



Planning,
Industry &
Environment

IRF21/1072

Gateway determination report – PP-2021-2532

Rezone land from RE2 Private Recreation to R1
General Residential, 142 Swan Hill Road, Murray
Downs

June 21



Published by NSW Department of Planning, Industry and Environment

dpie.nsw.gov.au

Title: Gateway determination report – PP-2021-2532

Subtitle: Rezone land from RE2 Private Recreation to R1 General Residential, 142 Swan Hill Road, Murray Downs

© State of New South Wales through Department of Planning, Industry and Environment 2021. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning, Industry and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (March 21) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning, Industry and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Contents

1	Executive summary	1
2	Planning proposal	2
2.1	Overview.....	2
2.2	Objectives of planning proposal	3
2.3	Explanation of provisions.....	3
2.4	Site description and surrounding area	4
2.5	Mapping.....	7
2.6	Rezoning and development background	7
3	Need for the planning proposal.....	8
3.1	Original justification	8
3.2	Further justification (Addendum version 2).....	9
4	Strategic assessment.....	11
4.1	Regional Plan	11
4.2	Local	11
4.3	Section 9.1 Ministerial Directions	12
4.4	State environmental planning policies (SEPPs)	14
5	Site-specific assessment	16
5.1	Environmental.....	16
5.2	Social and economic	17
5.3	Infrastructure	17
6	Consultation.....	17
6.1	Community	17
6.2	Agencies.....	17
7	Timeframe.....	17
8	Local plan-making authority	17
9	Assessment summary.....	17
10	Recommendation.....	18

1 Executive summary

This report recommends refusal of a planning proposal submitted for Gateway determination by Murray River Council to rezone land at Murray Downs from RE2 Private Recreation to R1 General Residential. The request for a Gateway determination included a planning proposal prepared by the proponent and an Addendum (Addendum version 1) prepared by Council.

The site has an existing development consent for a *16 Lot Community Title subdivision as part of a manufactured homes estate*.

Condition 8 of the development consent requires an approval under the *Local Government Act 1993* (LG Act) to be obtained for the operation of the manufactured home estate. Council has confirmed that no LG Act approval to operate the manufactured home estate has been issued.

The planning proposal's justification is based on the restrictions of the Swan Hill road bridge which prevents large pieces of manufactured homes being brought to the site cost-effectively. Based on this restriction, the planning proposal considers the only alternative is to rezone the site to R1 General Residential to allow the development of 'traditional housing'.

Under the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005* (LG Reg) the requirement to construct manufactured housing offsite can be waived by lodging an objection as part of the request for an approval to operate the manufactured homes estate. This is a simple process that could be resolved quickly and the concurrence of the Department (as delegate of the Chief Executive of the Office of Local Government) would be likely given the circumstances. Under this scenario, housing on the site would likely be completed well before completion of the planning proposal.

When Murray River Council considered the planning proposal and Addendum version 1 the option of constructing manufactured homes on site to avoid the bridge restrictions was not considered in the documentation.

The Department requested further information including clarification whether the LG Reg objection option had been considered. In response Council staff provided a different justification for the proposal based on flooding and its Local Strategic Planning Statement (LSPS). Council later responded with a new version of its Addendum report (Addendum version 2).

The planning proposal and the two Addendum reports have been considered in undertaking this assessment. The assessment concludes that the proposal has not considered the options available and therefore the need for the proposal has not been justified. The assessment also found the proposal is inconsistent with the Council's Department-endorsed land use strategy, Council's LSPS, the *Murray Regional Environmental Plan No. 2* (MREP) and section 9.1 Direction 2.1 Environment Protection Zones. There are also six unresolved section 9.1 Directions (2.3 Heritage Conservation, 3.1 Residential Zones, 3.2 Caravan Parks and Manufactured Home Estates, 3.4 Integrating Land Use and Transport, 4.3 Flood Prone Land and 5.10 Implementation of Regional Plans).

The option of issuing a Gateway determination to address these matters was considered however this would require significant conditioning to create coherent documentation. It also remains unclear whether the landowners and the elected Council are aware of and have considered all the options available to erect housing on the site. Instead of a conditional Gateway, this report recommends refusal. Council is encouraged to consider the options available for the site and, if considered necessary, submit a planning proposal that assesses available options and that has strategic and site-specific merit.

Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Documents supporting Council resolution to support planning proposal
Murray River Council Ordinary Council Meeting Agenda and Minutes – 23 February 2021
Addendum to Planning Proposal (Version 1) – 23 February 2021 – Considered by Council
Planning Proposal - Rezoning to R1 - 142 Swan Hill Road, Murray Downs – prepared by Roy Costa Planning and Development, undated
Due Diligence Assessment Aboriginal Cultural Heritage as part of a Development Application Amendment, 142 Swan Hill Road, Murray Downs NSW 2734 – February 2020 (attachment to planning proposal)
Murray Downs Floodplain Risk Management Study and Plan – January 2017 (attachment to planning proposal)
Location map – 142 Swan Hill Road Murray Downs
Documents provided by Council staff in response to requests for further information
Addendum to Planning Proposal (Version 2) – 30 April 2021 (Not considered by Council)
Development Assessment Report - DA18/16 12 Lot Community titled subdivision as part of a manufactured home estate, dated 26 July 2018
Development Consent DA 10.2016.1018.2 (DA18/16 Amendment One), dated 26 July 2019

2 Planning proposal

2.1 Overview

Table 2 Planning proposal details

LGA	Murray River
PPA	Murray River Council
NAME	Rezone land from RE2 Private Recreation to R1 General Residential (16 homes, construction related jobs)
NUMBER	PP-2021-2532
LEP TO BE AMENDED	Wakool Local Environmental Plan 2013
ADDRESS	142 Swan Hill Road, Murray Downs
DESCRIPTION	Lots 1 – 16 DP286903

RECEIVED	9/03/2021
FILE NO.	IRF21/1072
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

2.2 Objectives of planning proposal

The planning proposal (page 4) contains objectives and intended outcomes.

