



‘Kooyong Park’ – Moama - NSW

PLANNING REPORT

Review of Murray Shire Council Resolution to Draft LEP



‘Kooyong Park’, Old Deniliquin Road, Moama

Prepared for Murray Shire Council
December 2010

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1. INTRODUCTION

The land occupying "Kooyong Park" has been the subject of investigation by both the landholders and Murray Shire Council for a proposed rezoning and subsequent urban type development since 2005. In finalising the draft Murray LEP prior to exhibition in the later part of 2010, Council resolved to exclude the subject land from the draft for various reasons.

Following further representation from the applicants, Council, at its meeting on 3 August 2010, subsequently resolved to engage an independent qualified Planning Consultant to undertake a review of Council's resolution to not support the rezoning of "Kooyong Park" in draft Murray LEP.

The following planning report reviews all applicable documentation and information relating to this matter, focusing on the process and rationale behind Council's decision. The report will aim to provide a recommendation, from a strategic planning perspective, on whether Council should maintain or alter its position on the rezoning of the subject land under the draft Murray Shire LEP.

2. METHODOLOGY

The methodology followed in arriving at the final recommendation includes:

- Consideration of background information and facts
- Relevant Document Review
- Site Visit
- Meetings & Consultation
- Review & Assessment of Council's Decision Making Process & Rationale in arriving at the final resolution
- Reassessment of the site's role in the draft LEP from a strategic planning perspective
- Conclusion and recommendation

3. BACKGROUND & SUMMARY OF ISSUES (Consideration of the Facts)

3.1 Background

- In July 2005, Murray Shire commences a review of the existing principle Local Environmental Plan
- The O'Farrell family formally request that land comprising "Kooyong Park" be included in the new LEP for rezoning to allow a proposed environmentally sustainable tourism/residential development as illustrated by a conceptual layout plan submitted with their correspondence ("Kooyong Park" Urban Development Proposal" 4/5/07).
- Following a presentation to the Council meeting on 15 May 2007 (including the submission of the "Kooyong Park" Urban Development Proposal" document), Council resolved to *"support the proposal in principle (subject to a detailed site specific flood study proving the land is suitable for urban development) and amend the draft SLUP to indicate such support"*.
- Final SLUP (version #10) amended to identify subject land as *"possible development site subject to further investigation (including extension to town flood levee)"*.
- 21/5/07, correspondence from Council to applicant confirming Council's support in principle subject to detailed site specific flood study proving land is suitable for urban development.
- 18/6/07, correspondence from Council to applicant advising of flood study/existing levee modification requirements, DWE concurrence, etc. If flood study and DWE support the development proposal then progress to rezoning process under EP&A Act.
- 17/8/07, applicant correspondence to Council enclosing letter from DWE (9/8/07) who advise they have "no problem" with upgrade to existing levee.
- November 2007, Council engaged Coomes Consulting to undertake a Local Environmental Study (LES) over the subject site for *"the purposes of assessing the appropriateness of land for rezoning"*. LES prepared under guidance/instruction by Council for draft LEP preparation purposes, funded by subject landholder/applicant.
- Noted correspondence from Department of Planning (DoP) to Council advising of S54 requirements and requesting status of proposal for subject site.
- In preparing the LES, Coomes Consulting contacted the applicants for additional information. The "Kooyong Park" Development Strategy (15/12/07)", prepared by the applicant is included as background information in preparing the LES
- February 2008, the LES is completed for Council. In summary, the LES states:
 - The LES has identified a number of areas for further investigation including (amongst other matters) infrastructure provision, hydrological survey, flora & fauna study, archaeological survey, bushfire hazard assessment, and so on;
 - The site is suitable for some forms of residential development;

- The site is suitable for a combination of urban (including residential and commercial/tourism), semi-urban and conservation land uses, based on available information;
 - If rezoning proceeds then the site should be zoned Environmental Living E4;
 - Inclusion of a clause (wording provided) relating to development on land in flood referral areas.
- No documented correspondence during 2008
- Following completion of the LES, applicant addresses Council meeting on 3/3/09 including submission of “Kooyong Park” – Background Summary”. The applicants table a summary of the LES outcomes. Council received and noted the presentation.
- Council continues S62 consultation process with key agencies & stakeholders. Note that external consultant, Habitat Planning, are undertaking required LEP preparation tasks on behalf of Council.
- 27/3/09, DWE correspondence to Habitat Planning/Council providing their S62 reply on the Draft LEP. In relation to “Kooyong Park”, the following points are noted:
 - Grey water recycling concern – hydrological investigation required
 - Reticulated water/sewer required
 - “significant risk” of site affected by flood events, levee may be constructed, road access affected, risk to emergency services etc..
 - Recommend liaison with DECC & SES to assess risks
 - Construct/modify levee, plus flood risk analysis
- 14/5/09, DoP correspondence to Council providing comment on LES documents for various properties including “Kooyong Park”. In relation to “Kooyong Park”, the following points are noted:
 - Council is to establish its own formal support or otherwise for the site
 - Consider in context of the adopted SLUP & DoP letter of 4/2/09
 - Justified recommendation of support or otherwise
 - Additional information to be provided for LES including:
 - Variance to SLUP finding
 - Strategic decision to focus urban expansion to west
 - Flooding/bushfire issues
 - S117 assessment not completed
 - Strategic review of Floodplain Management Study
 - Servicing/infrastructure analysis
 - Flora/Fauna/Cultural Heritage assessment
 - Consideration of any other sites in Shire to accommodate the innovative development concept
 - Uniqueness requires justification
- Report tabled to the 21/7/09 Council meeting, including verbal presentation by staff, regarding the consideration of four (4) individual LES’s prepared as part of the Murray Shire LEP Review. The report included particular reference to the DoP correspondence of 14/5/09 and its detailed content. Council subsequently resolved to not include the “Kooyong Park” LES in the Shire wide LES as the proposal contradicts the direction taken by the SLUP as adopted by Council, based on the following:

- The proposed site is fragmented to the east of Moama township
 - Is situated in and/or surrounded by flood affected lands
 - Requires the extension of Council infrastructure
 - There are more suitable parcels of land, which, from a planning aspect, should take priority over this site.
- 10/8/09, Council letter to applicant advising that, following consideration of DoP comments, Council had resolved to not include the subject land in the final draft LEP. Copy of DoP correspondence and Council's reasons for making this determination were attached. Comments from applicant & Council staff indicate that this letter was never sent or received.
- The applicant subsequently made further representation to Council and Councillors requesting explanation on the decision and seeking support to review the decision. A presentation was made by the applicant to the 1/9/09 Council meeting, where Council then resolved to note the presentation but uphold the resolution of 21/7/09.
- The applicant's presentation to the 1/9/09 Council meeting focused on the outcomes, conclusion and recommendations of the site specific "Kooyong Park" LES that was commissioned by Council to assist in considering the content of the final draft LEP.
- 12/7/10, letter from applicant to Mayor and Councillors discussing "significant issues" with Murray Shire's Planning Department. In summary the points discussed included:
 - LES conclusions not taken into account
 - Lack of transparency and communication with MSC
 - Withholding DoP information on additional LES data
 - Procedural issues on notification to the applicants following 21/7/09 Council meeting
 - Uniqueness of proposed site development not communicated to DoP
 - Advice from MSC regarding fragmented titles.
- The applicant then requested by way of letter dated 27/7/10 to address Council at it's meeting on 3/8/10, seeking a review of the decision to remove "Kooyong Park" from the Draft LEP.
- 3/8/10, Council resolves to review the resolution of 21/7/09 in respect of "Kooyong Park" by way of an independent consultant, noting that the draft LEP is a priority and that if the site specific LES is supported it be considered as a spot rezoning (via the "Gateway" process).

