



Office of
Environment
& Heritage

MURRAY RIVER COUNCIL

Your reference:
Our reference:
Contact:

DOC184672
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Date Rec: 4/10/16

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Dear Ms Smith

RE: Planning Proposal for comment by public authorities – 312 Perricoota Road, Moama

I refer to your email dated 22 August 2016 to the Office of Environment and Heritage (OEH) providing the opportunity to comment on the Planning Proposal for 312 Perricoota Road, Moama. This Planning Proposal is to rezone Lot 11 DP285511 from RU1 Primary Production to R1 General Residential and reduce the minimum lot size from 120 ha to 750 m².

OEH has reviewed the documentation and detailed comments in relation to biodiversity, Aboriginal cultural heritage and flooding, are provided in **Attachment 1** with the key issues summarised below. The land which is the subject of this planning proposal located within 100 metres of the Murray River. It is currently used mainly for viticulture with a residence located on the western side of the lot.

Biodiversity

OEH recommends that a flora and fauna assessment be completed (by a qualified ecologist) before this land is rezoned. The trees that remain on the site may contain hollows, which may provide habitat for threatened and/or native species. Where residential development proceeds, OEH recommends that impacts on mature trees should be avoided where possible.

Aboriginal cultural heritage

The land which is the subject of this planning proposal is in close proximity to an Aboriginal cultural heritage indicator (the Murray River) and known Aboriginal cultural heritage sites. OEH considers there to potential for Aboriginal sites/objects to be located within the subject land. These may be at risk from a change from primary production to residential land use, particularly if excavation of the ground surface is intended.

As a minimum, OEH recommends that proponents who develop the future R1 General Recreation zone should undertake an assessment in accordance with the Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW, to address the 'strict liability' relating to harm to Aboriginal objects under the *National Parks and Wildlife Act 1974*. Depending on the outcome of this assessment, further consideration of Aboriginal cultural heritage may be required before development can proceed.

Flooding

Whilst the site is located within the study area of the Moama Floodplain Management Study (1999) there have been changes to flood risk management policy and practice since 1999 which mean the mapping presented in the study is not consistent with current policy and practice. The *Murray Local Environmental Plan 2011* includes flood mapping, however it is understood the basis of those maps is also not consistent with current policy and practice. OEH notes that Council is in the process of reviewing and extending its flood study with a view to undertaking a Flood Risk Management Study and Plan, to enable more robust assessment of proposals such as this.

This rezoning proposal is required to be consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005. Council should consider requesting the proponent to undertake a more detailed flood study addressing the requirements of the Flood Prone Land planning directions (section 4.3) issued under Section 117(2) of the *Environmental Planning and Assessment Act 1979*.

If you have any questions regarding this matter please contact Andrew Fisher on (02) 6022 0623 or at andrew.fisher@environment.nsw.gov.au.

Yours sincerely,

 9/9/16

PETER EWIN
Senior Team Leader Planning
South West Region
Regional Operations
Office of Environment and Heritage

Enclosure ATTACHMENT 1 – Comments on Planning Proposal for 312 Perricoota Road, Moama

ATTACHMENT 1 – Comments on Planning Proposal for 312 Perricoota Road, Moama

Biodiversity

While not included in the Terrestrial Biodiversity layer of the *Murray Local Environmental Plan 2011* (Murray LEP), the Planning Proposal notes that there are some remnant trees around the existing dwelling, which are presumed to be large eucalypts. OEH vegetation mapping for this area indicates Grey Box-White Cypress Pine-Yellow Box woodland previously occurred on this site. These may be hollow-bearing trees which may provide habitat for threatened and/or native species under the *Threatened Species Conservation Act 1995* or Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*. OEH recommends that a flora and fauna assessment should be completed (by a qualified ecologist) before these areas are rezoned. This will ensure that the ecological values and potential impacts of future development are fully considered, and clear guidance on future development can be identified early. This should include an assessment of significance consistent with the document *Threatened species assessment guidelines – the assessment of significance* (DECCW 2007)

(www.environment.nsw.gov.au/resources/threatenedspecies/tsaguide07393.pdf).

