



## **ADDENDUM TO PLANNING PROPOSAL**

**Rezone of land from RE2 Private Recreation to R1 General Residential**

**Lots 1 – 16 DP286903**

**142 Swan Hill Road, Murray Downs**

**Document Control**

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## ADDENDUM

Council is in receipt of a planning proposal to amend the Wakool Local Environmental Plan 2013 (Wakool LEP). The Planning Proposal authored by Roy Costa Planning & Development is titled "Planning Proposal Lots 1 – 16 DP286903, 142 Swan Hill Road, Murray Downs, Changing of zoning to R1 General Residential".

A gateway determination under Section 3.34 of the *Environmental Planning and Assessment Act 1979* is to be requested once endorsed by Council.

Council wishes to endorse the planning proposal with the following addendums:

- Introduction
- Part 1 – Objectives or intended outcomes
- Part 2 – Explanation of provisions
- Part 3 – Justification
- Part 4 – Maps
- Part 5 – Community Consultation
- Part 6 – Project Timeline
- Attachment A

## INTRODUCTION

Council seeks to clarify the recent 16 lot subdivision (DA 18/16) referred to in this section was for the purposes of a manufactured homes estate not standard residential development. The following background information is considered vital to the determination of the proposed rezoning of land from RE2 Private Recreation to R1 General Residential.

- Application to rezone the whole site (previously known as Lot 1 DP1134973) from RU1 Primary Production to R5 Large Lot Residential was refused at the Wakool Shire Council meeting in September 2014 based on inconsistency with the Wakool Land Use Strategy Report 2009 which identified the site as a tourism area.
- Application to rezone the whole site from RU1 Primary Production to RE2 Private Recreation (for the purposes of a Manufactured Homes Estate) was endorsed by Wakool Shire Council at the February 2015 meeting and the amendment to the Wakool Local Environmental Plan 2013 was formally published in February 2018.
- The development application was approved by Murray River Council as a "Manufactured Home Estate" (Community Title 12 Lots) on 10 October 2018, which only allowed manufactured homes to be constructed offsite and transported to the site for installation (DA18/16).
- Council at the time 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.
- An amendment to this development consent was approved on 26 July 2019 to add 4 lots, resulting in a 16-lot Community Title subdivision. It is noted that building envelopes are identified on title for each lot.
- 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.

## **PART 1 – OBJECTIVES OR INTENDED OUTCOMES**

Council notes the objective to amend the land zoning map of the Wakool LEP to facilitate development of traditional dwellings on each lot of the approved subdivision. Amendment of any land use table is not required, as Council is comfortable that due to the land already being subdivided and building envelopes established, there is little risk that other uses would be proposed on site. Any proposed use that is permitted with consent would be assessed by Council on its merits— see Part 3, Section A, Question 2 for further discussion.

## **PART 2 – EXPLANATION OF PROVISIONS**

It is noted that currently, there is no minimum lot size affecting the land and that the planning proposal did not include a proposed minimum lot size.

The existing subdivision operates under a community title scheme. Minimum lot size requirements are not applicable under the Wakool LEP for community title schemes in the R1 zone and are only triggered in the RU1, RU3, RU5 and E2 zones. The applicant has stated in their conclusion that “the density of development for the subject land is not increasing”. It is also noted that Council has no intention of taking over management of the existing road network within the community title scheme subdivision.

While Council would like to impose a minimum lot size as part of this planning proposal, we are unable to do so based on the existing subdivision (community title scheme). Any application for further subdivision of the lots (permissible under Clause 4.1AA of the Wakool LEP 2013) would be subject to a merits-based assessment. Given the density of development in the surrounding area, increasing the density of lots would be a further departure from the existing character of the area and may also constitute poor planning outcomes with respect to biodiversity and hazard risk. Additionally, any further subdivision of the lots could prove difficult due to the community title access arrangements in place.

## **PART 3 – JUSTIFICATION**

### **SECTION A – NEED FOR THE PLANNING PROPOSAL**

#### **1. Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?**

The planning proposal does not address the *Wakool Shire LEP Review Land Use Strategy Report April 2009*. The Murray Downs Strategic Framework within this report sets aside the land for tourism of which aligns with its current zoning of RE2 Private Recreation.

Council notes that there are various tourist land uses permitted with consent within the R1 General Residential zone of the Wakool LEP including but not limited to:

- Camping grounds;
- Caravan parks;
- Eco-tourist facilities;
- Information and education facilities; and
- Tourist and visitor accommodation

It is clear that the intent of the proposal is not to provide tourist development, but rather to provide traditional housing. While the proposal is inconsistent with the Wakool Shire LEP Review Land Use Strategy Report April 2009, Council does not object to the proposal's inconsistency with the strategy. The approved development (DA 18/16) allows for manufactured homes to be erected. This form of housing product is not specifically intended for use in a tourism setting, and therefore, Council have assessed that the erection of traditional housing (in place of manufactured homes) does not present any greater policy departure than is already presented by DA 18/16.

