



Planning,
Industry &
Environment

IRF21/4859

Gateway determination report – PP-2021-7085

Rezone land from RU1 Primary Production to IN1
General Industrial and amend the minimum lot size for
Lot 11 DP748011 and a part of Lot 16 DP835451

December 2021



Published by NSW Department of Planning, Industry and Environment

dpie.nsw.gov.au

Title: Gateway determination report – PP-2021-7085

Subtitle: Rezone land from RU1 Primary Production to IN1 General Industrial and amend the minimum lot size for Lot 11 DP748011 and a part of Lot 16 DP835451

© 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 (December 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	Planning proposal.....	1
1.1	Overview.....	1
1.2	Objectives of planning proposal	1
1.3	Background	1
1.4	Explanation of provisions	2
1.5	Site description and surrounding area.....	2
1.6	Mapping.....	4
2	Need for the planning proposal	5
3	Strategic assessment	6
3.1	Regional Plan	6
3.2	Local.....	6
3.3	Section 9.1 Ministerial Directions	7
3.4	State environmental planning policies (SEPPs)	9
4	Site-specific assessment	10
4.1	Environmental.....	10
4.2	Social and economic.....	10
4.3	Infrastructure	10
5	Consultation.....	11
5.1	Community	11
5.2	Agencies.....	11
6	Timeframe	11
7	Local plan-making authority	11
8	Assessment summary	11
9	Recommendation.....	12

Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Planning Proposal - Murray Downs dated September 2021
Council Minutes 24 March 2020 – Minutes of Ordinary Council Meeting and resolution
Council Agenda 24 March 2020 – Agenda of Ordinary Council Meeting

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Murray River Council
PPA	Murray River Council
NAME	Rezone land from RU1 Primary Production to IN1 General Industrial and amend the minimum lot size for Lot 11 DP748011 and a portion of Lot 16 DP835451
NUMBER	PP-2021-7085
LEP TO BE AMENDED	Wakool Local Environmental Plan 2013 (WLEP 2013)
ADDRESS	51 Swan Hill Road and Cygnet Lane, Murray Downs
DESCRIPTION	Lot 11 in DP748011 and a part of Lot 16 in DP835451
RECEIVED	26/11/2021
FILE NO.	IRF21/4859
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

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal. The proposal intends to amend the WLEP 2013 as follows:

- Rezone land zoned RU1 Primary Production to IN1 General Industrial land consistent with the existing industrial zoning of land adjoining the site.
- Amend the minimum lot size map from a 500 hectare minimum lot size to no minimum lot size for subdivision consistent with the minimum lot size controls for the adjoining industrial sites.

The objectives of this planning proposal are clear and adequate.

1.3 Background

In April 2020, Council considered a planning proposal to rezone Lot 11 DP748011 from RU1 Primary Production to IN1 General Industrial use. Council resolved to support the planning proposal, provided the planning proposal be amended to include a part of Lot 16 DP 835451. This assessment report undertakes a review of the amended planning proposal which includes a part of Lot 16 DP 835451.

1.4 Explanation of provisions

The planning proposal seeks to amend the Wakool LEP 2013 per the changes below:

Table 3 Current and proposed controls

Control	Current	Proposed
Zone	RU1 Primary Production	IN1 General Industrial
Minimum lot size	500 hectares	Nil

The planning proposal (page 5) contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

1.5 Site description and surrounding area

The planning proposal applies to Lot 11 DP 748011, known as Cygnet Lane and a part of Lot 16 DP 835451, known as 51 Swan Hill Road, Murray Downs (hereby referred to as 'the site').

The site is about 3ha in size and is currently used for cattle grazing, does not contain any dwellings or structures, is cleared and has no trees.

The site is located 2km east of Swan Hill. The site is surrounded by pastoral lands, rural dwellings and land used for broadacre rural activities to the north, south and east. To the immediate west of the site, fronting Swan Hill Road, is an industrial estate comprising small and medium lot industries (**Figure 2**). Further west, across the Murray River and the NSW border, is the City of Swan Hill.

Figure 3 shows the zoning of the site and surrounding area.



