

Planning Services

Gateway assessment report

LGA	Murray River
RPA	Murray River Council
NAME	Kooyong Park
NUMBER	PP_2017_MRIVE_002_00
LEP TO BE AMENDED	Murray Local Environmental Plan 2011
ADDRESS	Corner of Moama Street and Holmes Street, Moama
DESCRIPTION	Lot 2 DP1078090 and Lots 1-17 DP1228353
RECEIVED	25 August 2017, Further information provided on 7 September 2017 and 10 August 2018
FILE NO.	IRF 18/4471
POLITICAL DONATIONS	There are no known donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no known meetings or communications with registered lobbyists with respect to this proposal

INTRODUCTION

Description of planning proposal

The planning proposal (**Attachment A and E (Maps)**) seeks to amend the Murray Local Environmental Plan 2011 by:

- Rezoning land from RU1 Primary Production and E3 Environmental Management to R2 Low Density Residential;
- Removing minimum lot size provisions;
- Inserting a new listing into Schedule 1 Additional Permitted Uses for a restaurant and function centre; and
- Inserting a site-specific clause including a new term of “integrated tourist facility” and requiring certain requirements for Council to consider before issuing development approval.

Additionally, the planning proposal seeks to:

- Provide a low density residential development within a community title scheme, with lot sizes ranging from 1,000m² to 2,000m²;
- Include a function centre and restaurant on a community development lot; and
- Include recreation, open space and conservation reserve areas as neighbourhood property (community property vested in the community association).

Site description

The site, known locally as Kooyong Park, has an area of 39.1ha and is zoned part RU1 Primary Production (20.5ha on Lot 2 DP1078090) and part E3 Environmental Management (18ha on Lots 1-17 DP1228353 (noting Lots 1-17 occupy about 5ha), with a minimum lot size of 120ha. The site is used for agricultural purposes, with the area largely cleared.

There are some areas of sparse native trees along the boundary adjoining road corridors (Figure 1a and 1b).

An approved 16-lot residential subdivision is being constructed in the south-west corner of the property. The lots are approximately 2000m² in an area protected by a rural levee. The residue lot supports cropping and grazing activities and is vacant.