The overarching objective of the planning proposal is to *allow for the development of 'traditional dwellings' being constructed on site.*

The specific objectives and intended outcomes of the planning proposal are stated to be:

- *Ensure the zoning ... accurately reflects the actual uses and purposes of the site relevant to Councils Community Strategic Action Plan (sic) and LSPS; and*
- *Achieve optimum planning, land use and management outcomes and public interest for the subject land.*

'Traditional dwellings' are currently not permissible as the land is zoned RE2 Private Recreation. The need for 'traditional dwellings' is discussed in Section 3 of this report.

2.3 Explanation of provisions

The planning proposal seeks to amend the *Wakool Local Environmental Plan 2013* (WLEP) as per Table 3 below:

Table 3 Current and proposed controls

Control	Current	Proposed
Zone	RE2 Private Recreation	R1 General Residential
Number of dwellings	16 manufactured homes	16 dwellings
Number of jobs	Construction related jobs	Construction related jobs

The planning proposal (page 5) contains an explanation of provisions setting out how the objectives of the proposal will be achieved:

- Amend Land Zoning Map LZN_005B in WLEP 2013 to show the subject land as R1 General Residential.

No minimum lot size is proposed as part of the planning proposal to support the proposed zoning change. Were this report recommending support for the proposal, it would be appropriate to condition the Gateway determination to consider application of a minimum lot size to the site, to reinforce the existing density of the site and minimise the opportunity for intensification.

2.4 Site description and surrounding area

The site is legally described as Lots 1 – 16 in DP286903 and located at 142 Swan Hill Road, Murray Downs. The land is irregular in shape and has an area of about 4 hectares. The site has been subdivided into 16 lots under a community title scheme (as shown in Figure 1 below). Most of the site is currently zoned RE2 and a small portion of the site is zoned W1 Natural Waterway as shown in Figure 7.

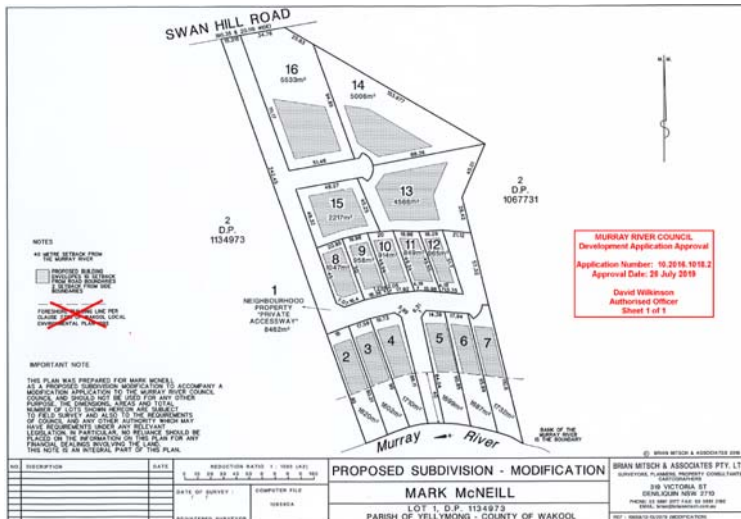


Figure 1 Approved Subdivision Plan (source: DA10.2016.1018.2 (DA18/16 Amendment One))



Figure 2 Current terrestrial biodiversity map (source: ePlanning Spatial Viewer, March 2021)

The southern portion is affected by the Terrestrial Biodiversity map of WLEP 2013 (Figure 2). There is a significant overlap of 6 lots in the approved subdivision plan with the terrestrial biodiversity layer.



Figure 3 Subject Site, August 2017 (source: Google Earth)



Figure 4 Subject site, March 2020 (source: Google Earth)

Aerial photos from August 2017 (left) and March 2020 show clearing and works have been undertaken on the site including in the terrestrial biodiversity area but no structures are evident.

The subject land is bounded to the south by the Murray River, and a State Heritage item adjoins it to the east. The land to the west is zoned RU1 Primary Production and is largely rural in character. The northern boundary adjoins Swan Hill Road (see Figure 5 and 6).

The site is located between Swan Hill and the Murray Downs residential area. The site and the lots west of the site have been identified as a tourism area in Wakool Land Use Strategy 2009 (WLUS) (see Figure 5 below). Areas further east around the Murray Downs Golf course have been identified as residential land. The intent of the WLUS was to consolidate residential areas around the golf club to build a sense of community identity, and also reduce service provision costs.

