



Notice is hereby given that the **Ordinary Meeting** of Murray Shire Council scheduled to be held on **Tuesday 19 January 2016** in the Multi-Function Room, Mathoura Visitor and Business Centre, Cobb Highway, Mathoura, has been **rescheduled** due to the lack of a quorum of the Council and **will now be held on Tuesday 2 February 2016**, commencing at **1:00pm** in the Meeting Room, **Moama Branch Office**, 6 Meninya Street, Moama.

Margot Stork
General Manager

AGENDA

1. Acknowledgement of Country
2. Opening Prayer
3. Apologies
4. Advice of any Conflict/Pecuniary Interest Pertaining to the Meeting
5. Confirmation of Minutes of:
 - Ordinary Meeting on 08/12/15
6. Business Arising from Minutes
7. Mayor's Minute
 - *Please refer over the page for a detailed listing*
8. General Manager's Report & Supplementary Matters
9. Director of Corporate Services Report & Supplementary Matters
10. Director of Engineering Report & Supplementary Matters
11. Director of Environmental Services Report & Supplementary Matters
12. Questions and Statements on Notice
13. Questions and Statements without Notice
14. Precis of Correspondence
15. Sundry Delegates Reports
16. Condolences
17. Confidential Reports & Supplementary Matters
 - *Please refer over the page for a detailed listing*

DEPUTATIONS

2:30pm Richard Stumpf
Re: Director of Environmental Services Report, Clause 3 (DA 017/16)

INSPECTIONS

NIL



Partnering for a sustainable community

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CLAUSE 4. 2016 AUSTRALIA DAY CELEBRATIONS

As Councillors are no doubt aware, Murray Shire's 2016 Australia Day Celebrations will be held at the Mathoura Visitor & Business Centre, Cobb Highway, on Tuesday 26 January, commencing at 7:45am with a free big BBQ breakfast. The morning's activities will include live entertainment, free kids activities, Australia Day merchandise giveaways and a display by the Echuca & District Historic Vehicle Club. The official ceremony will begin at approximately 8:45am, which will include the Australia Day Welcome by the Mayor, Cr John Pocklington; the Australia Day Address by the Australia Day Ambassador, Rev Graham Long; the presentation of Australia Day Awards and the cutting of the Australia Day Cake.

A copy of the flyer, which will be disseminated to all Murray Shire households via a household mail out (week beginning Monday 18 January), placed on Council's website and Facebook page, and advertised at Council's offices and in the local media, is attached for the Council's information (Appendix E).

Recommendation

That the information be noted.

**CLAUSE 5. MURRAY DEVELOPMENT CONTROL PLAN (DCP) 2012 –
DRAFT AMENDMENT 5****Background**

Murray Shire Council has engaged EDM Group as an independent Planning Consultant to facilitate and prepare a Planning Proposal for the rezoning of a property located to the east of the Moama township known as "Kooyong Park". The purpose of the project is to provide Council with sufficient information to make an informed decision in respect of the Proposal to develop the land for a range of residential and commercial land uses as part of an overall development to be known as "*Kooyong Park Sustainable Development*".

At its meeting of 20 October 2015, the Council considered a report from EDM Group in relation to this development and subsequently resolved:

1. *The Site Specific Review report prepared by EDM Group be received and noted by the Council;*
2. *The Murray Development Control Plan (DCP) Chapter 6 be amended to reinstate notation over the subject land identifying "Kooyong Park" as a potential development site, subject to further investigation (including extension of town flood levee);*
3. *Council place a draft copy of the Murray Development Control Plan (DCP) 2012 – Amendment 5, on public exhibition for a period of 28 days;*
4. *The landowner be invited to engage a suitably qualified floodplain practitioner, agreeable to Council, to prepare, at no cost to Council, an independent flood assessment, as outlined within the Site Specific Review report; and*

5. *Upon receipt of an agreed comprehensive flood risk report and having regard to any recommendations of such a report, that Council give further consideration to preparation of a Planning Proposal for the subject land.*

Following this resolution, a draft copy of the Murray Development Control Plan (DCP) 2012 – Amendment 5, was placed on public exhibition for a period of 28 days from 30/10/2015 to 27/11/2015.

At the close of the exhibition period there had been no submissions received.

After the close of the public exhibition period an anonymous objection was subsequently received by Council's Manager Planning & Building on 11 December 2015.

Having regard to previous Code of Conduct recommendations, EDM Group has been engaged to prepare this independent report to Council in respect of Draft Amendment 5.

Introduction

Council adopted a new Development Control Plan (DCP) on 19 June 2012 and subsequent amendments in August 2012, January 2013, August 2014 and September 2015. The DCP compliments the Murray Local Environmental Plan (LEP) 2011 and provides objectives and controls for a range of development in Murray Shire.

The purpose of a development control plan is to;
provide guidance on the following matters to the persons proposing to carry out development to which this Part applies and to the consent authority for any such development:

- (a) *giving effect to the aims of any environmental planning instrument that applies to the development,*
- (b) *facilitating development that is permissible under any such instrument,*
- (c) *achieving the objectives of land zones under any such instrument.*

Section 73 'Review of environmental planning instruments' states;
The Secretary shall keep State environmental planning policies and councils shall keep their local environmental plans and development control plans under regular and periodic review for the purpose of ensuring that the objects of this Act are, having regard to such changing circumstances as may be relevant, achieved to the maximum extent possible.

Public Exhibition

Following the Council resolution at its meeting of 20 October 2015, a draft copy of the Murray Development Control Plan (DCP) 2012 – Amendment 5, was placed on public exhibition for a period of 28 days from 30/10/2015 to 27/11/2015.