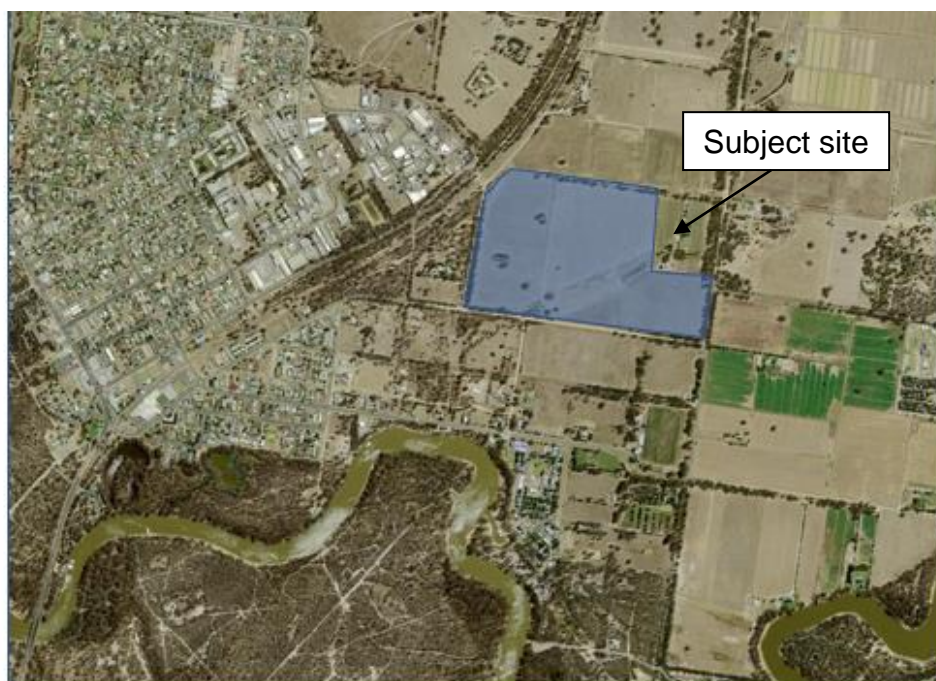


Figure 1a Site location east of Moama

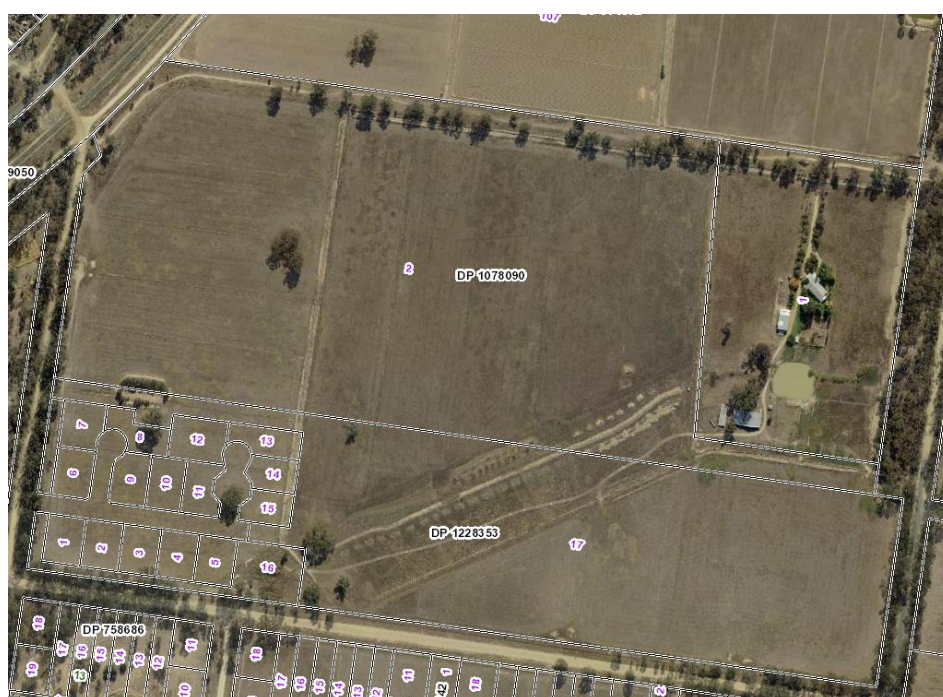


Figure 1b - cadastral boundaries

Surrounding area

The locality supports intensive farming, rural residential development and tourist facility (caravan park) to the east on the Murray River. The grid subdivision pattern reflects both the floodplain topography in layout and intensive land uses such as dairying and horticulture.

Moama is to the west of the site over a road and railway corridor, which act as flood protection for Moama. Development to the south of the site is a combination of residential development, with a tourist facility on the river. The land to the south and east (and towards the Murray River) is flood-prone.

PROPOSAL

Objectives or intended outcomes

The objective of the planning proposal is to rezone the subject land for a residential development. The supporting information indicates a 226-lot community title development with an area that will be used for a function centre/restaurant purposes as “integrated tourist facility”.

The proposal states that it intends to reflect the existing approved large lot 16-lot residential subdivision on the land. This subdivision was undertaken under the previous environmental planning instrument provisions that applied to the land and is not a community title scheme. The development of this area has commenced and it is understood that it is protected by a licensed rural levee arrangement, with flood protection afforded to the individual dwellings by having their finished floor levels above the flood planning level.

Explanation of provisions

It is proposed to amend the Murray LEP 2011 by:

- amending LEP map sheets LZN_006, LZN_006B, LSZ_006, LSZ_006B, APU_006 and APU_006B through:
 - rezoning lots 1-16 DP 1228353 from E3 Environmental Management to R2 Low Density Residential;
 - rezoning Lot 2 DP 1078090 and Lot 17 DP 1228353 from part RU1 Primary Production and part E3 Environmental Management to R2 Low Density Residential; and
 - removing the minimum lot size map for the subject lots so no minimum lot size applies.
- inserting a new item to Schedule 1 Additional Permitted Use:
 - listing restaurant and function centre as an Additional Permitted Use on Lot 17 DP 11228353.

(Please note that the planning proposal identifies Lot 17 as DP 1078090.)

It is also proposed to amend the LEP by inserting a site-specific clause (proposed clause 7.9 – Development of certain land in Holmes Street, Moama – known as Kooyong Parklands) to require a specific development provision for the site. This specific clause proposes to introduce “integrated tourist facility” as a new term. This is inconsistent with the Standard Instrument Local Environmental Plan and section 9.1 Direction 6.3 Site Specific Provisions.

The proposal explains the provisions it seeks to address.

The proposal does not discuss alternative methods or why the proposed amendment to Schedule 1 to list a function centre/restaurant as an additional permitted use is the preferred outcome. The implications of this development on other commercial sectors of Moama and its location in a rural setting have also not been discussed and requires clarification prior to community consultation.

Mapping

The proposal includes sufficient mapping to identify the location of the site. Indicative mapping is included in the application about existing and proposed zoning. Also provided is an indicative master plan for the development of the site (**Attachment E**).

NEED FOR THE PLANNING PROPOSAL

A planning proposal is the only mechanism to achieve the intended outcome. The proposal is not supported by a Department approved strategy and contradicts the Murray Shire SLUP and DCP at this time. It has not adequately addressed policy and strategic guidance provided by the section 9.1 Directions and State Environmental Planning Policy (Rural Lands) 2008 as discussed later.

