

Our Ref: 0081/16 ltr 1

7 February 2017

The Director Regions – Ashley Albury
Western Planning Services
Department of Planning and Environment
PO Box 58
DUBBO NSW 2830

Dear Ashley,

PLANNING PROPOSAL PP_2016_MRIVE_005_00
AMEND MURRAY LEP 2011 TO REZONE LAND FROM ZONE E3 TO SP3
LOTS 1, 2, 3 AND 4 DP 270496 NO.2 PERRICOOTA LANE, MOAMA ('TINDARRA RESORT')

INTRODUCTION

In a letter dated 1 November 2016, the Department of Planning and Environment made a request to Council for additional information with respect to the abovementioned application for a Planning Proposal. Council has provided the applicant for the Planning Proposal with the opportunity to respond to the issues raised in the Department's letter. Planning Ingenuity acts on behalf of the applicant and provides the following response to the issues listed in the Department's letter.

SUMMARY

In summary the information presented in this letter demonstrates that the application for a Planning Proposal to change the zoning of the land from Zone E3 Environmental Management to Zone SP3 Tourist:

- has strategic merit and is no more inconsistent with the Murray Shire Strategic Land Use Plan than other land in Zone SP3 and Zone E3 which are used as tourist facilities in the locality;
- has considered the relevant Section 117 Directions and achieves the environmental planning intent of those Directions;
- will have minor changes to the development potential of the Tindarra Resort site in a manner which is consistent and equitable with other land in Zone E3 and Zone SP3 used as tourist facilities in the locality;
- has an appropriate strategic context in terms of planning for tourist related land uses as informed by relevant Local Environmental Plan Practice Notes and available tourism strategies; and
- protects, and has the potential to improve, the natural assets of the river front area consistent with current and likely future planning provisions; and
- is the best option to plan for the improved use of the site given its development history, the context and setting and the natural and cultural assets of the site and surrounds.

1. STRATEGIC MERIT OF THE PROPOSAL AND THE MURRAY SHIRE STRATEGIC LAND USE PLAN

The original Murray Shire Strategic Land Use Plan 2010-2030 (MSSLUP) was produced by Council prior to MLEP 2011. The original primary purpose of the MSSLUP was to inform the Standard Instrument Local Environmental Plan. The MSSLUP also includes a commitment to monitor and review the MSSLUP with consideration to:

- *“the types of development being undertaken;*
- *The rate of land consumption by various land use types;*



PLANNING INGENUITY

Suite 210, 531-533 Kingsway
Miranda NSW 2228
P 02 9531 2555

Suite 6, 65-67 Burelli St
Wollongong NSW 2500
P 02 4254 5319



- *The supply of land for various land use types;*
- *The standard and capacity of infrastructure;*
- *Environmental impacts; and*
- *Community views”*

The Tindarra resort commenced operations at the site in 2007. Therefore the use of the site for tourist-related development was known to Council prior to the preparation of MLEP 2011 and the site had been assessed as suitable for tourist-related development in accordance with Development Consents DA070/2001 and DA068/2011 (both for various resort accommodation and facilities), DA158/2014 (for a mooring, jetty and pontoon) and DA175/14 (for a temporary function centre). Based on the tourist-related developments approved and undertaken to date, the use of the site as a tourist resort should be acknowledged in revisions of the MSSLUP if the review is to be consistent with the abovementioned commitment specified in the MSSLUP document.

Notwithstanding this, the use of the site for tourist-related uses is considered to be consistent with the (yet to be reviewed) MSSLUP as explained in the following Sections 1.1, 1.2 and 1.3.

1.1 MSSLUP Vision

The Vision of the MSSLUP is as follows:

“Within the context of land use planning and looking to the future, Council’s vision is for a prosperous community with a diversified economy integrated with a sustainable and productive natural resource base.

This vision seeks to ensure that the Shire’s natural environment is carefully managed and that its natural and built assets are protected from inappropriate rural and urban development that would prejudice the agricultural, heritage and urban attributes of the Shire.”

The approved and continuing use of the site for tourist related purposes is consistent with the MSSLUP Vision. The Tindarra resort contributes positively to a prosperous community and diversification of the economy. The resort attracts visitors to the locality and directly and indirectly employs local workers. Visitors to the resort are primarily attracted by the resort facilities, the riverfront setting and proximity to the town centre of Moama. Visitation of the resort encourages local spending and provides direct and indirect employment which supports the local economy. The use of the site as a resort has not, and will not, compromise the appropriate management of natural and built assets or prejudice agricultural, heritage and urban attributes (see Sections 2 and 3). Whether the site is in Zone E3 or Zone SP3, similar criteria apply to the assessment of any development application for the site (as explained in Sections 2 and 3). These criteria include the potential impacts and management of the natural and built assets and the potential impacts on agriculture, heritage and urban attributes.

1.2 MSSLUP Moama Strategy for Tourist Development

The MSSLUP states the following in relation to strategic planning for tourist development:

“It is reasonable to presume that tourist activities and accommodation will continue to expand in Moama.

More recently there has been a trend away from the traditional caravan park type establishment to developments incorporating ‘upmarket’ cabins that are more akin to residential units. To maximise the tourist benefit, the larger of these developments generally seek to locate out of Moama on the river and this can create potential infrastructure problems for Council and environmental impacts. There are a few sites remaining within Moama suitable for tourist development that are in close proximity to the river and above the flood level.

The strategic response is to identify land within and out of Moama that is below the 1 in 100 year flood level and restrict its use through an LEP. Although tourist development can generally co-exist with residential development without too many problems, it is considered good strategy to nominate

areas preferred exclusively for residential. This allows for tourist development to be focussed on particular precincts and minimise the risk of land use conflict.”

The continued use of the site for tourist-related uses is consistent with aspects of the Tourist Development strategy in the MSSLUP.

The MSSLUP anticipates tourist-related uses to expand and to provide more ‘up-market’ facilities. The Tindarra Resort offers cabin style accommodation with ancillary facilities. The capacity to add to, and improve, the range and quality of facilities available within the site is currently severely limited by zoning and existing use rights provisions. The application for a Planning Proposal, this letter and current development consents issued by Council and the NSW Land and Environment Court demonstrate that the Tindarra Resort site can potentially accommodate improvements to, and expansion of, tourist-related uses within the environmental constraints that are now well documented for the site.

Maintain economic viability is a key factor in the continued successful operation of the Tindarra resort and the capacity to manage the environmental attributes of the site. As detailed in the application for a Planning Proposal, the capacity of the Tindarra Resort to host functions is essential for business viability. As also explained in the application and in this letter, function centres (and several other tourist-related land uses) are currently prohibited on the site. Applying Zone SP3 to the site will potentially allow for a wider variety of tourist-related land uses on the site in a manner consistent with other sites in Zone SP3 in the locality and compatible with the well-known constraints and assets of the site and its setting.

As demonstrated in Section 2, tourist-related uses can continue to be provided at the site in a manner compatible with the flood affectation, bushfire risks and habitat management requirements of the site (and regardless of whether the land is in Zone E3 or Zone SP3).

As demonstrated in Section 3, applying Zone SP3 to the site will support the continued use of the site for tourist related uses consistent with specific tourist strategies for the region without compromising the environmental attributes of the site and the river front area.

The location of the Tindarra resort adjacent to the river is a fundamental feature of its appeal to visitors and for tourist-related uses. A riverfront setting is:

- appreciated and sought after by visitors;
- acknowledged by the resort operators as a valuable natural asset worthy of protection as well as a constraint to be accommodated in any future land use or activity.

The MSSLUP identifies riverfront land as suitable for tourist and residential accommodation as shown in the extract from the MSSLUP in Figure 1. Other land in Zone SP3 has river frontage (see land outlined blue in Figure 1 and see Section 2).

Figure 1 is extracted from the MSSLUP and shows that the Tindarra resort site (indicated by a red arrow) is surrounded to the east and west by land shaded orange and labelled as suitable for ‘Future Tourist Residential – Stage 1’. The land to the west of the site has river frontage and is considered by the MSSLUP as being suitable for tourist uses.

It is presumed that the Tindarra resort site was excluded from the ‘Future Tourist Residential – Stage 1’ land use shown in Figure 1 because the site is below the 1 in 100 year ARI Flood Event. However, this is not consistent with the application of Zone SP3 to other properties used as tourist facilities (see next paragraph). As explained in Section 2.2, tourist related uses can be conducted on the site in a manner compatible with the natural flooding regime of the Murray River and its floodplains and riparian lands. Furthermore there are other properties in close proximity to the site which are below the 1 in 100 ARI and are used for tourist facilities and are within Zone E3 and Zone SP3 (see Section 3). Therefore, since the original preparation of the MSSLUP, there is sufficient information available to planning authorities to appropriately assess the capacity of the site to support tourist-related development. A future review of the MSSLUP could include the Tindarra Resort site within the ‘Future Tourist Residential – Stage 1’ land use category.



Figure 1: Extract from MSSLUP showing desired future land use patterns (subject site indicated by red arrow)

As can be seen by Figure 1, there are properties (outlined in blue) which are currently in Zone SP3 Tourist and Zone E3 under MLEP 2011 which are located adjacent to, or close to, the river but are identified in the MSSLUP as either land suitable for residential use or for ‘Future Tourist Residential – Stage 2’. Some of the land within properties in Zones E3 and SP3 as described in Section 3 is above the 1 in 100 year ARI Flood event level and some land is below the 1 in 100 year ARI (see Section 3 for details). The application of Zone SP3 and Zone E3 to these sites identified in Section 3 demonstrates that the land use categories in the MSSLUP were not determinative in assigning zoning under MLEP 2011 (and therefore should not be determinative for the Tindarra resort site).

Figure 2 is an extract from MSSLUP and shows that the Tindarra Resort site (indicated by a red arrow) is surrounded to the east and west by land shaded yellow and labelled as suitable for tourist and residential use. Figure 2 categorises the Tindarra Resort site as ‘Rural Floodplain’ land. The distinction between ‘tourist and residential use’ land and ‘rural floodplain’ land in Figure 2 appears to relate to the 1 in 100 ARI. Section 2 to this letter demonstrates that tourist-related uses can be compatible with the flood affectations of the site and surrounds.

Figure 2 shows that there are properties (indicated by blue arrows) which are currently in Zone SP3 Tourist and Zone E3 under MLEP 2011 that are located on land anticipated by the MSSLUP for rural uses and Future Low Density Residential use. This demonstrates that the land use categories in the MSSLUP were not determinative in assigning zoning under MLEP 2011 (and therefore should not be determinative for the Tindarra resort site).