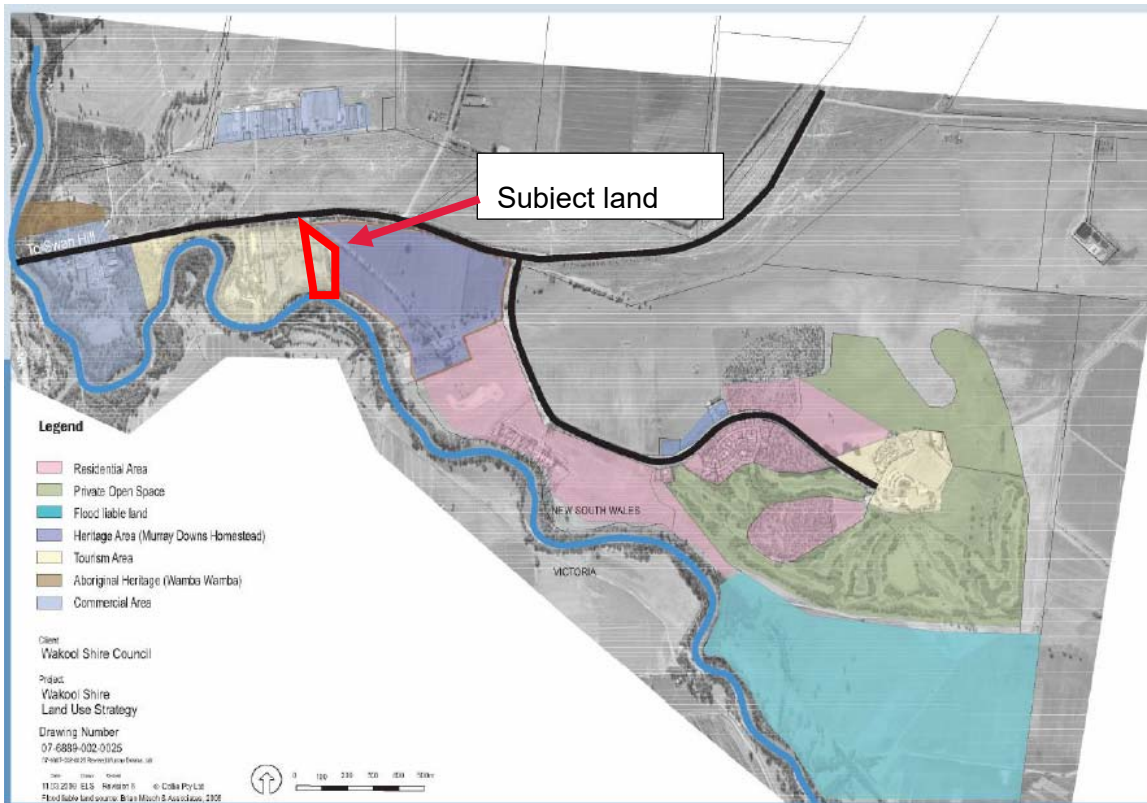


Figure 5 Murray Downs Strategic Framework (source: Wakool Land Use Strategy 2009)

Murray Downs is a small settlement of 271 people (Murray River LSPS). Residential land is concentrated around the Golf and Country Club. Closer to the Swan Hill bridge is a small business area comprised of a hotel, marina and small-scale tourism businesses. There is also a grain storage and rural industry area to the north of the site.

Adjacent to Murray Downs on the southern side of the Murray River in Victoria is Swan Hill (population 10,905 (2016 Census)). Murray Downs comprises only 2% of the cross-border community population. Murray Downs has a strong reliance on Swan Hill which provides higher order services to the Murray Downs community, such as essential services, education, health and employment opportunities. Figure 6 illustrates the contrast in size between the two towns and highlights Murray Downs reliance on Swan Hill.

