

Murray LEP 2011 - Amendment 10 - Rezone land from zone E3 Environmental Management to zone SP3 Tourist at 'Tindarra Resort', Pericoota Road, Moama

Proposal Title :	Murray LEP 2011 - Amendment 10 - Rezone land from zone E3 Environmental Management to zone SP3 Tourist at 'Tindarra Resort', Pericoota Road, Moama		
Proposal Summary :	Murray LEP 2011 – Rezone land from zone E3 Environmental Management to zone SP3 Tourist at 'Tindarra Resort' Lots 1, 2, 3 and 4 DP 270496, 2 Pericoota Road, Moama		
	NB: Proposal received 29 September 2016. Requested additional information from Council 18 October 2016 & 1 November 2016. Proposal held in abeyance until additional information submitted on 10 February 2017.		
PP Number :	PP_2016_MRIVE_005_00	Dop File No :	16/12837-1

Proposal Details

Date Planning Proposal Received :	10-Feb-2017	LGA covered :	Murray River
Region :	Western	RPA :	Murray River Council
State Electorate :	MURRAY DARLING	Section of the Act :	55 - Planning Proposal
LEP Type :	Spot Rezoning		

Location Details

Street :	2 Pericoota Road		
Suburb :		City :	Moama
		Postcode :	2731
Land Parcel :	Lots 1-4 DP 270496		

DoP Planning Officer Contact Details

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RPA Contact Details

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DoP Project Manager Contact Details

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :		Consistent with Strategy :	
MDP Number :		Date of Release :	
Area of Release (Ha)	0.00	Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with :

If No, comment :

Have there been meetings or communications with registered lobbyists? :

No

If Yes, comment :

There have been no known meetings or communications with registered lobbyists.

Supporting notes

Internal Supporting Notes :

The planning proposal seeks to rezone land known as the 'Tindarra Resort', being lots 1-4 DP 270496, 2 Pericoota Road, Moama from zone E3 Environmental Management to zone SP3 Tourist.

The subject land is 4.5 hectares in area and is held in community title subdivision configuration, and the land contains access road and artificial waterbody, 11 accommodation cabins, playground, tennis court, managers residence, reception office, associated car parking and recreation area. The southern boundary of the site adjoins the Murray River, the eastern and western boundaries adjoin zone E3 Environmental Management land containing residential properties, and the northern boundary fronts Pericoota Road.

There is no adopted regional strategy applicable to the planning proposal. The draft Riverina Murray Regional Plan has been publicly exhibited.

The Tindarra Resort has been operating on the subject site since 2007 in accordance with Development Consents 070/01 and DA 068/2011. The planning proposal has been submitted as a result of local compliance action by Council, following the operation of the resort as a function centre without the appropriate approvals. DA 175/14 was granted consent on 8 December 2015 for the temporary use of land as a functions centre and installation of a marquee within the river front setback area.

The development consent provided temporary consent under the provisions of Clause 2.8 of the MLEP 2011 for the function centre to operate for either 12 months, or 52 events, whichever occurs first. The landowner wishes to continue to operate functions on the site, however, it is noted that the existing E3 Environmental Management zone prohibits 'function centres', whilst the proposed SP3 Tourist zone permits 'function centres' with consent. Following the expiry of the consent that permits the temporary use of land on the site, function centres will be prohibited.

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The subject land is mapped as Murray REP2 Riverine Land and Flood Prone Land, and partly mapped as Bush fire Prone, Wetlands, Terrestrial Biodiversity (native vegetation) and Key Fish Habitat (Aquatic Biodiversity) within the provisions of the MLEP 2011. There are no known items of environmental heritage significance on the site.

The land is identified in the Murray Strategic Land Use Plan (MSLUP) as being within the rural floodplain, adjacent to areas proposed for residential tourism purposes. The MSLUP has not been endorsed by the Department.

Council has requested to be authorised to exercise delegations to complete the Planning Proposal and this is considered appropriate, as this is considered to be a minor local matter of an existing tourism development.

External Supporting
Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The planning proposal seeks to provide 4.5 hectares of zone SP3 Tourist land in the locality of Moama.**

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The planning proposal seeks to amend the Land Zone maps, which is consistent with the objective of the planning proposal.**

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA : **2.1 Environment Protection Zones
4.3 Flood Prone Land
* May need the Director General's agreement 4.4 Planning for Bushfire Protection**

Is the Director General's agreement required? **No**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified? **SEPP No 44—Koala Habitat Protection
Murray REP No. 2 - Riverine Land**

e) List any other
matters that need to
be considered :

The following Section 117 Directions are applicable to the proposal:

Direction 2.1 Environment Protection Zones

This direction has been identified and addressed in the planning proposal as the proposal intends to rezone land from E3 Environmental Protection to zone SP3 Tourist. The proposal is not justified with an endorsed strategy, however the Acting Director Regions, Western can be satisfied of the inconsistency with this direction can be justified, given that the LEP identifies the subject land as having biodiversity value (through terrestrial biodiversity mapping), which is not reduced through the rezoning of the land.