Figure 1 Subject site (source: Council's planning proposal report, 2021)



Figure 2 Site context (source: Council's planning proposal report, 2021)

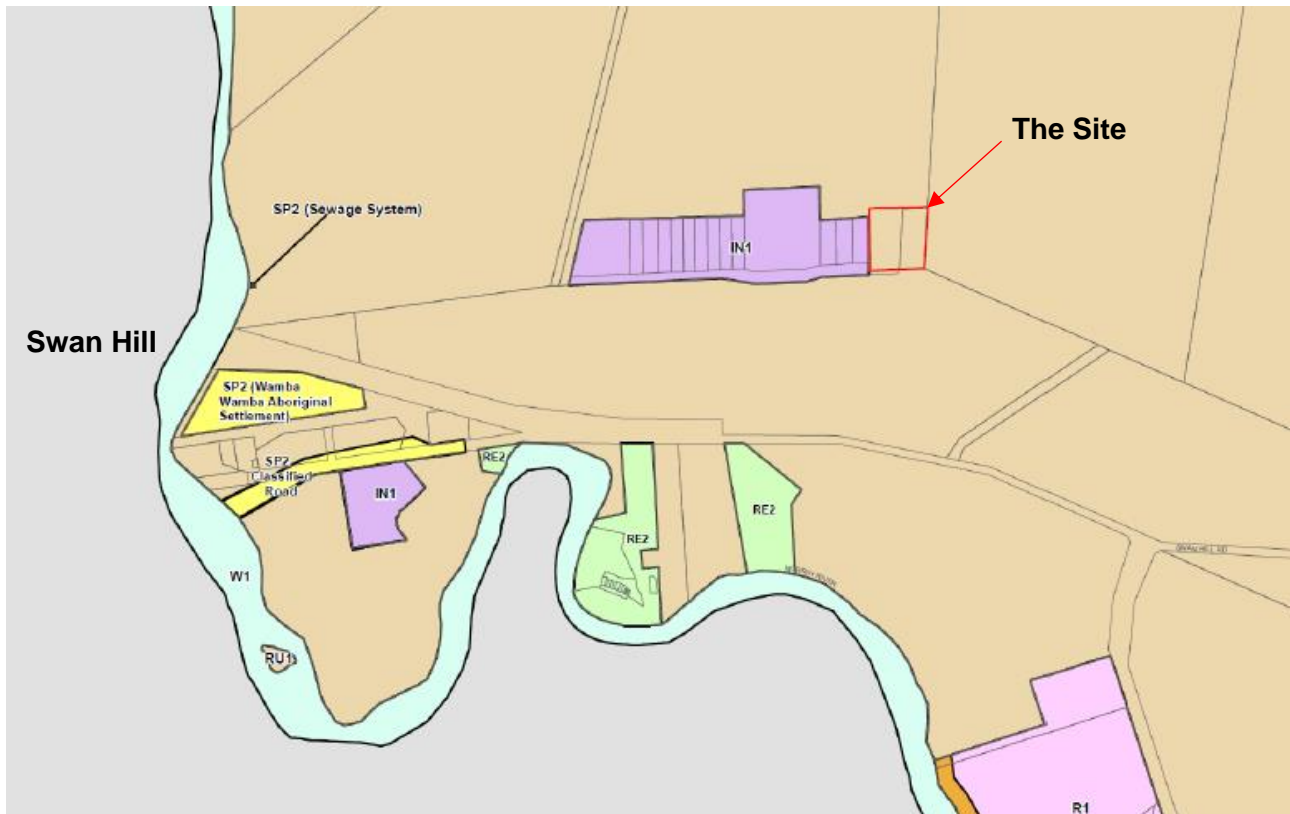


Figure 3 Existing land use zone map (source: Council's planning proposal report, 2021)

1.6 Mapping

The planning proposal includes mapping showing the proposed changes to Wakool LEP 2013 Land Zoning Map LZN_005B and the Minimum Lot Size Map LSZ_005B. The maps, shown in **Figures 3** and **Figure 4**, are suitable for community consultation.