The only proposed change to the DCP was in respect of Chapter 6 - Strategic Land Use Plan (SLUP) in which the SLUP was to be amended by reinstating notation over

the subject land identifying “Kooyong Park” as a potential development site, subject to further investigation (including extension of town flood levee).

No submissions were received by close of business on 27 November 2015.

Comment:

After the close of the public exhibition period, an anonymous objection was subsequently received by Council on 11 December 2015. In summary, the substantive matters raised within the submission relate to:

- the flood prone nature of the subject land;
- flood levee issues; and
- the merits of the proposal.

The issue for the Council to firstly consider is, whether such a late submission actually constitutes a valid submission about the draft DCP that has been duly made under the terms of the *Environmental Planning and Assessment Regulation 2000* (“the Regulation”). The second issue is, whether the objection is valid given that it’s been lodged anonymously.

In relation to the first issue, the following Clauses, 20 and 21, of the Regulation provide:

Clause 20 Who may make submissions about a draft development control plan?

Any person may make written submissions to the council about the draft development control plan during the relevant submission period.

Clause 21 Approval of development control plans

(1) After considering any submissions about the draft development control plan that have been duly made, the council:

(a) may approve the plan in the form in which it was publicly exhibited, or

(b) may approve the plan with such alterations as the council thinks fit, or

(c) may decide not to proceed with the plan.

(2) The council must give public notice of its decision in a local newspaper within 28 days after the decision is made.

(3) Notice of a decision not to proceed with a development control plan must include the council’s reasons for the decision.

(4) A development control plan comes into effect on the date that public notice of its approval is given in a local newspaper, or on a later date specified in the notice.

Having regard to the previous, it is noted that the submission was lodged well outside of the exhibition period. As a consequence, it is the case that the submission has not been duly made in terms of the Regulation and might otherwise be dismissed accordingly. If, on the other hand, the Council was prepared to give some consideration to matters raised within a late submission, it would need to be accepted that such a submission would carry less weight as opposed to a valid submission.

This notwithstanding the matter is further complicated by the fact that the submission has been lodged anonymously.

It is an accepted convention that an objection must emanate from a legal entity and it must be in writing stating the reasons for the objection and stating how the objector would be affected, in this case, by the proposed DCP Amendment.

Planning principles are well established in respect of the minimum requirements of an objection in the context of the Environmental Planning and Assessment Act ("the Act"). For instance it is accepted planning practice that:

- The primary purpose of an objection is to inform a Council of the views of the particular objector who opposes the planning matter being publicly exhibited.
- A subsidiary effect of lodging an objection is that the objector thereupon becomes entitled to notice of Council's ultimate conclusion on the matter and is thus warned of the decision so that they may consider their respective position including any possible further action if they see fit.
- Therefore for a document to be an objection it must be capable of consideration by Council. This involves not only an expression of opposition, coupled with sufficient identification of the matter which is the subject of opposition, but it must also contain sufficient information about the objector to permit the Council to give the objector notice in writing of its determination of the matter.

Quite apart from any planning practice issues raised above, there are also strong policy reasons to disregard anonymous objections. That is, any objection to a publicly exhibited planning matter effectively becomes a public document. It is therefore required to not only be open, but to also require the identity of the objector to be revealed to the Council. If anonymous objections could be made, a person could object, without revealing their identity and protecting any possible rights to appeal, without being placed in a position where the objection could be properly assessed by reference to the motive of the objector.

On the face of it, therefore, it is considered that the letter received should not be regarded as a bona fide objection in the terms of the Act and should be disregarded because the document received on 11 December 2015:

1. was received well outside of the public notice period and therefore has not been duly made in terms of the Regulation; and
2. is undated and unsigned and has no information provided so as to be able to identify the objector.

In any event, even if this conclusion is not acceptable to Council, it is the case that the draft Amendment does not provide any development consent for the *“Kooyong Park Sustainable Development”*, nor does it actually authorise any commencement of the development itself. The Amendment is a procedural matter that simply seeks to provide opportunity for further investigation of the appropriateness of the land for development purposes.

It is therefore plainly apparent that there would be no material impact upon the anonymous objector as a consequence of the proposed procedural amendment to the DCP being adopted, as exhibited.

Further, it should be noted that all the issues raised within the anonymous submission will in fact be addressed in any subsequent Planning Proposal should this development actually proceed after thorough consideration of any pending future flood study.

In other words, the unidentified person would have ample opportunity to actually lodge a valid objection to the development itself in due course at either:

1. the exhibition phase of any subsequent Planning Proposal under the Gateway process; and/or
2. the development application phase.

As a consequence, it is recommended that the Council resolves to approve the draft amended version of the Murray Development Control Plan (DCP) 2012 – Amendment 5 in the form which it was publicly exhibited and that notice of this decision be subsequently published. A copy is attached as Appendix F.

Recommendation

That the Council approves the amended draft version of the Development Control Plan (Murray Development Control Plan (DCP) 2012 – Amendment 5) in the form which it was publicly exhibited.

CLAUSE 6. MURRAY SHIRE COUNCIL POLICY DOCUMENT

As Councillors are aware, Council's Policies need to be reviewed in a regular, timely manner to ensure they meet the current conditions.

The Murray Shire Workforce Plan Policy (and Procedure) (POL118) has been reviewed and/or amended by Council's staff and needs adoption by the Council. The Draft Policy (and Procedure) is attached for Council's information at Appendix G.

Recommendation

That Council adopt the Murray Shire Workforce Plan Policy (and Procedure) (POL118).