Council has requested that the proposal be determined based on the information provided. The preferred approach to the proposal is to consider the subject land in the draft Comprehensive Land Use Strategy project currently being prepared by Council to incorporate a transparent process of decision-making. It is also important to resolve the extent of flood risk on the site through a comprehensive review of the current Floodplain Management Study and Floodplain Management Plan. The Moama Flood Study work is currently being reviewed and due for finalisation in 2020. The Office of Environment and Heritage (OEH) and State Emergency Services (SES) advised that they prefer this approach (refer to **Attachment F**).

STRATEGIC ASSESSMENT

Introduction

The intent of the planning proposal has merit as it will provide options for housing in the local area for both NSW and Victorian residents and the possibility of stimulating economic growth.

Regional

The Riverina Murray Regional Plan 2036 (RMRP) applies to the proposal. The RMRP includes actions to facilitate and manage a range of residential development in the region. The key actions of the RMRP relevant to this planning proposal are:

- Action 12.1: Consult with the NSW Department of Industry (Division of Resources and Energy) when assessing applications for land-use changes (strategic land-use planning, rezoning and planning proposals) and new development or expansions;
- Action 16.1: Locate developments, including new urban release areas, away from areas of high biodiversity value, high bushfire and flooding hazards, contaminated land and designated waterways to reduce the community's exposure to natural hazards;
- Action 16.5: Implement the requirements of the NSW Floodplain Development Manual by updating flood studies and floodplain risk management plans;
- Action 16.6: Incorporate the best available hazard information in local plans consistent with current flood studies, flood planning levels, modelling and floodplain risk management plans;
- Action 25.1: Prepare local housing strategies that provide housing choice and affordable housing;
- Action 25.3: Align infrastructure planning with land release areas to provide adequate infrastructure;
- Action 26: Provide greater housing choice;
- Action 27.1: Enable new rural residential development only where it has been identified in a local housing strategy prepared by Council and approved by the Department;

- Action 27.2: Locate new rural residential areas to avoid or minimise the potential for land-use conflicts with productive zoned agricultural land and natural resources; and to avoid areas of high environmental, cultural and heritage significance, important agricultural land or areas affected by natural hazards; and
- Action 27.3: Manage land-use conflict that can result from cumulative impacts of successive development decisions.

The proposal states the development is consistent with the outcomes of the plan as it *“provides rural residential housing that will not contribute to land-use conflict”*. While the planning proposal responds to Action 26 of providing greater housing choice, the land is subject to natural hazards (flooding), is in a productive agricultural area and is not identified in a Department approved strategy as being suitable for residential development.

The planning proposal is considered inconsistent with the RMRP and section 9.1 Direction 5.10 Implementation of Regional Plans.

Local

The Murray Shire Strategic Land Use Plan 2010-2030 (SLUP), which is not approved by the Department, identifies existing and future residential development areas. The preferred sequence for release of future residential land in Moama is mapped to the north-west (Figure 2). The map and text of the residential section of the SLUP describes this area, which is protected by the town flood levee and does not include “Kooyong Park”. The SLUP states *“At current rates of growth it would take possibly up to 50 years for all of this land to be developed for urban purposes.”* It is acknowledged that Moama has experienced growth and this is being reviewed as part of the Comprehensive Land Use Strategy project.

