



NSW GOVERNMENT

Department of Planning

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Our ref: Q06/00001-1
Your ref:
File: Murray LEP section 62
comments.doc

Dear Mr Murdoch

Subject: Murray LGA draft comprehensive Background and Issues Paper, draft Strategic Land Use Plan, draft Local Environmental Study and draft Murray comprehensive Local Environmental Plan 2009 and Maps.

I refer to the above documents received via email on 21 November 2008, provided to the Department for comment under section 62 of the Environmental Planning and Assessment Act.

The Department acknowledges receipt of the Murray LGA draft Background and Issues Paper, and draft Strategic Land Use Plan (SLUP). However, given the age of the data contained in the documents, and limited strategic justification given to support its recommendations for land use change, the Department is not prepared to endorse the documents for application against the planning policy and legislative framework at this time.

The Department further acknowledges receipt of the document titled Murray LGA draft Local Environmental Study (LES). Following review of the draft LES, the Department is of the view that the document is not an LES. It represents a broad overview of the merits of each candidate area for development and should be re-named as such. The document provided does not identify all of the sites considered as part of the process, or provide clear and transparent justification for the inclusion or exclusion of any specific sites in a strategic context. The detail expected of an LES is outlined in the Department's circular PS 06-013 'Local environmental studies', provided for use at Attachment 5.

Notwithstanding this, the Department is willing to consider endorsing a supplement to the SLUP or an amending draft Local Environmental Study which addresses all of the outstanding matters which are identified in this letter. These will then be used to support the changes proposed in the draft LEP and Maps. The key issues from the strategic documents are explained below with a more detailed description of all of these outstanding issues provided in Attachment 1.

The Department also acknowledges receipt of the preliminary draft Murray LEP and Maps. Preliminary comments regarding the draft LEP and draft LEP Maps are provided in Attachment's 3 and 4 respectively, however the Department will provide further detailed comments once all of the outstanding information in this letter has been submitted.

Currency of data and analysis

In order to maximise the strength of the recommendations contained in the documents it is essential that the revised draft LES at least, incorporates the most current data and policy frameworks available. It is necessary to analyse all relevant and current State Environmental Planning Policies, section 117 Ministerial Directions, Regional Environmental Plans and other policies, and how they affect recommendations in the Study and the changes proposed in the draft comprehensive Local Environmental Plan for Murray Shire.

Supply and Demand Analysis

The Strategic Land Use Plan should plan for at least 30 years supply of suitable land for residential and rural lifestyle settlement as well as commercial, retail, industrial and tourism development. To achieve an appropriate land supply for the life of the Strategic Land Use Plan, a land supply and demand analysis for all land uses covered by the strategy and a demographic profile and population projections summary is necessary.

Selection of Candidate Sites

The selection of candidate sites for future development should be based upon a set of clearly defined selection criteria which provide a clear method of selecting or eliminating sites based upon their individual attributes. The process should be transparent and include an assessment of environmental and land constraints which are best represented through a spatial mapping exercise. The current documentation does not illustrate the subject sites identified, or their attributes against other potentially suitable sites (which must now have been discounted)

When there is information available which gives a clearer picture of the suitability of land for development, the Department will be in a better position to indicate support or otherwise for some of the candidate areas.

Staging of Land Release

The Department supports Councils proposal to stage the land identified for release to ensure that it is released in a timely and orderly manner with clear consideration of issues such as servicing and meeting demand, whilst avoiding artificially inflating or deflating the property market.

Tourism Accommodation

The Department is aware that a range of 'tourist' developments have been approved in recent years including short-stay cabins, motel/hotel accommodation and permanent residential dwellings. Council will need to identify how it discerns 'tourist' accommodation/development/-attractions from permanent residential accommodation, and how it wishes to manage it in the future. Once the demand and supply figures are available, the Department will have a better understanding of what development exists, what has been approved and what is needed in the future. Strategic decisions can then be made regarding the provision of tourist accommodation in the Shire which is responsive to demand, whilst maintaining local environmental and social values.

Absence of four draft LES's

The Department notes the absence of four draft LESs from the package of information received via email from Councils consultant planner on 21 November 2008: Site 11: 2040 Perricoota Road, Moama; Site 14: 'Kooyong Park' Old Deniliquin Road, Moama; Site 15: Lot 24 DP 668368 & Lot 24 DP 668369, cnr Tataila & Twenty Four Lanes, Moama and Site 19, Deep Creek. Given their absence, this letter does not consider these sites, other than to provide general commentary regarding the Deep Creek tourism proposal. To be considered as a proper LES by the Department, they will need to be consistent with the Department's circular PS 06-013 'Local environmental studies'.

Planning Focus Meeting


As discussed with Council previously, the Department encourages Council to organise a planning focus meeting (PFM) with relevant government agencies as part of the section 62 consultation to discuss the recommendations of the draft Strategic Framework Plan, draft Local Environmental Study and subsequent changes proposed in the draft LEP

The PFM will also be used to engage with relevant state agencies (service providers) to determine if any public state infrastructure is required for any new urban release areas which may be proposed as part of the LEP.

The Department has issued Circulars PS08-017 and PS07-018 regarding the procedures to obtain any required contributions. Council will need to determine the relevant person in each Agency who will need to attend the PFM and discuss the changes proposed in the LEP with them prior to the meeting. Further, prior to the PFM, the agencies should be requested to consider what additional services will be needed to service the proposed new release areas, i.e schools, hospitals, road etc. The Circulars provide detail regarding what infrastructure can and can not be requested by the State agencies.

I recommend that you contact Anna Patton on 02 6841 7528 who would be pleased to assist further to resolve these outstanding issues.