Moama Strategic Land Use Plan

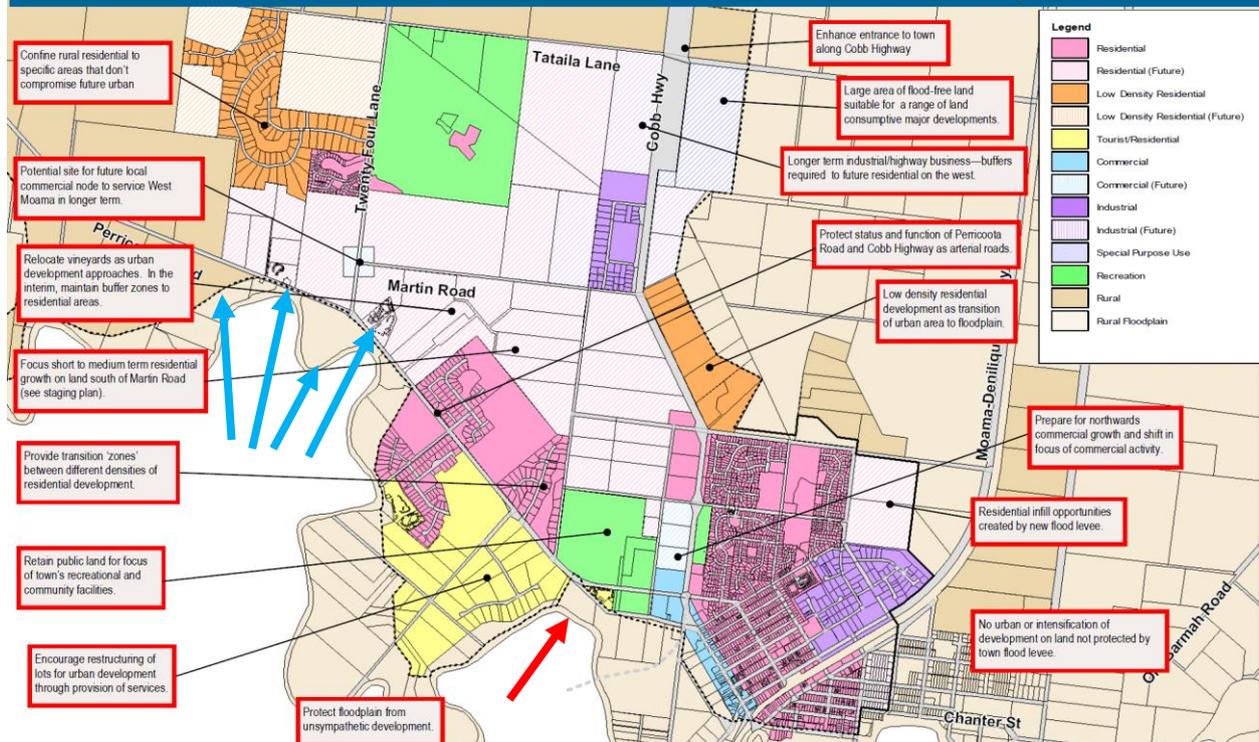


Figure 2: Extract from SLUP showing details of the anticipated land use patterns

The continued use of the Tindarra Resort site for tourist related development will not be incompatible with the anticipated pattern of land use on nearby and surrounding sites because the site is located adjacent to land anticipated to be used for residential and tourist uses. Furthermore land currently in Zone SP3 has been identified in MSSLUP for rural and residential uses. Therefore it cannot be said that the land use patterns in the MSSLUP are critical to the application of Zone SP3 to those sites.

1.3 MSSLUP Strategy for Rivers

The MSSLUP contains the following strategic statements in relation to land uses in riverine environments:

“The river environments of the Shire are the principal attraction for visitors and in recent times there has been an increase in demand to accommodate them in locations adjacent to or near the water. Given the sensitivity of the riverine environment, it is essential that any development undertaken within it is done so in a manner that has the best nil environmental impact. Activities that have potential to impact detrimentally on the environment are bank disturbance (either directly through excavation and use or indirectly through increased boat movements creating wash), effluent disposal and just a human presence (if located within a natural environment). To provide support for tourist developments, it is preferred that they are located within proximity to urban areas so that the infrastructure and services they offer can be tapped in to. Consequently tourist developments that are remote from services and facilities are less preferred.

The strategic response to this issue is to adopt land use controls via an LEP and DCP to protect the rivers and their immediate environs in the Shire. These controls should reflect the principles of Murray Regional Environmental Plan No.2 – Riverine Land and specifically address tourist developments and dwellings as it is these land use activities that often seek out river locations in non-urban areas. Since it is possible in most cases to undertake environmentally sustainable development, a merits-based approach to tourist development is preferred to a blanket ban or nomination of suitable sites at the expense of others.”

Applying Zone SP3 to the Tindarra resort site will not increase the risk of environmental harm to the river. As explained in Sections 2 and 3 of this letter, there are multiple layers of legislative protection which currently apply and will continue to apply to the site to recognise and protect the environmental attributes of the site and surrounds. These layers of legislative protection will not be changed by changing the zoning of the site to Zone SP3.

The specific environmental risk factors identified in the MSSLUP are bank disturbance, effluent disposal and general human presence. The integrity of the river bank within the site is to be maintained by ensuring land use is consistent with the provisions of the environmental planning instruments detailed in Section 2. The site is serviced by reticulated sewer and the flooding of the site will not result in uncontrolled effluent entering the riparian environment. General human presence can be strictly controlled by maintaining the tourist-related use of the site as all guests and visitors to the site are subject to supervision by 24-hour site management and various Plans of Management linked to development consents for the site. Furthermore, applying Zone SP3 to the site means that no land uses are permitted without consent. Under the current Zone E3 extensive agriculture may be conducted without consent on the site.

The Tindarra resort is well connected to urban infrastructure and readily accessible to the Moama town centre and established community and recreational facilities. As stated above, the MSSLUP supports tourist developments located in proximity to urban areas for these reasons.

As explained in the application for a Planning Proposal and in Section 2 to this letter, the proposed change to the land use zoning does not intend to change the manner in which many other environmental planning provisions apply to the land. Changing the zoning will maintain a merit-based approach to all development proposals. This is also consistent with the statements in the MSSLUP with regard to the river environment.

In summary, with reference to the MSSLUP, the application of Zone SP3 and the use of the Tindarra resort site for tourist land uses is no more or less consistent with the strategic land use intentions identified by Council in the MSSLUP for other properties currently used for tourist-related purposes and within either Zone E3 or Zone SP3. It has been demonstrated that the details of the MSSLUP are not determinative to the application of Zone SP3 or Zone E3 to land used for tourist facilities. A future review of the MSSLUP in a manner outlined in the MSSLUP would be anticipated to acknowledge the additional recent information available regarding the constraints and assets of the site and the current approved uses of the site to acknowledge and support tourist-related uses.

2. SECTION 117 DIRECTIONS

Sections 2.1, 2.2 and 2.3 expand upon the details provided in the application for a Planning Proposal in relation to Section 117 Directions.

2.1 Direction 2.1 Environmental Protection Zones

The application for a Planning Proposal addresses this Direction as follows:

TABLE 2: S.117 MINISTERIAL DIRECTIONS			
Ministerial Direction	Relevance	Consistency	Implications
2. Environment and Heritage			
2.1 Environment Protection Zones	<p>This Direction applies to all Planning Proposals and aims to preserve and conserve environmentally sensitive areas.</p> <p>A Planning Proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.</p> <p>A Planning Proposal that applies to land within an environment protection zone in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land).</p>	Yes	<p>This application for a Planning Proposal does not change provisions of MLEP 2011 which relate to the consideration of environmental assets within and adjoining the site. That is, this application does not propose to change the manner in which the provisions of Clauses 5.9, 7.1, 7.2, 7.3, 7.4, 7.5, 7.6 and 7.8 of MLEP 2011 apply to the site.</p> <p>For this reason the application is consistent with Direction 2.1.</p>

The current environmental protection standards that apply to the site are contained in:

- the LEP aims and zone objectives;
- Clauses 5.9, 7.1, 7.2, 7.3, 7.4, 7.5, 7.6 and 7.8 to MLEP 2011;
- Various other environmental planning instruments; and
- Council's Development Control Plan.

The LEP aims as outlined in Clause 1.2 to MLEP 2011 will remain unchanged should the Tindarra Resort site be zoned SP3 Tourist.

Section 3.2 of this letter shows that the objectives for development in Zone E3 are overlaid and repeated in the objectives of other environmental planning instruments as well as LEP and DCP provisions that will continue to apply to the site in the same manner as they do currently.

Clause 5.9 Preservation of trees or vegetation

Clause 5.9 to MLEP 2011 is an environmental protection standard which aims to protect and retain trees and vegetation and applies to the vegetation and trees on the site. Clause 5.9 continues to apply if the zoning of the site is changed from Zone E3 to Zone SP3. The *Native Vegetation Act, 2003* also continues to apply to the site as Zone E3 and Zone SP3 are not included in Part 3 Schedule 1 to the *Native Vegetation Act, 2003*.

Clause 7.1 Essential Services

Clause 7.1 to MLEP 2011 is an environmental protection standard which aims to ensure that essential services are available and appropriate to service any proposed land use. Clause 7.1 will continue to apply to the site whether it is in Zone E3 or in Zone SP3. It is relevant to note that the site is connected to all essential services available to urban land in the locality being reticulated water and sewerage services, electricity and road access. Stormwater management systems approved to date have been demonstrated to be compatible with the natural catchment and can continue to be integrated with the natural catchment characteristics subject to merit-based assessment.

Clause 7.2 Earthworks

Clause 7.2 to MLEP 2011 is an environmental protection standard listing matters for consideration in assessment of development applications which include earthworks. The clause seeks to ensure any approved earthworks will not have a detrimental impact on environmental functions and processes, neighbouring land uses, cultural or heritage items or features of surrounding land. This clause will continue to apply to the Tindarra Resort site in the same manner whether the land is in Zone E3 or Zone SP3.

Clause 7.3 Biodiversity Protection

Clause 7.3 to MLEP 2011 is an environmental protection standard which aims to maintain aquatic and terrestrial biodiversity and applies to land labelled Key Fish Habitat or Terrestrial Biodiversity in the LEP maps. The application for a Planning Proposal does not seek to change the mapped areas of Key Fish Habitat and Terrestrial Biodiversity which apply to the site (as shown in Figure 3). Therefore the provisions of Clause 7.3 will continue to apply to the site in the same manner whether the land is in Zone E3 or Zone SP3.



