

**DIRECTOR ENVIRONMENTAL SERVICES REPORT
SUBMITTED TO THE ORDINARY MEETING OF MURRAY SHIRE COUNCIL
HELD ON TUESDAY 21st June 2011**

Mr Chairman and Councillors,

I wish to report as follows –

CLAUSE 1. DEVELOPMENT APPROVALS

The following development applications have been approved under delegated authority:-

Number	Applicant Name	Site Address	Description of Development
038/11	Daryl & Debbie Archard	Tandarra Road, Moama	Dwelling with an attached Garage
077/11	PH Projects Pty Ltd - Paris Harvie	93 Goldsborough Road, Moama	Demolition of existing Dwelling, Erection of dwelling & detached Garage
102/10	Sultz Pty Ltd - Michael Falzon	Lot 6 Merool Lane, Moama	Extension of existing storage sheds
102/11	Bookfellowes.com Pty Ltd	Captians Cottage 42 Murray Street, Moama	Change of Use - Residential Dwelling to B&B
118/11	Dennis Family Homes - Kathryn Sutton	Bunnaloo Road, Mathoura	Dwelling & Attached Garage
167/11	Mid Murray Fire Protection	6 Marlin Street, Moama	Warehouse with Office Space
176/11	Daryl Paul Pangrazio	14 Aviemore Court, Moama	Detached Shed
177/11	Saxon Structural Steel - Wayne Saxon	National Parks Depot 22 Morris Street, Mathoura	Detached Shed & Carport
179/11	Dennis Family Homes	8 Shiraz Court, Moama	Dwelling with an attached Garage
183/11	Spanline Home Additions	72 Chanter Street, Moama	Extension - Verandah
193/11	Lockwood Willows Pty Ltd	21 Kilkerrin Drive, Moama	Dwelling with an attached Garage
194/11	Martin & Jenny Kwok	27 Meninya Street, Moama	Change of Use - Moama Takeaway
195/11	Senior Builders - Ryan Senior	49 Shetland Drive, Moama	Dwelling & Attached Garage
198/11	Dennis Family Homes	4 Aviemore Court, Moama	Dwelling & Attached Garage
200/11	Wendy Martin	11 Shetland Drive, Moama	Pergola
201/11	Conquest Pools Echuca	10 Iluka Avenue, Moama	Replace swimming pool
202/11	David Neil Wegener	425 Perricoota Road, Moama	Attached Carport
210/11	Darren Beer	17 Hollara Drive, Moama	Inground Fibreglass Swimming Pool

CLAUSE 2. KOOYONG PARK: REVIEW OF COUNCIL'S RESOLUTION TO DRAFT LEP**Executive Summary**

This report relates to the 'Kooyong Park Urban Development Proposal' and discusses a report prepared by Salvestro Planning which reviewed Council's decision to remove the Kooyong Park proposal from the draft Murray Comprehensive LEP in July 2009. Council resolved at its 3rd August 2010 Planning and Development Committee meeting that;

- 1. Council undertake consultation with the applicant to establish a brief for an independent consultant.*
- 2. Council engage an independent qualified Planning Consultant to undertake a review of all applicable documentation and provide a report on such back to Council for consideration.*
- 3. The Department of Planning be notified of Council's determination.*
- 4. Council support the Murray Local Environmental Plan (LEP) as a priority and if supported, any site specific Local Environmental Study (LES) be considered as a spot rezone.*

In accordance with the resolution Council engaged a planning consultant to undertake a review of all applicable documentation and provide a report on such back to Council for consideration. This review was completed by Salvestro Planning who recommended 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*

Council staff have noted these recommendations and the content of the report. Despite Council having made a resolution to remove the Kooyong Park proposal from the draft LEP on the 21st July 2009 using sound planning principles it is acknowledged that this decision was made without having appropriate regard for the subject Local Environmental Study and without providing the applicant the

opportunity to satisfy the concerns of the Department of Planning. As such it is recommended that Council provide the applicant with the opportunity to submit this information as recommended by Salvestro Planning and then subsequently reconsider the “Kooyong Park” Urban Development Proposal and Councils resolution made on 21st July 2009 taking into consideration all the relevant documentation. Mr O’Farrell will address Council at 3:30pm

Purpose of this report

The purpose of this report is to assist Council in considering the ‘Review of Murray Shire Councils Resolution to Draft LEP’ prepared by Salvestro Planning in respect to the ‘Kooyong Park’ property and its proposed rezoning.

Introduction

This report aims to present a summary of all relevant information to Council to enable an informed decision to be made in respect to responding to the review undertaken by Salvestro Planning.

The report provides a summary of the proposal to rezone ‘Kooyong Park’ in order to facilitate its urban development incorporating residential and commercial land uses. The report provides; a background summary, details of the site and proposal and details as to the recommendations of the Local Environmental Study. The report then completes an objective review of the strategic planning issues including relevant strategic planning documents and directions. A detailed summary of the review undertaken by Salvestro Planning is provided including the strategic assessment and recommendations followed by the comments of Council staff. The report concludes with a summary of key issues.

The report aims to objectively describe the proposal, the issues relating to it and the review undertaken by Salvestro Planning. However, the report also details the subjective comments of Council staff to ensure that these are also known. It is trusted that Council can obtain a thorough understanding of these issues and the perspective of relevant authors and stakeholders.

BACKGROUND DISCUSSION

History and Timeline

The consideration of the ‘Kooyong Park’ site has transpired over a number of years throughout the preparation of Council’s new principle LEP. Below is a timeline as summarised by Salvestro Planning in their review of Council’s resolution.

- In July 2005, Murray Shire commences a review of the existing principle Local Environmental Plan
- Upon expiration of the draft Strategic Land Use Plan (SLUP) 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". The SLUP is subsequently 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.
- Following completion of 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 proposal is not in accordance with the philosophy of the SLUP as adopted by Council. Contradictions relate to land being situated in a flood affected area and the SLUP not including lands protected by rural levees
 - The SLUP clearly focuses on developing and encouraging development to the west of Moama, not the east based on flooding and infrastructure constraints;
 - Additional detail is required to ensure the proposal complies with new legislation, in particular – SEPP (Rural Lands), new 117 directions and Part 2 of Murray REP (Plan 2);
 - Additional information is required addressing issues such as potential environmental constraints such as vegetation, biodiversity or similar;
 - Additional information on how the constraints surrounding the property ie bushfire, flooding etc will be managed;
 - Why Council would consider this site as it appears to be fragmented compared to other sites proposed by the SLUP;
 - The impact of the site on the demand analyses and the release of land that would be more suitable;
 - More detailed analysis of the Moama Floodplain Management Plan is required
 - Further analyses of previous land uses and the potential for land contamination; and
 - The impact of the rail system with respect to noise and vibration
- 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.
 - 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).