3.2 Summary of Issues

In undertaking this review, the documented issues to be dealt with include:

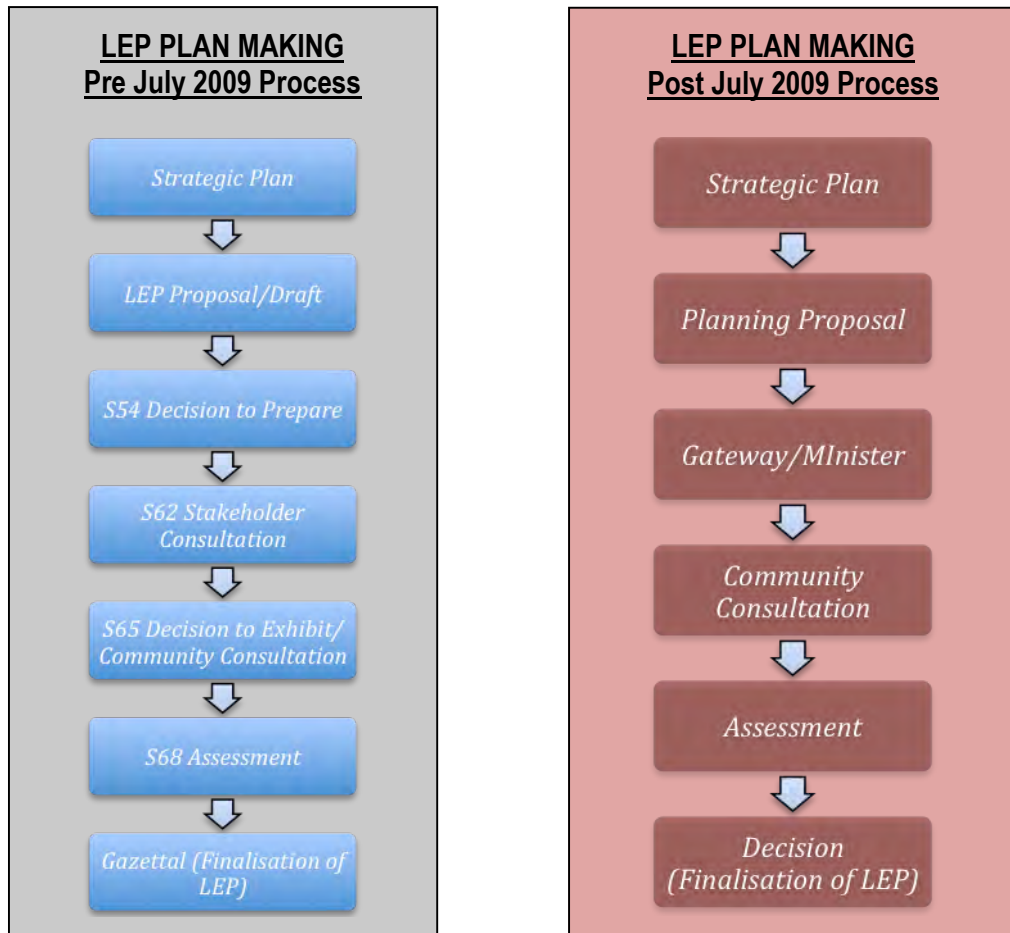
- a) Council, in conjunction with the Department of Planning have a statutory responsibility to prepare, consult, exhibit and finalise a new Local Environmental Plan for the Murray Shire LGA within an agreed timeframe.
- b) The applicant considers that there have been issues with the consultation process that resulted in certain information not being available to the Council at the time of the decision to not include their property in the draft LEP.
- c) Was the commissioned LES adequate to assist Council with the draft LEP?

- d) Did Council make a decision at its meeting on 21/7/09 in relation to "Kooyong Park" based on all relevant information and facts available at the time?
- e) Should "Kooyong Park", from a strategic planning perspective, retain rezoning support?

4. THE LEP PLAN MAKING PROCESS

A Local Environmental Plan (LEP) is made under the provisions of the Environmental Planning & Assessment Act 1979. In July 2009, changes were made to the way LEP's are prepared and made, known as the "gateway" process, which is aimed at speeding up the process.

As the Murray Shire draft LEP was prepared prior to July 2009, the process to completion will follow the previous (pre-July 2009) legislative guidelines. A summary of the LEP process is provided below, together with a comparison of the new "Gateway" system.



MSC's decision to not further support the "Kooyong Park" LES occurred as a result of the S62 consultation phase of the process, involving government agencies and other key stakeholders. This is an important step in the LEP plan making process where Council, as the responsible authority must determine, by way of a S64 report, the final version of the draft LEP taking into account the SLUP, rezoning requests and other relevant matters including LES content.

On endorsing the final draft LEP, Council must then seek DoP agreement to the issue of a S65 Certificate to enable exhibition of the draft LEP. The DoP may request amendments and further investigation to ensure the draft LEP conforms with legislative requirements/directions and DoP best practice.

Role of a Local Environmental Study (LES) in the LEP Plan Making Process

A Local Environmental Study (LES) provides the background information and justification for the rezoning of a parcel of land. It takes into consideration the interrelationship

between a wide variety of different land uses and the cumulative impact of these activities. It also becomes an important resource document upon which future development can be environmentally assessed. It is a necessary document to enable consideration of environmental factors effecting and potentially affected by a proposed land use activity.

The decision to prepare a Local Environmental Study is made at the S54 stage of the LEP process. The Council advises the DoP of its decision. The DoP concurs or otherwise with Council's on this decision. Council then supervise the preparation and consideration of the LES. The landowner, as a result of a rezoning request, usually pays for site specific LES's.

5. DOCUMENT REVIEW

Council and the applicant have made relevant documents available to undertake this review. Detailed notes on all documents reviewed are included in Appendix 1 of this report. The document review included the following:

- All relevant correspondence between Council, the applicant and agencies during period 2005 to present
- Council reports and meeting minutes from 2007 to present
- Draft and final version of Murray Shire Strategic Land Use Plan 2006-2030
- Draft Murray Shire LEP 2010 Zoning Map – Moama extract
- Kooyong Park Urban Development Proposal (4/5/07)
- Kooyong Park Council Presentation (15/5/07)
- Kooyong Park Development Strategy (15/12/07)
- Kooyong Park – Background Summary (3/3/09)
- Local Environmental Study – Kooyong Park (Feb 2008)
- Groundwater & Flood Assessment – Kooyong Park Lot Consolidation (AES - July 2010)
- Aboriginal & European Cultural Heritage – Kooyong Park Lot Consolidation (AES - July 2010)
- Bush Fire Assessment – Kooyong Park Lot Consolidation (AES - July 2010)
- Flora & Fauna Assessment – Kooyong Park Lot Consolidation (AES - July 2010)
- Soil Contamination Assessment (SEPP55) – Kooyong Park Lot Consolidation (AES - July 2010)
- Submission to Draft Murray LEP 2010 – O’Farrell (16/12/10)

In summary, the document review was undertaken in context of tracking a rezoning application under the LEP plan making process as guided by NSW State legislation, DoP Practice Note and advice, and local policy. Also, the document review provides a basis for assessing and recommending, from a strategic planning perspective, whether the land should be included in the draft LEP for rezoning.

