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Mr Des Bilske
Acting General Manager
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By Email: gbulmer@murrayriver.nsw.gov.au

Dear Mr Bilske

RE: PLANNING PROPOSAL (ADDENDUM) – KOOYONG PARK

I refer to Department of Planning correspondence dated 6 September and 9 October 2017 and further to Council correspondence dated 8 September 2017.

Having regard to the above, and in particular the latter correspondence of the Department, the following Addendum to the Planning Proposal is provided.

1. Murray River Comprehensive Land Use Strategy

As the Department will be well aware, Murray River Council has recently sought Expressions of Interest in relation to the preparation of a Comprehensive Land Use Strategy, which will among other things, integrate the former Wakool Shire and Murray Shire Strategic Land Use Plans and align the updated Strategy with the Riverina Murray Regional Plan 2036.

The contract for this work was only awarded in late October with a completion date currently anticipated by the end of 2018.

As noted within the Planning Proposal (including Appendix 2) the proposed rezoning of the land stems from a very long strategic planning process. To date all specified requirements have now been addressed. In short it is considered that there would be no proper or orderly planning outcome achieved by once again postponing consideration of this Planning Proposal for an unspecified time awaiting the formal implementation of an undated Shire wide LUS by way of subsequent amendment to the Murray LEP 2012. From long experience with such matters it is the case that such a detailed strategic planning process could well take years.

Given Council support to move forward with the Planning Proposal at this point in time it is clear that Council is of the opinion that such a rezoning process will not compromise or jeopardise other work associated with the LUS.

2. Flood Levee

The need for realignment and extension of the existing rural flood level so as to be upgraded to an urban standard is well canvassed in the Flood Report prepared by Water

Environment Design Management

Town Planning Surveying Engineering Environmental Planning Building Design Project Management

Technology (June 2017). This report included the following recommendations for Design and Maintenance:

Levee Recommendations for Design and Maintenance Consideration

- *Levee crest to be designed to 96.1 to 96.18 m AHD (1% AEP flood level plus 0.6 m freeboard).*
- *Earthen levee design is appropriate.*
- *Road entrances be carefully considered, if possible adopt 95.5 m AHD as road crest level, with sandbags or drop structures to make up the remaining freeboard in a flood event. These emergency measures would need to be documented in the Councils flood response plan.*
- *Experienced civil engineer with levee design to follow appropriate levee design standards.*
- *As constructed survey to be obtained after levee construction.*
- *Levee ownership and maintenance plan discussed between the developer and Council, with an agreement reached on ownership and maintenance prior to construction.*
- *Stormwater management plan developed including consideration for a pumping system to deal with stormwater during flood events.*

It will be expected that following successful rezoning that prior to any issue of a Subdivision Certificate for any future subdivision of land within the Kooyong Park Estate, that a Construction Certificate will have been issued for required works. These works will be as specified by relevant conditions of a future Development Application.

It will be the case that all works will be undertaken at the expense of the Developer. All ongoing maintenance requirements will be the responsibility of the Neighbourhood Association which will have ownership of the land containing the levee. These arrangements will also be the subject of a s.88B instrument that will be registered upon the land title.

3. Other Matters

In addition to the above, the Department’s letter of 6 September 2015 has raised a number of issues which are responded to as follows:

i) Function Centre/Restaurant.

As discussed within the Planning Proposal, the overall Kooyong Park development has been the subject of a very long strategic planning process, with the key components having been presented to Council on a number of occasions from 2005 – 2017. From the earliest concept plans the overall development layout has included a commercial component focussed largely around a Function Centre/Restaurant.

For instance the Masterplan including such development was considered by Coomes Consulting in preparation of a Local Environmental Study (LES) in respect of Kooyong Park. The February 2008 LES concluded among other things:

“the site is suitable for a combination of urban (including residential and commercial/tourism) semi-urban and conservation land uses, based on available information.”

A subsequent officer report to Council in 2010, outlined the following:

“The development is proposed on a ‘greenfield site’ which allows for a comprehensive master plan to be developed. It is proposed that the

development will contain a mix of medium and slightly higher density residential property. This will be enhanced with commercial and tourist initiatives.

The scale and location of this site offers the community a unique opportunity to undertake a series of innovative environmental initiatives. The strategy is to integrate community development with a mix of high quality residential and tourist elements.