Yours sincerely,

 4/2/2009
Tim Deverell
Acting Regional Director, Western Region

Attachment 1

Land Supply and Demand Analysis

- The yearly demand figure for each land use should be clearly formulated and based on sound analysis of data. If the figures indicated by the data are not deemed suitable for some reason, then clear justification why higher/lower figures are necessary, should be supplied.
- Current information available to assess demand scenarios includes population statistics, development projects and development application approvals and commencements.
- Essential data required for residential and rural settlement land:
 - baseline data on existing number of dwellings
 - number of approved dwellings
 - number of dwelling commencements
 - number of lots approved and released
 - total potential additional area under existing zoning (you will need to specify a minimum lot size for each category and thus, a lot yield per hectare taking account of land taken for roads, open space etc).
- Essential data for commercial and industrial land development:
 - total area of zoned land
 - total number of lots
 - total vacant lots
 - total potential additional area under existing zoning (you will need to determine a minimum lot size for each category and thus, a lot yield per hectare taking account of land taken for roads, open space etc).
- The following example is given which is one way that Council can assess demand based on different parameters. In this case, the example has been based on the recent population projections for the conurbation of Moama and Echuca given in the SLUP (pp7), however assessment should occur also for development approvals, potential employment generating industries locating in the area:
 - 2011: 19,000 people - 2016: 21,000 people; a population increase of 2000 people is projected for the conurbation of Moama and Echuca within the 2011 – 2016 time period.
 - Moama will share 40% of this population growth = 800 persons. At an occupancy rate of 2.5 people per dwelling, an estimated 320 dwellings will be needed within this 5 year period (800/2.5). This amounts to a rate of 64 (320/5 years) dwellings per year. A lot/dwelling yield of 7 per ha has been assumed (low-density, MLS=1000m²), considering need for roads, open space etc, 320/7= approx: 46ha needed for residential land in Moama over this 5 year time period.

Land Use Survey

- A land use survey is a spatial representation of the existing uses in townships and rural areas. For Murray Shire, a land use survey is needed specifically for Moama with a surrounding radius of 20 km as Council is proposing to change the current village zoning into separate land use zones. The survey can be used to apply the standard instrument zones correctly and it is also important for the land supply analysis.

Selection of Candidate Sites

To aid in the selection of sites, the following should be analysed:

- The parameters of each exclusion/constraint category listed (such as flood prone land for example) should be explained and mapped. These categories should provide a clear guide as to which factors would make a particular site suitable or unsuitable.
- Each candidate site recommended for development should analyse the nominated exclusion or inclusion categories and show on a map, how the constraints relate to the

subject sites. I.e. overlay the constraints mapping over the candidate sites so it is clear why that site has been chosen or excluded. The following examples are given of the constraints Council may consider as part of this exercise: biodiversity, contaminated lands – POEO scheduled premises, salinity (if applicable), bushfire, location of mineral resources, mineral exploration areas, stressed groundwater aquifers, groundwater availability systems (if proposing any release areas which will not be provided with town services), land capability, agricultural land suitability, land degradation, biodiversity, vegetation, water (ground and surface), heritage (Indigenous and European);

- An analysis of alternate sites and why they were excluded in making the final recommendations.

Staging of Land Release

Whilst a staging map has been provided, Council is requested to provide the following additional information:

- yield – based on the supply and demand analysis, the amount of land to be released for each type of land use (residential, rural settlement, commercial, industrial or tourism) in the comprehensive LEP and the justification for the amount identified in the strategy. An LEP should only release 10-15 years supply. In the case of residential land, the expected lot yields and proposed densities and how they have been derived; and
- Council will need to implement and administer a land use monitor once the land in the LEP has been released to manage the staging and timing of land releases over the life of the strategy.

Tourism Accommodation

- Future tourism accommodation should not negatively impact on the natural, economic or social fabric of the area it is to be located in.
- Future tourism accommodation should provide for a wide range of experience opportunities from the low cost family type tourism developments, such as in caravan parks and camping grounds, to large single destination development.
- Future large scale tourism accommodation that is located adjoining the River Murray should maintain public access to that feature. Consider Murray REP 2.
- As indicated above, Council will need to identify how it discerns 'tourist' accommodation from permanent residential accommodation, and how it wishes to manage it in the future.
- Permanent residential accommodation which is owned individually is not considered to be 'tourist accommodation' and should be distinguished from commercial tourist accommodation.
- Future tourism accommodation should be at a scale and location which is compatible with the rural and environmental land values around Moama and Mathoura. Tourist accommodation which is associated with or ancillary to primary production are encouraged such as farm stay accommodation, B&Bs and eco-tourism uses. However, large scale tourism uses such as hotel and motel accommodation, serviced apartments, low-density permanent residential accommodation are unlikely to be compatible with the primary and rural industry uses in these areas and would be more suitably located close to urban areas, appropriately zoned with good access to established services, facilities and infrastructure or in a dedicated area, identified through the strategic planning process.
- To gain a better understanding of how tourist accommodation has been provided for in the past and how it should be provided in the future, a supply analysis is needed for tourist development. Essential data is needed for at least the following:
 - total area of zoned land
 - baseline data on existing number and type of developments

- number of approved developments (distinguish the type of development: attractions/accommodation)
 - number of development commencements
 - total area approved for tourist development
- The Department encourages Council to consider the SP3 Tourist standard instrument zone where existing and future development specifically falls into this category given that expectations of amenity will be different within these areas as opposed to settled residential areas.

Deep Creek Marina and Development

- This area has been identified in the draft SLUP and supported by the draft 'LES' for discussion purposes, however an appropriately detailed LES pertaining to the site has not been submitted to the Department. As such, when the draft 'LES' is available for this site, it should state whether the Deep Creek Marina and development is proposed for consideration as part of this section 62 consultation and comprehensive LEP or whether it will be deferred to a later LEP amendment.
- Notwithstanding, given that the draft 'LES' is more of a broad overview of the merits of each site, the Deep Creek site should be included in the draft 'LES' with an analysis of the advantages and disadvantages of the site in accordance with the clearly defined selection criteria and a subsequent recommendation in support or otherwise for land use change.
- Whilst recognition is made of the unique opportunity that the Deep Creek concept presents because of the commercial off-river mooring facility for river boats between Yarrawonga and Torrumbarry, the selection of the appropriate area to take advantage of this opportunity should not be based solely upon a landowner's desire for development, rather it should consider a series of parameters to support a site's selection or exclusion based upon individual attributes. In this respect, Council is encouraged to broaden the LES's focus to the land surrounding the site to ensure a clear and transparent decision-making process regarding this development.
- The Department concurs with the SLUP's recommendation for an extensive LES to ascertain the impacts of the Deep Creek Marina Village Concept. Further, once the most suitable area has been selected, that a detailed Masterplan should accompany the LES to show the form and content of the proposed village and well as an appropriate staging program.
- Council needs to establish clearly whether the Deep Creek proposal is intended to be a tourist development or a new urban development removed from established centres.
- Given that a significant area of land has been identified for possible release, it is imperative that a detailed LES is provided which includes clear and current data regarding a number of matters:
 - Existing and future tourism and residential land demand and supply?
 - Years supply of land included in the development for tourism opportunities?
 - The implications of providing a large area for tourist development which may saturate the market and render existing and more suitably located areas closer to the urban area, services and infrastructure, unviable?
 - Whether stand alone infrastructure and services to the development are required?
 - The costs to the community, Council and service providers in terms of physical and social infrastructure to match the expected population for the area?
 - What are the implications of placing a significant number of residents away from an urban area which will maximise their need to travel to access higher order services and infrastructure available in either Moama or Echuca?
 - What will be the tenure of the development?
 - The issue of the intensification of land use and development along the Murray River for tourism/residential purposes needs to be addressed. The protection of