The following comments were noted:

- Council, in conjunction with their planning consultant, were developing/finalising a strategic landuse plan prior to determining the scope and content of their major LEP review document (draft Murray LEP).
- Correspondence between Council during 2006-07 followed standard practice for dealing with a rezoning matter.
- DoP correspondence suggests that Council may not have followed statutory procedure at the initial stages whereby the Department of Planning were not

notified under S54 of the proposal to prepare an LEP/LES. It is at this stage that the DoP concurs or otherwise on the need to prepare a Local Environmental Study for the subject land.

- A significant gap noted in correspondence during 2008, due to delays in draft LEP preparation/documentation, as explained by Council and their consultant.
- The applicant provided detailed reports and description of the development proposal and agreed to fund the additional LES report. In addition, the applicant subsequently commissioned additional reports to address noted gaps in the LES document.
- The background studies generally support some level of development on the land but raise specific areas of concern that would require detail study (mainly flooding issues).
- Scrutiny of the LES content and recommendations seems limited based on Council documentation. Council report to 21/7/09 meeting makes little reference to this important document and its content.
- There are some communication delays between Council and the applicant during the 2008-10 period.
- Relevant agencies address the matter based on technical response, with emphasis placed on Council to determine the strategic landuse decision. Agencies and LES consultant were advised that Council supported the proposal as per the original Council resolution.

6. SITE VISIT

On 6 October 2010 a site visit was undertaken on two occasions, each following separate discussions with Council Officers and the applicant. The following notes were taken in respect of observations of the site constraints and land characteristics:



- has frontage to Moama Street, Holmes Street and Old Deniliquin Road.
- located east of the existing town levee bank system
- generally flat terrain
- native vegetation to road reserves around site
- current general farming activities
- existing rural dwelling and outbuildings
- evidence of wetland area/shallow dam part of irrigation recycling system
- railway corridor to west, acts also as flood levee
- industrial area located further west across Barnes Road
- surrounding land mixture of rural activities, agriculture, holiday homes/tourist developments
- approximately 2.0kms to town centre
- road formed but generally unsealed other than section of Old Deniliquin Road



View east from railway line.



View southeast across railway crossing.



View south along from railway corridor.



Remnant native vegetation in road reserve.



Existing Flood Levee.



Existing Flood Levee.

7. CONSULTATION

The following persons/organisations were consulted with in relation to this matter:

- Council staff – Simon Arkinstall & Liam Wilkinson
- DECCW – Peter Nankivell
- The applicant/property owner – Mr Matthew O’Farrell
- Habitat Planning – Warwick Horsfall
- NSW Office of Water – Lindsay Holden
- Department of Planning – Anna Patton/Wade Morris
- DECCW – Darren Wallett
- AES – Peter Clinnick

7.1 Council Staff

Meeting held with Council staff on 6 October 2010 at Murray Shire Offices. Present were Simon Arkinstall & Liam Wilkinson. Mr Peter Nankivell of DECCW also joined the meeting approximately half hour later. Summary of notes taken during meeting:

- The rezoning was not support primarily due to the proposal being outside Council’s desired landuse strategy
- Council has strategically chosen to focus development to the west, why should they consider development to east
- Council has concerns on the potential & degree of flooding impact on the subject land. The land is flood prone, current levee has only a rural licence. Not subject to minor floods, however prone to more extreme floods and has no flood free access or egress in these events.
- Agreed there were some delays in communicating Council’s decision and responding to the applicant
- Council has had difficulty with attracting and retaining town planning staff
- There were times when lack of town planning staff resulted in delays in responding to various matters
- Council engaged an external consultant to assist in dealing with and finalising various town planning matters, including preparation and exhibition of the draft LEP
- Communicating town planning policy, strategy etc is sometimes difficult because of the complexity of the matters and at times landholders/general public can misconstrue information and/or advice
- Still consider Council resolution to be appropriate taking into account all information available at the time.

Further telephone discussion on 25/1/11 with Simon Arkinstall:

- LES accepted by planning staff
- Report to Council on 21/7/09, findings of LES were communicated to Council via verbal report
- Recommendation to not included “Kooyong Park” in draft LEP put to Council, flooding potential main issue, not consistent with SLUP strategic direction for no residential development expansion east of existing township, DoP concerns
- Communication with applicant - letter was drafted to applicant but wasn’t sent, system breakdown at the time
- DoP pressing to make a decision on draft LEP
- No planners available at the time
- Recommendation formulated through discussions with Warwick Horsfall and DoP
- Update studies were not in

7.2 DECCW – Peter Nankivell

- Discussed various flood events that have occurred over time that have posed a threat to the land
- Individual application vs interest of overall landuse plan
- Can design to 1:200 or 1:100 depending on strategic aim
- Nothing much has changed in relation to evaluating relative flood levels, floor heights etc
- Can protect to town standards, eg upgrade levee, build up pad sites
- Licencing required (Water Act) for levee upgrades etc
- Concerns over adequacy of access during flood event
- SES concerns over risk and demands on services during flood events

7.3 The applicant/property owner – Mr Matthew O'Farrell

- Copy of various documents as lodged with Council provided by Mr O'Farrell
- Reference to 2001 Floodplain Study plus Technical Support data verifying 1:100 year flood levels and that site would be relatively flood free at this interval
- There are still 2 options for flood free access to the site during a 1:100 year event
- The land was not included in the original SLUP
- Based submission on the unique attributes of the site and the opportunity to create a unique development. Noted attributes of:
 - Half distance to town centre than other residential sites
 - Major services available
 - Largest parcel of undeveloped land compliant with flooding
 - Local ownership prepared to put forward initiatives, particularly green/sustainable initiatives
- Misinformation in report to Council
- DoP comments re not part of SLUP – incorrect as Council included site in amended final SLUP
- Site fragmentation comment not warranted
- Unique qualities of site and proposed development not highlighted to DoP
- Discussion re sewer capacity to 16 lots not consistent between planners & engineers at Council
- Latest studies cover whole site and answer all DoP concerns
- Tourist aspect, eco development, green/organic produce in local area, proximity to local supplies for promoting local produce
- Holistic package, green financing incentives, even more valid/viable today
- Issues with Council planning staff, attitude, non-transparent process, difficult to contact, poor communication during crucial decision-making period, information not passed on to Councillors, inappropriate conduct
- Council made decision without all details, LES content was not reported to Council by staff or commented on

7.4 Habitat Planning – Warwick Horsfall

- Consultant assisting Council with SLUP preparation and draft LEP, including advisor to Council & Council staff on planning matters, particularly when there was insufficient planning staff
- Ongoing history of submission to be included in SLUP
- Potential flooding issues
- DoP concerns
- Council decision to not include in final draft LEP

- Considered all planning related matters, difficult decision
- LEP draft process drawn out, particularly during 2008
- LES was inconclusive on findings, particularly flooding, recommended further studies, not sufficient to assist in recommending inclusion of subject land in draft LEP
- Although reports indicate land is mostly not inundated by 1:100 yr flood, reliance on existing levees, which are not licenced for urban development.