Subject Site

The site subject to this report is Lot 1 DP 1098204 and Lots 1&2 DP 1078090 and is the property known as Kooyong Park.

Upon a site visit Salvestro Planning provided the following summary of site 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/low lying natural drainage
- 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

The Proposal

The applicant has requested that Murray Shire Council amend the SLUP and draft Murray LEP 2010 to reinstate 'Kooyong Park' in the process for rezoning in order to allow for the initiatives and facilitate the proposal detailed in their submission. The following is a summary of the proposal described by the applicant in the 'Kooyong Park Urban Development Proposal' submission and submission made in respect to the Draft Murray LEP.

The development is proposed on a 'greenfield site' which allows for a comprehensive master plan to be developed. It is proposed that the development will contain a mix of medium and slightly higher density residential property. This will be enhanced with commercial and tourist initiatives.

The scale and location of this site offers the community a unique opportunity to undertake a series of innovative environmental initiatives. The strategy is

to integrate community development with a mix of high quality residential and tourist elements.

The development proposes a range on renewable energy initiatives. Kooyong Park's strategy is to construct an integrated energy array over the entire site with it envisaged that an array encompassing approximately 200 residences will allow development to be essentially independent of non renewable energy sources, except in extreme peak periods.

The development also proposes a number of water initiatives where as with the energy array, the scale of site wide integrated water array will offer significant commercial and environmental benefits. The array will include grey and rain water management.

The development will also offer a broad range of residential options for the community with a philosophy of providing low maintenance living combined with superior residential amenity. An average of 1000 to 2000sqm of area will be allocated to each new residence to achieve this. Half of the area will be on an independent title on which the residential sites will be located on and the other half of the area will be consolidated into a body corporate owned and managed open green space. This will create a series of open spaces for general amenity and recreational purposes and reduce yard maintenance and water usage on each title. The green spaces will make use of extensive water minimisation design and will be more water efficient to maintain.

The development will comprise at one end, medium density, high quality housing on small low maintenance blocks (approx 500sqm) and situated overlooking parklands. These will cater for both the retirees, semi-retirees and those wanting a low maintenance lifestyle with access to open space. At the other end the development will provide a number of 2,000sqm allotments primarily for families.

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

It is noted in the above description of the development as put forward by the applicant there are a range of environmental sustainability initiatives conveyed. Although these are commendable initiatives, they should not cloud the essence of the proposal for which Council must consider. Council must make a resolution of the proposal from a strategic planning perspective and not consider initiatives that are considered in the statutory assessment of a development application. In this strategic decision, Council must determine whether the land uses proposed are

suitable on the subject land. The development put forward by the applicant proposes the following components;

- Conventional residential development (ie: allotment sizes 500-1000sqm)
- Low Density residential development (ie: allotment sizes approx 2000sqm)
- Commercial businesses such as a delicatessen and restaurant. The LES identifies this land use as 'Tourism/Hospitality'.

It is these two key land uses '**Tourism/Hospitality**' and **Residential** Development which were identified in the LES and explained in the applicants submission that Council must consider whether are appropriate development and use of the subject land.

Local Environmental Study (LES)

A 'Local Environmental Study (LES)' was prepared by Coomes Consulting Group 'for the purposes of assessing the appropriateness of land for rezoning.

Salvestro Planning provided the following comments in respect to the LES process. From the 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 with stakeholders:

- 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;

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

However it should be noted that within the LES other relevant comments were made such as;

- *It is relevant to determine whether the subject site is more appropriate for development than other nominated lands....
Given the finite potential population increases that could or should occur in the area, Council will be required to assess and balance the relative merits of the various proposals*
- *If a rezoning of this site were to be supported, a review of the development opportunities of adjacent lands should also be undertaken. Particular emphasis should be given to the integration of land east and to some extent south of the subject land into an urban or quasi-urban environment*

In addition to this conclusion, the LES made a number of recommendations. These were;

having regard to the Study brief and the findings of the Study, the following recommendations are made:

- **Demonstration of Development Potential**
Before any rezoning of the land, the proponent should undertake, and demonstrate to the satisfaction of Council, such work as would be necessary to justify the extent of the development proposed upon the site and the nominated allotment sizing.
- **Infrastructure Provision**
Before any rezoning of the land, the proponent should demonstrate to the satisfaction of Council, that the expected public outlay for the provision of the services (specifically electricity, street lighting, waste disposal; public road access and water supply) as may be necessary to service the development from an external source, are justified and can be provided at no additional ongoing cost to the Shire's existing community.

- **Drainage**

In considering the improvements to on-site drainage to enhance development opportunities the following works are recommended that:

- A hydrological survey be undertaken;*
- An analysis of the catchment area be undertaken;*
- A detailed flood study be undertaken to determine areas of inundation and determine access road levels;*
- A stormwater drainage plan be prepared; and*
- An environment protection and sediment control plan be prepared.*

- **Flora and Fauna**

In considering the development opportunities for the site, the following works are recommended:

- A comprehensive flora and fauna survey be undertaken, particularly in relation to the road verge adjacent to the site;*
- A Seven Part Test should be undertaken, particularly in relation to the road verge adjacent to the site;*
- A land use plan be designed to identify and incorporate the findings of the Study.*

- **Archaeology**

Prior to a site rezoning, the studies listed below should be undertaken. The findings should then be the basis for any detailed site development plans and identify the development opportunities and constraints for the site:

- A full archaeological survey, the survey is to be both pre and post European settlement focused; and*

The findings of the studies are to be incorporated into the final design parameters for the site.

- **Sewerage**

If rezoning is supported and effected, in considering the development opportunities the following works are recommended that:

- An analysis of possible treatment alternatives be undertaken;*
- A land capability assessment, if on site disposal is proposed, be undertaken; and*
- A preferred system be nominated.*

- **Water Supply**

If rezoning is supported and effected, in considering the development opportunities the following works are recommended that:

- An analysis of a possible potable supply source be undertaken;*
- An analysis of a possible non potable supply be undertaken; and*
- A preferred system be nominated.*

- **Bushfire Hazard**

Prior to support for a site rezoning a full Bush Fire Identification of Risk Study should be undertaken.