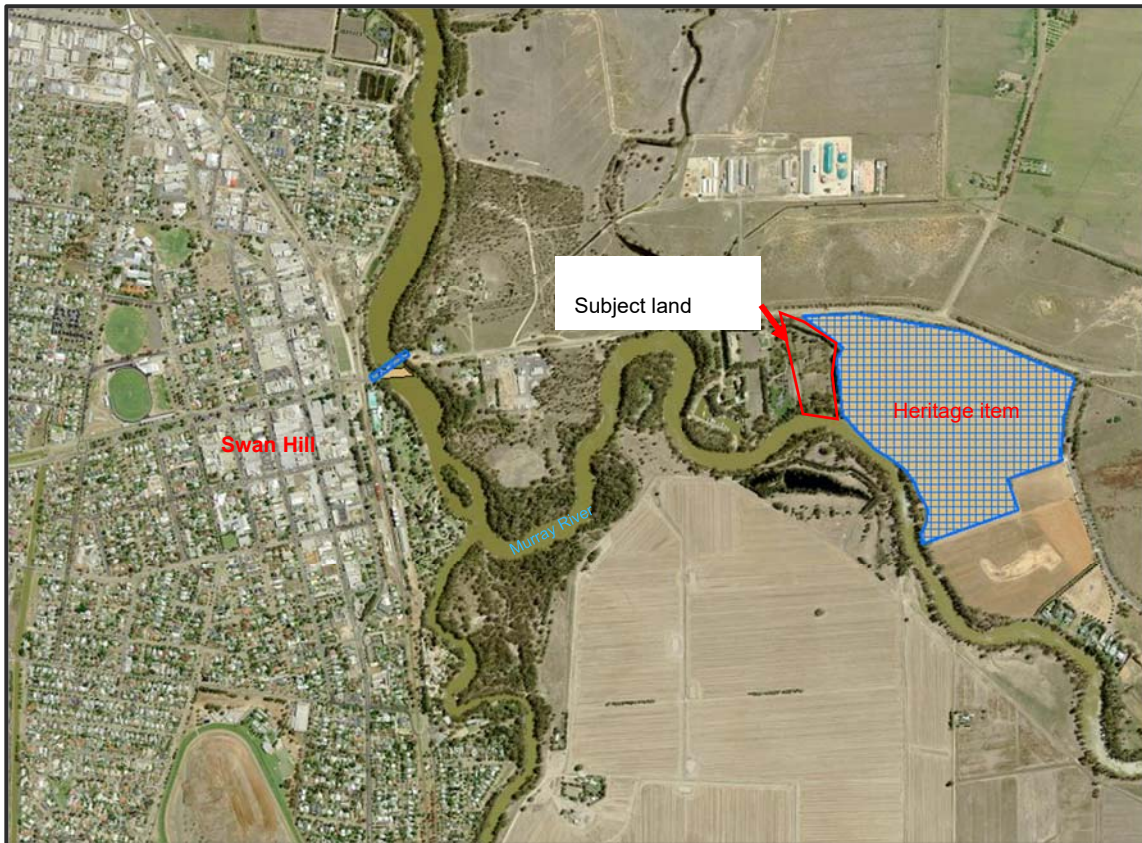


Figure 6 Site context (source: ePlanning Spatial Viewer, March 2021)

2.5 Mapping

The planning proposal requires amendment to LEP map sheet LZN_005B.

Addendum version 1 includes mapping that shows the existing zoning of the subject land on page 9 (Figure 7). A map showing proposed changes to the land zoning map is not provided and would be needed were this planning proposal to proceed to exhibition.



Figure 7 Current zoning map (source: Addendum to planning proposal, February 2021)

2.6 Rezoning and development background

Council provided a background to the planning proposal, as follows:

- Application to rezone the whole site (previously known as Lot 1 DP1134973) from RU1 Primary Production to R5 Large Lot Residential refused by Wakool Shire Council in September 2014 based on inconsistency with the WLUS which identified the site as a tourism area. (NB. The WLUS is endorsed by the Department).
- Application to rezone the site from RU1 Primary Production to RE2 Private Recreation supported by Wakool Shire Council (February 2015) and the amendment to the WLEP was published in February 2018. The Department supported this rezoning as it was consistent with the endorsed WLUS and reflected an existing consent for tourism development.
- A development application was approved by Murray River Council for a *12 Lot Community Title Subdivision as part of a manufactured home estate* on 10 October 2018.
- An amendment to this development consent was approved on 26 July 2019 to add 4 lots.

Following initial consideration of the planning proposal and Addendum version 1, the Department requested further information including clarification of the need for and justification of the proposal. Council's response (Addendum version 2) provided additional background and a different justification for the planning proposal:

- [At the time of the 2018 approval, Council] *"failed to recognise the significance of the impact of flooding on the site, and therefore the decision for a manufactured home estate to be created on this site should have been declined by Council, however it was approved."*
- *Council is concerned now that there are limited controls applying to manufactured homes being erected onsite which increases the risks associated with flooding. A direct response to the issue of this site is to allow traditional residential dwellings which would be conditioned to be constructed to a minimum finished floor level of 1:100 ARI flood level + 0.5m freeboard. This approach would reduce the risk to Council, the owners/community and emergency services in the event of a flood."* (Addendum version 2 p. 4-5)

3 Need for the planning proposal

3.1 Original justification

The original justification for the proposed rezoning to R1 General Residential was provided in Part 3, Section A (pages 6-7) of the planning proposal and includes:

- While not stated, the planning proposal suggests manufactured homes were to be sourced from Victoria. The Swan Hill bridge infrastructure restricts the transport of manufactured homes and therefore limits the ability of the landowners to erect manufactured homes onsite.
- As there are no plans to upgrade the bridge in the immediate future, limiting the site to the construction of manufactured homes could significantly delay development on the site. Alternative transport routes, via Moama for example, would significantly increase costs of constructing manufactured homes on the subject land.
- Due to the supposed requirement for manufactured homes to be constructed offsite and the limitations of the bridge infrastructure, timely and cost-effective provision of homes on the site is not possible.

Addendum version 1 considered the alternative of applying an 'additional permitted use' for a dwelling house on each lot under Schedule 1 of the WLEP but rejected this due to the number of lots concluding that rezoning is a 'more strategic approach'. A reason for this conclusion was not provided.

In response to the justification above, the Department advised Council it could accept an objection under Section 82 of the LG Act to allow the construction of manufactured homes on the site and avoid the need for the planning proposal. Council has since advised no LG Act approval has been

issued so there is no existing requirement for offsite construction even though this forms the basis for the planning proposal justification.

The general requirement for offsite construction in the LG Reg could be waived through an application under the LG Act and could form part of the approval to operate a manufactured housing estate required by the development consent and not yet obtained. Given this option, the need to rezone the land to R1 General Residential because of the bridge restrictions is not justified.