7.5 NSW Office of Water – Lindsay Holden

- No further action on this matter other than letter of 9/8/07 (DWE)
- Position remains the same
- Recent request from Council to comment on DA for 16 lot development and DA for licencing pad sites on new lots. Existing flood levee to remain as is.

7.6 Department of Planning – Anna Patton/Wade Morris

Anna Patton has been relocated to DoP head office. Conversation had with Wade Morris a regional office:

- DoP concerns summarised in letter dated 14/5/09
- Strategic planning decision ultimately a decision of Council
- Concerns over adequacy of flooding reports
- Other studies required including infrastructure, flora/fauna, cultural heritage, bushfire and soil contamination potential
- Recent exhibition of draft LEP
- “Kooyong Park” matter to be dealt with under “gateway” process if supported
- Draft LEP main concern for finalising asap.

7.7 DECCW – Darren Wallett

Darren Wallett was author of DWE letter of 27/3/09 to Habitat Planning, providing S62 reply on Draft LEP and raising concerns on hydrological impacts from greywater recycling and “significant risk” of flood events:

- Issues with levee, stability etc
- Needs further flood risk assessment report
- Can deal with flood risk, addressing access/egress in flood event, determine afflux upstream, Council support to upgrade levee

7.8 AES – Peter Clinnick

AES (Peter Clinnick) are authors of revised studies presented to Council in relation to current DA for 16 lot development. The revised studies cover topics raised as concerns by DoP in relation to “Kooyong Park”, including groundwater/flooding, Aboriginal/European heritage, bushfire, flora/fauna and soil contamination:

- Research & findings based on existing data and best practice
- Stand by report conclusions, based on conservative, cautious approach related to 1:200yr event
- 1:100yr flood, existing levee protection, licenced. 1:200yr protection would require some upgrade to existing levee
- SES ok with flooding risk, sufficient lead time, flood evacuation plan appropriate
- Can deal with various contingencies through design, as detailed in latest report
- Frequencies based on averages, pattern of flood events
- Research & findings applicable to whole farm

- Access issues would have to be resolved, but within scope of managed flood prevention design
- Proposed development supported, other developments surrounding the site would be more at risk than this site

8. REVIEW AND ASSESSMENT OF COUNCIL'S RESOLUTION

The Council decision under review is the resolution passed at its meeting on 21/7/09 and subsequently upheld at a further meeting on 1/9/09. An understanding of the background to this matter together with processes, procedures and documentation relevant to assisting the decision making process leading to this meeting date have been summarised above, based on supplied and available data.

The LEP process is prescribed under the EP&A Act 1979. Generally, in considering the content of a draft LEP, Council will review submitted information including a LES in order to submit a report/statement under (then) S64 of the EP&A Act 1979.

It is understood the meeting on 21/7/09 was necessary to consider 4 separate parcels of land, including "Kooyong Park", that Council had previously given interim support provided LES's were undertaken to verify their suitability for development under a revised Shire strategy (SLUP) and subsequent new LEP. The applicants were advised that there were no guarantees that the process would result in support for the rezoning.

In considering and making its decision, it would be expected, as general town planning best practice, that the relevant Council meeting would be tabled/presented with:

- a summary of background information, spatial & non-spatial
- the relevant commissioned Local Environmental Study
- commentary and summary on the recommendations of the Study
- conclusions and recommendations from relevant external agencies
- expert report from Council's Town Planner including any support consultant(s), providing recommendation to the Council meeting on this matter and reasons for making this recommendation
- a verbal presentation from relevant Council staff in order to provide explanation of the data presented to assist the decision making process
- a summary of any subsequent representations made by the subject applicants leading up to the Council meeting date (this may also include agreement to allow further presentation at the Council meeting, subject to Council meeting practice policy)

Council Meeting – 21/7/09

A copy of the Council meeting report and minutes on this particular matter is included in Appendix 2.

The following notes are made from the written report:

- the report provides an introduction to the topic that includes four properties
- no summary provided on information provided to date, although the author does qualify that they have attempted to summarise the main issues raised in correspondence from a planning perspective
- no discussion in any great detail on the outcomes of the LES and its intent on informing the LEP plan making process. Subsequent consultation with the author indicated that a verbal summary was provided to Council of the LES
- DoP correspondence discussed noting that the applicants will be required to provide additional information to enable the LES's to be considered – still no guarantee noted. This comment was given generally and was speaking in regard to all 4 property matters, the subject of the report
- Noted that justified recommendations are to be provided to enable the properties to be included in the SLUP

- The 3 other properties discussed also had information shortcomings, however considered within the strategic direction of the SLUP and recommended for inclusion as Future Residential
- "Kooyong Park" was not seen as part of the SLUP strategic direction.
- Constraints on this site were noted, however no reference made to LES content and recommendations/conclusions
- The report noted that although constraints can be managed through engineering/design solutions, priority should still be given to land supply in NW of township.
- A recommendation was then tabled.

With respect to the officer's report, the report does attempt to inform Council of the subject matter, outcomes of agency advice (DoP) and strategic direction advice.

The report, however, does have some notable shortcomings, namely in relation to having regard to the respective LES document and its conclusions/recommendations, the specific merits of the proposal in relation to landuses proposed (other than residential), specific comments from external agencies and infrastructure providers, the intent of the site specific strategy comment in the finalised SLUP vs overall SLUP philosophy, and the opportunity afforded to the applicant to respond to specific DoP comments on additional information to add to the finalised site specific LES.

Little documentation is available in relation to the Council meeting of 1/9/09 where further consideration was made of Council's resolution of 21/7/09, other than acceptance of presentation by the applicant. The applicant's concerns surrounded the additional information for the site and their contention that the LES process was not placed before Council at the time. Notwithstanding the presentation, Council upheld its decision.

The Local Environmental Study – "Kooyong Park"

The following comments are provided in relation to the role of the LES and its adequacy in addressing matters as specified in the tender documents.

The LES document was commissioned following Council's support of including the land in the SLUP. It was Council's intention to rely on the recommendations of this document to determine either support or otherwise for the proposal. The applicant agreed to fund the preparation of this document. This is an important step in the LEP plan making process.

From documentation supplied:

- the LES was commissioned and supervised by Council
- a specification was supplied to the consultant as part of the formal tendering process
- the applicant funded the LES
- a deed of agreement was entered into between the applicant and Council relating to funding and roles/obligations
- Council advised the consultant that the proposal had Council support
- Council received a draft and accepted the final LES
- The applicant presented a summary of findings from the LES to Council
- There has been no detailed documented report or otherwise by Council on the outcomes of the LES, its preparation, acceptance, comments etc leading to the finalisation of the document
- It appears that the LES was not fully communicated to the relevant Council meeting, including full recommendations, commentary on adequacy or otherwise by relevant Council staff.