Figure 3: Extract from Biodiversity Map 006 to MLEP 2011

Clause 7.4 Development on river front areas

Clause 7.4 to MLEP 2011 is an environmental protection standard which applies to all development on river front land and therefore will continue to apply to the site. MLEP 2011 contains the following definition of river front area:

“river front area means:

- (a) in Zone RU5 Village, Zone R1 General Residential, Zone R2 Low Density Residential, Zone R5 Large Lot Residential, Zone SP3 Tourism and Zone B2 Local Centre—the land within 40m of the top of the bank of the Murray or Wakool River, or
- (b) in Zone RU1 Primary Production, Zone RU3 Forestry and Zone E3 Environmental Management—the land within 100m of the top of the bank of the Murray or Wakool River.”

Under the current Zone E3, the river front area is the land within 100m of the top of the bank. Under the proposed Zone SP3 the river front area will be the land within 40m of the top of the bank. Figure 4 shows the comparative areas of the site defined as river front area under Zone E3 (orange dashed line) and under Zone SP3 (blue dashed line). Figure 5 shows a line 100m from the top of bank and 60m from the top of bank. As shown in Figures 4 and 5, the area within the site to which Clause 7.4 currently applies includes approved accommodation cabins, internal roadways and pathways and the temporary function centre and

bar. The approved development on the site within 100m of the top of bank is not consistent with the provisions of Clause 7.4. However, the approved development and use of the site is consistent with Clause 7.4 for the land within 40m (and even within 60m) of the top of the bank. Changing the way in which the 'river front area' is defined for the Tindarra Resort site is consistent with the assessment and approval of development on the site.

Figure 6 is an extract of the Land Zoning Map to MLEP 2011 which shows the subject site and a dashed line defining the approximate landward boundary of the river front area. Land to the west of the site is partly in Zone E3 and partly in Zone R5 Large Lot Residential. The river front area within land in Zone R5 is limited to 40m from the top of the bank. The width of the river front area in the immediate vicinity of the site varies from 40m to 100m. Applying a 40m river front area boundary to the Tindarra Resort site is consistent with the pattern of the river front area in the immediate locality.

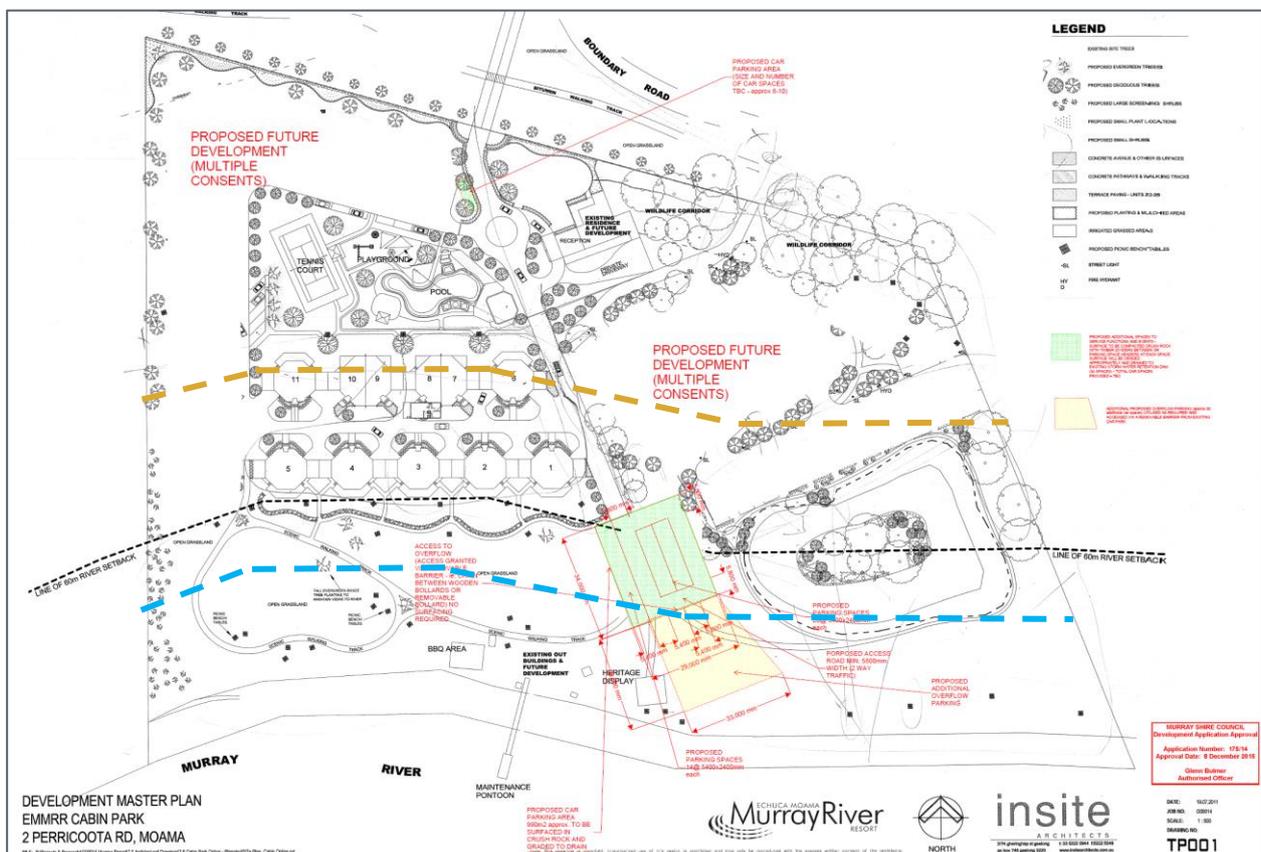


Figure 4: Lines showing approximately 100m (orange) and 40m (blue) from the top of bank as overlaid on plan approved with Development Consent 175/14.



Figure 5: Lines showing approximately 100m (orange) and 60m (red) from the top of bank as overlaid on plan approved with Development Consent 68/11



Figure 6: Approximate landward boundary of the river front area (dashed blue line) in the vicinity of the subject site (outlined red)

Figures 7 and 8 are extracts of the Land Zoning Map to MLEP 2011 which shows other land in Zone SP3 west of the subject site and a dashed line indicating the approximate landward boundary of the river front area. The river front area in the locations labelled in Figures 7 and 8 is approximately 40m to 50m from the top of the bank in proximity to land in Zone SP3.

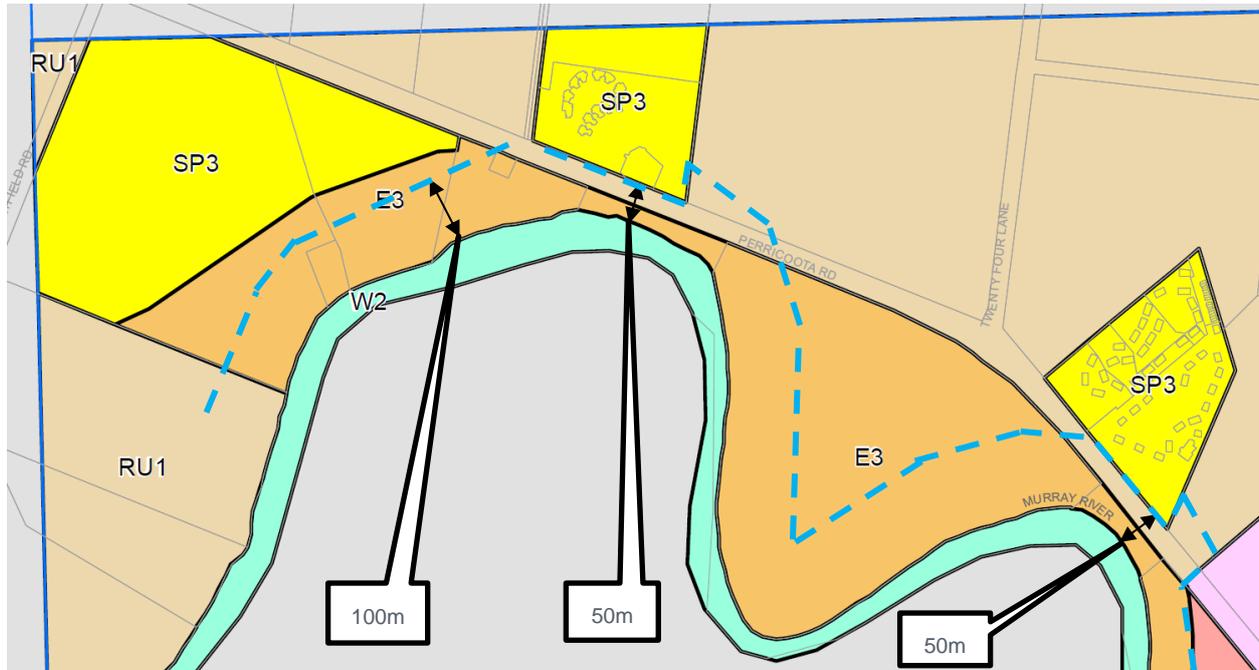


Figure 7: Approximate landward boundary of the river front area (dashed blue line) in the vicinity of land in Zone SP3

In summary

- the approved development on the site currently achieves a minimum setback of 60m from the top of the bank;
- the width of the river front area adjacent to the site varies from 40m to the west to 100m east; and
- the river front area adjacent to other land in Zone SP3 is 40 to 50m.

Furthermore, a 40m river setback is consistent with the Strahler Stream Order classification method ancillary to the *Water Management Act 2000*. The Strahler Stream Order recommends watercourses of 5th Order and higher to have a riparian buffer area 40m from the top of the bank. The section of the Murray River adjacent to the Tindarra Resort site is a 5th Order or greater watercourse. A 40m river front area for the Tindarra Resort site is consistent with the Strahler Method for maintaining and protecting riparian ecology.

Given these circumstances it is considered highly appropriate that the river front area within the site be 40m from the top of the bank were the site to become Zone SP3.