If rezoning is supported and effected, in considering the development opportunities the following works are recommended that:

– Access for fire fighting and protection purposes be provided along the perimeter of the study area. Access is to be a minimum four metres wide with passing opportunities at regular intervals. The access is to be within 20-30m of the boundaries of the site.

– A buffer area of at least 30m wide be established on the boundaries of the site. The area is to be maintained as a fire break with minimal tree planting and easily accessible for annual fuel reduction programmes where appropriate.

– Promote implementation of ecologically sound bush fire control practices while not compromising the protection of lives and property.

Consideration should be given to bush fire hazards when designing planting patterns, such as breaks in the vegetation to retard the spread of fire and consideration should also be given to the planting of indigenous fire retardant species.

- **Subdivision matters**

If rezoning is supported and effected, in considering the development opportunities the following works are recommended:

– A suitable allotment sizing for the development be adopted;

– A suitable chapter be prepared for the Murray Development Control Plan to direct and guide development on the site

– Suitable standards for the upgrading of the existing public roads in the area be adopted;

– A vegetation survey and Seven Part Test (see above) be undertaken; and

– A plan be prepared which nominates the road reserve landscaping with an aim of maintaining the visual amenity of surrounding landowners.

- **Roads and Traffic**

If rezoning is supported and effected, in considering the development opportunities the following works are recommended that:

– A flood free public road access be incorporated into the design;

– A traffic study be undertaken to identify any potential adverse impacts on the surrounding road systems and measures to minimise the impacts or mitigate them entirely; and

– Suitable standards be prepared for road improvements to existing road networks

- **Development Matters**

If rezoning is supported and effected, in considering the development opportunities the following works are recommended that:

– A Chapter of the Development Control Plan be prepared to control the redevelopment of the land;

– A detailed report be prepared to address the issues nominated in the Murray Regional Plan No 2 and/or the Murray Regional Strategy, as appropriate at that time.

- *Council and the proponent undertake consultation to achieve an acceptable biodiversity framework to offset any vegetation loss that occurs in the execution of the Master Plan should a rezoning be achieved.*

Based on the available information, the research undertaken to prepare this Study, and site and locality inspection, the following specific recommendations are made in respect to the site:

1. ***Should Council wish to proceed to rezone the site, it is recommended that the land be zoned as Environmental Living E4 as defined in the Standard Instrument (Local Environmental Plans) Order 2006,***
2. *Include in the objectives to the zone, a provision recognising the site's agricultural past, and current relationship with the agricultural endeavours of the area.*
3. *Include in the "permissible with consent" uses of the zone provision for the establishment of an agricultural interpretative centre and food outlet upon the site.*
4. *Without necessarily limiting debate as to the appropriate size of allotments in the zone, and having noted previous Council reports on the matter, set an appropriate acceptable sizing for allotments that should occur. The allotment sizing should take into account surrounding development and the need for and the availability of closer settlement allotments to the east of Moama.*
5. *To achieve a predetermined desired outcome for the site it will be necessary to employ relevant specific clauses in the Instrument. The Standard Instrument sets specific clauses that may be used to control and guide development on the land (ie Height of Buildings; Lot size map; Floor Space Ratio provisions; Preservation of Trees and Vegetation, etc).*
6. *Insertion of a clause to acknowledge the flood liable status of the site. Given the flood liability that may affect some, or the entire site, the insertion of an appropriate clause into any new instrument is considered to be necessary.*

A copy of the LES will be tabled at the meeting.

STRATEGIC REVIEW

Section 117 Directions

The Minister for Planning, under section 117(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) issues directions that relevant planning authorities such as local councils must follow when preparing planning proposals for new LEPs. The directions cover the following broad categories:

1. employment and resources
2. environment and heritage

3. housing, infrastructure and urban development
4. hazard and risk
5. regional planning
6. local plan making.

These directions will need to be addressed in more detail in a planning proposal if the rezoning is supported by Council.

Applicable Directions include;

- 1.2 Rural Zones
- 1.5 Rural Lands
- 2.1 Environmental Protection Zones
- 2.3 Heritage Conservation
- 2.4 Recreation Vehicles Areas
- 3.1 Residential Zones
- 3.2 Caravan Parks and Manufacture Home Estates
- 3.3 Home Occupations
- 3.4 Integrated Land Use and Transport
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 6.1 Approval and Referral Requirements
- 6.2 Reserving Land for Public Purposes

A relevant Direction is 4.3 Flood Prone Land.

The objectives of this direction are:

- (a) to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and*
- (b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.*

Salvestro Planning suggested that the site would be able to comply with Direction 4.3 Flood Prone Land subject to preparation of a 'floodplain risk management plan' prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005.

There has been no assessment of the s117 Directions. The LES noted the applicable s117 directions but did not make an assessment of the proposal against the directions. As such these directions will have to be addressed in a planning proposal.

Flooding Issues

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 subject site is considered to be flood prone as the height of the land is below the 1 in 100 flood level. The site is also separated from the Moama township by a floodway. Council originally resolved to "support the proposal in principle (subject to a detailed site specific flood

study proving the land is suitable for urban development)". To date a detailed site specific flood study has not been undertaken. A 'Groundwater and Flood Assessment' was undertaken as part of the development application for the consolidation and subdivision of the existing holdings, however, this was very much focused on the development proposed for the south west corner of the property and does not adequately address a number of the strategic considerations such as s117 direction 4.3 "Flood Prone Land".

The property is afforded some protection by a rural levee and as such the 1 in 100 flood level mapping contained within the Moama Floodplain Management Plan shows the site as being mostly flood free. The 1 in 200 year ARI (equivalent to the 1 in 100 year Victorian flood) flood map shows the site as being inundated in such an event.

Councils Strategic Land Use Plan and draft Murray LEP 2011 shows the land as being subject to flooding as it does not consider land protected only by 'rural levees' as being precluded from flooding issues. It is noted that the Department of Water and Energy (now the NSW Office of Water) indicated that they have "no problems" with an upgrade to the existing levee to urban standards subject the alignment does not change and an application under Part 8 of the Water Act 1912.