Direction 4.3 Flood Prone Land

This direction has been identified and addressed in the planning proposal as the proposal creates a provision for development that may potentially affect flood prone land. According to Councils flood mapping (Murray LEP 2011) the subject site is shown to fall within the 1 in 100 year flood level and is within an area which functions as a Low Hazard Flood Storage zone identified in the Moama Floodplain Management Study

1999.

The application for a planning proposal does not change the manner in which Clause 7.8 of the LEP applies to the site and the assessment of any future development application.

Consultation will be required with OEHL to satisfy any inconsistencies with this Direction.

Direction 4.4 Planning for Bushfire Protection

This direction has been identified and addressed in the planning proposal as the LEP amendment affects, or is in proximity to land mapped as bushfire prone land. A small section of the site is identified as being bush fire prone. At this time the proposal is inconsistent with this Direction and consultation is required and needs to be settled with the NSW Rural Fire Service prior to community consultation.

The following SEPPs are applicable to the proposal:

SEPP No. 44 – Koala Habitat Protection

The SEPP is relevant in this case given the former Murray Shire is listed in Schedule 1 of the SEPP, which identifies Local Government Areas to which the policy applies. Vegetation on the subject site is identified as being primarily River Red Gum, a species which is nominated in Schedule 2 and outlined as a “feed tree species” for Koalas. While proposal outlines the site is not “core koala habitat”, the matter can be considered as part of Council's merit assessment for a development application and is therefore not inconsistent with the SEPP.

Murray Regional Environmental Plan No. 2 – Riverine Land

The proposal is broadly consistent with the planning principles of the MREP 2 and any further consideration should be undertaken through the development application and assessment process. Council may request further investigations to adequately assess and mitigate potential environmental impacts of future tourist development on the riverine environment in consultation with relevant agencies.

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : Adequate indicative mapping is provided, clearly identifying the subject site.

Final amending LEP mapping is to be submitted for assessment as part of the section 59 (Making of local environmental plan by Minister) process.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : Community consultation is proposed however a specific time period has not been nominated. The planning proposal states that the consultation process will involve public notices in the local media and on Council's website. Written notification is proposed to adjoining land owners.

A period of 28 days consultation is considered appropriate for the proposal.

Additional Director General's requirements

Are there any additional Director General's requirements? **N/A**

If Yes, reasons :

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Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : **MLEP2011 was notified on 16 December 2011.**

Assessment Criteria

Need for planning proposal : **The planning proposal is required to formalise the use of the land as a function centre.**

DA 175/14 provided development consent for the temporary use of land as a Function Centre under the provisions of Clause 2.8 Temporary Use of Land, for a period of 52 events or 12 months, whichever is first.

The planning proposal is necessary to formalise the zoning of the site to be consistent with the existing use of the land as a 'function centre', which is not permissible under the current MLEP 2011.

Consistency with strategic planning framework : **The proposal is inconsistent with the Council adopted Murray Strategic Land Use Plan 2010-2030 (MSLUP), which identifies the site as 'rural floodplain'. The MSLUP does not identify the site for future tourism purposes, albeit the MSLUP has not been endorsed by the Department. It is recommended Council undertake a broader review of their land use strategy for the endorsement by the Department.**

Despite this inconsistency, the planning proposal is deemed to have adequate merit to proceed to Gateway determination. The proposal will provide for the continued operation of an existing approved tourist and visitor accommodation business, contributing towards the economy in Moama. The SP3 zone also provides for 'function centres' as development permissible with consent. This planning proposal does not provide any approvals for a function centre, only the mechanism for the operators to apply to Council for development consent.

The planning proposal demonstrates consistency with the aims of the former draft Murray Regional Strategy, while Council planning staff have addressed consistency with the current draft Riverina Murray Regional Plan.

Environmental social economic impacts : **The rezoning of land from E3 Environmental Management to SP3 Tourist is not expected to pose any immediate and unmitigated environmental impacts.**

The subject site is bushfire prone land, partly affected by biodiversity mapping and adjoins wetlands. The subject site is identified as 'rural floodplain' in the MSLUP, while it is identified to adjoin but not included in the Flood Planning Map of the MLEP 2011. The site is also identified as being affected by the 1 in 100 year flood zone.

The Murray River Council Business Paper Report (Ordinary Meeting 20 September 2016) provided as part of the application notes that a concrete slab has been constructed within the River Front Setback Area for the erection of a marquee without development consent. Aerial photography of the site shows erosion of the bank, which raises concerns in relation to the bar structure and concrete slab (for the erection of a marquee) on the riverbank for weddings and events (as advertised on Tindarra Resort website). There is potential for damage to occur to the river bank by development that is not setback appropriately.