3.2 Further justification (Addendum version 2)

Council staff provided further justification in Addendum version 2 (dated 30 April 2021). This Addendum has not been considered by the elected Council and it is unclear whether the option of pursuing manufactured homes through an objection to the offsite construction requirement has been considered by the Council or the landowners.

Addendum version 2:

- removed references to the bridge restrictions as the justification for the planning proposal
- states traditional dwellings are ... *subject to more vigorous (sic) development standards and regulations than a manufactured home installation and therefore Council can determine better design outcomes of the dwellings and reduced flood risk particularly in relation to engineering design of foundations to withstand flood waters*
- concludes that through the development application process, Council staff can provide better design outcomes and properly consider flood impacts including foundations to withstand flood waters.

Council's concerns about flooding and the regulation of manufactured homes are considered below.

Flood Planning

The site is located in the Flood Planning Area (FPA), however is located outside the 100-year flood event area (Figure 8). The removal of logistical issues associated with the bridge in Addendum version 2 has resulted in flood planning issues being the primary justification for the planning proposal. It is noted that flooding was not referenced as justification in the original planning proposal or Addendum version 1 considered by Council when it resolved to support the planning proposal.

No evidence has been provided demonstrating the extent of flooding as an issue across the site. If flooding is the justification for the planning proposal, it would be expected to include an assessment detailing existing ground levels and required floor levels in accordance with Council's Floodplain Development Strategy and the NSW Floodplain Development Manual. Discussion would also be expected of why 'traditional dwellings' are a better outcome than manufactured homes in terms of flooding including an assessment of the potential impacts on adjoining properties and the displacement of flood waters as result of slabs/pads to meet the relevant flood building levels. None of this has been provided so the need for the planning proposal based on flooding is not justified.

Although Council contends a development application for 'traditional dwellings' will provide more control over floor heights and footing specifications than an approval for manufactured homes, this is not accepted. An approval under Section 68 of the LG Act is required for the installation of a manufactured home and for the operation of a manufactured home estate. Clauses 6(2), 9(3) and 10 of the LG Reg concern the installation of manufactured homes on flood liable land and require councils to have regard to the principles in the Floodplain Development Manual and to condition approvals having regard to flood impacts.

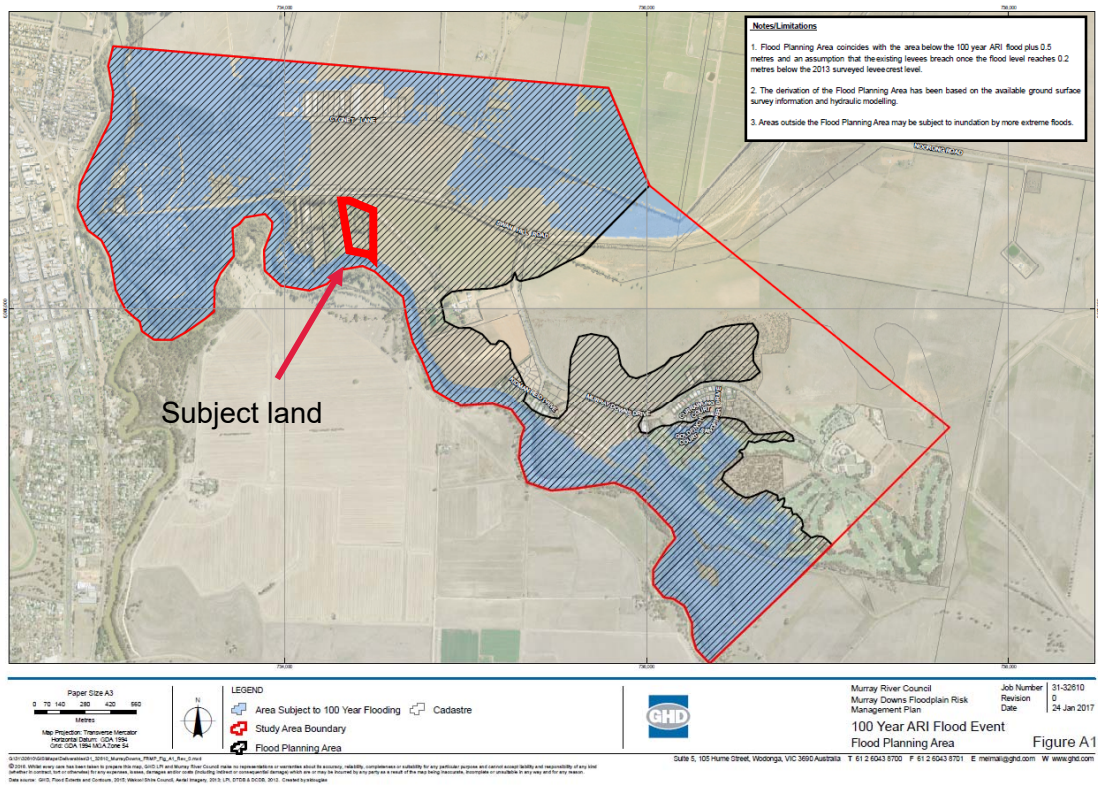


Figure 8 Flood Planning Map (Source Murray Downs Floodplain Risk Management Study and Plan, January 2017)

An additional general provision applies to any LG Act approval requiring a council to consider the principles of ecologically sustainable development, protection of the environment and protection of public health, safety and convenience which would encompass consideration of flooding impacts (LG Act s.89) in determining an application.