river and riparian ecosystems and the cumulative impacts of increasing access rights to water for stock and domestic use is an issue that should be considered as part of the Study;

- Overlay environmental constraints and values on this and surrounding sites;
- Context information to understand how any proposal might fit into the wider landscape including impacts on the environment and scenic values;
- Recognition is made of the demand for tourism development in the Moama region along the Murray River, and that the Deep Creek Marina concept may meet this location specific demand. Once the LES for this site is available and shows how the development sits in the broader strategic context of the Shire, the Department will be in a better position to make decisions regarding this development and any implications for future tourism developments in the Shire.

Commercial Land

- Future commercial land identified adjoining the existing area on Merinya Street in Moama appears a logical extension to the existing area. However, given that a new supermarket and specialty shops have been approved on Cobb Highway and Perricoota Road which is away from the historic town centre, these two areas must be planned carefully so that each of the centres do not compromise or undermine each other.
- Council should consider its options to promote the protection and consolidation of the two new areas for retail uses. A strategy action to maximise linkages between the two centres, through improved pedestrian links, signs and way-finding devices may assist this objective.
- Council should identify the 'core CBD' areas which are dominated by significant trip attractors and high turnover businesses, such as the centre of a traditional 'Main Street'. Following, identify the 'peripheral CBD' meaning that area, characterised by commercial, retail, community service and administrative uses, which is adjacent to the core CBD. The Standard Instrument zones, zone objectives and associated development control plan can be used to implement the findings.
- The additional commercial land identified on Martin Road is not adjacent to, or adjoining, the existing centre. The SLUP must be cognisant that it will not undermine the existing core centre and should be at a scale and location only to serve the target neighbourhood. This may be achieved through the implementation of a floor space ratio to limit the size of any future commercial developments in the precinct or the application of a more appropriate zone to suit its future land use.

Servicing and Infrastructure analysis

- A servicing and infrastructure program summary for the supply of utilities and social facilities (the PFM will assist with this analysis) is needed over the life of the strategy. If the provision of any of the facilities or services is the responsibility of another agency council should consult with the relevant service provider(s) to determine expected timing of the necessary infrastructure.
- If additional upgrades to current sewer and water supply services are necessary to service the proposed sites, an indication of how Council intends to achieve funding for the upgrading of servicing and infrastructure for future development should be provided.
- The candidate areas proposed for intensification in Moama and Mathoura must be capable of being connected to the existing or any proposed upgraded water and sewer network or alternative methods such as bores and effluent disposal systems.

Agency comments

- Documentation from any government agency correspondence is required as supporting data from the strategic planning process. This will assist Council, the community and other agencies to view the issues raised and how the strategic plan and LES has addressed these issues.

Flood Prone Land

- The SLUP shows a levee which has been built to protect a portion of the town of Moama. Council needs to confirm or otherwise that the existing levee is adequate to protect the town of Moama for the 1:100 year flood event.
- Information regarding the Probable Maximum Flood (PMF) is needed in accordance with the *Floodplain Development Manual 2005* - consideration should be given to using the PMF as the Flood Planning Level when siting and developing emergency response facilities such as police stations, hospitals, SES headquarters, and critical infrastructure, such as major telephone exchanges.

Draft LES/Overview of Candidate Sites

- As indicated, the Department does not consider this document as an LES, rather a broad overview of the merits of each site recommended for land use change. It does not consider all sites or indicate sites which have been discounted from inclusion in the strategic process.
- A broader description of the additional information needed to satisfy the section 117 directions relevant to the draft LEP is provided at Attachment 3.
- All SEPPs applicable in the Murray LGA, for example, SEPP (Rural Lands) 2008; SEPP (Infrastructure); SEPP 55 Remediation of Land, need to be applied to each candidate area for land use change with any inconsistencies justified.
- The Murray REP 2 – Riverine Land will need to be applied to each candidate area for land use change with any inconsistencies justified.
- At this stage, further discussion and consideration will be needed to determine the appropriate Standard Instrument zones which will be applied over land in the draft LEP. Rather than indicate a preferred Standard Instrument zone at this stage, the draft LES should give an understanding of the type of preferred land uses in the zone and provide a general heading, e.g. Residential (Low-Density/Medium Density), Business/Retail, Bulky Goods, Commercial/Office, Industrial, Tourist development, Rural, Public or Private Open Space.
- An indication of the status of the LES's for Site 11: 2040 Perricoota Road, Moama; Site 14: 'Kooyong Park' Old Deniliquin Road, Moama; Site 15: Lot 24 DP 668368 & Lot 24 DP 668369, cnr Tataila & Twenty Four Lanes, Moama; Site 19, Deep Creek and when they are likely to be submitted to the Department for assessment. When this information is available and clearly indicates the suitability of land for development, the Department will be in a better position to indicate support or otherwise for these candidate areas.
- As indicated, the Department of Planning Circular *PS06-013 Local environmental studies* explain the processes that are used to identify the information that is expected from a development proponent to support a rezoning request. This Circular should be used to guide the preparation of the outstanding LES's identified in the point above.
- Once all of the additional information requested in this letter has been provided the Department will be in a better position to indicate support or otherwise for some of the candidate areas proposed for land use change.