The NSW Department of Planning and Environment commissioned Ecological Pty Ltd to prepare a report informing the preparation of the Draft Riverina-Murray Regional Plan and the review of the Murray Regional Environmental Plan No.2 – Riverine Land (MREP No.2). The report by Ecological Pty Ltd is titled *Murray River Riparian Planning Controls Study* dated January 2016 and includes the following comments with regard to consistent controls for setbacks from the top of bank to the Murray River:

“The minimum standard setback widths that currently apply to riverfront areas in the region are 40m for urban zones and 100m for rural zones. It is recommended that river setbacks should remain as follows:

- *Rural areas – not less than 100 metres in all rural zones (Zones RU1, RU2, RU3, RU4, RU6)*
- *Urban areas – not less than 40m in urban zones (Zones R1, R2, R3, R4, R5 or RU5).”*

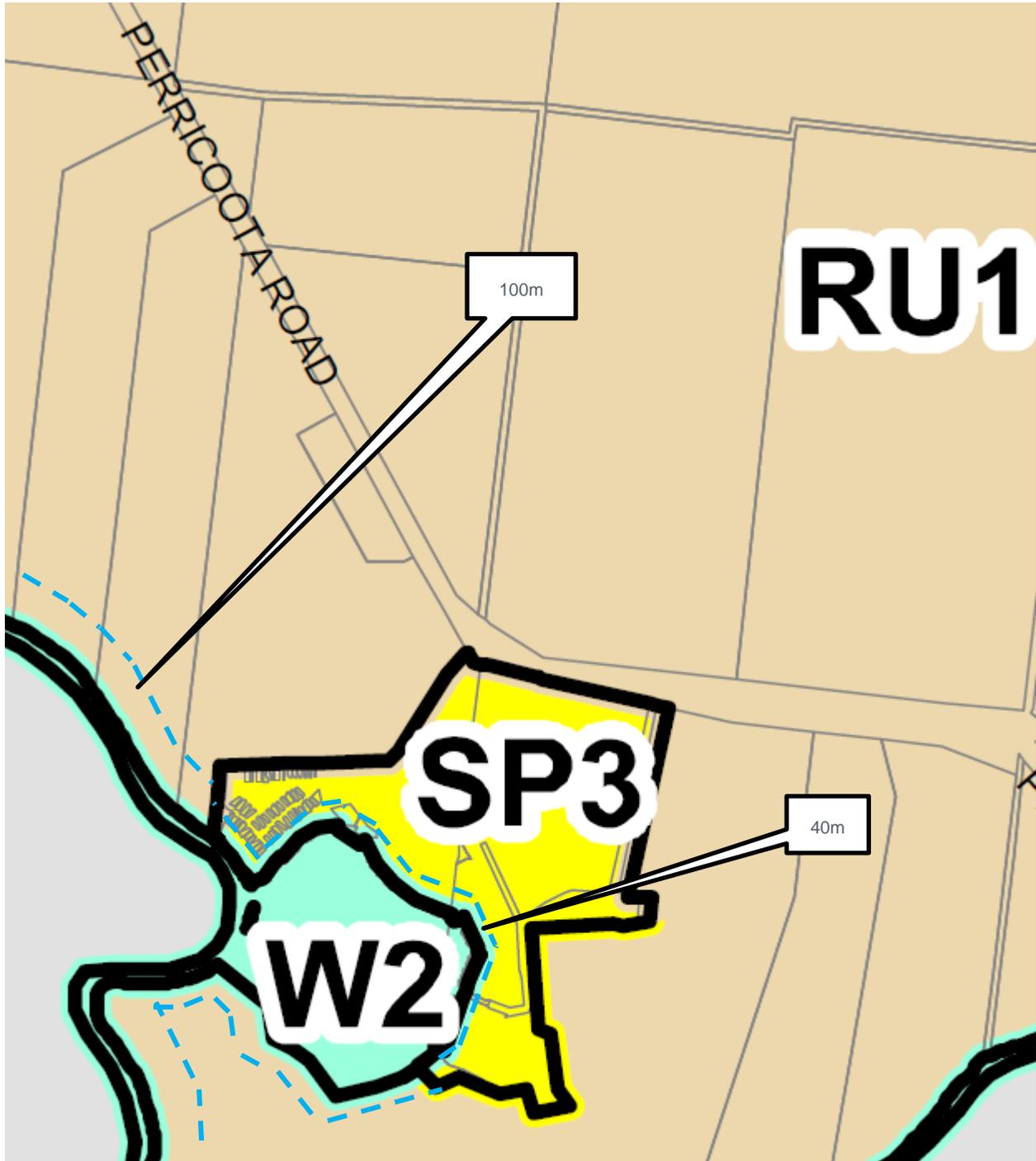


Figure 8: Approximate landward boundary of the river front area (dashed blue line) in the vicinity of land in Zone SP3

The report does not make recommendations for standard setbacks for land in Zone SP3 or Zone E3. In the context of the Tindarra Resort site, land adjoining to the west is in Zone R5 and land adjoining to the north east is in Zone R1. The site is within 400m of land in Zone B2 Local Centre. The site is connected to all essential services which are standard for urban-zoned land in the locality. Therefore the site has an urban setting rather than a rural setting.

The *Murray River Riparian Planning Controls Study* recommends that the 40m setback control in urban areas be listed in Clause 4.6(8) to all LEPs as a development standard excluded from the flexibility provided by Clause 4.6 (within the exception of infill sites).

The *Murray River Riparian Planning Controls Study* states that the cumulative impacts of setbacks along the Murray River is a matter of regional significance and recommends consideration be given to revoking assumed concurrence delegations for riverfront setback variations.

In summary, a 40m setback from the top of bank for the subject site is consistent with the *Murray River Riparian Planning Controls Study* which is a reference document to inform the review of the current planning controls for riverfront land. Based on the recommendations of the *Murray River Riparian Planning Controls Study* a 40m river setback would be recommended for future EPIs applying to the Tindarra Resort site.

The aims of Clause 7.4 relate to natural riverine processes, bed and bank stability, water quality, amenity, landscape scenic values and cultural heritage, public access and wildlife habitat. Table 1 lists the provisions in environmental planning instruments (EPIs) and current development consents which overlap with the aims of Clause 7.4 which will be maintained if the zoning is changed to Zone SP3.

Table 1: Planning provisions which replicate the aims of Clause 7.4 to MLEP 2011

Aim of Clause 7.4	Comparable provision in other EPIs which will continue to apply	Conditions of Development Consents which will continue to apply
<p><i>(a) to support natural riverine processes, including the migration of the Murray and Wakool Rivers' channels</i></p>	<p><i>MREP No.2 Objective (c) "to conserve and promote the better management of the natural and cultural heritage values of the riverine environment of the River Murray."</i></p> <p><i>And</i></p> <p><i>MREP No.2 Clause 10 Specific principles</i></p> <p>Flooding</p> <p><i>* Where land is subject to inundation by floodwater:</i></p> <p><i>(a) the benefits to riverine ecosystems of periodic flooding,</i></p> <p><i>(b) the hazard risks involved in developing that land,</i></p> <p><i>(c) the redistributive effect of the proposed development on floodwater,</i></p> <p><i>(d) the availability of other suitable land in the locality not liable to flooding,</i></p> <p><i>(e) the availability of flood free access for essential facilities and services,</i></p> <p><i>(f) the pollution threat represented by any development in the event of a flood,</i></p> <p><i>(g) the cumulative effect of the proposed development on the behaviour of floodwater, and</i></p> <p><i>(h) the cost of providing emergency services and replacing infrastructure in the event of a flood.</i></p> <p><i>* Flood mitigation works constructed to protect new urban development should be designed and maintained to meet the</i></p>	<p>DA68/11 Condition 6 – Flood Emergency Plan</p> <p>DA68/11 Condition 7 Stormwater Management Plan</p> <p>DA68/11 Condition 9 Flood compatible structures</p> <p>DA68/1 Condition 10 - Restore and maintain habitat within the 60m wide setback to the Murray River</p> <p>DA158/14 Condition 12 – Walkway and pontoon hinged to be compatible with waterway levels and flows</p> <p>DA158/14 Condition 14 – Use of mooring, pontoon and access to maintain stream alignment</p> <p>DA158/14 Conditions 24 and 25 – Protection of all riverine vegetation</p>



	<p>technical specifications of the Department of Water Resources.</p> <p>River related uses</p> <p>* Only development which has a demonstrated, essential relationship with the river Murray should be located in or on land adjacent to the River Murray. Other development should be set well back from the bank of the River Murray.</p> <p>* Development which would intensify the use of riverside land should provide public access to the foreshore.</p> <p>And</p> <p>MREP No2 Part 3 – Planning Requirements and Consultation</p> <p>And</p> <p>Clauses 7.5, 7.6 and 7.8 to MLEP 2011</p>	
(b) to protect and improve the bed and bank stability of those rivers	<p>MREP No.2 Clause 10 Specific principles</p> <p>Bank disturbance</p> <p>* Disturbance to the shape of the bank and riparian vegetation should be kept to a minimum in any development of riverfront land.</p> <p>And</p> <p>MREP No2 Part 3 – Planning Requirements and Consultation</p> <p>And</p> <p>Clauses 7.5 and 7.6 to MLEP 2011</p>	<p>DA68/11 Condition 10- Restore and maintain habitat within the 60m wide setback to the Murray River</p> <p>DA158/14 Condition 14 – Mooring, pontoon and access structure not to cause damage to banks</p> <p>DA158/14 Condition 21 – Erosion and sediment controls</p> <p>DA158/14 Condition 22 – Site restoration and stabilisation</p>
(c) to maintain and improve the water quality of those rivers	<p>MREP No.2 Clause 10 Specific principles</p> <p>Water quality</p> <p>* All decisions affecting the use or management of riverine land should seek to reduce pollution caused by salts and nutrients entering the River Murray and otherwise improve the quality of water in the River Murray.</p> <p>And</p> <p>MREP No2 Part 3 – Planning Requirements and Consultation</p> <p>And</p> <p>Clause 7.5 to WLEP 2011</p>	<p>DA68/11 Condition 7 Stormwater Management Plan</p> <p>DA158/14 Condition 17 – Protection of water quality</p>
(d) to protect the amenity, scenic landscape values and cultural heritage of those rivers and to protect public access to their riverine corridors	<p>MREP No.2 Clause 10 Specific principles</p> <p>Access</p> <p>* The waterway and much of the foreshore of the River Murray is a public resource. Alienation or obstruction of this resource by or for private purposes should not be supported.</p> <p>* Development along the main channel of the River Murray should be for public purposes. Moorings in the main channel</p>	<p>DA68/11 Condition 10 - Establish and maintain in perpetuity 20m wide wildlife corridor to the full length of the northern boundary and restore and maintain habitat within the 60m wide setback to the Murray River</p> <p>DA158/14 Conditions 24 and 25 – Protection of all riverine vegetation</p>





	<p>should be for the purposes of short stay occupation only.</p> <p>* Human and stock access to the River Murray should be managed to minimise the adverse impacts of uncontrolled access on the stability of the bank and vegetation growth.</p> <p>Landscape</p> <p>* Measures should be taken to protect and enhance the riverine landscape by maintaining native vegetation along the riverbank and adjacent land, rehabilitating degraded sites and stabilising and revegetating riverbanks with appropriate species.</p> <p>And</p> <p>MREP No2 Part 3 – Planning Requirements and Consultation</p> <p>And</p> <p>Clauses 7.3, 7.5 and 7.6 to WLEP 2011</p>	
<p>(e) to conserve and protect the riverine corridors of those rivers, including wildlife habitat</p>	<p>MREP No.2 Clause 10 Specific principles</p> <p>Land degradation</p> <p>* Development should seek to avoid land degradation processes such as erosion, native vegetation decline, pollution of ground or surface water, groundwater accession, salination and soil acidity, and adverse effects on the quality of terrestrial and aquatic habitats.</p> <p>MREP No.2 Clause 14 – Building Setbacks</p> <p>(b) Landscaping</p> <p>The visual impact of buildings in the riverine landscape can be lessened by the planting of a variety of appropriate vegetation species. This practice has other advantages in stabilising unstable or eroding banks and providing both habitat for wildlife and a trap for silt, nutrients and other substances which may otherwise enter the river and lead to a deterioration of water quality.</p> <p>And</p> <p>MREP No2 Part 3 – Planning Requirements and Consultation</p> <p>And</p> <p>Clauses 7.3, 7.5 and 7.6 to WLEP 2011</p>	<p>DA68/11 Condition 10 – Establish and maintain in perpetuity 20m wide wildlife corridor to the full length of the northern boundary and restore and maintain habitat within the 60m wide setback to the Murray River</p> <p>DA158/14 Conditions 24 and 25 – Protection of all riverine vegetation</p>

As demonstrated in Table 1, the aims of Clause 7.4 will continue to be applied to the assessment of any development proposal for the site as they are contained in the MREP No.2 and MLEP 2011. In addition, the continued operation of development consents require works which apply the aims of Clause 7.4 in real terms as listed in Table 1.