From consultations:

- The LES was considered inadequate by Council officers and its consultant

- The DoP considered that additional information was required that was not fully dealt with in the LES
- The applicant received no notification from Council leading up to the Council meeting that the LES was considered inadequate, that further studies were required and that a decision would be made at the Council meeting based on these matters

The adequacy of the LES is worthy of discussion as it raises several issues:

- The role of Council in supervising and accepting the LES based on a formal tendering process and agreed specification, particularly considering its importance in providing input to the determining Council's support on this matter
- The fairness and responsibility of Council to the applicant who paid a significant amount (\$18.5k +gst) to reimburse Council for the preparation of the study

Council accepted and subsequently paid the consultant for the final LES. Council, in 2007, resolved to *"support the proposal in principle (subject to a detailed site specific flood study proving the land is suitable for urban development) and amend the draft SLUP to indicate such support"*.

The LES concluded, together with other specific recommendations, that overall *"The site is suitable for some forms of residential development"* and *"The site is suitable for a combination of urban (including residential and commercial/tourism), semi-urban and conservation land uses, based on available information."*

The above conclusions and recommendations should have been reported in detail to the formal Council meeting by Council itself. The applicant has no role in undertaking that action in the formal LEP making process.

9. STRATEGIC PLANNING ASSESSMENT – INDEPENDENT REVIEW

The following is a reassessment of the strategic landuse merit of the proposal based on information gained from the review and consultation process undertaken above.

The limitations of this reassessment are encompassed in the available time, data and understanding of the merits or otherwise of the key landuse proposal, as provided by Council, the Applicant and relevant agencies.

9.1 The Landuse Proposal

The proposal put forward by the Applicant centred on urban development involving mixed-use tourism/low density residential landuse activities.

9.2 Strategic Planning Documents & Key Landuse Issues

Based on an initial submission to Council, the draft SLUP was amended to include reference to this proposal as *"possible development site subject to further investigation (including extension to town flood levee)"* (SLUP version #10).

The SLUP's purpose is to guide the future development and use of land within the Shire. The general strategic intent for urban land settlement is to guide development in a northwest direction away from potentially flood-affected land adjacent the Murray River. Other compatible landuses are identified and accommodated within the limitations of the landform characteristics of the area.

Key issues surrounding the subject proposal include (but not limited to):

- flooding
- infrastructure provision
- compatibility with the general landuse direction of the Moama township
- land supply & demand

Flooding is the main issue of contention in relation to this proposal. From available documentation, the 1:100 flood standard has been accepted as the planning standard for landuse planning purposes in the Shire. The documentation provided by key agencies and further investigation, provided by the Applicant, suggests that the subject site, currently serviced by a rural flood levee system, can be developed within accepted flood standards. The threat of minor inundation at higher flood levels (1:200) is noted and remains a concern of Council as well as satisfactory access during flood events.

A Local Environmental Study was commissioned for this site for *"the purposes of assessing the appropriateness of land for rezoning"*. Encompassed in the LES was investigation and discussion on the above key issues and also a list of additional support material to be completed prior to finalising the draft LEP. This review is satisfied that those matters have generally been addressed from a strategic planning perspective and concurs with the LES conclusion that, amongst other specific conclusions and recommendations, the site could be considered for a combination of urban (including residential and commercial/tourism), semi-urban and conservation land uses, based on available information. The LES also recommends that if rezoning proceeds then the site should be zoned Environmental Living E4, not a general residential zoning.

The LES also discusses supply and demand as they relate to this landuse proposal. Whilst the strategy for most regional centres is to over-supply zoned land to ensure opportunities for development are optimized, the introduction of further potential dwelling sites would need to be balanced with residential landuse takeup in other areas of the Shire. The density for the subject area would have to be significantly lower than

other more traditional general residential & rural residential areas. Also, the applicants suggest that a niche market exists for the type of “green” development they propose. There is obviously a lack of definitive data in this regard, however, the general direction of the “sustainable” community concept is one that has merit in respect of achieving overall environmental goals, and would align with long-term national & international environmental ideals. The proposal nevertheless represents an additional supply of land with settlement potential that would impact on other developing residential areas of the Shire.

Considering the existing mixed-use settlement patterns and character in this area of Moama, and having respect to the overall preferred general residential settlement strategy contained in the SLUP, the landuse proposal does not present a threat to the overall settlement objectives of the SLUP, provided the unique characteristics of the proposal are encompassed in more detailed planning documentation such as a Development Control Plan and that other settlement areas are also phased in an appropriate staged manner.

9.3 Department of Planning

The DoP has documented concerns in relation to gaps in information provided in the LES and other support documentation. These gaps in information would need to be addressed by the applicant if Council agrees the next step of the rezoning process. However, ultimately the decision on this matter from local strategic planning level is one for Council to resolve.

9.4 Ministerial S117 Directions

The proposal must satisfy key directions from the Minister for Planning. In relation to this matter, direction 4.3 Flood Prone Land is relevant.

Direction 4.3, amongst other items, directs Council to not rezone land within flood planning areas from (in this case) rural to residential or environmental protection. The Floodplain Development Manual 2005 defines a flood planning area as *the area of land below the FPL and thus subject to flood related development controls*. The FPL for this strategy, as noted in the SLUP, is the 1 in 100 year event as shown on the Flood Prone Map. Part of the subject land (southern part) is subject to this inundation according to the map, with the majority of the subject land unaffected due to the presence of an existing rural levee. Upgrading to an urban levee standard would be required with relevant external agencies indicating that this is achievable.

Noted concerns are level of access to flood free land in the event of a significant flood and presence of a low-hazard floodway between the land and town centre. Agencies recommend a flood risk analysis plan be prepared for the site.

The LES recommends an E4 zoning, however the landuse proposal includes a residential component.

Generally, considering the above, and provided a flood risk management plan is prepared for the site, this direction could be satisfied.

9.5 Planning Proposal Justification (Gateway Process)

As part of making a strategic decision to include this land in the overall shire landuse strategy and LEP, a broad assessment would be warranted on the potential acceptance of the proposal under the Planning Proposal Justification process. The following is not intended to be a thorough analysis under this process, as that step is beyond the scope of this review, however, a general understanding can be gained from commenting on the 12 justification questions to ascertain whether the strategic decision would have merit:

1 - Is the planning proposal a result of any strategic study or report?

Yes, see final Local Environmental Study and draft SLUP. Additional supporting reports to be completed.

2 - Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Provided the landuse mix is retained as proposed, ie inclusion of tourism/low density environmentally sensitive development. There would potentially be other ways to achieve the objectives of the strategy.

3 - Is there a net community benefit?

Conducting a Net Community Benefit Test is outside the scope of this review. At this stage there are no outstanding community benefits or dis-benefits that can be reliably commented on.

4 - Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?

Only for land not classed as flood liable.

5 - Is the planning proposal consistent with the local Council's Community Strategic Plan, or other local strategic plan?

In so-far-as the Council's inclusion of the land (subject to further investigation) within the final draft SLUP (Ver #10). The LES provided an answer to Council's key concerns.

6 - Is the planning proposal consistent with applicable state environmental planning policies?

Generally consistent, refer to LES documentation.

7 - Is the planning proposal consistent with the applicable Ministerial Directions?

Potentially, see comments above.

8 - Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The LES conclusion left this matter undetermined. Subsequent studies by the applicant related to another development matter on the land suggests minimal or no impact. Further specific site assessment may be needed.