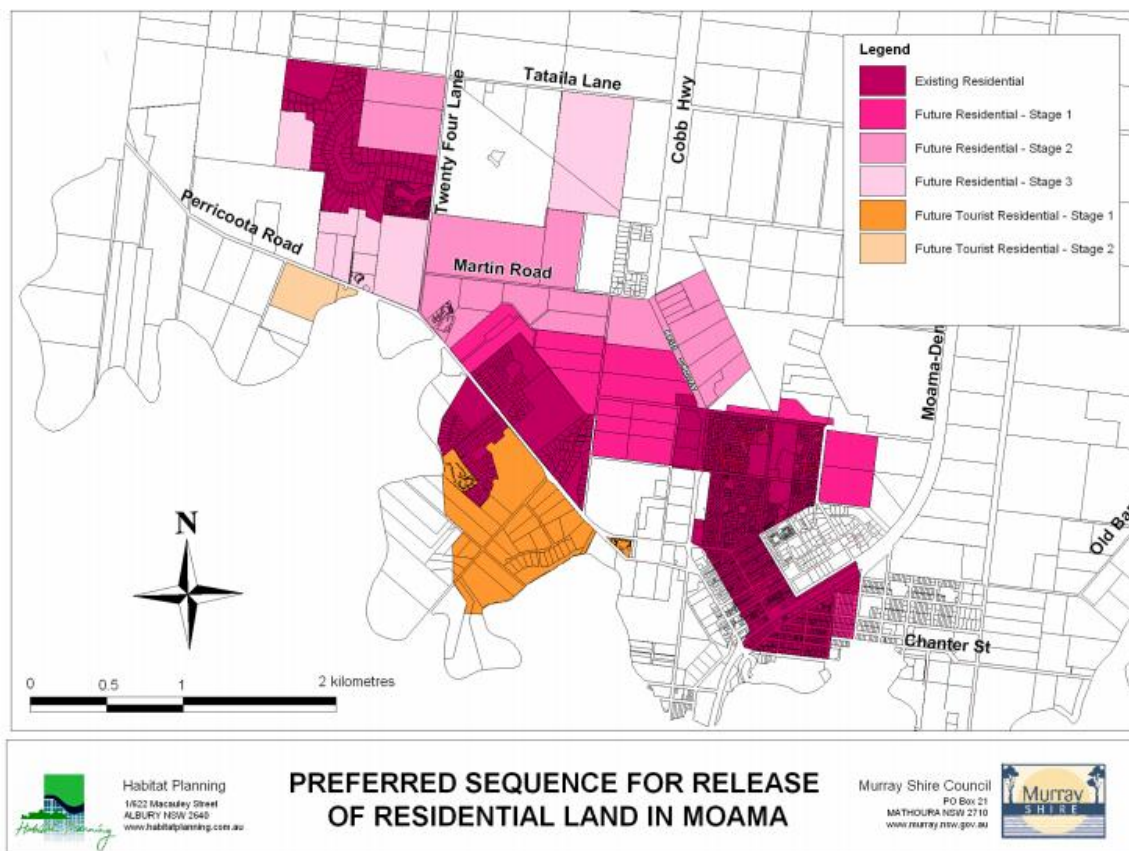


Figure 2 – excerpt from the Murray SLUP showing preferred release of residential land. Kooyong Park is not located in this vicinity.

In the SLUP and Murray Development Control Plan 2012 (DCP) the subject land is identified as a *“potential development site subject to further investigation (including the*

extension of the town levee)". The DCP also states, "*No urban or intensification of development on land not protected by town flood levee*". As the town levee has not been extended, further investigations have not yet been accepted by state agencies at this time.

Applicable section 9.1 Ministerial Directions:

Direction	Proponent's justification/consistency	Assessment
1.2 Rural Zones	<p>The objective of this Direction is to prevent rural land being rezoned to residential, business, industrial, village or tourist zones without justification.</p> <p>The planning proposal claims the inconsistency is justified in accordance with 5(b) as it is supported by the SLUP and DCP.</p>	<p>The proposal will remove approximately 34ha of RU1 and E3 land for predominantly residential purposes.</p> <p>The loss of the agricultural land is not justified by a Department-approved strategy. Review of the SLUP and DCP finds the subject property is listed as a <i>"Potential development site subject to further investigation (including extension of town flood levee)"</i>.</p> <p>Until the town flood levee is extended and agency concerns with the flood study are resolved this inconsistency is not considered justified at this time.</p>
1.3 Mining, Petroleum Production and Extractive Industries	<p>This Direction applies as the proposal affects rural land which could result in the prohibition or restriction of mining and resource recovery.</p>	<p>Murray River Council as the Planning Proposal Authority needs to consult with the Department of Primary Industries to seek advice on the development of potential resources to address this Direction.</p> <p>Consultation can occur prior to the proposal proceeding to community consultation.</p>
1.5 Rural Lands	<p>This Direction applies as the proposal affects rural land.</p> <p>The proposal argues it is consistent with the Rural Planning Principles of the Rural Lands SEPP through the provision of rural settlement and removal of the minimum lot size. The proposal states that the loss of agricultural land will be minimal due to its current low agricultural use and potential productivity.</p>	<p>The removal of approximately 34ha of agricultural land is not considered to be of minor significance at this time.</p> <p>The proposal is therefore inconsistent with this Direction and the Rural Planning Principles of the Rural Lands SEPP. These inconsistencies have not been justified through an approved strategy and are not considered as being of minor significance at this time.</p> <p>Council will need to provide further information to address</p>

Direction	Proponent's justification/consistency	Assessment
		this Direction prior to community consultation.
2.1 Environment Protection Zones	<p>This Direction applies as the proposal affects E3 Environmental Management land.</p> <p>The planning proposal includes discussion around the provision of open space and conservation areas of the site through a master plan, but also notes there is "no environmental value" on site, further to a study prepared in 2011, found there were no threatened species on site.</p> <p>The Fauna and Fauna Report is based work in 2010.</p>	<p>The subject land is zoned part E3 Environmental Management. The portion of land that is zoned E3 at the southern edge of the site is approximately 18ha (with about 5ha developed for residential use). The Direction states a planning proposal affecting land within an environmental protection zone must not reduce the environmental protection standards.</p> <p>The Murray LEP 2011 biodiversity map shows the site has environmental assets along the northern boundary. This is not discussed in the proposal.</p> <p>While old surveys are useful to understand site characteristics and historical data, the report is considered to be out of date in respect to this consideration.</p> <p>The proposal does not adequately address this Direction to establish whether the matter is of minor significance at this time.</p> <p>The proposal is not consistent with a Department approved strategy or justified by a current study.</p> <p>Council will need to address this inconsistency though consultation with OEH prior to community consultation.</p>
4.3 Flood Prone Land	<p>This Direction applies because the proposal is to alter a zone that affects flood prone land. The proposal notes that most of the site is flood-prone as flood storage area. A site-specific flood study summarises as follows:</p>	<p>The Murray LEP 2011 flood planning map shows the site as completely inundated as part of the flood planning area.</p> <p>The planning proposal is inconsistent with this Direction at this time.</p>