As established previously, an approval under the LG Act has not yet been obtained for the manufactured home estate providing Council the opportunity to deal with flood impacts.

The advantage of a development application over a local government approval for the management of flooding has not been established and is not accepted as justification for the planning proposal.

Tourism uses and better design outcomes

The site was identified for tourism type development in the Department-endorsed WLUS and it was on this basis that Council and the Department supported the rezoning to RE2 Private Recreation in 2018. No discussion is provided to support the change to a residential zone and why it is now considered appropriate (noting that an application to rezone the land R5 Large Lot Residential was refused in 2014).

The case has not been made for undermining the strategic support for the site to be used for tourism through rezoning. Rather, Council's LSPS provides further support for retaining tourism uses in reporting key issues as *Increase public access to the riverfront for recreation* and *Encourage tourism development in riverfront precincts* (p.10).

Addendum version 2 also introduces 'better design outcomes' as a benefit of the rezoning but without supporting evidence. Council's LSPS provides a contrary view in noting *advances in prefabricated, manufactured homes are making them an attractive alternative to traditionally-built houses* (p.54).

In summary, none of the reasons put forward in Addendum version 2 to justify the planning proposal are supported.

4 Strategic assessment

4.1 Regional Plan

The planning proposal contains an assessment against the Riverina Murray Regional Plan 2036 at its Attachment A. Table 5 provides an assessment of the planning proposal against relevant directions under the regional plan's Goal 2 – A healthy environment and pristine waterways and Goal 4 - Strong, connected and healthy communities, which directly relate to the planning proposal.

Table 4 Regional Plan assessment

Regional Plan Objectives	Justification
Direction 14: Manage land uses along key river corridors	The proposal would facilitate development that is directly inconsistent with this Direction. Specifically, the development approval and subdivision has resulted in creating six residential development opportunities (ribbon development) along the riverbank. Action 14.2 is to ' <i>Retain riverfront setback provisions in local plans and limit ribbon development along the Murray River</i> '. The planning proposal facilitates development that would be inconsistent with this Action.
Direction 23: Build resilience in towns and villages Direction 25: Build housing capacity to meet demand Direction 26: Provide greater housing choice Direction 28: Deliver healthy built environments and improved urban design	The site and existing planning provisions are already consistent with these Directions. Residential development (manufactured home) is already permissible on the site and it provides the opportunity to capitalise on population growth. The rezoning is not supported by any local housing strategy to justify the need for 'traditional dwellings' on the site. Council has also highlighted in its LSPS (p.54) that ' <i>advances in prefabricated, manufactured homes are making them an attractive alternative to traditionally-built houses</i> '. Rezoning the site to R1 General Residential is not required or justified.

4.2 Local

The proposal states it is consistent with local strategic plans (page 8). Table 6 provides assessment of the proposal against the relevant local strategic plans.

Table 5 Local strategic planning assessment

Local Strategies	Justification
Local Strategic Planning Statement	<p>The site and existing planning provisions are already consistent with Planning Priority 4 – Housing as Manufactured Homes are permitted on the site.</p> <p>Several aspects of the proposal are inconsistent with the LSPS, namely:</p> <ul style="list-style-type: none"> • <i>Increase public access to the riverfront for recreation:</i> The existing subdivision design has resulted in the fragmentation of the riverfront into privately owned land. Proceeding with the planning proposal would indirectly support the approved subdivision, which does not increase public access to the river. • <i>Encourage tourism development in riverfront precincts:</i> The site has previously been strategically identified for tourism development. Rezoning the site to residential is in direct conflict with the above objective. • <i>Advances in prefabricated, manufactured homes are making them an attractive alternative to traditionally-built houses:</i> The planning proposal suggests 'traditional dwellings' lead to a superior outcome.
Wakool Shire Land Use Strategy April 2009	<p>The planning proposal is inconsistent with this Department-endorsed strategy. The strategy sets aside the land for tourism which aligns with its current zoning of RE2 Private Recreation. Council has justified departure from the strategy based on the approval of the subdivision for a manufactured home estate however manufactured homes could still be used for tourism purposes.</p> <p>When endorsing the strategy, the Department agreed to certain areas being rezoned to residential. This was not one of those sites.</p>

4.3 Section 9.1 Ministerial Directions

The planning proposal has undertaken assessment against the applicable s9.1 Directions on page 9. The relevant Directions are discussed in Table 7.

Table 6 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
2.1 Environment Protection Zones. The aim is to protect and conserve environmentally sensitive areas.	No	This Direction applies to the planning proposal. The planning proposal states the rezoning does not seek to alter the environmental protection controls that apply to the land. The planning proposal indicates that the existing lots contain building envelopes and the existing building setback from the river will be retained.