The development concept also includes a commercial component including a restaurant and delicatessen facility designed to be a 'Regional Produce Centre of Excellence'. The venue will provide high quality entertaining, dining and food shopping options for the community. It is expected that the use of the delicatessen and restaurant as a central show case and outlet for locally grown and manufactured food and wine products. The facility will provide a wide range of employment and community benefits. The facility and grounds will be configured to enable it to host a wide range of functions, cultural events, conferences and large outdoor events."

It is the case, that over the years, in every recommendation by Council in support of Kooyong Park, that a commercial component has been identified as a feature of the overall development proposal.

Having regard to the dictionary to the Murray LEP it is considered that the most appropriate land use terms are function centre and restaurant.

It is therefore submitted that the proposed inclusion of a proposed Amendment to Schedule 1 to list a function centre/restaurant as an additional permitted use on site, is an appropriate response that has been long justified by Council in its lengthy appraisal and consideration of the Kooyong Park Estate.

ii) Site Specific Provision.

It is acknowledged that s.117 Direction 6.3 seeks to discourage:

"unnecessarily restrictive site specific planning controls".

In particular, it is also noted that the Direction does not prohibit site specific provisions, rather it allows for a Planning Proposal to be inconsistent if the provisions of the planning proposal are justifiable as being of a minor significance.

Firstly in response, it is the case that the proposed inclusion of Clause 7.9 – *"Development of Certain Land in Holmes Street, Moama (known as Kooyong Parklands)"* was considered after a comprehensive review of standard formal LEP's gazetted since the release of Direction 6.3 issued 1 July 2009.

As noted at Appendix 2 of the Planning Proposal, the consideration of the final format of a recommended approach for Kooyong Park canvassed a number of options. In respect of Site Specific Provisions the following was considered:

"This option can be considered either in isolation of and/or in conjunction with the above described "Additional Permitted Uses" Option.

That is, the LEP could be amended to include a specific local provision related to Kooyong Park and to introduce a "Development Map" which would identify the subject land as a Development Area. An example of this approach is Clause 7.19 of the Great Lakes LEP 2014 where a clause has been introduced to allow subdivision of particular land holding to any size subject to conditions.

Within the same LEP is an example of the second approach where a land holding is not only the subject of a local provision (ie Clause 7.18) which outlines specific provisions related to residential accommodation but the same land is also included within Schedule 1 as land affected by the “Additional Permitted Uses Map” allowing extractive industry with development consent.

The Lake Macquarie LEP 2014 also includes a number of variations of the above with:

- *land included within Schedule 1 and identified within the “Additional Permitted Uses Map” only (with or without specific conditions);*
- *land included as above but also within an additional local provision clause providing greater detail in respect of development controls (eg Clause 7.18);*
- *land included within an additional local provision clause but also identified on a “Key Sites Map” (eg Clause 7.13); and*
- *land affected by a local provision clause only (eg Clause 7.15).*

There are numerous examples where such a Site Specific provisions, as that recommended, have been successfully introduced. Apart for the above referenced Clauses within existing LEP’s further examples include but are not limited to the following:

- Armidale Dumaresq LEP 2012 (Clauses 6.9 & 6.10)
- Bathurst Regional LEP 2014 (Clause 7.11)
- Blue Mountains LEP 2015 (Part 7)
- Eurobodalla LEP 2012 (Clause 6.16)
- Fairfield LEP 2013 (Part 7)
- Gosford LEP 2014 (Clauses 7.10 & 8.10)
- Great Lakes LEP 2014 (Clause 7.15 & 7.18)
- Ku-ring-gai LEP 2015 (Clauses 6.10 & Clause 6.11)
- Lake Macquarie (Clauses 7.14, 7.16, 7.17 & 7.19)
- Shoalhaven LEP 2014 (Clauses 7.19 – 7.26)
- Tweed LEP 2014 (Clause 7.16)

In addition to the above Site Specific LEP’s can also be cited as follows:

- Shoalhaven LEP (Jerberron Estate) 2014
- Queanbeyan LEP (Poplars) 2013
- Queanbeyan LEP (South Tralee) 2012

Secondly, the recommended Site Specific Provision is also considered to be justifiable on the basis that the provisions:

- are considered necessary to enforce an overall density of development that could not be necessarily guaranteed through either via the Lot Size Map by way of Clause 4.1 or 4.1AA or alternatively the simple adoption of a DCP only;
- are not considered to be unnecessarily restrictive, reflecting instead an agreed development framework.
- will work towards facilitating a sustainable development outcome as reflected in an approved Masterplan.