Proposed Minimum Lot Size in RU1 zone

- The draft SLUP indicates that Council wishes to maintain the existing minimum lot size (MLS) for dwellings in rural areas. This is possible in accordance with the SEPP (Rural Lands) 2008 and section 117 direction 1.5 Rural Lands. However, the draft LEP seeks only to introduce a minimum lot size of 120ha in the rural zones. This is inconsistent with the existing provisions of the Murray LEP 1989 which contain a MLS of 500ha for a dwelling, otherwise additional conditions must be met to reduce the MLS.
- Any variation proposed to the subdivision provisions must be assessed against the SEPP (Rural Lands) 2008 and section 117 Direction 1.5 Rural Lands. Further comments in this regard are made in Attachment 3 - Preliminary Murray s117 direction comments.

Draft LEP

- A preliminary analysis of the draft LEP is provided at Attachment 2.

Draft LEP Maps

- A preliminary analysis of the draft LEP Maps is provided at Attachment 4.

Development Control Plan (DCP)

For your information and action:

- Section 74C of the Environmental Planning and Assessment Act 1979 permits only one DCP per planning authority to apply in respect of the same land (non-compliance with this provision renders all DCPs invalid). Section 74C also states that a provision of a DCP is rendered invalid if it is the same as, or is inconsistent with, the provisions of an environmental planning instrument applying to the same land.
- Councils must now comply with section 74C, when whichever of the following occurs *first*, the principal LEP that applies to the same land as the DCP adopts the provisions of the Standard Instrument (Local Environmental Plans) Order 2006, or 31 March 2011 (being five years after the gazettal of the Standard Instrument on 31 March 2006).
- See Department of Planning Circular *PS 05-010 Requirements for Development Control Plans* with the latest planning reforms for further information about how to comply with this requirement.

Attachment 2 - Preliminary Murray LEP Comments – detailed comments will be provided once the outstanding issues relating to the draft SLUP and draft LES have been addressed satisfactorily and the Land Use Matrix ([Attachment 6](#)) is submitted.

Clause	Issue
Clause 1.7(4) Maps – Land Use Tables – general	<ul style="list-style-type: none"> Also include a Map Cover Sheet and Land Acquisition Map. Standard Instrument mandated uses must still be listed in the relevant section of the land use table, despite the words “any development not specified in item x or y” Complete the land use matrix provided (Attachment 6, and an electronic copy has been provided to Council via email) Where particular exclusions from group terms are proposed the correct wording is (for example) “Retail premises (other than neighbourhood shops)”. Ensure matters covered by the Infrastructure SEPP are removed from the LUT. A spreadsheet is provided to show the land uses permissible with and without consent in prescribed zones under the ISEPP (Attachment 7). These uses should be removed from the LUTs.
Zone Objectives - general	<ul style="list-style-type: none"> Objectives of the zone are just that and are not objectives for future development. Similarly, objectives are not to locate land uses or define zone boundaries. This occurs through the LEP mapping. Ensure zone objectives do not essentially repeat the mandated land use objectives.
RU3 Forestry	<ul style="list-style-type: none"> Proposed zone objectives are not consistent with the mandated zone objectives and should be removed. This zone caters for forestry and ancillary uses only. RU3 is not a conservation zone. The RU3 zone may only be used for ‘State’ forests in long term use. Seek advice from the DPI – Forests to determine whether the LEP mapping is correct.
RU5 Village	<ul style="list-style-type: none"> As indicated, objectives are not to locate land uses or define zone boundaries. This occurs through the LEP mapping. Re-draft 1st objective, for example: ‘to protect and conserve the amenity of the existing village areas of Mathoura, Bunnaloo and Womboota’ (Deep Creek yet to be considered as a Village zone).
R1 General Residential	<ul style="list-style-type: none"> Ensure uses identified in LUT are consistent with the Mandatory zone objectives. E.g. Question the permissibility of Viticulture in this zone. Any existing operations would continue to have ‘existing use rights’ in the zone, however the establishment of any new uses in the zone would not be encouraged for land use conflict and amenity considerations.
R5 Large Lot Residential	<ul style="list-style-type: none"> LUT appears to prohibit all of the ‘retail premises’ group term other than ‘neighbourhood shop’. Therefore more economical to list “Retail premises (other than neighbourhood shops)” in the LUT rather than listing all of the group members.
IN1 General Industrial	<ul style="list-style-type: none"> Noted that LEP uses IN1 zones. – Note the general policy position re bulky goods premises is that they shouldn’t occur on any industrial land – they are a retail use and belong in centres or clusters with a B5 or similar zone. ‘Mining’ and ‘extractive industry’ are prescribed in this zone through the Infrastructure SEPP and can be deleted

Clause	Issue
	from the LUT.
RE1 zone	<ul style="list-style-type: none"> Note that the RE1 zone has been used. It proposes to permit land uses such as 'crematorium', 'health services facilities', 'registered clubs' etc. These are not considered suitable for the RE1 zone which is about public recreation and publicly accessible land. For example, the RE2 zone will need to be applied to land where registered clubs are located on private land. Health services facilities include hospitals, surgeries etc – question this use in the RE1 or RE2 zones. Public administration buildings, educational establishments etc are covered by the Infrastructure SEPP and don't need to be listed.
E3 Environmental Conservation	<ul style="list-style-type: none"> It appears that the E3 zone has been applied over land that is currently zoned rural, however is identified as 'environmentally sensitive land' and 'flood liable land' on the current Murray LEP 1989 maps through hatching. The land has been included in the natural resource draft LEP maps which will be tied to a flooding clause. Council should consider the primary use of the land and whether any of the rural zones would be more appropriate over these areas. If Council wishes to retain the E3 zone over the applied areas, it will need to address the section 117 direction 1.2 Rural Zones and 1.5 Rural Lands to justify any loss of land zoned for rural purposes. The Department has prepared a model clause for flooding where the affected areas are mapped. The model clause is attached (Attachment 8). Guidance on the application of the Environmental zones in the Standard Instrument will be issued shortly by the Department.
W1 Natural Waterway	<ul style="list-style-type: none"> Reference to Murray River is OK but will need to be drafted as a separate objective, not an addition to the mandated one. Ensure that the zone is only applicable over the existing bed of a river. Following, only limited uses relating to the zone and that do not have an adverse effect on the natural value of the waterway will be encouraged as permissible in the zone.
3.1 Exempt development, 3.2 Complying development, and 3.3 Environmentally sensitive areas.	<ul style="list-style-type: none"> Generally additions to this clause are discouraged. We need to be sure they are not unnecessarily restrictive e.g. there may well be exempt development types that are fine on land affected by bushfire, flooding etc – to exclude them all by a general exclusion is too onerous. Council should insert any exclusions in the Schedules themselves, next to particular development types. For clause 3.3(2)(k), is this Council's intention? What is mapped on the Environmentally Sensitive Lands Map? – consider that this may be too onerous an exclusion.
5.1A Development on land intended to be acquired for a	<ul style="list-style-type: none"> A map is needed. If the comprehensive LEP does not intend to acquire any land a 'Note' must be included within the Legend of the Land Reservation Acquisition Map which indicates that 'At the date of gazettal of this plan, there is no land identified on this map for acquisition'.