Aboriginal cultural heritage

The land which is the subject of this planning proposal is in close proximity to landscape features indicative for the presence of Aboriginal cultural heritage (the Murray River) and to known sites including culturally modified trees and burials. OEH considers there to be potential for unknown Aboriginal sites/objects to be located within the subject land. These may be at risk from a change from primary production to residential land use, particularly if excavation of the ground surface is intended.

OEH has a statutory role under the *National Parks and Wildlife Act 1974* (NPW Act) in the protection and preservation of Aboriginal sites. It is an offence to do any of the following things without an exemption or defence provided for under the NPW Act and penalties apply:

- Knowingly harm or desecrate an Aboriginal object (the 'knowing' offence)
- Harm or desecrate an Aboriginal object or Aboriginal place (the 'strict liability' offence)

It is in the interest of the proponent to ensure that all reasonable precautions are taken to prevent the occurrence of damage to Aboriginal objects (known and unknown). Attention is drawn to the Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW (the Code) and in particular the generic Due Diligence process on pages 10-14 of the Code. Anyone who exercises due diligence in determining that their actions will not harm Aboriginal objects has a defence against prosecution for the strict liability offence if they later harm an object. Further information on the code is available at the OEH website www.environment.nsw.gov.au/resources/cultureheritage/ddcop/10798ddcop.pdf.

As a minimum, OEH recommends that proponents who develop the future General Residential zone should undertake a Due Diligence assessment in accordance with the Code:

1. To identify whether or not Aboriginal objects are, or are likely to be, present in the proposed development area;
2. To determine whether or not the proposed activities are likely to harm Aboriginal objects (if present); and
3. To determine whether further assessment in the form of an Aboriginal Cultural Heritage Assessment and/or an Aboriginal Heritage Impact Permit (AHIP) application is required.

The results of the Due Diligence assessment can then be used to guide future development within the area, including identifying areas where Aboriginal objects will need to be avoided or whether an AHIP is required. It is OEH's preference that this assessment be done at the rezoning stage to give potential proponents certainty on future constraints or legislative requirements before multiple development applications are prepared.

OEH keeps a register of notified Aboriginal objects and declared Aboriginal places in NSW – the Aboriginal Heritage Information Management System (AHIMS). You can search AHIMS to discover if an Aboriginal object has been recorded, or an Aboriginal place declared, on any parcel of land. More information about accessing AHIMS, is available on the OEH website:

www.environment.nsw.gov.au/licences/WhatInformationCanYouObtainFromAHIMS.htm.

Flooding

Mapping provided in the planning proposal (understood to come from the Moama Floodplain Management Study 1999) indicates that the site is just outside the 1 in 100 year Average Recurrence Interval (ARI) flood extent, but inside the extent of the 'extreme flood'.

According to definitions in the Floodplain Development Manual, the land is considered flood prone and the Flood Prone Land planning directions (section 4.3) issued by the Minister for Planning under Section 117(2) of the *Environmental Planning and Assessment Act 1979* are considered to apply. This requires the rezoning proposal to be consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005.

Whilst the flood planning area mapping in the Murray LEP does not cover the site, it is understood that the flood planning area definition used in that mapping is not consistent with the Floodplain Development Manual and NSW Flood Prone Land Policy. Given that the 1 in 100 year ARI flood extent is adjacent to the boundary of the site, and the site is mapped within the 'extreme flood' extent, it is considered possible that the site is within the flood planning area that would apply under current policy.

If the site is found to be within the flood planning area that would apply under current policy, under Minister's directions (s117) land within the flood planning area may not be rezoned from rural to residential unless 'minor significance' can be demonstrated. OEH considers it likely that minor significance can be demonstrated. If minor significance can be demonstrated then some floor level controls or other flood risk mitigation measures may be required.

These issues require further assessment by Council or the proponent. Council should consider requesting the proponent to undertake a more detailed flood study addressing the relevant requirements of the Minister's directions.