Council has a number of concerns with the development of flood prone land including the inundation of properties in extreme flood events, provision of satisfactory access and egress to properties and the costs to Council and the community as a result of the development during flood events. As such Council's Strategic Land Use Plan has aimed to discourage development of the flood plain.

State Environmental Planning Policies (SEPPs)

Applicable SEPP'S and deemed SEPPs will need to be addressed in more detail in a planning proposal. Policies such as Murray REP2, SEPP 55- Remediation of Land, SEPP (Rural Lands) 2008 apply.

- **Murray REP 2- Riverine Land states:**
This plan aims 'to conserve and enhance the riverine environment of the River Murray for the benefit of all users'.
The applicable principle relating to settlement is;
New or expanding settlements (including rural-residential subdivision, tourism and recreational development) should be located:
 - (a) on flood free land,
 - (b) close to existing services and facilities, and
 - (c) on land that does not compromise the potential of prime crop and pasture land to produce food or fibre.
- **SEPP 55- Remediation of Land**
Outlines certain considerations that are relevant in rezoning land and provides a consistent approach to the remediation of contaminated land.

- SEPP (Rural Lands) 2008
Applies to land currently rural and is required to be addressed as part of Ministerial Direction 1.5 Rural Lands.

These and other applicable SEPP's have not been considered in detail and will need to be adequately addressed in a planning proposal submitted as part of the Gateway Process.

Background and Issues Paper

As part of the Murray Shire LEP review Council prepared a 'Background and Issues Paper (BIP)'. The purpose of the BIP was to present information on the Shire that subsequently allows for the identification of land use planning issues having an influence on future development. The issues identified in the BIP were strategically addressed in the Strategic land Use Plan 'SLUP' and recommendations made as to forward land use planning for the Shire. The recommendations of the SLUP will then be implemented via a new LEP.

In this document issues such as demographics, housing, flooding & other natural hazards, heritage & archaeology and infrastructure were identified as requiring consideration in the preparation of the SLUP.

Murray Shire Strategic Land Use Plan (SLUP)

The Murray Shire SLUP is a strategic planning document prepared to guide the future development and use of land within the Shire for the next 20 years and beyond. More specifically the purpose of the SLUP is to assist in:

- preparing a new Shire-wide Local Environmental Plan;
- providing the community with a degree of certainty for the location of various land uses in the future;
- maintaining in production agricultural land not required for urban expansion;
- protecting the riverine environment from use and development detrimental to it;
- separating incompatible land uses;
- reducing development speculation;
- considering tourist development proposals; and
- discouraging development on flood prone land.

The SLUP aims to provide a strategic planning response to the issues identified in the "Background and Issues Paper".

In respect to flooding the SLUP comments:

The Moama Floodplain Management Study confirms that most of the land east of the Cobb Highway and flood levee around Moama is flood prone. This severely constrains the eastern expansion of Moama for urban purposes and essentially confirms the future growth of the township can only be in a north-westerly direction generally between Perricoota Road and the Cobb Highway.

As such the SLUP aims to “prohibit urban or intensification of development on land not protected by town flood levee” and “protect the floodplain from unsympathetic development”.

The SLUP also recognises the current fragmented form of the Moama township. As such the SLUP promotes the infill of residential development on unconstrained land generally to the north west of the Moama township.

At a Council meeting on 15 May 2007 following a presentation in respect to Kooyong Park (including the submission of the “Kooyong Park Urban Development Proposal” document), Council resolved to amend the draft SLUP to indicate such support for further consideration of the rezoning of Kooyong Park to support its development.

The SLUP is subsequently amended to identify subject land as “possible development site subject to further investigation (including extension to town flood levee)”.

Following further investigation, at its Ordinary meeting held on 21 July 2009, Council resolved not to support the inclusion of the “Kooyong Park” in the draft LEP. This was partly due to inconsistencies with the proposal and the SLUP.

The SLUP was subsequently amended to reflect this change. A copy of the latest version of the SLUP will be tabled at this meeting.

Draft Murray Regional Strategy

The draft strategy identifies the NSW Government’s key priorities for the region over the next 25 years. The draft strategy:

- outlines a coordinated approach to managing land use to facilitate growth and protect the environment—so that the region continues to prosper and offer communities a high quality of life
- sets a target for 13,900 new dwellings by 2036—the majority of this growth taking place within existing centers, close to infrastructure and services
- recognises the important role of the Murray River—seeking to protect the river in a coordinated way, through interagency and cross-border collaborations
- identifies the key industries for the region and the need to strategically plan for them—both traditional activities such as agriculture and forestry as well as emerging sectors such as mining and tourism.

More specifically in respect to developments such as the proposal for ‘Kooyong Park’ the strategy outlines a number of actions including;

- Councils will use local strategies to consider and respond to the supply and demand, for housing, identify the most suitable locations for future residential and rural lifestyle development, and assess proposals for new release areas.
- Planning for urban land must be integrated with the supply of relevant infrastructure and services. Reticulated water supply must be provided to new urban areas.

- In development local strategies and local environmental plans, councils will confirm the location and conservation significance of key environmental assets and constraints such as riverine corridors, significant remnant vegetation, groundwater aquifers, salinity and flood prone land, in consultation with the DECCW when identifying potential new urban release areas.
- Development will be minimised in areas with known flood risks as identified in floodplain management studies prepared under the Floodplain Development Manual

Consistency with the draft Murray Regional Strategy will need to demonstrated in a planning proposal' submitted as part of the Gateway Process.

Department of Planning

The Department of Planning requires Council to establish its support or otherwise for sites proposed to be included in a draft LEP or for those submitted as a planning proposal under the "Gateway Process". A resolution of Council support is submitted with the submission to the Department. The Department recognises the decision on this matter from local strategic planning level is one for Council to resolve

The Department has provided Council with some guidance in respect to selecting appropriate sites including the development of exclusion/inclusion categories (such as flood prone land) and an analysis completed in respect to the nominated sites against these categories. This was completed in Councils shire wide LES.