Clause	Issue
public purpose	
6.1 Environmentally Sensitive Land	<ul style="list-style-type: none"> Need to split this clause (and relevant LEP mapping) into specific attributes, i.e. Native Vegetation, Water, Land. Each attribute will need to be considered individually as part of Council's assessment of a development application and as such, it will need to determine the specific attribute (if not all) which affects the site. Model Clauses for Land, Water and Native Vegetation are provided at <u>Attachment 9</u>. The Department's position is that we don't want to refer to "environmentally sensitive land" as this has the potential to cause confusion with the "environmentally sensitive areas" in clause 3.3 of the Standard Instrument. "Natural Resources Sensitivity map - Water" has therefore been used by Wagga. Other preferred names of local maps are in s6.2 of Technical Mapping manual. These clauses may be able to be replaced by the model erection of dwellings clause – <u>Attachment 10</u>.
6.2 Dwellings in RU1 Rural Zone	
6.3 Subdivision for residential purposes in Zone RU5	<ul style="list-style-type: none"> Amend this clause to refer to all other residential zones rather than just the RU5 Village zone, unless all other existing and proposed zones currently have access to services.
6.4 Flood planning area	<ul style="list-style-type: none"> Change reference from 'Flood Prone Land Map' to 'Flood Planning Map'.
6.6 General matters for consideration	<ul style="list-style-type: none"> All good things – though generally no need to repeat section 79C. May be better in the DCP.
6.7 Subdivision matters for consideration	<ul style="list-style-type: none"> As above
6.12 Development along rivers	<ul style="list-style-type: none"> TBA – Murray LEP 1989 - Amendment 14 to guide the wording of this clause.
Urban Release Areas	<ul style="list-style-type: none"> Once the demand and supply and land release yield information is available, and following the outcomes of the PFM, the Department will determine whether satisfactory arrangements for designated State public infrastructure must be made and required via a provision in the comprehensive LEP. Further that, any land proposed for change from non-urban to urban is an 'urban release area' and identified on separate LEP maps. If needed, model clauses will be provided which should be inserted in Part 6 Additional Local Provisions.
Schedule 1	<ul style="list-style-type: none"> Council should consider whether an appropriate zone e.g. a village zone could be applied over Cummeragunja Aboriginal Settlement and that some of the matters could be covered by mapping e.g. through the lot size map. What existing services and infrastructure are available there? What level of amenity is expected? Is it a Village or an isolated settlement?
Schedules 2 and 3	<ul style="list-style-type: none"> These will have to be amended to comply with the SEPP (Exempt and Complying Development Codes) 2008.

Clause	Issue
	<ul style="list-style-type: none"> • The certified draft Wagga Wagga LEP exempt and complying development schedule is attached (<u>Attachment 11</u>) for your consideration.

Attachment 3 - Murray s117 direction comments

S117 Direction	Issue
General	<ul style="list-style-type: none"> Need to apply all relevant s117 directions to each candidate area for land use change and indicate their consistency with each Direction.
1.1 Business and Industrial zones	<ul style="list-style-type: none"> How will the draft LEP meet the direction's objectives? E.g future areas identified will be a logical extension to the existing area; they will not detract or undermine the existing centre because? The SLUP has identified areas based on a number of parameters, those being? the areas chosen will not create land use conflict with adjoining areas because of the provision of buffers, compatible development etc.
1.2 Rural Zones	<ul style="list-style-type: none"> Need to go into detail regarding how the draft SLUP and draft LES justifies the inconsistency with the Direction. At this stage, they are not endorsed by the DoP and do not justify the inconsistency with the direction. The significant area proposed for conversion from rural to urban land is not considered of 'minor significance, particularly given that Council is proposing to convert the existing Murray 'wine region' to urban land uses in the SLUP. Land capability/Land suitability maps are needed for this section.
1.3 Mining, Petroleum Production and Extractive Industries	<ul style="list-style-type: none"> Determine whether a map has been prepared by the DPI showing the location of mineral resources, mineral exploration areas. If so, include the map to satisfy this direction.
1.5 Rural Lands	<ul style="list-style-type: none"> The Rural Planning Principles must be applied when a Council prepares a draft LEP which affects land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary) and/or that changes the existing minimum lot size (MLS) on land within an existing rural or environment protection zone. In this respect, Council needs to apply the Rural Planning Principles to its proposals to convert non-urban land to urban uses, i.e. rural to urban/environment protection zone (E3 – Environmental Management). The SLUP (pp12) indicates Council's intention to maintain their existing rural MLS for a dwelling. The draft LEP Lot Size Map proposes a MLS of 120ha in the rural areas which is not consistent with the recommendation of the SLUP or Cl. 17 of the Murray LEP 1989 which requires a MLS of 500ha for a dwelling, or, additional development standards control whether the 500ha MLS can be reduced for a dwelling. Therefore, In accordance with the Rural Lands SEPP and section 117 direction 1.5, Council may choose to retain a MLS of 500ha for a dwelling in its rural zones, or, apply the Rural Planning and Subdivision Principles to its proposal to change the 500ha MLS to 120ha minimum lot size for a dwelling. In this respect, the following additional information is needed to confirm or identify an alternative suitable minimum lot size for this area in accordance with the s117 direction and SEPP (Rural Lands) 2008. This will include:

S117 Direction	Issue
	<ul style="list-style-type: none"> ○ The spatial distribution and size of agricultural holdings as they currently exist within the locality and a discussion regarding the distribution and size of the agricultural holdings in the locality. An analysis of the proposed minimum lot size taking into account amongst others, sufficient area to undertake a variety of dryland agricultural industries and to account for unforeseen market or climatic shifts and still make a reasonable profit and return on investment. ○ The prevailing and predominant forms of agriculture located within a locality and the likely trends impacting upon those forms of agriculture, including but not limited to changes in technology/crops/stock, farm management and practices, climate change, economic conditions, land values and farm sizes. ○ The impact the proposed lot size may have on the current and future use of the land by way of minimising the potential for land use conflict, the fragmentation of agricultural land and the maintenance of land values at levels which are reflective of their agricultural use and potential. ○ Establish the views of the DPI – Agriculture.
2.4 Recreation Vehicle Areas	<ul style="list-style-type: none"> ● Ok, however note that the E3 zone is an environmental protection zone.
3.1 Residential Zones	<ul style="list-style-type: none"> ● Provisions must be included to ensure the servicing of all land affected by the LEP. Note that the SLUP does not contain information in this regard. See the DoP's comments in <u>Attachment 1</u>. ● Ensure that draft Local Clause 6.3 is amended to refer to all other residential zones rather than just the RU5 Village zone.
3.2 Caravan Parks and Manufactured Home Estates	<ul style="list-style-type: none"> ● How does the LEP deal with existing development? How does it propose to zone it? The Land Use Survey requested in <u>Attachment 1</u> will help with this direction.
3.3 Home Occupations	<ul style="list-style-type: none"> ● Need a statement that there are no prohibitions on Home Occupations in any of the residential zones and are included in Schedule 2 – Exempt Development.
4.3 Flood Prone Land	<ul style="list-style-type: none"> ● See comments in Attachment 1. Need a comment referring to the Study which does not designate the land as Flood Prone. ● Site 14 – flood storage area? ● Information regarding the Probable Maximum Flood (PMF) is needed in accordance with the <i>Floodplain Development Manual 2005</i> - consideration should be given to using the PMF as the Flood Planning Level when siting and developing emergency response facilities such as police stations, hospitals, SES headquarters, and critical infrastructure, such as major telephone exchanges.
6.3 Site Specific Provisions	<ul style="list-style-type: none"> ● The draft LEP proposes to include the Cummeragunja Aboriginal Settlement in Schedule 1 which is relevant to this direction.

Attachment 4 – draft Murray comprehensive LEP Mapping

The following list is not exhaustive and all sheets of the LEP Maps and LEP GIS data should be cross-checked with the DoP Standard Technical Requirements for the preparation of LEP Maps and Standard Requirements for LEP GIS data. For further information see Department of Planning Circulars PS07-007 and PS07-012.

Canada Bay and Liverpool comprehensive LEPs have been gazetted in the Standard Instrument format and are available from the Parliamentary Counsel's website. These maps may be of assistance.

ISSUE	ACTION
General	<ul style="list-style-type: none"> The number of maps per map series should be a maximum of 30. Insets or maps of different scales may be used to cover centres if necessary. Show North Point on all maps; Label Streets, parks, recreation reserves where applicable on all maps to assist interpretation. The unique map identifier must be shown on each map at the bottom left corner of the frame. The date included in the identifier of that the individual map sheet was prepared as 8 digits in the format: YYYYMMDD. This will not be the date of gazettal, as this will not yet be known when the LEP is submitted. Replace 'File Number' with 'Map Identification Number'. Ensure all maps must be referenced or 'called up' in a provision of the LEP. A map must be given meaningful effect through a clause.
Cadastre Layer	<ul style="list-style-type: none"> Show the following: <ul style="list-style-type: none"> Adjoining local government areas (labelled) Land parcel identification labels (usually street numbers in urban areas, note: alternate numbers can be used to reduce clutter. Lot and DP numbers may be used in rural areas if legibility can be maintained). Town / suburb labels Water bodies, including rivers, lakes, ocean etc (labelled where appropriate) National parks and nature reserves (labelled) State recreation areas (labelled)
Scale	<p>The PDF zoom function will enable individual properties to be viewed on line and printed at an appropriate scale.</p> <p>The choice of map scale should be based on the following principles:</p> <ul style="list-style-type: none"> Maps should be able to be viewed to a reasonable level of detail (but not fine detail) at A3 Fine detail on maps may be viewed by either: <ul style="list-style-type: none"> Using the zoom features of the PDF version on-screen, and printing at the 'zoomed-in' view where desired

ISSUE	ACTION
	<p>(select 'Print', 'Current view'), or by viewing a printed version of the full map at A0.</p> <ul style="list-style-type: none"> Based on these standard scales at A3 (landscape) size, council may determine the grids that will be used for each map type within the LEP.
Numbering map sheets	<ul style="list-style-type: none"> The grid sheet numbers must be legible. See Figure 4.2 of the DoP Standard Technical Requirements for LEP Maps.
Map Cover Sheet	<ul style="list-style-type: none"> Need Map Cover Sheet <p>Key components of the Map Cover Sheet will include:</p> <ul style="list-style-type: none"> name of plan date the plan is made (or date of certification under s.65 for draft plans) list of ALL maps that are included by unique map identifier (i.e. all individual map sheets). These must match the reference in the bottom left of each map, and the PDF file names. Refer to the technical requirements for details. signature block for council signature block for the Minister A template Map Cover Sheet is provided at Appendix B of the DoP Standard Requirements for LEP Maps. NOTE: the map identifier on the map cover sheet must match the unique map identifier on the bottom left corner of individual map sheets (both PDF and any printed versions). The name of each individual PDF map file should also correspond with the unique map identifier.
Land Application Map	<ul style="list-style-type: none"> Need Land Application Map which must be clear enough to delineate the boundaries of the LGA. The line thickness can be adjusted from the mapping requirements standard to produce an outline that is legible. Must have a Map Identification number Label Towns/Villages. Include a map of NSW in bottom left corner of the map sheet and label approximate location of Murray Shire.
Land zoning maps	<ul style="list-style-type: none"> I think this has been done - the legend of land use zones should show all categories of land used in the Murray LEP, notwithstanding whether the zone is shown on the sheet. The legend should show the land use zones in alphabetical order. Zone boundaries must be outlined in medium black. Every zone polygon should be annotated with the relevant zone abbreviation in black font as indicated in Table 7.1 of the DoP Standard Technical Requirements for LEP Maps. This will ensure that zoning information can be read when LEP maps are printed in black and white and also by people who have a colour vision deficiency.
Lot Size Map	<ul style="list-style-type: none"> Change title from 'Minimum Lot Size Map' to 'Lot Size Map' Question application of 'No minimum required' over land in the south east of Minimum Lot Size map - sheet LSZ-007. The 'no minimum required' does not correspond with the Land Zoning Map - sheet LZN-007 which only applies the RU3 zone to a portion of land identified as having 'no minimum required'. Please indicate reasoning