Furthermore, the goals of the Draft Riverina-Murray Regional Plan (exhibited in 2016) include measures for the protection and enhancement of the riverine environment. It is expected that the final Regional Plan will contain provisions which overlap with the objectives and provisions listed in Table 1.



Clause 7.4(2) limits development within river front areas to the following:

- “(a) boat building and repair facilities, boat launching ramps, boat sheds, charter and tourism boating facilities or marinas,
- (b) the extension or alteration of an existing building that is wholly or partly in the river front area, but only if the extension or alteration is to be located no closer to the river bank than the existing building,
- (c) environmental protection works,
- (d) extensive agriculture and intensive plant agriculture,
- (e) environmental facilities and recreation areas,
- (f) water recreation structures.”

Table 2 lists the land uses permitted by Clause 7.4 in comparison to the land use table for Zones E3 and SP3. Table 2 demonstrates that the land uses permitted in Zone SP3 are more restrictive when overlapped with those land uses those potentially permitted under Clause 7.4(2) in comparison to land uses permitted in the current Zone E3. Clause 7.4(2) applies “*despite any other provisions of*” MLEP 2011 and therefore Clause 7.4(2) is more facilitative than the land use tables for Zone SP3 within the river front area of the subject site. This demonstrates that applying Zone SP3 to the site does not add to the development potential of the river front area.

Table 2: Land use table comparisons Clause 7.4, Zone E3 and Zone SP3

Land Uses permitted by Clause 7.4	Permitted in Zone E3	Permitted in Zone SP3
Boat building and repair facilities	Yes	No
Boat launching ramps	Yes	Yes
Boat sheds	Yes	Yes
Charter and tourism boating facilities	Not specified	Not specified
Marinas	Yes	Yes
Extension or alteration of existing buildings within the river front area	Yes	Yes
Environmental protection works	Yes	Yes
Extensive agriculture	Yes (without consent)	No
Intensive plant agriculture	No	No
Environmental facilities	Yes	Yes
Recreation areas	Yes	Yes
Water recreation structures	Yes	Yes

Clause 7.4(3) list matters to be satisfied for all development assessment within the river front area as follows:

- “(a) that the appearance of the development, from both the river concerned and the river front area, will be compatible with the surrounding area,*
- (b) that the development is not likely to cause environmental harm, including (but not limited to) the following:*
 - (i) pollution or siltation of the river concerned,*
 - (ii) any adverse effect on surrounding uses, riverine habitat, wetland areas or flora or fauna habitats,*
 - (iii) any adverse effect on drainage patterns,*
- (c) that the development is likely to cause only minimal visual disturbance to the existing landscape,*
- (d) that continuous public access, and opportunities to provide continuous public access, along the river front and to the river concerned are not likely to be compromised,*
- (e) that any historic, scientific, cultural, social archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land is to be maintained.”*

As shown in Table 1, the matters for consideration in Clause 7.4(3) overlap with provisions in MREP No.2 and other clauses within MLEP 2011. Furthermore these overlapping provisions will continue to apply to the whole of the Tindarra Resort site. The matters in Clause 7.4(3) will still apply to the subject site albeit within 40m of the top of the bank rather than 100m of the top of the bank should the zoning of the land be changed to Zone SP3.

Clause 7.5 Riparian land and Murray River and other watercourses – general principles

Clause 7.5 to MLEP 2011 applies to land within 40m of the top of bank of a watercourse and seeks to maintain and protect water quality, bank and bed stability, aquatic riparian habitats and ecological processes. Clause 7.5 will continue to apply to the Tindarra Resort site in the same manner if the land is in Zone SP3.

Clause 7.6 Additional provisions – development on river bed and banks of the Murray and Wakool Rivers

Clause 7.6 to MLEP 2011 applies to land within the river beds to the top of bank and will continue to apply to the Tindarra Resort site in the same manner if the land is in Zone SP3.

Clause 7.8 Flood Planning

Clause 7.8 to MLEP 2011 applies to the entire Tindarra Resort site as detailed in Section 2.3.6 to the application for a Planning Proposal. The provisions of Clause 7.8 will continue to apply to the site in the same manner if the land is in Zone SP3.

Summary

In summary it has been demonstrated in detail that the application of Zone SP3 to the Tindarra Resort site is inconsistent with Direction 2.1 Environment Protection Zones only in that the zone category and width of the river front area are to change. However, it has been demonstrated in detail that in all other practical and strategic respects, the proposed amendment to the MLEP 2011 will be consistent with Direction 2.1 because the applicable planning provisions will:

- continue to maintain provisions in MREP No.2 and MLEP 2011 that facilitate the protection and conservation of the environmentally sensitive assets of the site and surrounds;
- not reduce the environmental protection standards that apply to the land and to the assessment of future development applications;
- not change the existing conditions of development consent which require ongoing implementation and management of practices which protect and enhance native vegetation and habitat, the riverine environment, landscape and scenic quality, ensure compatibility with natural flooding regimes, maintain and improve public access and bank and bed stability and water quality; and
- establish a river front area within 40m of the top of bank which is consistent with development consents, land to the west of the site, the urban setting of the site, other land in Zone SP3 and the



recommendations of the report titled Murray River Riparian Planning Controls Study which will be used to inform future planning controls for the Riverina-Murray Region and review the MREP No.2.

2.2 Direction 4.3 Flood Prone Land

The application for a Planning Proposal addresses this Section 117 Direction as follows:

4.3 Flood Prone Land	A Planning Proposal must include provisions that give effect to and are consistent with the <i>NSW Flood Prone Land Policy</i> and the principles of the <i>Flood Development Manual</i> .	Yes	The site is Flood Prone Land. This application does not change the manner in which Clause 7.8 to MLEP 2011 applies to the site and any future development application. The potential constraints of flooding have been identified in Section 2.3 and acknowledged throughout this application.
			This application for a Planning Proposal is therefore consistent with the requirements of Direction 4.3.

Council prepared the *1999 Moama Floodplain Management Study* which was used to identify the Probable Maximum Flood level and the land anticipated to be inundated in a 1 in 100 year Average Recurrence Interval (ARI) flood event. This information was used to prepare the MSSLUP and the Flood Planning Maps to MLEP 2011 (see Figure 3 and Figure 9).

The flooding regime for the Tindarra Resort site has since been subject to more detailed investigation with subsequent development applications in accordance with the NSW Flood Prone Land Policy and the NSW Flood Development Manual 2005. The outcomes of these detailed investigations include:

- identification of the majority of the site as ‘Low Hazard Flood Storage’ and land within the site adjacent to the river as ‘High Hazard Floodway’ (see Figure 10);
- determination of a Flood Planning level of 95.63 AHD which is equivalent to 300mm freeboard above the 1 in 100 year ARI level; and
- flood velocity calculations for points throughout the site.

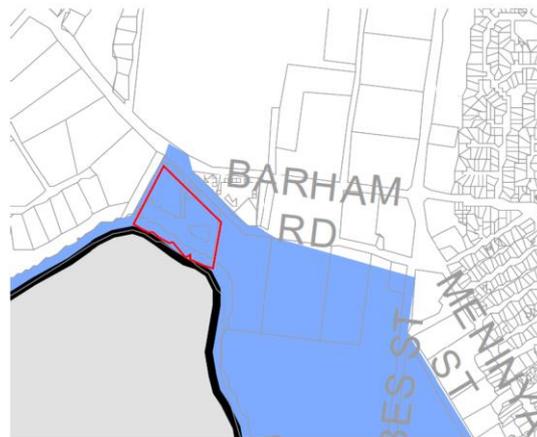


Figure 9: Extract from Flood Planning Map FLD_006 to MLEP 2011. Subject site outlined in red.



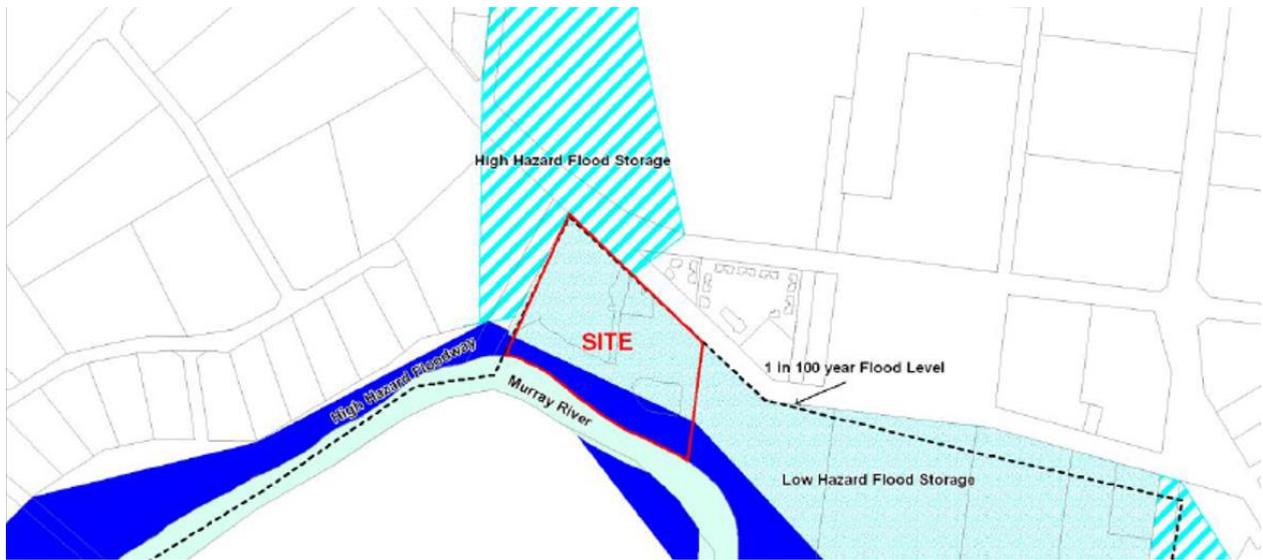


Figure 10: Extract from flood activity investigation conducted for DA175/2014

The additional information established with various development applications for the site has informed the preparation of a Flood Emergency Plan dated March 2016 approved in conjunction with DA175/2014. Development Consent DA68/11 also specifies conditions to ensure the tourist accommodation and ancillary facilities are compatible with the flood risks for the site and the likelihood of flooding of adjoining lands including local roads. This demonstrates that tourist-related uses of the site can be compatible with the natural flooding regime for the site and surrounds.