iii) **S117 Directions. 1.2 Rural Zones, 1.3 Mining Petroleum Production and Extractive Industries and 1.5 Rural Lands.**

In response to this matter it is noted that the Planning Proposal provided the following responses:

Direction	Consistency with Direction
1.2 Rural Zones	<p>Inconsistent. This direction applies in relation to a planning proposal that will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary). The Direction provides that a planning proposal must not rezone land from a rural zone to a residential zone.</p> <p>The inconsistency is justified in accordance with (5)(b) in this instance as the planning proposal is identified within the Moama DCP Chapter 6 – Strategic Landuse Plan as a candidate site for investigation for rezoning for residential purposes. This outcome is further supported by a range of Strategic Planning work that has been commissioned in respect of the subject land dating back to 2009.</p>
1.3 Mining, Petroleum Production and Extractive Industries	No response was provided
1.5 Rural Lands	<p>Consistent. This direction notes among other things that rural areas are increasingly under pressure for lifestyle housing opportunities. This demand for rural housing has both social and economic advantages and disadvantages for rural communities. The direction provides that planning should identify a range of housing choices within rural areas including urban areas and that housing opportunities should be determined through a strategic planning process to avoid land use conflict, avoid constraints, fragmentation of rural land and provide access to appropriate infrastructure and services.</p> <p>The site has been identified as being a candidate area potentially suitable for expansion of the residential area of Moama and consistent with Council's proposed Standard Instrument the land is to be rezoned accordingly.</p> <p>The proposal has been considered against the Rural Planning Principles listed in State Environmental Planning Policy (Rural Lands) 2008.</p> <p>As the land is to be rezoned and the land will not remain within a rural or environment protection zone no assessment is required against the Rural Subdivision Principles listed in State Environmental Planning Policy (Rural Lands) 2008.</p>

- **Direction 1.2** In respect of this Direction the following additional responses are provided:
 - The objective of the Direction is to protect the agricultural production value of rural land.
 - Clause 4(a) applies.
 - Clause 4(b) does not apply.
 - Clause 5 notes that a Planning Proposal may be inconsistent on certain grounds. In response:

- The Planning Proposal has been justified by a long strategic planning process which has always envisaged the rezoning of the land from a rural zone to allow residential development, subject to flood considerations being resolved. No objections have been raised to date in respect of this intended course of action.
- The subject land has not been identified as being high quality land of local or regional significance within any Regional or Sub-Regional Strategy.
- In the context of the land's location between the Moama Township to the west and large scale Tourist Development to the south and the east, the rezoning of the land is seen as being of minor significance. It will have minimal impact on the overall farm gate value of the Shire, and will not compromise the Shire's overall productive capacity.
- The rezoning was previously supported by a Local Environment Study which considered among other things the objective of protecting agricultural lands where appropriate.

In respect of this last dot point the Coomes LES indicated that there were a range of opportunities for the development outlined as follows:

- *Land being in one ownership*
- *Proximity to township*
- *Servicing advantages over more remote locations currently zoned for urban uses*
- *Proximity and access to Murray River and the Echuca-Moama urban areas*
- *Surrounding development being of a rural residential nature*
- *The land has some limitation owing to possible low level inundation*
- *Existing levee licence to provide additional protection for the site*
- *Relatively small amount of work (0.5 – 1m) in raising height of levee*
- *Agricultural activity is less than on other lands nominated for residential uses*
- *Area is remote from any serious conflicting land uses*
- *The site does not have a high visibility from public places*
- *Land configuration suitable for development proposal*
- *The site is nominated in Council 2030 Strategic land use strategy as suitable for further investigation*

Significantly in respect of development potential the LES concluded:

"It is considered that the benefits of retaining the site as rural use are outweighed by the proposal to rezone and develop."

Having regard to the above the inconsistency with Direction 1.2 is considered to be justifiable in the circumstances.

- **Direction 1.3** In respect of this particular Direction it is noted that the objective is to ensure future extraction of State reserves are not compromised.

Although the rezoning seeks to facilitate a Masterplanned Community Title residential development, the proposal does not seek to include any provision that would have the effect of prohibiting coal mining or other minerals, petroleum or extractive materials which are of State or Regional significance.

- **Direction 1.5** In addition to the comments previously outlined above, it is noted that the Direction applies when:

- (a) a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary); or*
- (b) a relevant planning authority prepares a planning proposal that changes the existing minimum lot size on land within a rural or environment protection zone.*

A planning proposal to which clauses 3(a) or 3(b) apply must be consistent with the Rural Planning Principles listed in State Environmental Planning Policy (Rural Lands) 2008 unless otherwise justified.