ISSUE	ACTION
	<p>for the application of 'no minimum required' over the aforementioned land.</p> <ul style="list-style-type: none"> • Generally, all land covered by rural and environmental protection zones (not including State forests) must have a minimum lot size. • As indicated, all maps must be referenced or 'called up' in a provision of the LEP. Ensure that these maps are called up by reference somewhere in the draft LEP. • Change title to 'Flood Planning Map'
Bush Fire Prone Land Map	
Flood Planning Area Map	
Urban Release Areas	<ul style="list-style-type: none"> • Requirement for this TBA • If required, all urban release areas, i.e. any land identified for up-zoning to an urban land use will need to be identified and linked to corresponding model clauses (see Note below). Separate maps are to be prepared which identify all urban release areas. See Liverpool LEP 2008 as an example.
Environmental Sensitive Land Maps	<ul style="list-style-type: none"> • Separate the attributes into the categories of Land, Water and Biodiversity. This map gives no indication as to why the land is environmentally sensitive.
Heritage Map	<ul style="list-style-type: none"> • Number Aboriginal Items identified in Schedule 5 (if any).
GIS Data	<ul style="list-style-type: none"> • GIS data relating to the LEP along with the written LEP document and PDF maps should be emailed to the regional teams for assessment with its section 64 submission. • LEP GIS data is requested for all draft and final LEPs, in accordance with section 33C of the <i>Environmental Planning and Assessment Act 1979</i> (EP&A Act). The Department advises, pursuant to the EP&A Act, that the Crown in right of New South Wales holds copyright over all LEPs and this right extends to the associated maps and GIS datasets. As such the Department does not require a licence to use the LEP GIS data.
Land Reservation Acquisition Map	<ul style="list-style-type: none"> • All comprehensive LEPs must contain a Land Reservation Acquisition Map even if the provisions of the LEP do not intend to acquire any land for public purposes. • If the provision of the comprehensive LEP does not intend to acquire any land a 'Note' must be included in the Legend of the Land Reservation Acquisition Map which indicates that 'At the date of gazettal of this plan, there is no land identified on this map for acquisition'. • the LRA should adopt one of the standard scales provided in the DoP Standard Technical Requirements for LEP Maps.



PLANNING circular

PLANNING SYSTEM

Local planning

Circular	PS 06–013
Issued	2 May 2006
Related	PS 05–005 and PS 06–005

Local environmental studies

This circular explains the processes that are used to identify when a local environmental study is required for an amendment to a local environmental plan. It supports advice provided by the Department on the introduction of new section 117 directions and the strategic approach to the review of proposed local environmental plans through the LEP Review Panel.

Introduction

The NSW Government's planning reform agenda is focused on improving the way that local planning is done in NSW. In recent months the Minister for Planning has introduced changes to the *Environmental Planning and Assessment Act 1979* (EP&A Act), issued new Ministerial Directions for plan making and established the strategic review of local environmental plans through the LEP Review Panel. With these changes has come a need to clarify the role of local environmental studies in the plan-making process.

This circular provides advice to councils and development proponents on when a local environmental study should be prepared to support an amendment to a local environmental plan. This circular also provides guidance on the supporting information that councils and State Government would expect from a development proponent when asking for changes to the zoning or planning controls of land in order to facilitate new development.

Strategic focus

Part of the movement towards a more strategic approach to plan making is the importance of ensuring that spot rezonings and other changes are thoroughly justified against a strategic context. If a proposal is not identified in a strategic plan, the local environmental study provides the independent review of proposals necessary to justify a change (or not) to the existing planning controls.

As stated in previous planning circulars, the NSW Government is not encouraging an ad hoc approach to the amendment of local environmental plans. However, the NSW Government recognises that the rezoning of land may occur if:

- the land has been identified in an agreed strategy
- the proposal will provide for significant employment generation
- an innovative proposal occurs that meets the strict sustainability criteria laid down in a regional strategy
- a compelling argument can be made for the spot rezoning, or
- the proposal is a minor one involving administrative issues.

As has previously been the case, a local environmental study will provide an objective analysis of the capability and suitability of the land for future development that will ensure that the proposed rezoning is both environmentally sustainable and consistent with relevant metropolitan, regional or local planning strategies. A local environmental study may also be required in order to justify an inconsistency between a draft local environmental plan and a section 117 direction. A number of section 117 directions allow for inconsistencies if a council can provide a strong case via a local environmental study as to why a variation is justified.

Process governing the specification and preparation of a local environmental study

The local environmental plan process, including the role of the LEP Review Panel, is illustrated in Attachment 1. The preparation of a local environmental study is a key step in the preparation of a local environmental plan or amendment under section 57 of the EP&A Act. It ensures that the proposed local environmental plan identifies zonings and uses for an area that are appropriate to its existing and future natural, cultural, economic and built environment.

It is important to note that section 57 of the EP&A Act requires a local environmental study to be prepared to accompany a draft local environmental plan. However, under section 74(2)(b) of the EP&A Act the need for a study may be waived by the Director-General for local environmental plans that amend a principal plan.

Where a local environmental study is prepared section 57(5) of the EP&A Act and clause 15 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) allows a council to recover the costs of the study from the person or persons who have made the request for the rezoning amendment.

Specifying terms of reference for local environmental studies

The decision to proceed with a local environmental plan and accompanying study will come from the Director-General based on a recommendation from the LEP Review Panel. Under clause 9 of the EP&A Regulation, councils are expected to identify in their section 54 notification a view on whether a study is necessary for the intended rezoning and any proposed terms of reference. If written authorisation to proceed is granted by the Director-General, it will also provide advice on the need for a study and the terms of reference.