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This development has not been assessed nor is supported by the Department, and Council will be required to assess the impact of the marquee on the environment in any future development application received to formalise the use of the site as a function centre.

The rezoning of the land does not endorse the use of the land as a function centre, as there are no development approvals in place. It is noted that aerial photography and the Tindarra Resort website show the site operating as a function centre, with structures located on the river front area - including a concrete slab for the erection of a marquee, and a bar structure, both used for events and weddings within the riverfront setback area. Additional approvals from Council will be required to formalise the use of the site, including the provisions of Clause 7.5 of the MLEP, which restricts development within 40m of the bank of the Murray River. The existing E3 Environmental Management zoning of the site currently requires a 100m setback from the riverfront. The proposed rezoning will require the reduction of the riverfront setback to 40m.

The existing marquee used for events on the land is located within the 40m setback as prescribed in Clause 7.5. Any future development application for the permanent use of the land within the river front setback will be required to be assessed by Council. The planning proposal does not contain a request to vary the river front setback provisions and therefore it can only be noted at this time.

Positive social and economic impacts are expected, providing for a modest economic benefit to the landowners.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	28 Days
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Timeframe to make LEP :	12 months	Delegation :	RPA
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Public Authority Consultation - 56(2)(d) :	Murray Catchment Management Authority Office of Environment and Heritage NSW Rural Fire Service Transport for NSW - Roads and Maritime Services
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Is Public Hearing by the PAC required?	No
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(2)(a) Should the matter proceed ?	Yes
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If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required.:

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

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Documents

Document File Name	DocumentType Name	Is Public
Request for Additional Information 01112016.pdf	Proposal	Yes
Additional Information recieved 10 February 2017.pdf	Proposal	Yes
DPE 230916 Tindarra Planning Proposal - Attachment_4_-_Evaluation_criteria_for_the_delegation_of_plan_making_functions.pdf	Proposal	Yes
DPE 230916 Tindarra Resort PP 2016 - Request for Gateway Determination.pdf	Proposal	Yes
DPE 230916 Tindarra Resort PP 2016 - Request for Initial Gateway Determination checklist.pdf	Proposal	Yes
Letter to Council addit info S117 Direction 1.5 Rural Lands.pdf	Proposal	Yes
MRC 200916 Ordinary Council Meeting Agenda September 2016.pdf	Proposal	Yes
MRC 200916 Ordinary Council Meeting Minutes September 2016.pdf	Proposal	Yes
Revised Planning Proposal Tindarra Resort.pdf	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 2.1 Environment Protection Zones**
- 4.3 Flood Prone Land**
- 4.4 Planning for Bushfire Protection**

Additional Information : **The Minister's delegate determines and supports the planning proposal, subject to the following conditions:**

1. Prior to undertaking community consultation, consultation with NSW Rural Fire Service is required to address the proposal's inconsistency with section 117 Direction 4.4 Planning for Bushfire Protection.

Council is to update the planning proposal to take into account the outcomes of this work and forward the NSW Rural Fire Service response to the Department to seek approval from the Department prior to undertaking community consultation.

2. Prior to undertaking community consultation, Council is to consult with NSW Office of Environment and Heritage to address the proposals inconsistency with section 117 Direction 4.3 Flood Prone Land. Council is to update the planning proposal to take into account the outcomes of this work and seek approval from the Department prior to undertaking community consultation.

3. Consultation is required prior to public exhibition with the following public authorities under section 56(2)(d) of the Environmental Planning and Assessment Act 1979 and to comply with the requirements of relevant section 117 Ministerial Directions:

- Transport for NSW – Roads and Maritime Services
- Murray Local Land Services

Each public authority is to be provided with a copy of the planning proposal (as amended) and any relevant supporting material, and given at least 21 days to comment on the proposal. Council is to forward public authority responses to the Department and seek approval to proceed to community consultation.

4. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 as follows:

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(a) The planning proposal is required to be made publicly available on exhibition for 28 days as described in A Guide to Preparing LEPs (Department of Planning and Infrastructure 2013).

(b) The relevant planning 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.

5. A public hearing is not required to be held into the matter by any person or body under section 56(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).

6. Prior to submission of the planning proposal under section 59 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' 2015.

7. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

8. Murray River Council is to be authorised to exercise delegation.

Supporting Reasons :

The amendment to the Land Zoning Map in the Murray LEP 2011 to allow the subject land to be rezoned to SP3 Tourist for the purposes of a function centre will provide a more appropriate zoning to an existing tourism development within Moama.

Signature: _____

Printed Name: _____

Date: _____

Endorsed
W Gammay 24/2/2017
A DRW