The Department of Planning provided a summary of the outstanding issues relating to the "Kooyong Park" site. As of the 19 May 2009 the outstanding issues were as follows;

- *The proposal is at variance with the findings of Council's adopted SLUP which indicates the following for the subject site:*
 - *'Possible development site subject to further investigation (including extension of town flood levee)';*
 - *'Sites protected by rural levees are not regarded as suitable for urban development as the levees are not designed, constructed, or intended to guarantee flood protection in a major event'.*
 - *The SLUP has 'not identified any land in Moama below the 1:100 year flood event not protected by the town flood levee as suitable for future urban development. In regards to the area east of the Moama levee this effectively means maintaining existing and approved proposals (including several major tourist developments) with no further intensification'.*
- *Council, in its adopted SLUP has made a strategic decision to focus all planned growth to the west of Moama to avoid flood affected areas (pp58 - Background and Issues Paper), not protected by the town levee; protect existing vineyards until demand requires their conversion to urban uses; take advantage of the potential for river-based settlement and to consolidate existing development along Perricoota Road.*
- *It is anticipated that Council's SLUP has identified a considerable supply of residential land for the 30 year life of the SLUP which is accessible via*

existing sealed roads, available, less constrained and more consistent with Council's established strategic approach to focus Moama's future growth to the west of the Cobb Highway.

- A number of natural hazards including flooding and bushfire constrain the site and will require future management to enable urban development on the site. Intensification of urban development in areas subject to natural hazards when there are less constrained, alternative sites available is not encouraged by the Department.*
- The areas directly east of the township of Moama appear less constrained by urban fragmentation compared with other sites identified for land use change in the SLUP west of Moama.*
- An assessment of the proposal against the relevant section 117 Ministerial Directions, SEPPs, and REPs has not been completed. In particular, SEPP (Rural Lands) 2008 and the section 117 Direction 1.5 Rural Lands have not been considered by the LES.*
- The agricultural land capability and suitability classifications of the land have not been provided.*
- A strategic review of the Moama Floodplain Management Study has not been completed in accordance with the Floodplain Development Manual to determine the impact of the proposed development. The Floodplain Development Manual summarily indicates that 'the cumulative impact of the development must be addressed at the regional rather than development specific level. The study will form the basis for review, by council and the floodplain risk management committee, to determine whether the management plan can be altered to accommodate the proposal without affecting its integrity. It should be noted that a private or site specific flood plan (see Section N7) for the proposed development is not an appropriate measure to rectify adverse impacts or to manage the consequences of inappropriate decisions' (pp 16-17, Floodplain Development Manual, Apr11 2005).*
- An assessment of environmental and land constraints which are best represented through a spatial mapping exercise has not been completed, e.g. bush fire, contamination, biodiversity etc.*
- A servicing and infrastructure analysis for the supply of utilities and possible social facilities has not been completed.*
- A flora and fauna, and definitive cultural heritage assessment of the site has not been completed.*
- Council needs to determine past land use activities on the site to establish whether there is potential for contamination in accordance with the SEPP 55 Remediation of Land- Managing Land Contamination Guidelines.*
- Potential for amenity disturbance from noise and vibration from the adjoining rail corridor should be considered.*
- The LES identifies a number of unique proposals for the site in the form of a restaurant with function facility focusing on marketing the region's high quality organic food and drink to domestic and international markets. In addition, a 'power plant' energy savings proposal. Acknowledgement is made of the concepts, however consideration should be given regarding whether only the subject site contains those unique site characteristics which specifically support the proposals, or whether they could potentially be carried out on other alternative, strategically supported less constrained sites.*

Salvestro Planning consulted with the Department of Planning with a summary of discussion with Regional Officer, Wade Morris provided below.

- 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.

Upon hearing of Councils reconsideration of the “Kooyong Park” site the Department of Planning contacted Council. They expressed the importance of processing the principle LEP and advised “should Council determine to support the Kooyong Park” proposal it can be processed as a separate planning proposal to the Standard Instrument LEP”.

Should Council resolve to support the Kooyong Proposal a planning proposal would need to be submitted under the Gateway System. This planning proposal would need to address the issues identified in the correspondence above.

Government Agencies

Further there are outstanding issues from other government agencies such as the Department of Water and Energy (now Office of Water). There issues as of the 23 March 2009 are as follows

The Department is concerned with the proposal for grey water recycling on this site, as there has been no hydrogeological investigation to determine the potential impacts on the local groundwater system. Due to the close proximity to the Murray River, it is likely that this site is underlain by a high quality groundwater system situated within permeable soils that are highly vulnerable to groundwater contamination.

Should Council decide to develop this site, reticulated town water and sewerage services must be available. DWE would not be willing to support any upzoning proposal on this site that involved grey water recycling or on-site sewage management in the absence of hydrogeological investigations due to the potential for adverse impacts on local groundwater systems.

It also appears evident that there is a significant risk of the site being affected by flood events. Whilst a levee bank may be constructed to alleviate the flood risk for potential future dwellings, it appears road access to the site may also be affected, which will increase the risk to emergency services in the event of an emergency evacuation. DWE recommend Council liaise with the

Department of Environment and Climate Change (DECC) and the State Emergency Service (SES) to thoroughly examine the risks developing this site may incur on the community.

Any proposal to construct or modify a levee system will require an approval from DWE under the Water Act 1912 / Water Management Act 2000. An application for such works to DWE must be accompanied by an appropriate and detailed flood risk analysis.

Salvestro Planning consulted with the NSW Office of Water with a summary of discussion with Lindsey Holden provided below.

- *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.*

Salvestro Planning also consulted with the DECCW. In discussions with Darren Wallett the following comments were made;

- *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*

A summary with 'floodplain officer' Peter Nankivell is provided below;

- *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*

The above is a summary of the responses and issues specifically regarding flooding from the Department of Environment Climate Change and Water (now Office of Environment and Heritage) and NSW Office of Water. It should be noted issues were outstanding when a decision was made to remove Kooyong Park from the draft LEP. If the proposal is supported through the Gateway Process there will be the need to consult once again with these agencies including other agencies which may not have provided their comments originally as directed by the Department of Planning.

Planning Proposal Justification

Should Council ultimately support the rezoning of the subject land a planning proposal is required to be prepared. The relevant planning authority (Council) is responsible for the preparation of a planning proposal, which explains the effect of

and justification for the plan. It will be used and read by a wide audience including the general community as well as those who are responsible for deciding whether or not the proposal should proceed. This planning proposal is subsequently submitted to the Gateway for their determination in respect to whether the planning proposal should proceed. Salvestro Planning provided comment in respect to the subject proposal against the 12 justification questions required to be addressed in this planning proposal. Although noting that the further analysis of the subject proposal is required Salvestro Planning suggested that *"subject to addressing the information gaps, planning proposal justification could be achieved"*.