		<p>The planning proposal does not discuss the land partially zoned W1 Natural Waterway and the areas adjacent to the river mapped as 'Terrestrial Biodiversity' under WLEP.</p> <p>The planning proposal does not provide any provision to protect or further enhance the environmental values of the riverfront. No discussion is provided in relation to associated excavation and works to construct a dwelling and pad to mitigate any flood impacts. 'Traditional dwellings' potentially have more impact on the surrounding environment than manufactured dwellings but this is not discussed.</p> <p>The planning proposal is inconsistent with the Direction.</p>
2.3 Heritage Conservation. The aim is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	Unresolved	<p>This Direction applies to all planning proposals. The subject land adjoins a state heritage item to the east, known as Murray Downs Homestead. The planning proposal suggests there will be no likely adverse impacts on the adjoining heritage item. No explanation or discussion has been provided as to how Council will manage the interface between the subject site and the state heritage item. Consultation with Heritage NSW has not been proposed as part of the planning proposal.</p> <p>The development consent included a condition requiring the retention of tall trees along the eastern boundary of the site however it is noted in comparing figures 3 and 4 that some of the boundary vegetation has been removed.</p> <p>A Due Diligence Assessment of Aboriginal Cultural Heritage report submitted with the planning proposal indicates that the site has low archaeological potential and no artefacts or items of Aboriginal cultural heritage are present at the site.</p>
2.6 Remediation of Contaminated Land. The aim is to reduce the risk of harm to human health & the environment.	Yes	<p>The subject land is not known to have been used for potentially contaminating activity. The planning proposal states that future development applications on the land will be assessed against requirements of SEPP 55, as appropriate. This is considered consistent with the Direction.</p>
3.1 Residential Zones. The aim is to encourage housing diversity, maximise infrastructure and minimise impact of residential development.	Unresolved	<p>This Direction applies as the proposal seeks to rezone the subject land to a residential zone. Objective (1)(c) of the Direction is to minimise the impact of residential development on the environment. The planning proposal contains no assessment of the relative environmental impacts of 'traditional dwellings' and manufactured homes and the planning proposal's consistency with the Direction is unresolved.</p>
3.2 Caravan Parks and Manufactured Home Estates. The aim is not provide for a variety of housing and opportunities for caravan parks and	Unresolved	<p>The Direction applies when a planning authority prepares a planning proposal. The planning proposal and Addendum version 2 do not address the Direction. The objective of the direction is to provide for a variety of housing types and opportunities for manufactured home estates. Rezoning the land to R1 General Residential to prioritise 'traditional dwellings'</p>

manufactured home estates.		would make it unlikely the manufactured home estate would be constructed. Consistency with the Direction is unresolved.
3.4 Integrating Land Use and Transport. The aim is to ensure urban development achieves specified planning objectives.	Unresolved	<p>The Direction applies as the proposal seeks to rezone the subject land to a residential zone.</p> <p>The planning proposal and Addendum version 2 do not provide any detail or discussion around the planning proposal's consistency with the principles in <i>Improving Transport Choice – Guidelines for planning and development (DUAP 2001)</i> and <i>The Right Place for Business and Services – Planning Policy (DUAP 2001)</i>.</p> <p>The subject site is an isolated parcel, separated by a mixture of rural, tourist and industrial uses. It is unclear how the planning proposal would meet the objectives and terms of the Direction.</p>
4.3 Flood Prone Land. The aim is to reduce the flood impacts of development both on and off the subject land.	Unresolved	<p>This Direction applies as the subject land is within an FPA and partially subject to the 1-in-100-year ARI (average recurrence interval) flood level as per the Murray Downs Floodplain Risk Management.</p> <p>It is unclear to what extent flooding is an issue or how the planning proposal can be justified based on flood planning (Addendum version 2).</p>
5.10 Implementation of Regional Plans. The aim is to give legal effect to the Regional Plans.	Unresolved	The Direction applies to all planning proposals. As discussed above there are several concerns related to the planning proposal and its consistency with the regional plan. As result consistency with the regional plan remains unresolved.

4.4 State environmental planning policies (SEPPs)

The planning proposal and Addenda provide consideration of the following SEPPs.

SEPPS	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Murray Regional Environment Plan (MREP) No 2 (1994)	No	<p>The subject site is mapped under the MREP and the MREP is applicable to the planning proposal.</p> <p>Addendum version 2 states the planning proposal is consistent with the MREP as the subdivision already exists, manufactured homes are already permissible, and the rezoning does not present any greater impact. The specific principles of MREP are not considered on the basis that the inconsistency was established at development application stage.</p> <p>However, a planning proposal presents an opportunity to reinforce the specific principles of the MREP and to create a better development outcome. For example, the planning proposal could lead to a revised subdivision layout, which creates community land along the riverfront, benefitting all lots</p>

SEPPS	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
		<p>within the subdivision. As submitted the planning proposal facilitates further departure from the specific principles in Clause 10 of the MREP as follows:</p> <p>Access</p> <ul style="list-style-type: none"> - The development consent and planning proposal alienate the river foreshore for private purposes, through the creation of six private riverfront parcels. - The development consent and planning proposal facilitates private development. Development along the main channel should be for public purposes. <p>Bank disturbance</p> <ul style="list-style-type: none"> - Works undertaken on the site appear to have removed riparian vegetation. There has been no discussion in the planning proposal that demonstrates how development will avoid further land degradation such as native vegetation decline, and adverse impact on the quality of terrestrial and aquatic habitats. Works undertaken on the site appear to have already affected land within the mapped terrestrial biodiversity area. <p>Landscape</p> <ul style="list-style-type: none"> - Measures to protect and enhance the riverine landscape have not been discussed. <p>River related uses</p> <ul style="list-style-type: none"> - The planning proposal has provided no discussion about the essential relationship of the proposal to the river and why it is appropriate to rezone the site for private residential purposes. - The development consent and proposal intensify development opportunities on the site. A small road reserve has been provided to the river, but public access has not been prioritised. <p>Settlement</p> <ul style="list-style-type: none"> - The proposal is located on flood liable land.