9 - Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The LES touches on most of these environmental management subjects. Further studies by the applicant relating to another development matter suggests minimal or no impact. Further specific site assessment may be needed.

10 - How has the planning proposal adequately addressed any social and economic effects?

The LES reviews social and economic impact and concludes there are no issues that preclude urban development.

11 - Is there adequate public infrastructure for the planning proposal?

From the above research, adequate public infrastructure exists or is within viable extension to the site.

12 – What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

To be undertaken as part of the gateway process. Preliminary comments, as discussed above raise certain issues to be addressed, however, there is no outstanding recommendation to restrict the landuse development as originally proposed.

Overall, subject to addressing information gaps as indicated in previous sections, planning proposal justification could be achieved.

9.6 Strategic Conclusions

In reaching a strategic conclusion on this matter, several questions are raised and discussed below:

1. What landuse is proposed & does it meet the test of achieving the strategic direction of the plan.

The applicant has proposed a mixed-use tourism/low density residential development for the site. Council considered this had merit subject to further investigation. The LES recommended that, amongst other matters, the land was suitable for rezoning and that the appropriate zone be E4 – Environmental Living.

This land is located within a tourist accommodation area that is undergoing continued development, albeit under the provisions of a former planning instrument. The SLUP seeks to address this landuse issue. The SLUP's key residential land release strategy is to direct general residential and rural residential development into the northwest direction.

Development of the eastern side of Moama can be seen to be counter-productive to achieving the strategic direction of the plan. However, the specific nature of the development and suggested environmental based zoning provides a balance of respecting the core strategic landuse preferences of the plan and ensuring suitable land is put to best use. There are some information gaps that need to be completed to satisfy some key agencies in this regard, however, overall the proposal as submitted and guided by E4 zoning provisions and other support development guidelines could potentially compliment the landuse mix of the SLUP.

2. Does it meet the test of environment and hazard analysis?

The LES and agency comments, in most areas, support the proposal. However, in relation to flooding there appears to be challenges in relation to resolving the existence of a rural levee on the site, accepting flood free parts of the site in the 1:100 year flood event vs potential inundation in a 1:200 year event, isolation during flood events and provision of flood free access to the town centre.

Discussion with agencies and experts on this topic do not discount the potential for use of the site, however, the issues remain a real concern for Council. A common theme in these discussions is the completion of a flood risk management plan for the site that will consolidate all current documentation produced for this site on this topic.

3. *Does incorporating the landuse proposal compromise the strategic direction in any significant way?*

Under the restrictions of an E4 environmental zoning, the proposal would not significantly affect the strategic direction of the future growth of the Shire. The zoning would need to be supported by appropriate development control plan guidelines to ensure the sustainability and environmental goals of the project, including specific controls on density and other landuse activities, result in a landuse character quite distinct from a general residential settlement environment. General residential would continue to be directed to the north-western parts of the township in accordance with the SLUP.

4. *By not including the proposal limit the optimum use of land taking into account all related constraints & opportunities inherent with the property?*

The conclusions of the LES are clear that the site is suitable for some form of urban, semi-urban and conservation landuses. The optimum use of the land would be compromised, noting that the LES does not advocate general residential landuse.

Overall, the landuse proposal has the potential to compliment and complete the SLUP, provided a clear distinction is made via development controls to ensure the character of the development reflects environmental living and not general residential. DoP guidelines are available to assist in this regard.

10. CONCLUSION & RECOMMENDATIONS

10.1 Conclusion

The conclusions of this review are based on available documentation and the result of discussion with key personnel within and external to Council. If any item mentioned in this report, or further matter arising subsequent to this report, is found to be factually incorrect or circumstances change that have a significant bearing on the conclusions below, then the writer should be informed to allow a review of these conclusions.

This review aimed to address the following deliverables:

1. An assessment of Council's resolution to not support the rezoning of "Kooyong Park" in the draft Murray LEP, including a review of all applicable documentation and information relating to this resolution; and
2. A recommendation as to whether Council should support the rezoning of the property as part of its draft LEP or subsequently as a planning proposal.

Council's resolution:

Council, in 2007, resolved to *"support the proposal in principle (subject to a detailed site specific flood study proving the land is suitable for urban development) and amend the draft SLUP to indicate such support"*, and the LES concluded that *"The site is suitable for some forms of residential development"* and *"The site is suitable for a combination of urban (including residential and commercial/tourism), semi-urban and conservation land uses, based on available information"*

The report to Council on 21/7/09 is considered lacking in some detail to enable Council to make an informed decision on this matter, notwithstanding that verbal presentations would have also been included in the report consideration. In particular, a full discussion should have been made on the LES outcomes. The LES is a significant document in the LEP process. Council's acceptance of the LES and its final recommendations require tabling, including comment and discussion, to provide the necessary input to the enable Council to make a decision on this matter.

In addition, the applicant should have been given some opportunity to respond to the study inadequacies noted by DoP.

It is noted that Council's resolution was made based on sound planning concerns put forward by Council staff, particularly in relation to adherence to strategic direction, flooding, land supply and infrastructure issues. However, the noted omissions above cannot be ignored to ensure a balance view on the matter. The rezoning process is therefore incomplete and the applicant should be advised of this situation and given the opportunity to respond.

Rezoning:

The proposal was originally put forward as a mixed-use tourism/low density residential development, focusing on the "uniqueness" of the proposal. In relation to strategic merit, the landuse proposal has the potential to compliment and complete the SLUP, providing a clear distinction is made via development controls to ensure the character of the development reflects environmental living and not general residential.

The LES, whilst lacking in detail in some areas, did provide an answer to Council's question of whether the land would be suitable for rezoning. An E4 Environmental Living

Zone was recommended, which has distinct landuse objectives compared to general residential. The general conclusions of the LES are supported, however, the list of recommended additional reports/studies require attention. In particular, the issues of flooding require consolidation to ensure both Council and concerned agencies are satisfied all potential risks are addressed. In this regard, the completion of a site specific flood risk management plan appears essential, together with other information gaps identified by DoP.

Agency conclusions centred on their areas of expertise and offered technical response on what was achievable on the site based on Council's strategic landuse direction (ie Final draft SLUP Ver #10).

The specific details on what this development was proposing to achieve seems to have been lost in the discussion and preparation of the draft LEP. Council's decision refers to residential development and expansion, whereas this development, whilst having a residential living component, has additional landuse proposals that have received little discussion, particularly as an integrated proposal.

As discussed above, the rezoning process appears incomplete and, prior to Council moving forward with this matter, the applicant should supply the additional reports as listed by DoP and noted in the LES.

Therefore, Council should, at this stage, continue its consideration of the rezoning by requesting all appropriate documentation be submitted by the applicant, to complete the required land and development data in order to address all statutory and strategic concerns. Only then would Council be in a position to progress the matter formally. The worth of undertaking this additional work is a decision to be weighed up by the applicant

Any progression to rezoning the site will still be subject to the Gateway Process and consideration by the Department of Planning.