Direction	Proponent's justification/consistency	Assessment
	<ul style="list-style-type: none"> • the site is protected by a rural or unlicensed levee; • the flood hazard has been categorised as low hazard storage in a 1:100-year event; • the proposed levee upgrade will protect the site in a large flood; and • in an extreme event, evacuation may be necessary. 	<p>The planning proposal should be amended to provide further information in relation to this Direction and justification for the rezoning of flood-prone land for residential development. The inconsistency cannot be considered as being of minor significance at this time.</p> <p>Flood modelling provided indicates that land to the north of the site will be affected by the proposed levee. There will therefore be an impact on adjoining properties because of the proposal.</p> <p>The proposed levee will need to be constructed to approximately 1.5 -1.6m high and 11m wide at the base to be brought up to standard with the levee around Moama. The construction, ownership and maintenance of the levee has not been resolved at this time.</p> <p>Advice from OEH recommends the town levee around Moama be extended, realigned and heightened to protect the site to urban standard. It is noted by OEH that <i>"the proposal is likely to increase overall flood risk for Moama. Standalone assessment of developments provides the potential for cumulative and more significant impacts on flood risk to adjacent areas"</i>.</p> <p>SES have also raised concerns about the increased impacts of flooding from cumulative development outside of the flood levee. In its current form SES do not support the proposal until additional information is provided to satisfy their concerns regarding evacuation procedures.</p>

Direction	Proponent's justification/consistency	Assessment
		Given the uncertainty around flood impacts and state agency concerns the proposal remains inconsistent with this Direction at this time and will need to be addressed through an adequate regional flood study.
4.4 Planning for Bushfire Protection	<p>This Direction applies as the land is identified as bushfire-prone; however, it is not considered that there is identifiable bushfire hazard on the site.</p> <p>The surrounding land is predominantly cleared or has a permit to be cleared. When clearing is completed, the land will not be bushfire-prone.</p>	<p>As the site is mapped as bushfire-prone land, consideration of the Rural Bushfire Service's (RFS) <i>Planning for Bushfire Protection 2006</i> is required to be consistent with this Direction.</p> <p>Consultation with NSW RFS is required to address this matter and resolve inconsistency.</p>
5.10 Implementation of Regional Plans	<p>This Direction applies as it affects land within the Riverina Murray Regional Plan 2036 (RMRP).</p> <p>Considered in planning proposal as consistent.</p>	<p>The RMRP applies to the proposal.</p> <p>The proposal is inconsistent with the RMRP and does not meet the requirements for the provision of new housing, which needs to be identified in an approved strategy and away from natural hazards. This has not been justified at this time and will need to be addressed through an updated land use strategy.</p>
6.3 Site Specific Provisions	<p>This Direction applies as it is proposed to have site specific provisions for Kooyong Park.</p> <p>The planning proposal suggests that an amendment to Schedule 1 of the Murray LEP 2011 to facilitate the proposal is appropriate.</p> <p>It is also proposed to insert a new site specific clause to provide further development control provisions. This new clause also proposed to introduce "integrated tourist facility" as a new term.</p>	<p>The planning proposal should be revised to consider this Direction.</p> <p>Further justification for a site-specific clause is required.</p> <p>More information is required on the proposed business/commercial development on site.</p> <p>The proposal is inconsistent with this Direction at this time.</p>

State environmental planning policies

SEPP	Proponent's justification/consistency	Assessment
SEPP (Rural Lands) 2008	The planning proposal indicates consistency with the Rural Planning Principles of the SEPP that encourage the provision of rural settlement opportunities.	<p>The proposal will result in 34ha of primary production and environmental management land being used for residential and commercial purposes without justification through a strategic process. This is inconsistent with the Rural Planning Principles and the Rural Lands SEPP.</p> <p>The subject land has agricultural potential and, nearby and adjacent land is being used for agriculture. The proposal does not assess the agricultural potential of the land or adequately determines the proposal's consistency with the Rural Planning Principles as required when proposing to rezone rural land.</p> <p>The proposal does not adequately address this policy at this time.</p>
SEPP 55 – Remediation of Land	<p>The proposal states that there is no history of the site being subject to contamination.</p> <p>This is based on a Soil Contamination Report.</p> <p>Council can consider this matter as part of the Development Application process.</p>	No further action required at this time.
SEPP 44 – Koala Habitat Protection	<p>The proposal does not consider this SEPP.</p> <p>The Fauna and Fauna Assessment classifies the subject site as potential core Koala habitat.</p>	<p>The proposal will not clear the tree line around the property which contains Koala feed trees.</p> <p>No further action is required and further consultation with OEH may be required.</p>
Murray Regional Environmental Plan No 2—	The planning proposal does not identify any inconsistencies with the MREP as the proposal states it is consistent with the Murray SLUP and is not	<p>MREP applies as Moama is indicated as riverine land.</p> <p>While the proposal is consistent with multiple parts of the MREP</p>