SEPP (Rural Lands) requires that the planning proposal must be consistent with the following Rural Planning Principles.

- (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- (c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- (d) in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- (e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- (f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- (g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- (h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

The planning proposal can be considered consistent with these principles for the following reasons:

- (a) The land is located to the immediate east of the township of Moama in an area 'earmarked' for future residential development subject to appropriate flood considerations. The Flood Review Report (June 2017) now provides a basis of support to move on with a rezoning outcome of land that can be otherwise considered as having no real economic future in a rural context.
- (b) As for (a) above.
- (c) The loss of a relatively small parcel of rural land through its rezoning and development will have no little or no impact on the local community. Indeed given the location of the land relative to the Township the ongoing rural use of the land for long term sustainable farming outcomes would be seriously constrained whether or not the rezoning progressed as proposed.
- (d) On balance the future use of the subject land for residential style development as part of Moama's continued growth is considered to have a greater net community benefit than the limited small scale rural use of the land.
- (e) Apart from a number of scattered paddock trees, the subject land is largely devoid of environmental features that would preclude the development. A number of specialist reports have been previously supplied that support this

conclusion. Issues in respect of natural hazards such as bushfire and flooding in a 1 in 100 year event have also been duly considered.

- (f) The land is identified for future residential development as part of the Moama Township subject to reconciliation of flood issues including need for an urban levee around the subject land. This work has now been satisfactorily completed.
- (g) The proposed community title housing is not 'rural'. In any case the development will be fully serviced to minimise impacts.
- (h) The development outcome will not be inconsistent with the Riverina Murray Regional Strategy.

Further the SEPP (Rural Lands) also identifies the following Rural Subdivision Principles:

- (a) the minimisation of rural land fragmentation,*
- (b) the minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses,*
- (c) the consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands,*
- (d) the consideration of the natural and physical constraints and opportunities of land,*
- (e) ensuring that planning for dwelling opportunities takes account of those constraints.*

As previously contended the land will not remain within a rural or environment protection zone. Despite this outcome, the planning proposal can be considered consistent with the above principles for the following reasons:

- (a) Whilst the planning proposal will result in the fragmentation of rural land, the subject land effectively has little value from an agricultural perspective. The first Stage of subdivision that has resulted in 15 lots has already occurred within the south western corner of the property. This clearly reflects a situation whereby this area to the immediate east of the township has been effectively lost to full time agriculture. Further it is the case that the land has been identified through previous strategic planning processes including a Local Environmental Study as being better suited for urban purposes and this conclusion has been further supported by the Murray SLUP wherein the land is identified in the for further investigation.
- (b) There is little or no risk of potential land use conflict between the residential use of the subject land and the broad acre use of land to the north.
- (c) There are no agricultural holdings and the proposed development is not for 'rural residential' development.
- (d) The subject land can be protected by levee upgrade from the identified 1 in 100 year flood level and can be provided with all urban infrastructure. Having two road frontages and access to all urban services presents as an opportunity for the land to be developed for urban residential purposes.
- (e) The proposal has taken into account all natural and physical constraints and opportunities of land.

iv) SEPP (Rural Lands)

The Planning Proposal addressed the SEPP (Rural Lands) Rural Planning Principles as follows:


- *The proposal seeks to facilitate opportunities for settlement and housing in a planned and orderly manner that will contribute to the social and economic welfare of the Moama Township.*
- *The proposal will not adversely impact upon the existing productive potential of adjacent farm land or the capacity of farm land in the general vicinity of the subject land.*
- *The site has not been identified as being "State Significant" agricultural land or as being of regional significance for farming activities.*
- *No natural resources or areas of significant biodiversity or native vegetation would be adversely impacted by the proposal;*
- *The site has no forestry value or forestry industry potential;*
- *The site is within relatively close proximity of an established urban area and can be fully serviced with reticulated services with adequate spare capacity.*
- *The proposal is not inconsistent with RMRP 2036.*

In respect of the Rural Subdivision Principles please refer to above s.117 Direction commentary.

I trust the above Addendum adequately addresses the outstanding matters as referenced within the Department's letter of 9 October 2017.

Should you require any further information or have any further enquires please contact the Wodonga office.

Yours faithfully
EDM Group



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