The proposed change of zoning from Zone E3 to Zone SP3 will not change the manner in which Clause 7.8 to MLEP 2011 applies to the site or the manner in which the potential risks to any future development is evaluated in accordance with the NSW Flood Prone Land Policy and the NSW Flood Development Manual 2005.

All applications for future land uses must demonstrate that they are compatible with the flooding regime for the site.

The fact that the subject site is affected by flooding should not preclude the application of Zone SP3 to the site. Land north west of the site between the Murray River and Perricoota Road which includes the Deep Creek Marina and Hotel and a variety of tourist related uses and accommodation includes land which is flood affected which is also within Zone SP3 (see Section 3.2 of this letter).

2.3 Direction 4.4 Planning for Bushfire Protection

The application for a Planning Proposal addresses this Section 117 Direction as follows:

4.4 Planning for Bushfire Protection	<p>This Direction applies to Planning Proposals which involve land which adjoins or is affected by bushfire risk.</p> <p>In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 56 of the Act, and prior to undertaking community consultation in satisfaction of section 57 of the Act, and take into account any comments so made.</p> <p>A planning proposal must:</p> <ul style="list-style-type: none"> (a) have regard to Planning for Bushfire Protection 2006, (b) introduce controls that avoid placing inappropriate developments in hazardous areas, and (c) ensure that bushfire hazard reduction is not prohibited within the APZ. <p>A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the council has obtained written advice from the Commissioner of the NSW Rural Fire Service, to the effect that, notwithstanding the non-compliance, the NSW Rural Fire Service does not object to the progression of the planning proposal.</p>	Yes	<p>The site is within an area identified as being affected by bush fire hazard. This application does not change the manner in which the assessment of potential hazard must be considered in preparing and assessing any future development application. Many of the permissible uses are likely to trigger the provisions for integrated development assessment and require concurrence from the NSW RFS and consultation is also anticipated for this application for a Planning Proposal post Gateway.</p> <p>This application does not propose controls which would be contrary to the intent and purpose of Planning for Bushfire Protection 2006 (as revised).</p> <p>In accordance with Clause 5.11 to MLEP 2011 bushfire hazard reduction works will continue to be permitted on the site without consent in a bushfire emergency situation.</p> <p>This application for a Planning Proposal is therefore consistent with the requirements of Direction 4.4.</p>
--------------------------------------	--	-----	---

A section of the site near the eastern boundary is within the 100m buffer to Category 1 hazard risk vegetation. A section of the site near the western boundary is within the 30m buffer to Category 2 hazard risk vegetation. No vegetation within the site is classified as having bushfire risk attributes.

Ongoing management of the site as a tourist resort requires maintenance of the landscaping and vegetation throughout the site in accordance with current development consents. The environmental attributes of the foreshore vegetation are acknowledged in the application for a Planning Proposal and in successive development applications.

Development Consent DA68/11 includes conditions for the ongoing implementation of the recommendations of the Bushfire Risk Assessment prepared by Habitat Planning and approved with the consent as well as Conditions No.39 to 44 inclusive as prescribed by the NSW Rural Fire Service. These conditions demonstrate that tourist-related uses can be supported on the site.

As demonstrated by Development Consents DA68/11 and DA175/2014 in particular, proposed tourist-related uses within the site can be subject to merit-based assessment to ensure they can be conducted in accordance with plans of management appropriate to the site and the proposed use.

The bushfire hazard risk that applies to the site is unchanged by the application of Zone SP3. The nature of land uses potentially permissible at the site under Zone SP3 is examined in Section 3 to this letter and shows that the land uses potentially permissible with consent in Zone SP3 and Zone E3 include land uses which would attract people to the site for accommodation and recreational uses. Therefore whether the land is within Zone E3 or SP3, development applications which potentially bring people to the site for temporary or longer term purposes would require the same level of assessment with regard to bushfire risk.

The fact that the subject site is affected by bushfire risk should not preclude the application of Zone SP3 to the site. Properties north west and west of the site which are in Zone SP3 and used for a variety of tourist related uses includes land which is subject to bushfire hazard as shown in Figure 11 (see also Section 3.1 of this letter).



Your Property

You have conducted a search of the online bush fire prone land tool for the land in the map above. This search result is valid for the date the search was conducted. If you have any questions about the Bush Fire Prone Land Tool please contact bushfireprone.mapping@rfs.nsw.gov.au

! The parcel of land you have selected is within a designated bush fire prone area.

Your Property

You have conducted a search of the online bush fire prone land tool for the land in the map above. This search result is valid for the date the search was conducted. If you have any questions about the Bush Fire Prone Land Tool please contact bushfireprone.mapping@rfs.nsw.gov.au

! The parcel of land you have selected is within a designated bush fire prone area.

Your Property

You have conducted a search of the online bush fire prone land tool for the land in the map above. This search result is valid for the date the search was conducted. If you have any questions about the Bush Fire Prone Land Tool please contact bushfireprone.mapping@rfs.nsw.gov.au

! The parcel of land you have selected is within a designated bush fire prone area.

Your Property

You have conducted a search of the online bush fire prone land tool for the land in the map above. This search result is valid for the date the search was conducted. If you have any questions about the Bush Fire Prone Land Tool please contact bushfireprone.mapping@rfs.nsw.gov.au

! The parcel of land you have selected is within a designated bush fire prone area.

Your search result

You have conducted a search of the online bush fire prone land tool for the land in the map above. This search result is valid for the date the search was conducted. If you have any questions about the Bush Fire Prone Land Tool please contact bushfireprone.mapping@rfs.nsw.gov.au

! The parcel of land you have selected is within a designated bush fire prone area.

Figure 11: Extracts from Bushfire Hazard maps indicating other properties currently in Zone SP3 which are within bush fire prone areas (Source: www.rfs.nsw.gov.au)

3. Development Potential Under Zone SP3 Tourist

3.1 Comparison with Other Nearby Land in Zone SP3

The Tindarra Resort commenced operation in 2007. The resort commenced prior to the application of the current land use Zone E3 in accordance with MLEP 2011. There are other tourist accommodation and tourist related land uses close to, or adjacent to, the Murray River which are within Zone SP3 and Zone E3. These properties are discussed below.

3.1.1 Deep Creek Marina and Hotel

Located between the Murray River and Perricoota Road is an area of land in Zone SP3 which contains the Deep Creek Marina and Hotel and tourist-related uses including self-contained tourist cottages, recreation facilities and swimming pool (see Figures 12 and 13).

The land within Zone SP3 includes land which has a foreshore to the Murray River, is flood prone land (see Figure 12) and affected by bushfire hazard (Figure 11). The river front area within the property is 40m from the top of the bank where the land adjoins the Murray River and Deep Creek Lagoon (see Figure 8). The land includes, and is adjacent to, land affected by the Biodiversity Maps to MLEP 2011 and includes land with Terrestrial Biodiversity values and is adjacent to Key Fish Habitat. This land has similar features to those of the Tindarra Resort site.

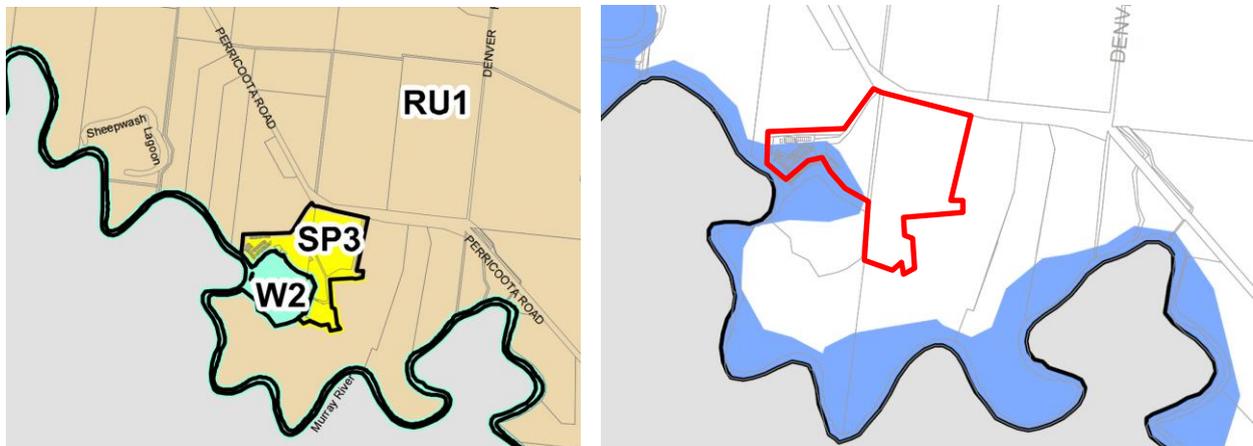


Figure 12: Land at Deep Creek Marina including a Hotel and tourist related accommodation (in Zone SP3 in map to the left and approximately outlined in red to the right)



Figure 13: Aerial photo of land including the Deep Creek Marina and Hotel site

3.1.2 Perricoota Vines Retreat

Located in close proximity to the river at No.400 Perricoota Road is 'Perricoota Vines Retreat' which includes a function centre on the riverbank and 21 tourist accommodation cottages, tennis courts and swimming pools (see Figure 15) and is within land zoned part Zone SP3 and part Zone E3 (see Figure 14). The land is partly bushfire prone land (see Figure 11). The portion of the tourist facility property which is in Zone E3 is also flood affected (see Figure 16). The river front area within this tourist facility property varies from approximately 50m to 100m in width. This land has similar features to the Tindarra Resort site.



