



Notice is hereby given that the **Ordinary Meeting** of Murray Shire Council will be held on **Tuesday 20 October 2015**, commencing at **1.00pm** in the Multi-Function Room, **Mathoura Visitor and Business Centre**, Cobb Highway, Mathoura.

Margot Stork
General Manager

AGENDA

1. Acknowledgement of Country
2. Opening Prayer
3. Apologies
4. Advice of any Conflict of Interest Pertaining to the Meeting
5. Confirmation of Minutes of:
 - Extraordinary Meeting on 29/09/15
 - Ordinary Meeting on 06/10/15
6. Business Arising from Minutes
7. Confidential Reports & Supplementary Matters
 - *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's Report & Supplementary Matters
11. Director of Environmental Services Report & Supplementary Matters
12. Questions and Statements without Notice
13. Correspondence
14. Sundry Delegates Reports
15. Condolences

DEPUTATIONS

- 2:00pm** Peter O'Dwyer (Consultant)
2:15pm Matthew O'Farrell
Re: General Manager's Report, Clause 2
- 2:30pm** Trent Horneman and/or Representative
Re: Director of Environmental Services Report, Clause 3

INSPECTIONS

NIL



Partnering for a sustainable community

PO Box 21 Mathoura NSW 2710 Ph 03 5884 3302 Fax 03 5884 3417 admin@murray.nsw.gov.au www.murray.nsw.gov.au
Head Office 21-25 Conargo St Mathoura NSW 2710 **Branch Office** 6 Meninya St Moama NSW 2731

**CLAUSE 2. MURRAY DEVELOPMENT CONTROL PLAN 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”. EDM Group’s Peter O’Dwyer, will be presenting this report to Council in the absence of Council’s Director of Environmental Services.

The initial assessment of the background information undertaken by EDM Group lead to a preliminary conclusion that while the Planning Proposal Application has “a range of quite positive merits” that there are a range of issues that must be firstly resolved in order to progress the planning proposal. These were outlined by the consultant as follows:

- *The lack of strategic justification within the Murray Development Control Plan (DCP) 2012 – Chapter 6 (Strategic Land Use Plan).*
- *The need for a comprehensive response to the issues raised within the NSW Department of Planning letter dated 14th May 2009 which appear to remain outstanding.*
- *The need to reconsider and respond, where appropriate, to the long list of recommendations as outlined within the Coomes LES.*
- *The need for an independent flood assessment prepared by a suitably qualified practitioner. While it is noted that a report prepared by Advanced Environmental Systems – “Flood and Ground Water Assessment – Kooyong Park Stage 2” dated November 2011 has been provided to EDM Group by the proponent, there are a number of concerns that lead to a conclusion that this report cannot be relied upon at this point in time. That is there is a need to:*
 - i) *Ensure that such an independent report references the current provisions of Murray Local Environmental Plan (LEP) 2011, Murray DCP 2012 and Moama Strategic Land Use Plan (SLUP) 2010-2030;*
 - ii) *Acknowledge and respond to the draft Murray Regional Strategy;*
 - iii) *Reconcile the current stated Council position that rural levees should not be relied upon to designate land as being flood free;*
 - iv) *Comment on the changes over time to the flood prone land mapping that now includes the land within the area of land subject to inundation by the 1:100 flood.; and*
 - v) *Discuss the specific works that would be required to protect the site in isolation to town levee standard including:*
 - *appropriate construction standards*
 - *type of levee construction and associated footprints*
 - *dealing with internal drainage*
 - *access in times of flood*
 - *impact on neighbouring property*
 - *environmental impacts*

- *land management issues; and*
- *ongoing operation and maintenance.*

In response to the above, EDM Group was subsequently engaged to carry out a site specific review of the Murray DCP 2012 – Chapter 6 (Strategic Land Use Plan). This work was seen as being critical to the overall purpose of providing Council with the ability to make an informed decision in respect to the suitability of the site to be rezoned as proposed.

The project brief required that the site specific review draw upon and address the relevant issues raised within the:

- Coomes Local Environmental Study February 2008; and
- NSW Department of Planning letter dated 14th May 2009.