## **2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

Alternative approaches to rezoning to achieve the objective of traditional residential development on the subject land were not outlined for consideration in the submitted Planning Proposal. However, Council can confirm that the following options were considered;

1. Consideration was given by Council to lodge an objection under Section 82 of the Local Government Act 1993 to the requirements of Section 135 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.
  - This is not favourable due to the intent of the planning proposal is for lot owners to be able to construct traditional dwellings on the lots.
  - The intention was that traditional dwellings are subject to more vigorous 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.
2. Consideration to land uses that would be permitted if the land zoning were changed to R1
  - The land has been subdivided already into 16 lots, with building envelopes included on the titles of each lot.
  - In the unlikely event that a land owner wishes to pursue any other land use permitted within the R1 zone of the Wakool LEP, they would be limited via access, community title arrangements, flooding, and development consent approval from Council.
  - 'Home occupations' falls under permitted without consent within the R1 zone. The definition is very prescriptive and outlines the activity must not involve "interference with the amenity of the neighbourhood". Council is satisfied that this land use would not be inappropriate in this setting.
3. Consideration to apply for an 'additional permitted use' for a dwelling house on each lot under Schedule 1 of the Wakool LEP.
  - This approach is not favourable considering the number of lots in the subdivision, a rezoning seems to be a more strategic approach. In addition, Council is satisfied that the land uses under the R1 zoning are compatible with the subject site and do not present a major departure from the current RE2 land use zoning.

## **SECTION B – RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK**

### **3. Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?**

The Draft Murray Regional Strategy 2009-2036 has been superseded by the Riverina Murray Regional Plan 2036.

**4. Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?**

Council notes that most of these objectives referenced from the Community Strategic Plan could be arguably achieved by the land staying as RE2 zoning and the manufactured homes being constructed as approved. Only objective 1.3.5 relating to greater housing choice is achieved through rezoning to R1, as traditional dwellings and manufactured homes will both be permissible with consent.

There is only anecdotal evidence to back the claim of demand of traditional dwellings in the area. However, Council understands that a single landowner of the balance of residential zoned land in Murray Downs is not actively pushing for release of residential land due to business interests in close proximity.

Also Council notes that there is only one rural zoned property that exists between the subject lots and the existing residential zoned land that is unlikely to change zoning due to its State Heritage listing of the Murray Downs Homestead.

Council are to undertake a housing strategy to review the existing supply and demand of housing across the LGA. Murray Downs will be included in this review.

**5. Is the planning proposal consistent with applicable State Environmental Planning Policies?**

The applicant did not provide any assessment against State Environmental Planning Policies (SEPPs). Council makes the following comments regarding applicable SEPPs. SEPPs which have not been referenced in the below list have been assessed as 'not applicable'.

State Environmental Planning Policy	Comment
Murray Regional Environment Plan (REP) No 2	<p>The subject site is mapped as Murray Regional Environmental Plan 2 – Riverine Land. It is considered that the proposal complies with the objectives of the Murray Regional Environmental Plan No 2 – Riverine Land.</p> <p>Development approval already exists for the manufactured home estate to operate on this land, therefore it is considered that there is no greater impact for this land to be rezoned for residential purposes. The inconsistency with the Specific Principles of Section 10 has already occurred with the development consent creating lots along the riverfront on flood prone land and alienating the public from accessing the water at this location. As discussed above, by rezoning the land to residential to be able to allow traditional dwellings also enables Council to set finished floor levels to reduce flood risk through the DA process.</p> <p>The proposal does not seek to amend the building envelopes or the 40m river front setback identified in the existing development consent.</p>
SEPP No 21 – Caravan Parks	<p>The existing development consent allows for a manufactured homes estate. The planning proposal is seeking to rezone the land to allow for consent for traditional dwellings to be sought. Caravan Parks will remain permissible with consent under the proposed R1 zone.</p>
SEPP No 33 – Hazardous and Offensive Development	<p>The planning proposal does not seek to deviate from any relevant SEPP aims, strategies,</p>