SEPP	Proponent's justification/consistency	Assessment
Riverine Land (MREP)	located near the bank of the Murray River.	<p>the proposal is inconsistent for the following reasons:</p> <p>Section 10 of the MREP lists specific principles of this plan. Specifically, new or expanding settlements (including rural-residential subdivision, tourism and recreational development) should be located on flood free land. The proposal is in direct contravention of this plan at this time.</p> <p>Consultation with agencies will be required to address the MREP.</p>

SITE-SPECIFIC ASSESSMENT

Introduction

Kooyong Park has been investigated previously to include in a strategic land use strategy, but not included. There was no clear reason put forward as to why the land should not be included. The inclusion of this land in a strategy has the potential to prove more options for housing in the area. The site-specific matters require more detailed investigation and justification of issues.

Social

The proposal identifies social and economic benefits to the region through the provision of additional recreation areas to the locality. The benefits of the proposal have been stated but not substantiated through studies or evidence.

Potential social impacts of the development could arise from exposure to flood risk as the result of the isolated, flood-prone nature of the land.

Other impacts could develop on surrounding farming activities through rural land-use conflict, which is an inevitable side-effect of non-strategic urban encroachment into farming areas. Further issues that are possible are added pressure for the rezoning and subdivision of other land for residential purposes, increased complaints and competition for resources such as water, and the permanent removal of valuable agricultural land from production.

SES raised concerns about impacts in flood events. Further work is required to determine the agreed future for the locality, preferably through the Comprehensive Land Use Strategy and Flood Study process.

Environmental

The proposal is supported by 2011 studies that indicate any potential environmental impacts can be managed through consultation with agencies and the development assessment process. Flooding requires more comprehensive investigation due to the need to determine the actual risk affecting the site and the floodplain. The level of inundation is reported by OEH (2017) at approximately 1.5m across the site, and in a large flood it will be necessary to evacuate residents (Figure 3). SES note if there are evacuation constraints the proposal could no longer be classified as a 'low hazard' area. It is imprudent to place a 226-lot residential community at risk and the optimal outcome at this stage is to accurately

assess the flood risk through a comprehensive flood study prepared under the Floodplain Development Manual 2005.

The site was classified as high hazard floodway in a 2007 flood study. A subsequent flood study (2012) for the E3-zoned section of the site classified it as low hazard flood storage. In 2011, the Department advised Council that the Floodplain Development Manual indicates that the cumulative impact of the development must be addressed at a regional rather than development specific level.

In 2017, OEH reviewed the proponent's flood report and raised concerns about the extent of inundation and the height of the levee required to protect the site. It was found that a floodway exists to the west of the site and that encroachment on the floodway should be avoided; also, that there would be an impact on properties to the north of the site. It was also advised that the levee height would need to be raised to the same standard as the Moama town levee. Finally, OEH advised that a more strategic approach to flood risk assessment be undertaken (refer to **Attachment F**).

Further flooding information was provided in 2017, which found that the site could be protected by a levee constructed to the required standard with "very little if any" environmental, social and economic adverse issues associated with the proposed development. Notwithstanding, it is noted that in the event of a large flood (1:200), evacuations will be required.

In January 2018, OEH (**Attachment F**) advised that the proposal is likely to increase the overall flood risk for Moama and recommended against a stand-alone assessment and postponing the proposal until completion of strategic flood planning, the Moama (and Echuca) Flood Plain Risk Study and Management Plan currently in preparation.

In May 2018, SES (**Attachment F**) provided comments on the proposal which included requests for additional assessment on the following matters:

- Consideration of the ongoing integrity and maintenance of the levee and potential risks around levee failure.
- Reassessment of the hazard rating after consideration of any evacuation constraints.
- Reassessment of the potential evacuation route is required to be safe up to the 1% AEP. This includes quantifying the evacuation capacity of the route and, road closure heights and locations for a variety of flood levels.
- Evidence of whether or not this development will place a significant additional burden to emergency services.

The Department has reiterated concerns over the adequacy of the site-specific flood assessment, raising concerns over the construction, ownership and maintenance of the levee after development of the site.

