community consultation. Please see attached Gateway determination as Appendix 4. The Applicant subsequently supplied the amended Planning Proposal to Council on 22 January 2018. A copy of the amended Planning Proposal is attached as Appendix 5.

DISCUSSION:

In accordance with the Gateway Determination, the Planning Proposal was referred to relevant authorities for approval. All authorities have supported the subject planning proposal. The Planning Proposal was publicly advertised for comment for 28 days, closing on 12 June 2018. No public submissions were received.

TIMELINE:

The table below provides an overview of the timeline with respect to the lodgement and assessment of the planning proposal.

Planning Proposal lodged and fees paid	4 January 2017
Council resolved to support Planning Proposal and send to DPE for Gateway Determination	8 August 2017
Planning Proposal sent to DPE requesting Gateway Determination	18 August 2017
Response received from DPE requesting additional information from the applicant	8 September 2017
Additional information provided by Applicant	22 January 2018
Referral to relevant agencies in accordance with Gateway Determination conditions	10 May 2018
NSW Roads & Maritime response received – No objection.	11 May 2018
Shire of Campaspe response received – No objection subject to advisory comments.	22 May 2018
NSW OEH (Heritage Division) response received- No objection subject to advisory comments.	25 May 2018
DELWP (Vic) response received - No objection subject to advisory comments regarding any applicable development application.	1 June 2018
NSW DOI (Water) response received - No objection subject to advisory comments.	1 June 2018
NSW MDBA response received – No objections.	4 June 2018
NSW OEH (Environment Division) response received- No objection.	7 June 2018
NSW DOI (Crown Lands) response received - No objection subject to advisory comments regarding any applicable development application.	7 June 2018
NSW DPI (Fisheries) response received- No objections.	20 July 2018
Council request to NSW DPE for extension of time to complete LEP amendment.	30 August 2018
Response received from NSW DPE granting extension until 8 March 2019 to complete LEP amendment (attached as Appendix 6).	12 September 2018

SUBMISSIONS:

The table below provides an overview of responses received from relevant agencies.

Agencies

Agency	Response
NSW DPE	Gateway Determination received dated 8/09/2017 subject to conditions. Gateway requested the applicant provide amended planning proposal prior to community consultation. Community consultation required under sections 56(2)(c), 56(2)(d) and 57 of the Act.

This is Page No. 11 of the Director Planning & Environment Report submitted to the Ordinary Meeting of MURRAY RIVER COUNCIL held on Tuesday 16 October 2018 in the Tatalia Room, Rich River Golf Club, 24 Lane, Moama

	<p>No public hearing was required.</p> <p>Prior to submission, under section 59 of the Act final LEP maps must be prepared.</p> <p>Response received dated 12/09/2018 confirmed alteration of Gateway Determination extended timeframe for completing the LEP to 8 March 2019.</p>
Shire of Campaspe	<p>No major concerns and recognizes that an appropriate decision will be made.</p> <p>A planning permit would be required for the works required within Victoria.</p>
VIC DELWP	Does not object to the permit being granted, however requested the floating restaurant be constructed in muted colours that complement the natural environment.
NSW DOI (Water)	<p>Recommendations provided:</p> <ul style="list-style-type: none"> - Crown Lands and RMS should be contacted in relation to existing mooring/wharf structure and navigational issues. - If this activity results in the need for additional infrastructure and disturbance on the river bank, consideration would need to be given to the requirements of the Guidelines for Controlled Activities on Waterfront Land (DPI 2012).
MDBA	<p>Concluded the proposed activity, in isolation, is unlikely to have a detrimental impact on the flow, use, control or quality of water in the River Murray.</p> <p>The proponent needs to be aware that the MDBA has responsibility to regulate the River Murray and cannot guarantee water levels. As part of river operations variation in river levels, both up and downstream, may become more pronounced, or average levels may significantly change.</p>
NSW OEH (Environment)	As access will be from the Victorian side of the river, there are no concerns.
NSW OEH (Heritage)	<p>No objection is raised to the proposed amendment to Murray LEP 2011.</p> <p>Note: any works within the State Heritage Register curtilage of 'Moama Historic Precinct' would require an approval from the Heritage Council of NSW prior to any works being undertaken.</p>
NSW DOI (Crown Lands)	No objection to the proposal providing any developments on the site are referred to the Department for comment or consent as Landowner.
NSW DPI (Fisheries)	No objection to the proposed amendment to Murray LEP.
NSW RMS (Maritime)	No objection to the proposed amendment to Murray LEP.

PUBLIC SUBMISSIONS:

No responses were received in respect to this proposal.

STRATEGIC IMPLICATIONS:

It is noted if the planning proposal is supported, the Murray LEP 2011 will be amended to include 'Restaurant' as an additional permitted use in Schedule 1. This is considered an appropriate outcome as outlined in all previous documentation.

BUDGETARY IMPLICATIONS:

Not applicable.

POLICY IMPLICATIONS:

Not applicable.

LEGISLATIVE IMPLICATIONS:

It is noted if the planning proposal is supported, the Murray LEP 2011 will be amended to include 'Restaurant' as an additional permitted use in Schedule 1. This is considered an appropriate outcome as outlined in all previous documentation.

RISK ANALYSIS:

Not applicable.

CONCLUSION:

It is considered that the Planning Proposal is a suitable outcome for the Council. The planning proposal is consistent with the objects of the *Environmental Planning and Assessment Act 1979* and will allow for the sustainable and economic use of the subject land within Murray River Council. The planning proposal is not inconsistent with the aims of the Murray Local Environmental Plan 2011 or any other Environmental Planning Instrument relevant to the Council. The Planning Proposal has been notified to the public, and submissions received have been considered and addressed appropriately. All conditions of the Gateway Determination have been complied with (it is noted that Council staff are finalising the final LEP Maps in accordance with Condition 5. These maps are to be compliant with DPE's 'Standard Technical Requirements for Spatial Datasets and Maps 2015'). It is therefore recommended Council proceed with the proposal in accordance with the recommendations at the start of this report.

ATTACHMENTS:

1. Gateway Determination (Appendix 4)
2. Amended Planning Proposal (Appendix 5)
3. Amended Gateway (Appendix 6)