State Environmental Planning Policy	Comment
	development consent, land assessment or location provisions. It is believed that the land has not been used for hazardous or offensive industry and will be rezoned to a residential zone which does not allow development for the purposes of a potentially hazardous or offensive industry.
SEPP No 36 – Manufactured Home Estates	The planning proposal is seeking to rezone the land to allow for consent for traditional dwellings to be sought. The R1 zone still allows for Caravan Parks and therefore manufactured home estates would still be permissible with consent.
SEPP No 55 – Remediation of Land	There is no information available that would indicate that the property is subject to contamination. The land is not in an investigation area as determined under the <i>Contaminated Land Management Act 1997</i> . The Planning proposal is considered consistent with the objectives of the SEPP. Any future DA lodged will be assessed against this SEPP as part of the determination process.
SEPP (Exempt and Complying Development Codes) 2008	The planning proposal does not seek to deviate from any relevant SEPP aims and functions with respect to exempt and complying development provisions.
SEPP (Infrastructure) 2007	The planning proposal does not seek to deviate from any relevant SEPP aims, and/or requirements relating to infrastructure.
SEPP (Koala Habitat Protection) 2019	Noted. Murray River Council is listed in Schedule 1 as an effected Local Government Area and this policy applies. The subject land is not considered core koala habitat, is not known to contain any existing koala habitat, and is considered unlikely to support future Koala habitat given the characteristics of the site and surrounding land. The existing titles for the subject land include building envelopes. These were applied to the titles as a result of the DA for the manufactured home estate, to achieve protection of vegetation. These building envelopes will continue to be enforced as part of any DA considered for the existing lots.
SEPP (State and Regional Development) 2011	Noted. The subject proposal is not considered to be State significant development or Regionally significant development.
SEPP (Vegetation in Non-Rural Areas) 2017	The proposal does not involve the removal of any vegetation from the property. 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.

**Table 1: State Environmental Planning Policy Assessment**

## **6. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 Directions)?**

Council makes the following comments regarding the Directions addressed in the planning proposal.



Direction	Comments
<b>2. Environment and Heritage</b>	
2.1 Environment Protection Zones	The planning proposal does not involve environmental protection zones or land otherwise identified for environment protection purposes. It is unclear as to what the environment protection standards referenced are.
2.3 Heritage Conservation	The planning proposal does not reference the adjoining Murray Downs Homestead (Lot 2, DP 1067731) which is of local and state significance (Wakool LEP, Schedule 5, Item I7).  It is unlikely the planning proposal will have an adverse impact on the adjoining heritage item.
<b>INCLUSION OF:</b> 2.6 Remediation of Contaminated Land	There is no information available that would indicate that the property is subject to contamination. The land is not in an investigation area as determined under the <i>Contaminated Land Management Act 1997</i> .
<b>3. Housing, Infrastructure and Urban Development</b>	
3.4 Integrating Land Use and Transport	It is presumed that the applicant is referring to the proximity of the site to services in Swan Hill by walking or cycling.
<b>6. Local Plan Making</b>	
6.1 Approval and Referral Requirements	While the applicant's comments are not relevant to the criteria for assessment against this Direction, Council wishes to clarify the planning proposal concept and intent was discussed with Department of Planning, Industry & Environment (DPIE) representatives and support was given to lodge the planning proposal. There was no in-principle support given for approval of the rezoning.  The planning proposal does not introduce concurrence, consultation or referral requirements. The planning proposal does not relate to designated development.

## SECTION C – ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT

### 7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

Lots 2 – 7 are partially impacted by the Terrestrial Biodiversity mapping. Future development applications for dwellings on these lots will need to meet the objectives of Section 6.3 - Terrestrial Biodiversity of the Wakool LEP.

Any vegetation proposed to be removed will be assessed against the necessary provisions of this SEPP and the requirements of the Biodiversity Offset Scheme Entry Threshold (BOSET) tool.

As previously noted, building envelopes have been established on the titles to limit the removal of vegetation and contain development into a selected footprint.

## SECTION D – STATE AND COMMONWEALTH INTERESTS

### 10. Is there adequate public infrastructure for the planning proposal?

As described above, Council has no intention of taking over management of the existing road network within the subdivision. The existing infrastructure is considered adequate for the proposed rezoning where the applicants have connection to services at the front of the estate including water and sewer services.

### 11. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

Council has not consulted with NSW Office of Environment and Heritage (or any state agency or referral body) regarding the planning proposal. The applicant's comments referencing "four recommendations as conditions on the consent determination" appear to relate to the subdivision, DA18/16. Council believes given the site has been approved for a similar use on the site (manufactured homes as a type of dwelling), there is unlikely to be any further requirements from referral agencies.

A merit-based assessment will be undertaken for each future development application lodged on site, which will encompass consultation with all relevant agencies and authorities at that time.

As discussed earlier, Council consulted with the Department of Planning, Industry & Environment (DPIE) and support was given to lodge the planning proposal. There was no in-principle support given for approval of the rezoning.

Any other agency consultation required by the Gateway determination will be undertaken as directed.

## PART 4 – MAPS

The submitted planning proposal shows land use zoning of the site and subject surrounds (Map 1) however it does not clearly identify the subject land correctly or adequately. See map below identifying subject land (Lots 1 – 16 DP286903) as RE2.