INDEPENDENT REVIEW

Council resolved at its 03/08/2010 Planning and Development Committee meeting to *'engage an independent qualified Planning Consultant to undertake a review of all applicable documentation and provide a report on such back to Council for consideration'*

As such Council prepared a brief in consultation with the landholder and approach a number of qualified planning consultants to undertake the review. Upon receiving a response from these consultants Council engaged Salvestro Planning to undertake a review of Council's resolution made on the 21 July 2009 to not support the inclusion of the property 'Kooyong Park' in the draft LEP. The brief stated the project objective was to;

"To undertake a review of all applicable documentation and information relating to this resolution. To make a final recommendation to Council on whether the Kooyong Park site should retain rezoning support".

The brief required the consultant to review all applicable background information and documentation.

The summaries and observations Salvestro Planning made in respect to this background information and documentation has been incorporated into this report. Following this review of background information and documentation and consultation with applicable stakeholders the consultant was required to provide;

"an assessment of Council's resolution and 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"

Strategic Conclusions

Salvestro Planning arrived at a number of strategic conclusions detailed below;

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 northwestern 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.

This strategic conclusion forms the basis of the conclusions and recommendations of the review undertaken by Salvestro Planning.

Conclusions and Recommendations

Conclusions

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. A Review of LEP Resolution – Kooyong Park, Moama Page 28 of 39 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.

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***

COMMENTS FROM COUNCIL STAFF

Council Staffs view

Council staff still hold concerns over the “Kooyong Park” development proposal specifically in respect to its strategic justification and suitability given its location in an area subject to flooding. Council staff acknowledge that Council initial resolution of in principle support, and subsequent withdrawal of this support, the outcomes of the LES and the outcomes of the review undertaken by the Slavestro Planning. However staff believe there are a number of planning issues with the proposal that have not been strategically justified or adequately addressed.

These include but are not limited to;

- **Local Environmental Study outcomes-** Council staff acknowledge that based on the available information the LES concluded that, *that the site is suitable for a combination of urban (including residential and commercial/tourism), semi-urban and conservation land uses.* However, the LES also commented that;
 - *It is relevant to determine whether the subject site is more appropriate for development than other nominated lands*
 - *If a rezoning of this site were to be supported, a review of the development opportunities of adjacent lands should also be undertaken*
 - *This has identified a number of areas of further investigation as appropriate to fully assess any proposed development of the site*
 - *Given the site’s location, relative to the residential area of Moama, thought must be given to the possibility of a residential proposal on the site. However, given the issues identified in this Study; the large tracts of residentially nominated land to the west of the town; and the potential impact of a flood event upon the site and its surrounds, the possibility of such a use would need to be qualified until such time as collaborative data is available to support the premise of rezoning.*

Council staff consider that due to the issues identified in the LES that the possibility of the land being used for residential purposes was not qualified. Further that the site was not more suitable for residential land use than other nominated sites and that the rezoning if it was to go ahead would compromise the Strategic Land Use Plan. This is concurred by the Department of Planning in their correspondence dated 14/05/2009.

- **Inconsistency with the Murray Shire Strategic Land Use Plan (SLUP)-**

As noted above staff recognise that Council resolved to amend the SLUP to recognise in principle support for the proposed development however staff believe this resolution was contradictory to the aims and strategic direction of the SLUP. An aim of the SLUP is to “discourage development on flood prone land” and as such “prohibit urban or intensification of development on land not protected by town flood levee”. The SLUP directs residential growth to the north west of Moama where it is unconstrained by flooding. As the Department commented;

“Council in its adopted SLUP has made a strategic decision to focus all planned growth to the west of Moama”.

The support of this proposed development is a clear contradiction of Council’s key strategic land use plan. Council staff concur with the Department of Planning’s comments that a decision to support the proposal is a variation to the adopted findings in the SLUP.

Further a recommendation contained within the Local Environmental Study further highlighted the inconsistency between the resolution and the SLUP. The LES suggested that

“If a rezoning of this site were to be supported, a review of the development opportunities of adjacent lands should also be undertaken. Particular emphasis should be given to the integration of land east and to some extent south of the subject land into an urban or quasi-urban environment notwithstanding the potential for inundation.”

As such for Council to consider urban or quasi-urban environment for land affected by flood prone land not protected by the town levee would not only be inconsistent with the plan but would compromise the integrity of the entire document. As such upon the comments made within the Local Environmental Study it is recognised that the proposed rezoning is in complete contradiction to the SLUP.

- **Site Suitability**

The LES did conclude that site was suitable some urban uses including residential however, recommended that the given the sites constraints that it be compared against other nominated sites. A request to analyse/compare the suitability of each of the nominated sites was also made by the Department of Planning. Council has considered a number of other sites in the review of its Murray LEP and has been able to accommodate all of its required residential land supply on flood free land, with the ability to be connected to services and within the existing Moama urban area. The Department noted that Council’s SLUP has

“identified considerable supply of residential of residential land for the 30 year life of the SLUP which is accessible via existing sealed roads, available less constrained and more consistent with Council’s established strategic approach to focus Moama’s future growth to the west of the Cobb Highway.”

As such the parcels of land contained within the north west growth corridor were considered to be more suitable for urban development and the subject land considered to be less suitable.

The LES made reference to the use of an E4 Environmental Living Zone over the subject land. Salvestro Planning considered that this would differentiate the subject land from the other residential parcels of land and as such provide for an alternative land use within the LEP. Salvestro Planning suggests that a DCP be developed to ensure environmental living character is achieved that is clearly distinct from general residential.

Council staff disagree with this interpretation. The development proposes a number of land uses including residential. The E4 Environmental Living Zone is merely the LEP control placed over the land. The fundamental use of at least part of the land is for residential purposes or for 'tourism/hospitality' does not change. As such Council staff consider it to be reasonable to undertake a comparison of the merits of rezoning the subject land against other parcels of land. Council staff have applied the same principal in considering the residential land use in respect to flooding issues.

- **Flooding**

Council staff have concerns in respect to flooding including;

- the proposals inconsistency with Councils aim of restricting development on the flood plain
- the proposals inconsistency with other strategies and policies such as Murray REP2 and the Draft Murray Regional Strategy
- the potential inundation of the property in extreme flood events
- the lack of appropriate access and egress to the site during a flood event
- the cost to Council and community in respect to having a large population and amount of infrastructure located in an area prone to flooding
- the ability for the proposal to comply with Section 117 Direction 4.3 Flood Prone Land.