SEPPS	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Vegetation in Non-Rural Areas) 2017	Unresolved	<p>The proposal does not involve the removal of any vegetation from the property however the approved subdivision and building envelopes significantly overlap with the terrestrial biodiversity layer. Council has stated that vegetation removal will be assessed at the development application stage for each lot, against the necessary provisions of this SEPP and the requirements of the Biodiversity Offset Scheme Entry Threshold (BOSET) tool.</p> <p>Figures 3 and 4 suggest clearing of terrestrial biodiversity has already been undertaken on the site. It is unclear whether the clearing has received any necessary approvals.</p>
SEPP (Koala Habitat Protection) 2021	Unresolved	<p>Murray River Council is listed in Schedule 1 as an affected LGA. The Addenda state that the vegetation is not core koala habitat, is not known to contain any habitat and is unlikely to support any future koala habitat. The existing lots for the subject land include building envelopes. These were applied to the titles as a result of the development application for the manufactured home estate, to achieve protection of vegetation and habitat.</p> <p>There is significant overlay of building envelopes and terrestrial biodiversity layer and vegetation appears to have been removed on the site. There is no site-specific environmental investigation to support Council's statement on koalas.</p>

The planning proposal is considered consistent with the terms of SEPP No 36 - Manufactured Home Estates, SEPP (Remediation of Land) 1998 and SEPP (Infrastructure) 2007.

5 Site-specific assessment

The planning proposal provides site-specific assessment of the proposal in Section C, page 10.

5.1 Environmental

The subject land contained mature trees in many parts of the site, and the southern portion is affected by the Terrestrial Biodiversity map of WLEP. Council has relied on the existing building envelopes on the lot titles to control vegetation removal and its consequences on biodiversity however the building envelopes overlay the mapped terrestrial biodiversity areas.

During this assessment aerial photographs were obtained showing vegetation loss within the terrestrial biodiversity layer.

There are concerns about the existing development consent and future development of the land and its potential to impact on the riparian area, the W1 Natural Waterway zone and the river. It is unclear how the rezoning will facilitate a better environmental outcome as suggested by Council.

The planning proposal does not consider the impacts 'traditional dwellings' and associated excavation will have on the site or the effect slabs/pads would have on flood waters.

The environmental benefit of the rezoning is unclear. There is an ability to assess the ecological sustainable development impacts under a local government approval.

5.2 Social and economic

The social and economic benefit to the area of the planning proposal over the existing development that can occur is unclear.

5.3 Infrastructure

Manufactured homes can be constructed on site resolving the infrastructure capability issue posed by the Swan Hill bridge (the initial justification for the planning proposal).

The subject land has adequate established infrastructure and services. Addendum version 2 indicates Council does not intend to take over the ownership and management of the existing road network within the subject land and as such it will be managed under community title.

6 Consultation

6.1 Community

Community consultation is not relevant as the recommendation is for the planning proposal not to proceed.

6.2 Agencies

Agency consultation is not relevant as it is recommended that the planning proposal not proceed.

7 Timeframe

As it is recommended not to proceed, this section is not applicable.

8 Local plan-making authority

As it is recommended not to proceed, this section is not applicable.

9 Assessment summary

The planning proposal is not supported to proceed for the following reasons:

- The need for the planning proposal is not adequately justified and there are inaccuracies and inconsistencies in the information provided in the planning proposal, Addendum version 1 and Addendum version 2 that cannot be easily remedied through Gateway conditions.
- A solution exists to would allow manufactured homes to be erected on site removing logistical issues attributed to the Swan Hill bridge.
- It is unclear whether the elected Council were aware of all options for the site when it resolved to support the planning proposal. It is unclear whether the landowners are aware of the alternatives available to facilitate the erection of manufactured homes.
- Flooding can be considered through a Local Government Act application for manufactured homes and appropriate conditions applied to the approval.
- The planning proposal would further facilitate departure from the *Murray Regional Environmental Plan No. 2* and Riverina Murray Regional Plan.

- The planning proposal is inconsistent with Council Local Strategic Planning Statement and the Department-endorsed Wakool Land Use Strategy 2009.
- The proposal is inconsistent with Section 9.1 Direction 2.1 Environment Protection Zones.
- There are six unresolved section 9.1 Directions (2.3 Heritage Conservation, 3.1 Residential Zones, 3.2 Caravan Parks and Manufactured Home Estates, 3.4 Integrating Land Use and Transport, 4.3 Flood Prone Land and 5.10 Implementation of Regional Plans).

10 Recommendation

It is recommended the delegate of the Minister determine that the planning proposal should **not** proceed, based on the reasons outlined above.



____ (Signature)

____ 09/06/2021 ____ (Date)

Haydon Murdoch

Manager, Western Region



____ (Signature)

____ 28.6.21 ____ (Date)

Garry Hopkins

Director, Western Region



____ (Signature)

____ 2/7/2021 ____ (Date)

Monica Gibson

Executive Director, Local and Regional Planning