10.2 Recommendations

As a result of the above review, it is recommended to Murray Shire Council that:

1. The "Kooyong Park" Urban Development Proposal be reconsidered for inclusion in the Murray Shire LEP based on the recommendations of the LES and further reports noted below:
2. The applicant be given the opportunity to submit additional studies and reports, as detailed by the Department of Planning in its correspondence of 14/5/09 and noted in the LES, including a site specific flood risk management plan, as addendums to the final LES, to enable final determination of proceeding with the draft LEP.
3. Considering the importance of not stalling the introduction of the Shire-wide new LEP, this matter proceeds as a LEP amendment under the "gateway system" of the DoP.
4. Site specific development control plan guidelines be prepared to compliment the proposed LEP, as noted in the LES, to ensure an environment living character is achieved that is clearly distinct from general residential.

11. APPENDICES

1. Review Documents – detail notes
2. Council meeting report & minutes
3. Department of Planning letter – 14/5/09
4. Local Environmental Study conclusions
5. Department of Planning – relevant circulars

APPENDIX 1: Review Documents – Summary Notes**1.0 Murray Shire SLUP 2006-2030 (Version #8 - Draft) 8/3/07**

- Vision seeks to ensure Shire's natural environment is carefully managed and that its natural and built assets are protected from inappropriate rural and urban development that would prejudice agricultural, heritage and urban attributes of the Shire
 - One of fastest growing townships in NSW
 - Purpose is to guide future development and use of land over next 20-30 years
 - In particular, to assist:
 - New LEP preparation
 - Degree of certainty re landuse location
 - Maintaining ag land in production not required for urban expansion
 - Protecting the riverine environment from use & development detrimental to it
 - Separating incompatible uses
 - Reducing development speculation
 - Considering tourist development proposals
 - Discouraging development on flood prone land
 - Strategic response to key planning issues
 - Not identifying any flood prone land for future urban development
 - Maintaining existing development east of levee, with no future intensification
 - 'no urban development east of the levee bank due to flooding'
 - Environment
 - Reference to Moama Floodplain Management Study
 - Confirms most of land east of Cobb Hwy & levee is flood prone – limits eastern expansion for urban purposes
 - Confirms future growth "can only be" in NW direction between Perricoota Road & Cobb Highway
 - Acceptance of relocatable homes
 - Not role of SLUP to determine where residential types to be built other than rural residential
 - Tourist developments vs normal residential development – acceptance that not in areas under 1:100 flood affected
 - Site is identified as partially not floodprone on Flooding Map extract from Flood Study
-

2.0 Murray Shire SLUP 2006-2030 (Version #10 as adopted)

- Similar content to draft version
 - Final version includes subject land as "possible development site subject to further investigation (including extension of town flood levee)".
-

3.0 Draft LEP 2010 Zoning Map - Moama

- Note zonings applied to land as Part E3 – Environmental Management (Holmes Street frontage) and Part RU1 – Primary Production
- Zone E3 Environmental Management - Objectives of zone
 - To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
 - To provide for a limited range of development that does not have an adverse effect on those values.
 - Dwellings are permitted with consent
 - Min Lot Size = 120 ha
- Zone RU1 Primary Production - Objectives of zone

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
 - To encourage diversity in primary industry enterprises and systems appropriate for the area.
 - To minimise the fragmentation and alienation of resource lands.
 - To minimise conflict between land uses within the zone and land uses within adjoining zones.
- Dwellings are permitted with consent
 - Min Lot Size = 120 ha
-

4.0 Kooyong Park Urban Development Proposal (4/5/07)

- Highlighting attributes and concepts of proposed “mixed use” eco-friendly” development, tourism aspect including accommodation
 - Infrastructure details, servicing etc
 - Target outcomes – env model, sustainability/ESD principles
-

5.0 Kooyong Park Council Presentation (15/5/07)

- Details of integrated tourist & residential development
 - Document as presented to Council – summary from KPUDP above.
-

6.0 Kooyong Park Development Strategy (15/12/07)

- Further details on tourism/mixed use proposal, expanding on previous documents
 - Details of development design team
-

7.0 Kooyong Park – Background Summary (3/3/09)

- Prepared for Councillor’s presentation on 3/3/09
 - Includes summary of findings from completed LES (Feb 2008), outcomes etc
-

8.0 Local Environmental Study (LES) - Kooyong Park (Feb 2008) – Coomes Consulting

- As commissioned by Murray Shire Council, funded by applicant, supervised and accepted by Council
 - Detailed LES addressing environment/planning criteria relevant to the site
 - See study conclusion for details:
 - E4 zoning suggested - This zone is generally intended for land with special environmental or scenic values where residential development could be accommodated.
 - Other specific clauses/objectives etc recommended
 - Body of report lists recommended works and study elements for further investigation
 - Considered that the site is suitable for some forms of residential development
 - Considered that the site is suitable for combination of urban/commercial/tourism, semi urban and conservation land uses
-

9.0 Correspondence Precis

26/5/05	Request from M. O'Farrell for subject land to be included in new LEP – general request - map illustrating concept layout over 40ha, mixed residential (2000m ² urban "lifestyle" lots – 12ha), residue house lot, "enviro" community precincts (12ha incl parklands), tourist precinct area, restaurant/function centre/accommodation/open space (6ha), wetlands area.
4/5/07	From M O'Farrell to MSC, formal request for rezoning as part of SLUP/New LEP – Living Zone – Low Density. Requesting presentation to 15/5/07 Council Meeting
21/5/07	From MSC to MO, confirming Council support in principle, including amendment to SLUP, subject to detailed site specific flood study proving land is suitable for urban development.
18/6/07	From MSC to MO, advising of flood study/existing levee modification requirements, DWE concurrence etc. If flood study & DWE support the development, then progress to rezoning process under EP&A Act.
3/8/07	From MSC to DWE (Peter Nankervill), confirming DA for levee only required if both Council & DWE are satisfied the land is appropriate for urban development.
17/8/07	From MO to MSC, enclosing letter from DWE (9/8/07). DWE confirm discussions with MO – no problem with upgrade to levee.
23/8/07	From MSC to MO re LES requirement prior to rezoning & deed of agreement.
26/9/07	From MSC to Coomes Consulting re LES & acceptance of tender.
16/11/07	From DoP to MSC, advising of S54 requirements and requesting status of proposal
18/12/07	Emails between MSC to Coomes Consulting confirming contact with MO for additional information. Council support noted, comment re Warwick noted.
2008	<i>Note: no correspondence/documentated activity during 2008. Confirmed with Council & Warwick Horsfall that time consumed by draft LEP preparation, SLUP finalisation, etc.</i>
27/1/09	From MO to MSC re request to address/update Council/Councillors on rezoning, LEP/SLUP, LES recommendations, DA for 16 existing building entitlements.
27/3/09	From DWE (Darren Walleit) to Habitat Planning re S62 reply on Draft LEP: - re Kooyong Park – greywater recycling concern, hydrological investigation required - reticulated water/sewer required - "significant risk" of site affected by flood events, levee may be constructed - road access affected during food event, risk to emergency services, etc. - recommends liaison with DECC & SES to assess risks - construct/modify levee + flood risk analysis.
14/5/09	From DoP (Anna Patton) to MSC re LES for "Kooyong Park" & others: - Council to establish its own formal support or otherwise for site - consider in context of adopted SLUP & DoP letter of 4/2/09 (no copy supplied) - justified recommendation of support or otherwise - additional information to be provided for LES, incl: - variance to SLUP finding - strategic decision for future development to west - flooding/bushfire issues - S117 assessment not completed - strategic review of Floodplain Management Study - servicing/infrastructure analysis