As discussed a detailed site specific study has yet to be undertaken in respect to the site. Salvestro Planning has recommended that a 'flood risk management plan' be prepared to address these issues and comply with the Section 117 Direction 4.3 Flood Prone Land. Council staff acknowledge that this plan may address a number of the concerns however, whether this will make the site more suitable than other unconstrained land is less clear. Further, there has been no further strategic review of the *Moama Floodplain Development Manual* as noted in the Department of Planning's correspondence.

- **Murray REP2**

Murray REP 2 states;

New or expanding settlements (including rural-residential subdivision, tourism and recreational development) should be located:

- (a) on flood free land,
- (b) close to existing services and facilities, and
- (c) on land that does not compromise the potential of prime crop and pasture land to produce food or fibre.

The subject development is not considered to be on flood free land.

- **Draft Murray Regional Strategy**

This strategy aims to provide for the growth in housing and population in the Murray Region in a sustainable manner. The strategy requires Council to identify the most suitable locations for new urban release and minimise development of land subject to flood risks. As discussed above the Kooyong Park proposed development is not considered to be consistent with these actions as Council staff do not consider the site to be the most suitable for urban development and the proposal will intensify rather than minimise development of flood prone land.

- **Outstanding Information**

There is a range of information that is outstanding. The LES identifies a number of issues which require further investigation. Further the Department of Planning has raised a number of issues which need to be addressed. A number of other government agencies have also made comment which needs to be considered. Finally, there is a need for detailed 'flood study' in accordance with the original Council resolution and the s117 ministerial directions which has not been undertaken. Without such information that covers each of the outstanding issues Council is unable to support the progression of the rezoning no matter its strategic justification. This information is required to enable Council to make an informed decision.

Issues from Salvestro Planning Report

Salvestro Planning undertook a comprehensive review into the matter and come up with their recommendation and conclusion. Council staff respect the outcomes of this review. However, there are two key issues within the report that staff disagree with Salvestro Planning and as such wish to make that clear.

The first is in respect to flooding, which is identified as being the main issue, the report notes;

"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."

Council staff are concerned that issue of flooding has been potentially downplayed in the report.

In respect to flooding, Council resolved in relation to the SLUP;

- Adopt the 1 in 100 year flood event as the basis for identifying flood prone land in the SLUP (previously it was the 1 in 200 year).*
- Adopt the Moama Floodplain Management Study as the principal point of reference for flooding in and around Moama.*
- Allow for adjustment of identified flood prone land where evidence can be provided to the contrary. This is particularly relevant to specific sites and the area outside of the flood study for Moama.*
- Remove land shown as 'Residential' in Moama around Lignum Lane and 24 Lane where it is affected by "high hazard flood storage".*

e. Mention that licensed rural levees are not considered to provide land with 'flood free' status for the purposes of development.

The entire property is below the 1 in 100 flood level. It is only due to the presence of a rural levee that the land appears to not be flood free in the Floodplain Management Study. However, as per resolution (e) this Council does not consider licensed rural levees to provide land with 'flood free' status for the purposes of development. As such Council staff consider the land to be flood liable. It is noted that there is the potential to upgrade the levee to an 'urban standard' however until this occurs the land does not have 'flood free' status. As such for the purposes of considering applicable planning directions and environmental planning instruments the land is to be considered entirely 'flood liable'. This is to be noted and considered in submitted information and the flood study which Salvestro Planning recommends be prepared.

The second issue is in respect to land use. Council staff consider that the land uses proposed are;

- Conventional residential development (ie: allotment sizes 500-1000sqm)
- Low Density residential development (ie: allotment sizes approx 2000sqm)
- Commercial businesses such as a delicatessen and restaurant. The LES identifies this land use as 'Tourism/Hospitality'.

In his report Salvestro Planning recognizes the E4 Environmental Living Zone suggested by the LES and environmental objectives of the development noting that; *'the specific nature of the development and suggested environmental based zoning provides a balance of respecting the core strategic land use preferences of the plan (SLUP) and ensuring suitable land is put to best use'.... "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 land use activities, result in a land use character quite distinct from a general residential settlement environment. General residential would continue to be directed to the northwestern parts of the township in accordance with the SLUP".*

As such the report argues that the proposal can be strategically justified as it is different to 'general residential'.

Council staff believe that the proposed 'development' provides for a 'residential' land use and as such the suitability of the site must be compared to other sites considered suitable for a residential land use. The use of such environmental zoning, controls and initiatives is commendable but does not change the core proposed land use. As such Council staff do not consider the proposed residential development to be 'significantly' unique to warrant special consideration and exemption from the comparative analysis requested by the Department of Planning.

Summary of Salvestro Planning Conclusions and Recommendations

Council staff have thoroughly reviewed the report prepared by Salvestro Planning and understand that the report effectively concludes that; “*the rezoning process is incomplete*”. This is due to Council’s failure to have properly considered all documents (most importantly the LES) when the decision to remove Kooyong Park from the draft LEP was made. Further the applicant was not given the opportunity to respond to the outstanding issues particularly those raised by the Department of Planning.

Despite noting that the decision was made using “sound planning concerns”, Council staff accept the flaws with the decision making process used. As such Council acknowledge that the applicant should be given the opportunity to submit additional information and proper consideration of the outcomes of the LES be given. It is important that information that is submitted is specifically relevant to the rezoning proposal and adequately addresses the outstanding issues outlined in the LES and Department of Planning correspondence.

Salvestro Planning also identifies that a key document that is missing and should be prepared prior to Council being able to resolve the matter. The document is a “flood risk management plan” which would satisfy a number of the issues in respect to flooding, a requirement of the government agencies and satisfy s117 direction 4.2 Flood Prone Land. Council agrees that this issue has not be adequately addressed especially considering the basis for including the site in the amended Strategic Land Use Plan was subject to a detailed site specific flood study being prepared which to date has not been undertaken. However given the importance of this document to the process it is critical that such a plan be prepared by someone who is suitably qualified and experienced in respect to flooding issues and is independent of Council and the applicant. Council would be responsible for arranging the preparation of this document and the applicant would, if they elect to have the document prepared, be required to fully fund its preparation.