The need for a local environmental study to be prepared for an amending local environmental plan will likely be identified where the amendment will:

- allow a major residential, tourist/lifestyle, commercial, industrial or rural residential development, whether or not the proposal is in accordance with an agreed strategy
- any proposed rezoning that is inconsistent with section 117 directions, but is otherwise considered to be worthy of further investigation or review
- review matters of high public interest or significance for the future planning of the area
- allow a proposal that will have significant economic development or employment-generating potential to be investigated.

In establishing terms of reference for an environmental study the Director-General (via the LEP Review Panel), will take into consideration the site, the nature of development arising from the proposed land use, the likely environment of the site and any strategic issues or principles that will need to be addressed through the draft plan.

Where the draft plan is to rezone land a local environmental study will need to provide the detailed information about the environment of the land, including:

- the existing natural, social and economic environment
- a review of potential land uses
- an analysis of the environmental, economic and social implications that will arise from a change in the zoning of the land.

In the case of minor rezonings or amendments, the Director-General (via the Panel again), will consider whether the need for a local environmental study should be waived. What constitutes a minor rezoning or amendment will be determined on a case-by-case basis. Determining factors will include the nature of the amendment, consistency with metropolitan, regional or local planning strategies, consistency with section 117 directions, as well as the size, scale and location of any accompanying proposal.

Information to support rezoning applications

The preparation of extensive supporting documentation by development proponents before the Director-General has received advice on the proposed rezoning from the LEP Review Panel runs the risk that the various studies will not be used. Where the proposed rezoning does receive written authorisation to proceed there is a strong likelihood that additional information, studies or independent review will be required by the Director-General on the recommendation of the LEP Review Panel.

It is recognised that development proponents are preparing these detailed studies in order to justify a particular rezoning proposal and convince council that the concept is worthy of support. Over time these studies have become more comprehensive and akin to local environmental studies, albeit prepared by the proponent.

The decision to rezone land and the amount of information required to make this decision is a matter for council. However, it is not appropriate that detailed local environmental study style rezoning applications be expected before council or the Director-General has agreed to proceed with a rezoning.

As such councils should refrain from asking for excessive amounts of detail before a proposal is considered by council and the Director-General. As an example, it is not appropriate to request

detailed threatened species assessments until there is an agreement from council and the Director-General to progress the draft plan.

In order to justify a request to rezone land the right balance of supporting information is needed from the proponent to allow the council and the Director-General, to make a decision. Where proponents wish to provide additional information the following list should be considered as a guideline on the information to be provided:

- a brief description of the locality of the proposal, including its character, the existing and previous land use, the existing zoning of the land and its surrounds
- mapping information and photographs (including aerial where appropriate) to describe the land, its locality and the relationship with adjoining land uses
- a concise but adequate outline of the proposal, including the changes required to the existing zoning or plan
- compelling reasons for the proposed rezoning, including:
 - policy and strategic context in terms of consistency with State policy/council strategy, public interest reasons and existing studies
 - compatibility with the surrounding zoning and land use patterns
 - implications of not proceeding with the proposal
 - where relevant, a supply and demand analysis to demonstrate the need for the proposal
 - justification of the proposal in terms of the relevant LEP Panel pro-forma criteria
- an identification of the key environmental issues of the land as understood at the time, including:
 - soils and geological capability
 - biophysical environment, including natural vegetation and threatened species
 - the water cycle on the land and in the locality
 - natural hazards that may exist on the land
 - cultural environment, including information on Aboriginal or European heritage
 - social or community issues, including housing, employment and economic environments
- information to highlight for discussion any broader issues that may need attention or resolution.

Note: It is not the purpose of a rezoning justification to go into a detailed description of a proposal and its environmental implications. This material needs to be developed as part of the formal local environmental study. As a guide it is expected the above issues could be addressed in a concise document of 6–10 pages.

Who prepares a local environmental study

The key focus and rationale of a local environmental study is to ensure that the information supporting the proposed rezoning is balanced and forms a sound basis for decision-making. While independently prepared studies prepared by the council can achieve this, it is also the Department's experience that this can be achieved through proponent-prepared studies provided they are properly managed and reviewed prior to adoption by council.

Councils can use a number of strategies to appropriately manage or review local environmental studies prepared by proponents, including:

- oversight of consultants work by a council officer or an independent council engaged contractor
- periodic reviews of the supporting and background work of the consultants by a council officer or council employed contractor
- utilisation of peer reviewers (at the expense of the proponent) when the local environmental study is submitted
- review of draft studies by state or federal government agencies.

Managing the transition

It is recognised that circumstances may exist where development and rezoning proponents have already expended considerable resources on the preparation of detailed environmental studies to support potential rezoning applications. It is not the intention of the Government to deter investment in innovative proposals that are consistent with metropolitan, regional or local planning strategies.

In these circumstances it is suggested that the following courses of action may be appropriate:

- proponents should make contact with the council to discuss their proposal and the extent of information that council will require to support a proposal through the initial stages of the plan making process, or
- proponents can reformat their prepared studies to address the issues set out in the section 'Information to Support Rezoning Applications' in this circular.

If a decision is taken to support a rezoning proposal proceeding, it is likely that material already prepared by proponents will provide substantial input to a formal local environmental study or other document required by the council or the Director-General.

Further information

For more information, please contact the relevant Department of Planning local planning team.

Regional NSW

Barwon	02 6764 6831
Central Coast	02 4323 7000
Central West/Far West	02 6884 2560
Hunter	02 4904 2700
Illawarra/South Coast	02 4224 9450
Murray/Murrumbidgee	02 6297 6477
North Coast	02 6640 2160

Sydney East

City/East	02 8374 5915
Inner North/Inner West	02 8374 5913

Sydney North West

North/North East	02 8374 5926
North West	02 8374 5925

Sydney South West

South West	02 9895 7633
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General enquiries

Information Centre 02 9228 6333

Note: This and other Department of Planning circulars are published on the web at www.planning.nsw.gov.au/planningsystem/practicenotes.asp.

Authorised by:

Sam Haddad
Director General

Important note

This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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Local Environmental Plan Process