	<ul style="list-style-type: none">- flora/fauna/cultural heritage assessment required- development concept – any other suitable sites?- uniqueness requires justification
28/5/09	Email from Warwick Horsfall to S62 agencies requesting response to additional LES's
10/8/09	Frm MSC to MO advising that, following consideration of DoP concerns, property not to be included in final draft LEP
17/8/09	From MO to MSC, seeking review of decision to exclude "Kooyong Park" from draft LEP & to be included in agenda to address Council on 1/9/09.
21/8/09	From MO to MSC/Councillors, seeking explanation on Council's decision to exclude "Kooyong Park" from draft LEP, providing background to actions of applicant & lack of communication by Council <ul style="list-style-type: none">- seeking support to review the decision
12/7/10	From MO to MSC/Mayor/Crs, raising issues with MSC Planning Department. <ul style="list-style-type: none">- LES conclusions not taken into account- lack of transparency & communication with MSC- withholding DoP information/advice on additional LES data- procedural issues on notification following 21/7/09 Council Meeting- uniqueness of proposed site development not communicated to DoP- advice from MSC re fragmented titles- misleading advice on infrastructure capacity- inability to lodge official complaint- requesting review of these matters
27/7/10	From MO to MSC – seeking opportunity to address Council & to request review of decision to remove "Kooyong Park" from draft LEP. <ul style="list-style-type: none">- responses provided to Council-raised issues- uniqueness of development proposal vs general strategic zoning provisions.
10/8/10	Emails – MSC/DoP re achieving timeline for new LEP & review of "Kooyong Park" site.

10.0 Council Report – 15/5/07

- Description of proposal
 - Strategic assessment discussed including reasonings for/against the application
 - Applicant's points noted
 - Resolved to support the proposal, subject to detailed site specific flood study.
-

11.0 Council Reports - 2009

- 3/3/09 – MO invited to address Council with overview of LES outcomes – noted
- 21/7/09 – Discussed process of LES preparations for supported sites including "Kooyong Park" and made recommendations for inclusions/exclusions to LEP review
 - DoP comments tabled, noted concerns
 - Additional LES info required re environmental constraints, flooding & infrastructure constraints, etc
 - Additional detail to comply with new legislation
 - Strategic landuse philosophy discussed, emphasis on residential release areas to west
 - Not in accordance with philosophy of SLUP
 - Report recommended to not include property in Shire wide LES as it contradicts adopted SLUP

- no mention of “uniqueness” of development proposal as originally presented to Council that provided the strategic input for Council to consider the proposal as a possible development site in 2007
 - No discussion on the content and conclusions of LES that was commissioned by MSC
 - no discussion on E4 zoning recommendation, alternatives
 - Applicants content that they were not given opportunity to attend the meeting or respond to the DoP concerns
- 1/9/09 – Request by applicant , presentation made to Council seeking appeal or review of decision to exclude rezoning of subject land from draft LEP, noted, upheld resolution of 21/7/09.
-

12.0 Council Report – 3/8/10

- Review of Council’s resolution of 21/7/09, resolved that review be undertaken by an independent consultant
 - Selection by applicant
 - LEP is priority, if site specific LES is supported, consider as spot rezoning (“gateway process”).
-

13.0 Groundwater & Flood Assessment (AES) – July 2010

- DA for 15 lots – rural residential
 - Prepared at request of Murray Shire
 - Impact on flooding
 - Suitability in the floodplain environment
 - Actions related to flood event
 - Subsurface hydrology
 - Conclusions – flooding
 - Site not readily subject to flooding in low to moderate floods (mostly <1:100 AEP)
 - Possible to engineer the development so that potential costs arising from flood storage hazards & risks are eliminated
 - Flood Management Plan needed as part of approval process
 - Conclusions – Groundwater
 - Likely to be less impact on groundwater, compared with irrigated agriculture
 - Additional vegetation will increase interception etc, stabilization of water tables at or below current levels
 - F.P.L. (1:200) 95.63 AHD defined flood liable land
 - F.P.L. (Floor Height) 95.34 AHD + 0.3 free board = 95.64
-

14.0 Aboriginal & European Cultural Heritage (AES) – July 2010

- Potential impact from farming, lots, roadside reserves
 - Conclusions
 - No aboriginal artifacts or other items of cultural importance
 - Findings – low archaeological potential
 - Recommendations – no specific management strategies, no impediment to proposed development
-

15.0 Bushfire Assessment (AES) – July 2010

- Part of land classified ‘bushfire prone’, with approx 1ha high hazard risk
- Mitigation measures required and achievable
- Development is able to meet all standards, objectives and performance criteria

16.0 Flora & Fauna Assessment (AES) – July 2010

- Extremely limited floristic diversity in both farm and development area
 - No threatened fauna species
 - Habitat enhancement measures recommended in management plans
 - Development offers substantial opportunities to improve habitat
-

17.0 Soil Contamination Assessment (SEPP55) (AES) – July 2010

- No detectable levels of soil contamination
 - No impediment to residential occupancy re SEPP55
-

18.0 Additional documents from Applicant (M O'Farrell)

- The following documents were additional to those supplied by Council. The balance of documents including in applicant's resource folder were duplicates of documents included in Council's package.
- 13/6/06 – MO Letter to Habitat Planning
- 9/3/07 – MO Letter to Habitat Planning
- 7/8/07 – MSC request for tender re LES for "Kooyong Park", including copy of LES brief/specification
 - payment terms – 75% on submission of draft, final 25% on acceptance of final report
 - specification explained purpose, necessity & procedure for preparing the LES
 - Council set the specification and made final selection of consultant
 - Specific matters to be addressed in LES were provided including all landuse & environmental impact matters raised by Council
 - The provider clearly advised that they are responsible for completing all contracted activities as specified
 - The provider advised of procedure for variations to contracted work
 - Qualifications & insurances verified by Council
 - Council to supervise the contract, including final acceptance (measured against the specification outcomes)
 - Council to take ownership of the work on completion with rights to its use extended to the landowner/applicant
 - *"The final Environmental Study will assist Council in determining the suitability of the land at Kooyong Park, Old Deniliquin Road, Moama for rezoning. It will also be used to assess future applications for development".*
- 8/11/07 – MSC letter to MO re LES Deed of Agreement including copy of Deed as signed.
 - LES to provide justification for rezoning
 - Council has tendered for the provision of LES consultancy work, and has sole discretion to select consultant in compliance with the tender specifications
 - Owner has agreed to reimburse Council for the costs of the consultant in preparing the LES
 - The owner must permit access to the land, make available relevant documentation and make payment of all costs
 - The Council must provide estimated cost of LES works (in accordance with specification) and provide copy of LES to owner on completion
- 16/12/10 – submission to Draft Murray LEP 2010, summary document and submission in relation to Draft LEP exhibition.

APPENDIX 2: Council meeting report & minutes

APPENDIX 3: Department of Planning letter – 14/5/09

APPENDIX 4: Local Environmental Study conclusions

APPENDIX 5: Department of Planning – relevant circulars