Note the applicant did not provide mapping for the proposed rezoning to R1 General Residential, this will be provided once Gateway is determined.



Figure 1 - Land use zoning of subject site and surrounding land, (ePlanning Spatial Viewer 2021)



Figure 2 - Subject land Lots 1 - 16 DP 286903, (ePlanning Spatial Viewer 2021).

## PART 5 – COMMUNITY CONSULTATION

As discussed earlier, Council consulted with the Department of Planning, Industry & Environment (DPIE) and support was given to lodge the planning proposal. There was no in-principle support given for approval of the rezoning.

It is noted that the community consultation for the preparation of the Community Strategic Plan and LSPS did not specifically look at this site, and therefore is irrelevant to this planning proposal.

Consultation will be carried out in accordance with the requirements set out in the EP&A Act and Regulation. The proposed consultation strategy for this proposal will include:

- Written notification to landowners adjoining the subject land;
- Public notices to be provided in local media, including the local newspaper and Council's website;
- Copies of the planning proposal and supporting material in Council public buildings;
- Electronic copies of all documentation to be made available on Council's website

The Gateway determination will confirm public consultation requirements.

At the conclusion of the public exhibition period Council staff will consider submissions made with respect to the Planning Proposal and prepare a report to Council.

## PART 6 – PROJECT TIMELINE

Council provides the revised project timeline in line with the estimated 6 months timeframe from the applicant.

Milestone	Anticipated timeline
Planning Proposal and report heard at Council meeting for endorsement	23 February 2021
Endorsed proposal forwarded to DPIE for assessment	1-2 weeks post Council endorsement at February meeting (March 2021)
Assessment of proposal by DPIE and issue of Gateway	1 month (or as advised by DPIE) (March – April 2021)
Amendment to proposal if required and subsequent reporting to DPIE	1-2 weeks (April – May 2021)
Public consultation (including any required agency referral) in accordance with Part 5 of this proposal and the Gateway determination	1 month (May – June 2021)
Dates for public hearing (if required)	Not anticipated to be required.
Post exhibition review and reporting	2 weeks (July 2021)
Drafting of mapping	Beginning immediately following issue of Gateway determination
Legal drafting of the LEP	2 weeks (July/August 2021)
Making of the LEP	2 weeks (July/August 2021)
Notification of the LEP	1 day (August 2021)

## ATTACHMENT A – CONSISTENCY WITH THE RIVERINA MURRAY REGIONAL PLAN

### Directions 14 & 15

These responses in the original planning proposal do not explain how the planning proposal will increase/improve development standards and the claim of subsequent increased protection of environmental assets.

The intention was that traditional dwellings are subject to more vigorous development standards (higher level of engineering requirements for housing foundations) and regulations than a manufactured home installation.

## **Direction 16**

This response is in contradiction to the assessment against Direction 4.3 Flood Prone Land (pg.9).

As per the Murray Downs Floodplain Risk Management Study and Plan, the mapping covers the 1% ARI flood level plus the 500mm freeboard based on the assumption that the levee will fail past a certain point.

Please see Notation 1 from Figure A1 of the Murray Downs Floodplains Risk Management Study and Plan:

*“Flood Planning Area coincides with the area below the 100-year ARI flood plus 0.5 metres and an assumption that the existing levees breach once the flood level reaches 0.2 metres below the 2013 surveyed levee crest level”.*

At the time of this report, *flood planning level* means the level of a 1:100 ARI flood event plus a minimum 0.5 metre freeboard.

A Manufactured Home Estate was in Council’s opinion incorrectly approved on flood liable land. Council is now trying to ensure that future dwellings are designed appropriately to reduce flood risk, that includes control over foundations of the dwellings to withstand flood waters as per the National Building Code requirements. It is anticipated that determinations for dwelling houses will include consent conditions requiring the construction of all habitable areas above the minimum flood planning level.

Therefore, Council considers the building of traditional dwellings via the development application and construction certificate processes a consistent and preferable approach to reduce flood risk. This would provide a level of protection and somewhat mitigate the flood risk to some degree from a Council, community and lot owner perspective. As traditional dwellings require high engineering requirements for foundations in flood liable areas, where Manufactured Homes do not have the same requirement.

Council also believes that the levee protection structures are of mixed standard and therefore caution will be applied in relation to the flood risk being assessed and managed at the time future development applications are lodged.

Council have advised prospective landowners at this site that the flood planning level would be 68.7 AHD, being the flood height of 68.2 AHD plus 0.5m freeboard based on Murray Downs Floodplains Risk Management Study and Plan (see Figure D1 of that plan – 100 Year ARI Flood Event Levee Breach conditions).