Figure 14: Extract from Zoning Map to MLEP 2011 shown SP3 zoned land used for Perricoota Vines Retreat



Figure 15: Aerial photo of land in Zone SP3 used for Perricoota Vines Retreat



Figure 16: Extract from Flood Planning Map to MLEP 2011 (land in Zone SP3 outlined in red)



3.1.3 Murray River Resort and Cadell on the Murray

Figure 17 shows the Murray River resort located at 162 Perricoota Road which is on land in Zone SP3. Figure 17 also shows Cadell on the Murray located at 325 Perricoota Road which is on land in Zone E3. Murray River Resort has self-contained tourist cottages, swimming pools, tennis court and other ancillary recreational facilities (see the aerial photo in Figure 18). The site is not bush fire prone land and is not within the river front area (see Figure 7).

Cadell on the Murray has self-contained tourist accommodation, recreation facilities including a swimming pool, a function centre and conference facility. Tourist cabins are within approximately 30m of the top of the riverbank and the function centre is located on the riverbank. The land containing tourist accommodation and the function centre is flood affected land (see Figure 19) and bush fire prone land (see Figure 11) and within the 100m wide river front area as shown in Figure 7.



Figure 17: Murray River resort (Zone SP3) and Cadell on the Murray (Zone E3)



Figure 18: Aerial photo of Murray River Resort and Cadell on the Murray

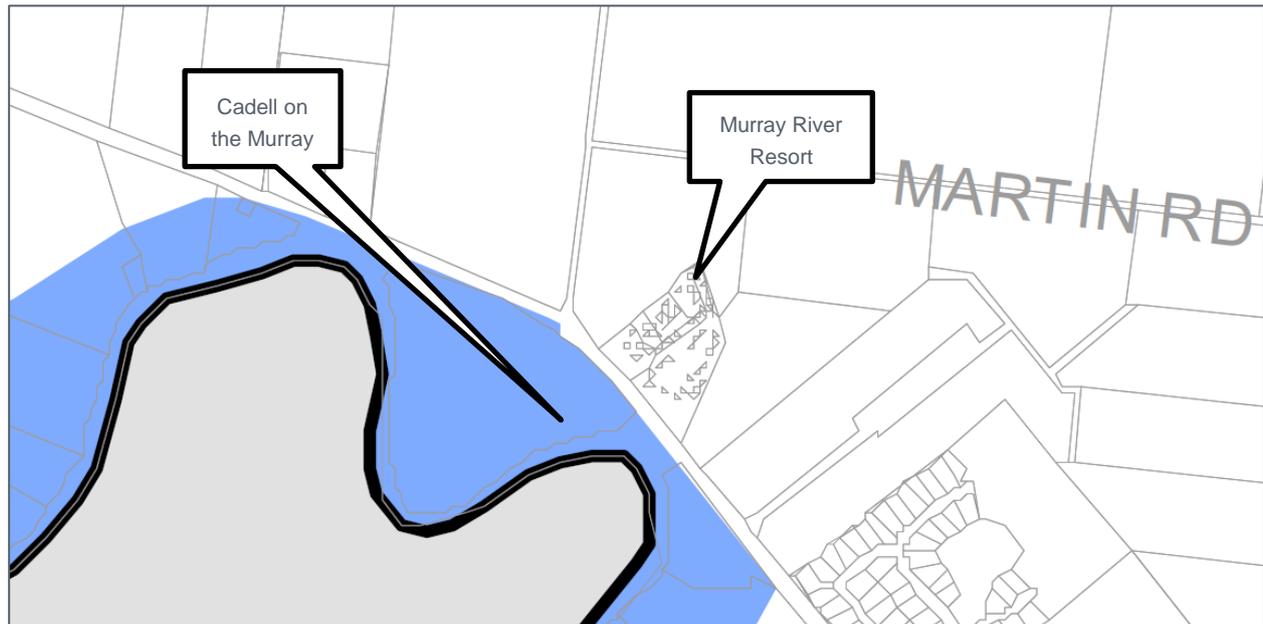


Figure 19: Extract from Flood Planning Map to MLEP 2011

In summary, Section 3.1 demonstrates that there are parcels of land currently in Zone SP3 which have similar attributes to the Tindarra resort site in terms of proximity to the Murray River, affectation by flooding and bushfire risks, the nature of land uses within the sites and the nature of surrounding land uses. There is no consistency in the width of the river front area on properties used for tourist-related uses. Therefore there are no reasons to preclude the application of Zone SP3 and a river front area of 40m to the Tindarra resort site when considered in the context of the site and the features of other land in Zone SP3. The application for a Planning Proposal will not set an undesirable precedent for the application of Zone SP3.

3.2 Objectives for Development

Table 3 lists the objectives for all development in both Zone SP3 Tourist and Zone E3 Environmental Management.

Table 3: Objectives of Zones extracted from MLEP 2011

	Zone SP3 Tourist	Zone E3 Environmental Management
Objectives of zone	<ul style="list-style-type: none"> To provide for a variety of tourist-oriented development and related uses. 	<ul style="list-style-type: none"> To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values. To provide for a limited range of development that does not have an adverse effect on those values.

The fundamental differences between the zone objectives can be summarised as follows:

- for Zone SP3 - uses and development which are tourist-related; and
- for Zone E3 –uses and development which are compatible with the protection, management and restoration of special values.

The objectives of Zone E3 do not preclude uses and development which are tourist-related. As explained in Section 2.1 above, the application for a Planning Proposal does not detract from existing objectives and provisions of EPIs and development consents which seek to protect, manage and restore the ecological, cultural and aesthetic assets of the site in the same manner as the objectives for Zone E3. As shown in Section 3.3, the range of permissible uses in Zone E3 is actually greater than the range of permissible uses in Zone SP3. In conjunction with the further land use restrictions imposed by Clause 7.4 to MLEP 2011, the application of Zone SP3 will reduce the range of permissible land uses on the Tindarra Resort site.

3.3 Land Uses

Table 4 is a summary of the land use tables for Zone SP3 and Zone E3 as listed in MLEP 2011. As can be seen from the table:

- all land uses in Zone SP3 require development consent (which is a greater level of planning control than applies to land in Zone E3);
- both zones include land uses for temporary, tourist-related accommodation (eco-tourist facilities) and Conditions 15 and 16 to Development Consent DA68/11 limit the types of tourist facilities on the Tindarra Resort site and specifically state that there is to be no camping or use of caravans on the site. Future development consents could reinforce these conditions if deemed appropriate; and
- tourist-related land uses which are currently prohibited in Zone E3 but are essential to the ongoing viable operation of the Tindarra resort are function centres, food and drink premises, kiosks and tourist and visitor accommodation.

Table 4: Summary of land use tables for Zone SP3 and Zone E3

	Zone SP3 Tourist	Zone E3 Environmental Management
Permitted without consent	Nil	Extensive agriculture Home occupations
Permitted with consent	Boat launching ramps Boat sheds Building identification signs Business identification signs Business premises Camping grounds Caravan parks Cellar door premises Charter and tourism boating facilities Eco-tourist facilities Environmental facilities Environmental protection works Flood mitigation works Food and drink premises Function centres Information and education facilities Jetties Marinas Neighbourhood shops Recreation areas Recreation facilities (indoor) Roads Tourist and visitor accommodation Viticulture Water recreation structures Water reticulation systems	Agriculture Bed and breakfast accommodation Boat building and repair facilities Boat launching ramps Boat sheds Building identification signs Business identification signs Camping grounds Cellar door premises Charter and tourism boating facilities Community facilities Dwelling houses Eco-tourist facilities Environmental facilities Environmental protection works Extractive industries Farm buildings Farm stay accommodation Flood mitigation works Forestry Home-based child care Home businesses Home industries Information and education facilities Jetties Kiosks Marinas Mooring pens Moorings Recreation areas Recreation facilities (outdoor) Research stations Roads Roadside stalls Water recreation structures Water supply systems
Prohibited	Any development not specified in item 2 or 3	Industries Intensive livestock agriculture Multi dwelling housing Residential flat buildings Retail premises Seniors housing Service stations Warehouse or distribution centres Any other development not specified in item 2 or 3

The landuse table for Zone E3 does prohibit some land uses which are tourist-related and there is a high degree of overlap in permissible land uses between the two zones. The current zoning of the Tindarra Resort site prevents the full range of land uses that could potentially be provided at a typical tourist facility. Specifically, the land uses that are currently prohibited but are typical for tourist resorts are function centres, food and drink premises, kiosks and tourist and visitor accommodation. These land uses are located on other tourist facilities in the locality (as described in Section 3.1). The current zoning places the Tindarra Resort in an inequitable position in comparison to the land in Zone SP3 described in Section 3.1 and in an economically unsustainable state in terms of improvements to the Tindarra Resort in the future.

The nature and intensity of land uses permitted with consent in Zone E3 are not comparably 'lower impact' by their definition than those uses permitted with consent in Zone SP3. For example 'boat building and repair facilities', 'extractive industries' and 'forestry' are all land uses permitted in Zone E3 that are not permitted in Zone SP3 but which have potentially significant environmental impacts. The nature and intensity of any future proposal for a function centre, food and drink premises, kiosk and/or tourist and visitor accommodation would be subject to merit-based assessment and, as demonstrated by Section 2, effectively the same EPI provisions regarding environmental protection that current apply and are anticipated to apply in the foreseeable future particularly with respect to the river front area.

In summary, the current Zone E3 is unsuited to the Tindarra resort (which existed as a tourist facility prior to the application of Zone E3 to the site). Furthermore there are no particular features of the site which make it different to other properties in Zone SP3 which are currently used for similar tourist-related development.

With consideration to the range of permissible land uses, it is more appropriate and more equitable that the Tindarra resort site be within Zone SP3 and that all development proposals for future land uses continue to be subject to merit-based assessment.

4. The Need for Rezoning and Alternative Solutions

4.1 Clause 2.8 to MLEP 2011

Clause 2.8 requires the consent authority to be satisfied that a temporary use and any approved structures will not (amongst other things):

- prejudice the subsequent carrying out of development on the land; and
- impact on the environmental attributes or features or increase the risk of natural hazards.

Clause 2.8 (and Condition 8 to Development Consent DA175/14) requires that the land will be restored to the condition in which it was before commencement of the temporary use.

Clause 2.8 to MLEP 2011 has been implemented to obtain Development Consent DA175/14.

The NSW Land and Environment Court approved a modification to Development Consent DA175/14. The modified consent is for '*temporary use of the land as a function centre, installation of Temporary Structure (Marquee), Temporary formalisation of existing bar structure and car parking facilities*' at the Tindarra Resort. Specifically the modification of the development consent allows the approved temporary use to apply for a period of three years.