Expected outcomes included:

- Determination of the most suitable zoning for the site;
- Identification of further information and/or studies (if required); and
- If the review supports rezoning of this site, preparation of an amended Moama SLUP / Murray DCP 2012 Chapter 6.

Subject Land

The subject land known as “Kooyong Park” is identified as Lot 1, DP 1098204; Lot 1, DP1139001; and Lots 1 & 2, DP 1078090.

Figure 1: Site context plan (source SIX Viewer)



The property has frontage to Moama Street to the west, and Holmes Street to the south. To the east, the property also has frontage to Old Deniliquin Road.

As previously noted within various Council reports in respect of this particular property, site characteristics include the following:

- Located less than 2.0km to east of town centre;
- Largely protected by an existing rural levee bank system;
- Land uses in the vicinity to the east of the railway line include a mixture of farming, rural living, holiday homes/tourist developments;
- The property is generally flat terrain draining from south to north at a grade of around 0.5%;
- A single storey dwelling and associated outbuildings are located in the north eastern corner of the property (Lot 1, DP1078090);
- An approved 1-17 lot subdivision is being constructed in the south western corner of the property. Fifteen of these lots are to be developed for residential purposes. Lots are fully serviced and range in size from 1775m² – 2270m²;
- Some scattered paddock trees across the property;
- Native vegetation largely constrained to the road reserves around the site; and
- Evidence of wetland area/low lying natural drainage along southern section.

Located to the west across Moama Street is the rail corridor, which also acts as a flood levee. Further west across Barnes Road is the Moama Industrial Estate.

Discussion

A final Site Specific Review report has been provided by the Consultant and is separately attached to this report as Appendix A.

As noted above, the Site Specific Review in respect of the Kooyong Park planning proposal considered in detail the following review documents:

- Coomes Local Environmental Study February 2008; and
- NSW Department of Planning letter dated 14th May 2009.

The Coomes LES was commissioned by Council for the purpose of assessing the appropriateness of the subject land for rezoning to facilitate the Kooyong Park Sustainable Development. It was noted within the LES that the initial request by the landowner for inclusion of the land within the new Shire-wide LEP was lodged in May 2005.

The letter of the former NSW Department of Planning dated 14 May 2009 was subsequently received by Council in direct response to the referral of the Coomes LES for Kooyong Park. This letter was largely framed in the context of the overall strategic work that was being undertaken in support of the comprehensive LEP at that time.

The Department's letter also outlined additional information that should be provided to facilitate the completion of an appropriately documented LES for the proposed new release areas of Kooyong Park. In this case, it is apparent that the

Department's position was largely a reflection of the recommendations outlined within the Coomes LES.

In response to the Coomes LES the Consultant states:

"It is difficult, even with the benefit of hindsight, to understand why the Coomes LES was not relied upon to support the retention of Kooyong Park within the SLUP. It is clear from an analysis of the various recommendations that the only critical outstanding matter was in respect of the lack of a detailed flood study. Either such a study should have been commissioned at the same time as the LES or alternatively such work should have been required as a matter of priority so as to be included as an addendum to the LES prior to the Council Meeting of 21 July 2009.

Be that as it may, such work still remains outstanding and in terms of any additional detailed site analysis, it clearly remains the responsibility of the proponent to undertake such work."

Further to the above, in response to the Department's letter, the Consultant concludes:

"Upon review it would seem that the abovementioned lack of clarity within the Coomes LES had a direct impact on the subsequent response of the Department of Planning.

Putting aside the range of issues that would be appropriately addressed at any subsequent DA phase it is once again apparent that the single stumbling point for the development proposal is the need for an up to date and detailed flood assessment report.

The Consultant also provides the following discussion for Council consideration in respect of the Murray DCP – Chapter 6:

"Putting aside other strategic considerations as noted above (eg need for an updated independent flood study), the current Moama strategy as expressed within the Murray DCP 2012 – Chapter 6 is considered to be an obstacle for the current planning proposal. This notwithstanding what might otherwise appear to be a range of quite positive merits of the proposed development itself. These include:-

- Good use of what might otherwise be considered to be under-utilised land with high levels of amenity within close proximity of the Moama Town Centre;*
- Being located in proximity of existing rural residential development situated across lots that were formerly part of the 'Old Moama Township' area;*
- The significant quasi-residential development which has effectively leap-frogged the subject land to the east under the apparent guise of "Tourist Development";*