The land is flood-prone and identified as a flood storage area. It is outside the Moama town levee and is currently protected by a rural levee. The planning proposal acknowledge this is insufficient for residential purposes and suggests the town levee is extended to include "Kooyong Park". There is conjecture over the level of inundation and risk associated with the proposed extension of the town levee to the site. The Department has recommended that an assessment of the impact of the proposed development on this land be undertaken in the context of the broader Moama (including Echuca) Flood Study Project and the requirements of the Floodplain Development Manual 2005. This recommendation has been supported by the OEH and SES. SES have also raised additional concerns over suitable evacuation routes and the impact of the development on neighbouring properties. No further evidence has been provided by the applicant or Council to address these concerns

at this time. Flooding impacts to the potential future residents of “Kooyong Park” and neighbouring properties have not been resolved.

Note: Council has received funding for the Moama Flood Study Review in accordance with the Floodplain Development Manual 2005. Council advised that this project has commenced and is projected to be finalised in late 2020.

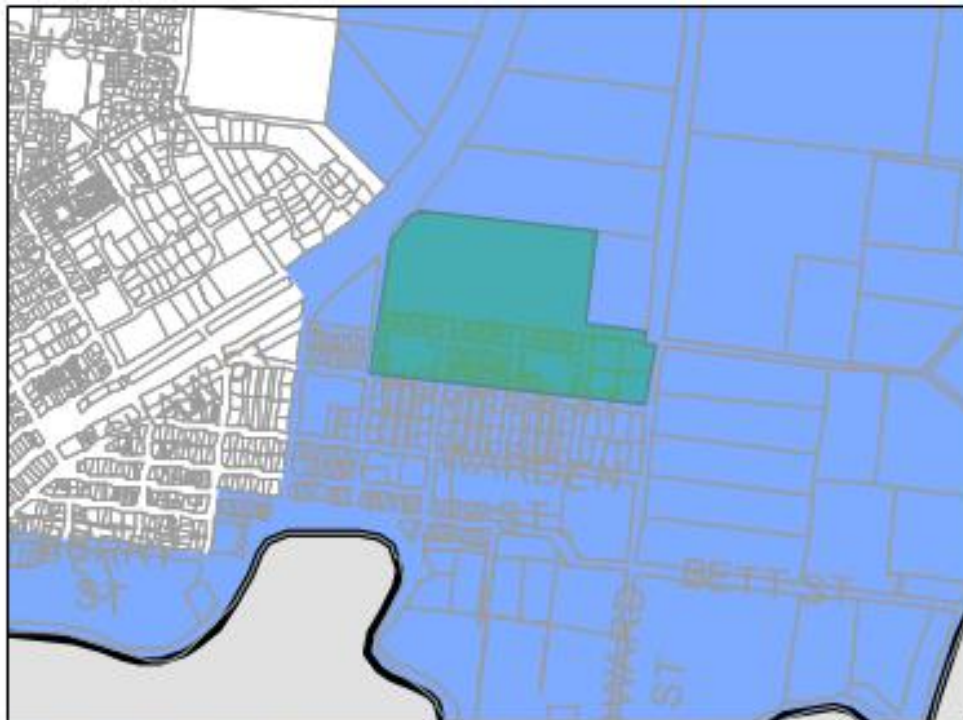


Figure 3 - Flood Planning Area showing the site highlighted in green

There is terrestrial biodiversity generally along the road corridors shown on the Murray LEP 2011 biodiversity map (Figure 4). The Fauna and Flora Assessment states there is a low likelihood of threatened species utilising the proposal land for important habitat.



Figure 4 Subject site showing Terrestrial Biodiversity

Economic

The proposal states there will be positive economic benefits. In relation to servicing and access, government agencies have expressed concern over the ownership and ongoing maintenance of the levee bank around the site as proposed. There may be impacts on surrounding rural activities via land-use conflict. There will be negative economic impact

during times of floods in terms of disruption and evacuation. Should the proposal proceed the concerns about the levee bank and the flooding impacts will need to be resolved prior to community consultation.

Infrastructure

The proposal is not identified in an urban release area. Individual connection to urban services is proposed by the proponent via a community title scheme. Connection to the town reticulated water and sewer supply will be at full cost to the developer as required by Council.

CONSULTATION

Community

As this is not a low impact proposal and community consultation is recommended for a minimum of 28 days.

Agencies

The proposal has been reviewed by the OEH and SES (**Attachment F**). OEH requested that the planning proposal be postponed until completion of a strategic flood plan is completed for Moama. SES are concerned with the proposal's inconsistency with section 9.1 Direction 4.3 flood prone land and potential for and increased number of people and property to be exposed to flood risks.

Both OEH and SES agree the proposal should be postponed until additional information is provided to address their concerns. This can be addressed through completion of the strategic flood study for Moama, which has commenced and is planned to be finalised in 2020.

TIME FRAME

The timeframe to complete this LEP amendment is recommended to be 18 months.