A function centre is an essential element for the ongoing viability of the Tindarra Resort as demonstrated by the information submitted with Development Application DA175/14 and with the application for a Planning Proposal. Development Consent DA175/14 is temporary and cannot be relied upon for sustaining the ongoing viability of the Tindarra Resort.

An alternative, permanent function centre could, subject to merit-based assessment, be accommodated elsewhere within the Tindarra Resort site in a manner compatible with the constraints and assets of the site (which have been investigated in detail to date). However, this would require a change to the LEP that

allows function centres to be permissible on the site. Amending the LEP to apply Zone SP3 to the site allows function centres as a permitted use.

4.2 Existing Use Rights

Tourist and visitor accommodation is a land use category currently prohibited on the site and in Zone E3. However, tourist and visitor accommodation was approved on the site prior to MLEP 2011 and therefore the site benefits from existing use rights as defined by Section 106 to the *Environmental Planning and Assessment Act, 1979* (EP&A Act 1979). Under the provisions of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regs 2000) changes to the approved tourist and visitor accommodation are limited to expansion or enlargement of the approved floor space by no more than 10%. Existing use rights, which are a consequence of applying Zone E3, places an inequitable burden on the continued operation of the Tindarra Resort site despite the features of the site being comparable to those of other properties in Zone SP3.

Tourist and visitor accommodation and a function centre exist on the site known as Cadell on the Murray (325 Perricoota Road) despite the property being within Zone E3 where these land uses are prohibited. Furthermore, the buildings associated with tourist and visitor accommodation and the function centre at Cadell on the Murray are within the river front area and therefore contrary to the land use limitations in Clause 7.4 to MLEP 2011. The land uses on the Cadell on the Murray site also represent an inequitable planning regime.

Applying Zone SP3 to the Tindarra Resort site will establish a more equitable planning framework for properties used for tourist-related facilities in the locality.

4.3 Additional Permitted Uses

As explained above, 'function centres', 'food and drink premises', 'kiosks' and 'tourist and visitor accommodation' are land uses that are currently prohibited on the Tindarra Resort site. These land uses exist and are permissible on other properties used for tourist facilities as described in Section 3.1. The prohibition of these land uses on the Tindarra Resort site is an inequitable burden and not related to any specific differences in site attributes, constraints or setting (as demonstrated in Section 3).

Clause 2.5 to MLEP 2011 allows additional permitted uses for particular land. The uses and the land are specifically described in Schedule 1 to MLEP 2011 and mapped. The provisions of Clause 2.5 *"(have) effect despite anything to the contrary in the or other provision of this Plan"* and therefore can be implemented in circumstances where additional uses not permitted by the standard land use table are warranted in the special circumstances of a site.

Schedule 1 to MLEP 2011 currently contains only one listing for a vehicle body repair workshop being permissible with consent at 75 Meninya Street, Moama.

Adding the land uses 'function centre', 'food and drink premises', 'kiosks' and 'tourist and visitor accommodation' as permitted with consent on the Tindarra Resort site to Schedule 1 is contrary to the directions of LEP Practice Notes as explained in Section 4.4.

At a meeting with the applicant and Council staff held on 8 March 2016 the option of an Additional Permitted Use clause was discussed in comparison to a change in the land use zone to Zone SP3. Advice from Council staff at this meeting was a clear preference for a change in zoning.

4.4 LEP Practice Notes

4.4.1 LEP Practice Note PN11-001 Preparing LEPs using the Standard Instrument: standard clauses (PN11-001)

PN11-001 provides guidance on how to use mandatory clauses and local content in an LEP. It is compulsory to include Clause 2.5 Additional Permitted Uses in all Standard Instrument LEPs. However, PN11-001 states:

“Councils may insert a list of additional permitted uses in Schedule 1 for particular land, e.g. by lot and DP number. Listings in the LEP Schedule 1 should be minimised, with appropriate justification provided to the Department for any inclusions. Wherever possible, land uses should be governed by the Land Use Table and Schedule 1 should only be used where council has demonstrated why this cannot be achieved.”

This letter and the application for a Planning Proposal clearly demonstrate that the land uses necessary to support the ongoing viability of the Tindarra Resort can best be achieved by applying Zone SP3 to the site and furthermore that this amendment to the LEP is the most equitable and consistent approach with consideration to other land in Zone SP3.

4.4.2 LEP Practice Note PN11-002 Preparing LEPs using the Standard Instrument: standard zones (PN11-002)

PN11-002 contains an overview of the intended purpose of each zone to give guidance to Councils in preparing LEPs. The intended purpose of Zone SP3 is outlined in LEP PN11-002 as follows:

“SP3

This zone is to be used where tourism is considered the focus of the particular location, for example, where there is a natural or built site or location which attracts visitors and the intended future use of the area is to be focused on developing those tourist-related uses. Such development may include ‘tourist and visitor accommodation’, ‘function centres’, ‘information and education facilities’, ‘recreation facilities’, ‘food and drink premises’ and other ancillary and compatible land uses.

Other uses permitted in the zone should not undermine existing centres, or be incompatible with the primary tourist-oriented nature of the zone.

In general, tourism should be encouraged through the inclusion of suitable uses across the majority of zones where compatible with the core objectives of the zone. This approach provides greater flexibility than applying a separate tourist zone. Generally, the SP3 Tourist zone should only be used for areas where other zones are not appropriate.”

Applying Zone SP3 to the Tindarra Resort site is consistent with PN11-002 in that:

- tourism is the focal use of the site and was the approved use prior to the application of MLEP 2011;
- the natural and built assets of the site (which existed prior to the implementation of MLEP 2011 and continue to exist) attract visitors;
- the intended future use of the site is for tourist-related purposes; and
- the use of the site for tourist-related purposes does not undermine the function of the nearby Moama commercial centre (and in fact notably supports the function of nearby commercial premises as described in Sections 2.3.13 and 4.3 to the application for a Planning Proposal).

4.4.3 LEP Practice Note PN09-006 Providing for tourism in Standard Instrument local environmental plans (PN09-006)

PN09-006 notes that *“business tourism is becoming a more important sector with visitors attending conferences, exhibitions, conventions, trade fairs and meetings”*. The capacity to accommodate for business tourism is an important aspect of the ongoing viability of the Tindarra Resort. Function centres and additional tourist accommodation are essential to this capacity.

PN09-006 encourages Councils to prepare a tourism strategy. The MSSLUP includes a section on tourism and it has been shown in Section 1 of this letter that applying Zone SP3 to the Tindarra resort site is no more or less consistent with the MSSLUP than other land in Zone SP3. The Practice Note also recommends reference to regional tourism plans and strategies and in this regard Section 4.3 of the application for a Planning Proposal has shown that the proposal is consistent with the Murray Region Tourism Destination Management Plan prepared by the Murray Regional Tourism Board in July 2012.

Since lodgement of the application for a Planning Proposal, the Murray Regional Tourism Board has produced the *Murray Regional Tourism Strategic Plan 2015-2020 (MRTSP 2015-2020)*. Facilitating the continued use and expansion of the Tindarra Resort site through applying Zone SP3 is consistent with some of the key strengths of this Plan which include a focus on the Murray River and the provision of nature-based experiences related to the river, waterfront dining and recreation and unique accommodation.

PN09-006 requires consideration of the availability and capacity of infrastructure. The Tindarra Resort site is connected to all essential services and infrastructure as required for urban-zoned land in the locality.

PN09-006 requires consideration of the natural and cultural context of a site. The natural foreshore setting of the Tindarra Resort will continue to be protected and enhanced by the EPIs and conditions of consent as detailed in Section 2 (and specifically in Section 2.1) of this letter.

PN09-006 lists land use compatibility matters to be considered in applying Zone SP3. These matters are listed in Table 5 along with comments as to how they relate to the Tindarra Resort site if Zone SP3 is applied.

Table 5: Relevant land use compatibility matters in PN09-006 as they apply to the Tindarra Resort site

Land use compatibility matter	The Tindarra Resort site
Compatibility with important primary production resources	<p>Primary production resources relevant to the Tindarra Resort site are the water quality and quantity within the Murray River and associated stormwater runoff and flooding regimes for the site and the protection of the river banks and soils.</p> <p>As demonstrated in Section 2 current environmental protection requirements in EPIs and development consents will not be compromised if the land is within Zone SP3.</p>
Appropriate separation, vegetated buffers and site selection	<p>As demonstrated in Section 2, a 40m river front area is appropriate for the protection of the riparian ecology and a variety of conditions of consent require the establishment and maintenance of vegetated corridors and buffers within the site.</p> <p>A 40m setback is consistent with the recommendations of the <i>Murray River Riparian Planning Controls Study</i>.</p>
Avoiding or mitigating public health and safety risks	<p>The risks associated with potential flooding and bushfire have been examined in Section 2 and with current development consents. The potential risk to public health and safety will not be increased if the land is within Zone SP3. The flooding and bushfire risks are no different to other land in Zone SP3.</p>
Undermining residential development through converting tourism accommodation to permanent accommodation	<p>Applying Zone SP3 to the site will not facilitate conversion of tourist and visitor accommodation to permanent residential accommodation.</p>
Protection of the environment	<p>As demonstrated in Section 2 current environmental protection requirements in EPIs and development consents will not be compromised if the land is within Zone SP3.</p>

In summary, applying Zone SP3 to the Tindarra Resort site is consistent with PN11-001, PN11-002 and PN09-006.

CONCLUSION

The evidence provided in this letter demonstrates clearly that the changes to the future development potential of the Tindarra Resort site resulting from the application of Zone SP3 will:

- not be any more or any less consistent with the MMSLUP than other land in Zone SP3 and other land used for tourist-related development in the locality and in proximity to the river;
- not be contrary to the relevant Section 117 Directions and achieves the environmental planning intent of those Directions;
- reduce the development potential and range of land uses permissible with consent on the site;
- have minor changes to the development potential of the Tindarra Resort site in a manner which is consistent and equitable with other land in Zone E3 and Zone SP3 used as tourist facilities in the locality;
- have an appropriate strategic context in terms of planning for tourist related land uses as informed by relevant Local Environmental Plan Practice Notes and available tourism strategies; and
- protect and potentially improve the natural assets of the river front area;
- be consistent with current and likely future planning provisions for river front land uses; and
- be the best option to plan for the improved use of the site given its development history, the context and setting and the natural and cultural assets of the site and surrounds.

We thank Council for the opportunity to provide additional information in response to the Department's letter. Should you require any further clarification of the contents of this letter or the application for a Planning Proposal, please do not hesitate to contact our office.

Yours faithfully,

Planning Ingenuity Pty Ltd

J. Mead

Jeff Mead

MANAGING DIRECTOR