- *The ability to service the land with reticulated infrastructure including water and sewer;*
- *The potential for augmentation of an existing rural levee to a town levee standard so as to protect the site in isolation;*
- *The positive social and economic impacts for Moama and the Murray Shire from a well planned residential development that seeks to pursue sustainable environmental outcomes;*
- *The additional economic benefits from tourism promotion and neighbourhood business opportunities;*
- *The opportunity to pursue a range of environmental initiatives across an entire estate;*
- *The clear linkages with the approved Stage 1 in the south western corner of the property which has created 15 residential lots ranging in size from 1,759m² to 2,636m² plus a lot to cater for a Community Raw Water Supply;*
- *The apparent lack of constraint in terms of Aboriginal and European cultural heritage, flora and fauna considerations, bush fire hazard and soil contamination.*

*Having regard to this site specific review and analysis in respect of Kooyong Park, it is concluded that a more appropriate outcome at the time of the submission of the final draft Murray LEP to the Minister for approval would have been to have simply left the SLUP containing notation over the subject land stating: **“Potential development site subject to further investigation (including extension of town flood levee)”**.*

Such a designation would not have committed Council to any premature re-zoning of the land unless and until all necessary information was provided to allow consideration of a site specific rezoning at some future date.

In fact the current zone of the land being RU1 – Primary Production, is perhaps the best “holding” zone in the circumstances, and remains so until such time a Planning Proposal is otherwise supported by Council.

To have deleted this notation from the SLUP largely on the basis of flooding issues seems to have been an ‘overreaction’ to the matters raised within the Department of Planning & Environment letter dated 14 May 2009. Certainly it appears today that a more considered response would have been to have not altered the SLUP while at the same time recommending the land remain zoned for rural land use purposes.

On the basis that Council has now reached a point where it is prepared to entertain a fresh Planning Proposal for consideration under the Gateway Process, it is recommended that Moama DCP - Chapter 6 be amended to once again identify the subject land as a “Potential Development Site” as was the case up until the Council resolution of 21 July 2009.

While the SLUP has never been formally endorsed by the Department of Planning and Environment, this recommended course of action remains an appropriate outcome to provide a firmer strategic basis for any subsequent LEP review."

Lastly, the Consultant also provides some detailed discussion on the various zone and/or ordinance changes that might be considered should the Murray LEP be amended. In conclusion the Consultant notes:

"Without pre-empting the findings of any possible future flood risk assessment report prepared by a suitably qualified practitioner it is considered after an evaluation of the various options available that the most suitable outcome to consider might be:

- *Rezoning the land to R5 – Large Lot Residential Zone without specifying a minimum lot size; and*
- *Introduction of a specific local provision related to Kooyong Park which would identify the subject land as a Development Area and that allows subdivision of land consistent with an approved Masterplan.*

However, before making a final decision upon such an outcome the necessary further analysis in respect of flood risk must be carried out to Council's satisfaction.

As a consequence it is considered that subject to any recommendations within an agreed comprehensive flood risk report, that should this matter then proceed to a Gateway Determination the Planning Proposal should further reconsider the various options available and in consultation with the NSW Department of Planning and Environment make a recommendation as to the most appropriate response for inclusion in a subsequently amended Murray LEP."

Concluding Comments

Following a thorough review of the numerous detailed background documents relating to the Kooyong Park proposal, it is evident that there are now two (2) critical elements of supporting documentation required so that the matter can proceed. These relate to provision of:

- Strategic justification within the Murray DCP 2012 – Chapter 6 (Strategic Land Use Plan); and
- An independent detailed flood assessment.

It is the case that unless these issues of concern can be adequately addressed in a timely manner, that the Kooyong Park project will be otherwise extremely difficult to justify and progress to an acceptable manner for the purposes of the Gateway Process.

In relation to the recommended Murray DCP amendment, draft Development Control Plans are required to be publicly exhibited for at least 28 days in accordance with clause 18 of the *Environmental Planning and Assessment Regulation 2000*.

A copy of the draft Murray Development Control Plan 2012 – Amendment 5, has been attached to this report as Appendix B.

Recommendation

That:

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 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.



Margot Stork
General Manager