LOCAL PLAN-MAKING AUTHORITY

I have considered Council as the local plan-making authority and have determined not to condition the Gateway for Council to be the local plan-making authority at this time due to the section 9.1 Direction inconsistencies. This delegation can be reviewed once the issues are resolved.

CONCLUSION

With further investigation the land known as Kooyong Park has the opportunity to provide other options for housing in the local area. Notwithstanding the inconsistencies with the section 9.1 Directions – 1.2, 1.3, 1.5, 2.1, 4.3, 5.10 and 6.3 and SEPP(Rural Lands) 2008 it is considered that Council be granted an opportunity to undertake further work to satisfy these matters. It is therefore recommended that the proposal proceed for the following reasons and that a Gateway determination be issued.

- That Murray River Council is undertaking a Comprehensive Land Use Strategy project that can consider the "Kooyong Park" land. This work is expected to be finalised in 2020. "Kooyong Park" can be considered in this comprehensive strategic context. The Department is most supportive of Council undertaking the Comprehensive Land Use Strategy project. Should this be satisfied it will address the section 9.1 Directions 1.2, 1.5, 2.1 and 5.10.
- That Murray River Council is also part of a comprehensive review of the Moama – Echuca Flood Study project. This project is expected to be finalised in 2020. Murray River Council has received funding from OEH to undertake this work. This will allow

the “Kooyong Park” land to be considered as part of the comprehensive Flood Study work.

Should the result of this work support the proposal it will then satisfy section 9.1 Direction 4.3

- The conditional Gateway determination will allow Council to undertake further work in relation to this proposal in consultation with agencies and the community.

It is noted that a Gateway determination assessment (**Attachment G**) prepared by the Department Planning Officer does not support the planning proposal as submitted, however reconsideration of the strategic merits of the proposal has been undertaken in line with the initial intent of a Gateway Determination. Detailed investigation to all unresolved matters will be able to adequately inform the direction of the development.

RECOMMENDATION

It is recommended that the delegate of the Minister support the planning proposal to proceed subject to the following conditions:

1. Prior to undertaking community consultation of the planning proposal, Murray River Council is to demonstrate that the “Kooyong Park” proposal is included as part of the review of the Moama Flood Study work and consistent with the NSW Flood Prone Land Policy and Flood Plain Development Manual 2005.

Murray River Council is submit to the Department of Planning and Environment the review of the Moama Flood Study for approval and demonstrate consistency with section 9.1 Direction 4.3 Flood Prone Land prior to undertaking community consultation.

2. Prior to undertaking community consultation Murray River Council is to demonstrate consistency with section 9.1 Directions 1.2 Rural Zones, 1.5 Rural Land, 2.1 Environment Protection Zones, 5.10 Implementation of Regional Plans and 6.3 Site Specific Provisions (including justification for the proposed schedule 1 – Additional permitted uses), State Environmental Planning Policy (Rural Lands) 2008 and Murray Regional Environmental Plan No 2 – Riverine Land.

Murray River Council is submit all information and seek the approval of the Department of Planning and Environment to demonstrate consistency.

Consultation may be required with government agencies to assist Council with demonstrating consistency.

3. Prior to undertaking community consultation is required with the Department of Planning and Environment – Resources and Energy under section 3.34(2)(d) of the *Environmental Planning and Assessment Act, 1979* to address the inconsistency with section 9.1 Direction 1.3 Mining, Petroleum Production and Extractive Industries.

The Department of Planning and Environment – Resources and Energy is to be provided with a copy of the planning proposal and any supporting material, and given at least 40 days to comment on the proposal.

The result of the consultation is to be provided to the Department of Planning and Environment seeking approval to undertake community consultation.

4. Community consultation is required under section 3.34(2)(c) and schedule 1 clause 4 of the *Environmental Planning and Assessment Act 1979* as follows:
 - (a) the planning proposal must be made publicly available for a minimum of 28 days; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A Guide to Preparing LEPs (Department of Planning & Environment August 2016)*.
 5. Consultation is required with the following public authorities under section 3.34(2)(d) of the *Environmental Planning and Assessment Act, 1979*:
 - Department of Primary Industry – Agriculture
 - Office of Environment Heritage
- Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.
6. Prior to submission of the planning proposal under section 3.36 of the *Environmental Planning and Assessment Act, 1979*, the final LEP maps must be prepared and be compliant with the Department's 'Standard Technical Requirements for Spatial Datasets and Maps' 2017.
 7. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the *Environmental Planning and Assessment Act, 1979*. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
 8. The timeframe for completing the LEP is to be 18 months from the week following the date of the Gateway determination.
 9. Council not be authorised to exercise plan making delegation as the local planning authority in this case. Such delegation be reconsidered after conditions 1, 2 and 3 are completed.



15.10.18

**Director Regions, Western
Planning Services**

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