Salvestro Planning also indicate that 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” and that there has been little discussion of the development as “an integrated proposal”. Salvestro Planning suggests that LES did provide Council with an answer as to whether the site was suitable for rezoning and that the proposed Environment Living zone would provide a distinction to general residential. Further analysis of Salvestro Planning’s review suggests that there is some strategic merit for the proposal which needs to be considered. The comments of Council staff in respect to this have been discussed above and there are some degree of difference over this issue. Both views must be duly considered by Council.

As stated above staff acknowledge due to the flaws identified in the original decision making process that there is a need to reconsider the ‘Kooyong Park Urban Development Proposal’. Further the applicant should be given the opportunity to submit additional information that address the issues raised in the LES and by the DoP. The applicant should also have the opportunity to fund a ‘flood risk management plan’ noting the importance of this being prepared by a suitably qualified independent consultant. Council staff concur that the applicant should

have the opportunity to provide this information and it is up to the applicant to determine whether it is worth proceeding or not.

It is only once Council has all this information in front of them including both the current documents and further information to be submitted, that it is able to properly consider the Kooyong Park proposal. As such the information is required to be submitted prior to Council reconsidering its resolution from the 21/7/09 to remove Kooyong Park from the draft LEP. Salvestro Planning note that this should be prior to final determination of the draft LEP however considering their recommendation that the matter be processed under the 'Gateway Process' it is considered that the matter best be discussed as a 'planning proposal'. It must be noted that as a 'planning proposal', if supported Council must take ownership of the proposal notwithstanding the applicants obligation to fund the documentation.

In reconsidering this resolution the Council must take all information and relevant documents/ statutory instruments into consideration. Council staff have reinforced their concerns with the proposal and should these concerns not be effectively resolved by the additional submitted information then staff are likely to recommend that Council do not support the planning proposal. However, it is noted that the matter is a decision for the elected Council to resolve.

SUMMARY

Salvestro Planning has recommended that Murray Shire Council resolve to reconsider the "Kooyong Park" Urban Development Proposal. Salvestro Planning noted that Council's resolution made on 21/7/09 was made "based on sound planning concerns put forward by Council staff". However, Salvestro Planning noted that "there were some omissions [in the information presented to Council] which can not 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".

This would enable the applicant the opportunity to provide the additional reports as listed by the Department of Planning and noted in the Local Environmental Study (LES). In addition to this information Salvestro Planning recommends that a 'site specific flood risk management plan' be prepared and submitted as an addendum to the LES. This would complete the required land and development data in order to address all statutory and strategic concerns.

There is a large element of risk that the applicant must accept in allocating the resources required to provide the information that Council requires to make an informed and considered decision. The applicant would be responsible for the whole funding of all necessary documentation. The applicant should note the concerns Council staff have with the proposal and the sound planning principles used in Councils decision made on the 21/07/2009. As has been detailed in this report, the independent review and the Department of Planning have clearly stated the decision of whether to support the proposal is that of the Council.

However, it is only with the submission of this additional information that Council would be in a position to properly consider the proposal. It would be at this stage

that Council would make a decision as to whether to support or not support the “Kooyong Park” Urban Development Proposal. However, it should be noted that even should the submitted information satisfy the gaps identified in the LES that if strategic planning concerns remain that the proposal need not be supported. If supported by Council, a ‘planning proposal’ would be subsequently prepared and submitted under the “gateway system” as an amendment to the Murray Shire LEP.

Documents to be Tabled

The following documents will be tabled at the meeting to assist Council in making a decision.

- “Planning report: Review of Murray Shire Council Resolution to Draft LEP: ‘Kooyong Park’, Old Deniliquin Road, Moama” prepared by Salvestro Planning and dated 29/04/2011 (Copy also attached to report as **Attachment 1**)
- “Local Environmental Study: ‘Kooyong Park’ Old Deniliquin Road, Moama prepared by Coomes Consulting Group and dated February 2008
- Department of Planning correspondence dated 19/05/2009
- Department of Water and Energy correspondence dated 23/03/2009
- Kooyong Park Urban Development Proposal dated 04/05/2007
- Murray Shire Strategic Land Use Plan (Versions 8, 10 and 13)
- Submission to Draft Murray LEP 2010: Matthew O’Farrell dated 16/12/2010

Recommendation

It is recommended that :

1. 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 Council to consider the Kooyong Park site as a ‘planning proposal’.
2. Should the applicant desire, a “site specific flood risk management plan” is to be prepared and submitted as an addendum to the LES and that this plan, must be prepared by a suitably qualified independent consultant engaged by Council and that this plan be funded fully by the applicant.
3. Following the completion and submission of the outstanding documents, the “Kooyong Park” Urban Development Proposal be reconsidered for inclusion in the Murray Shire LEP including consideration of the LES recommendations and the further submitted reports.
4. Council note the following recommendations from Salvestro Planning and will take them into consideration should the “Kooyong Park” Urban Development progress further;
 - 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.

- 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

CLAUSE 3. DEVELOPMENT APPLICATION: 169/11
4 LOT STRATA SUBDIVISION AND CONSTRUCTION OF
4 SINGLE STOREY TOWNHOUSES
ZONE: 2V VILLAGE OR URBAN
ADDRESS: 4 DUMFRIES CRT, MOAMA
OWNER: BAMKAR PTY LTD
APPLICANT: DENHAM DESIGN

Section 1: Introduction

1.1 Scope of this Report

This report has been divided into the following structure:

- Section 1 – Introduction: provides an introduction to the DA and a basic description of the proposed DA.
- Section 2 – Description of the statutory assessment process: describes the proposed statutory procedures used to assess the DA.
- Section 3 – Assessment of the Application: identifies the relevant statutory and strategic land use and development policies and guidelines applicable to the DA and assesses the considered performance of the DA against these policies and guidelines.
- Section 4 – Recommendations: discusses the recommendations arising from the assessment of the DA.
- Section 5 – Proposed Conditions of Approval

1.2 The Site

The site of the subject development is Lot 43 DP 1077262, 4 Dumfries Crt, Moama. The allotment has an area of 1314m² and currently vacant. The land is located within the Moama urban area and is located within a residential precinct within Moira Park Estate. The estate is a relatively new residential area dominated by standard detached dwellings. This has come about as a result of a covenant on land within the estate that restricts development to detached dwellings. However a couple of allotments have been designated for unit development including the subject site and as such this covenant does not apply to these allotments. The site is adjoined by single storey residential dwellings and a vegetated road reserve that runs along the eastern boundary of the property. The site is not bushfire or flood prone and is connected to all town services.