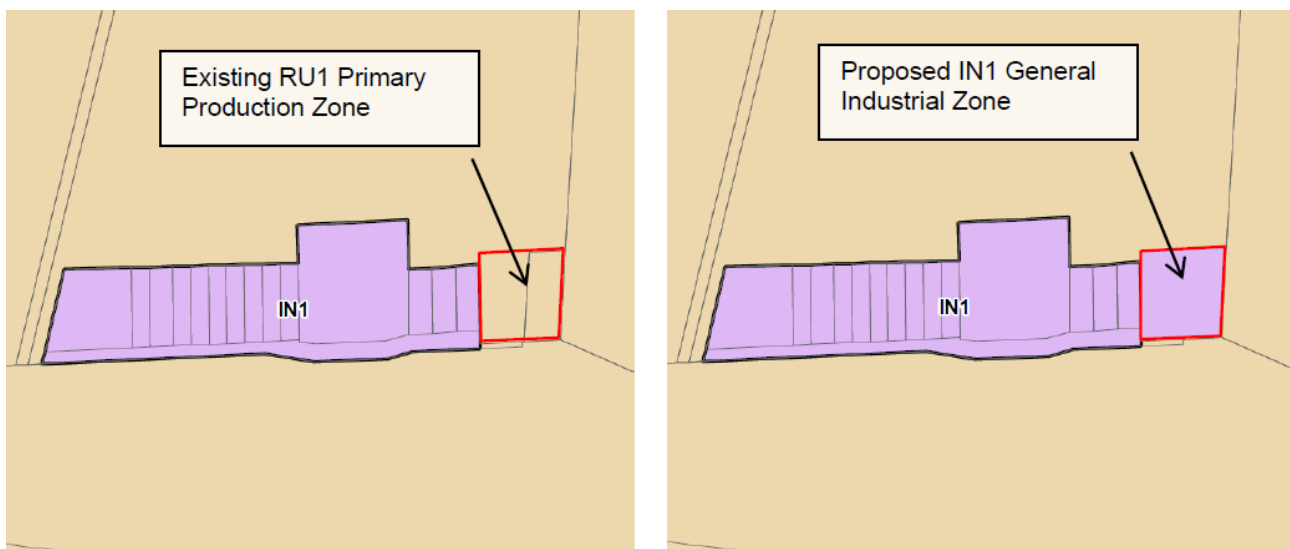


Figure 4 Existing and proposed zoning map changes

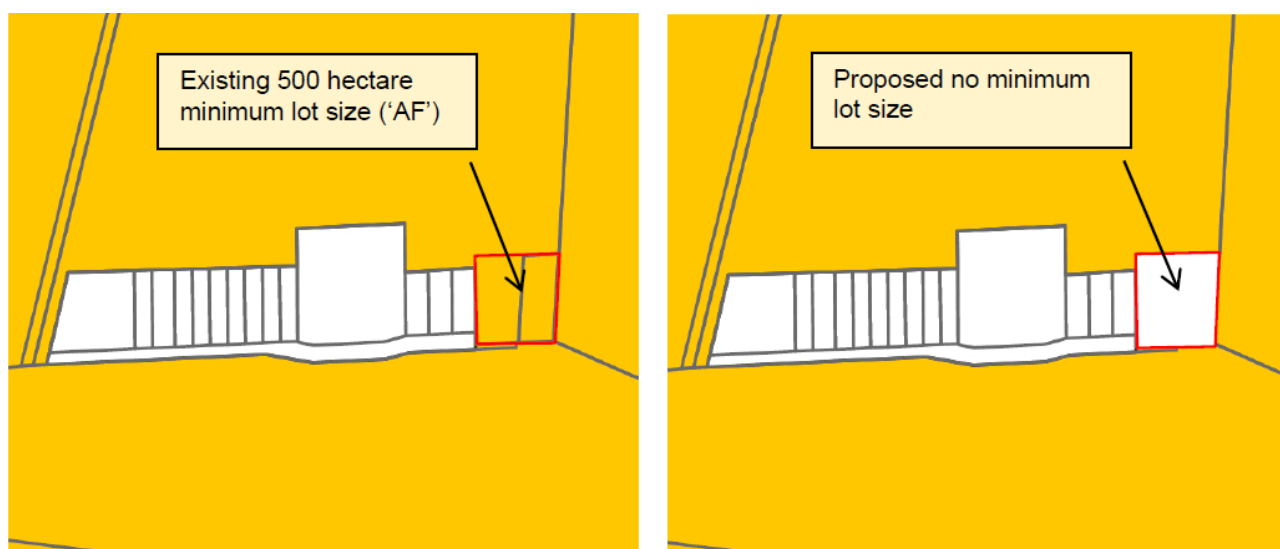


Figure 4 Existing and proposed minimum lot size map changes

2 Need for the planning proposal

Justification for the proposed amendment has been provided in Section 5, page 5 of the planning proposal.

The amendments sought by the planning proposal responds to a need identified by Council, for industrial zoned land and lack of supply in the area. The amendments are not supported by a particular strategic study to justify the need or appropriateness of the proposed rezoning and lot size amendment.

The Department however notes that the proposal is broadly consistent with the Murray River Local Strategic Planning Statement (LSPS) which identifies a shortage of industrial and employment lands in Murray Downs and surrounds. Action 3.2 in Council's LSPS acknowledges the need to review the relevant LEP to promote opportunities for employment uses including industrial and manufacturing uses. Action 3.1 of the LSPS calls for the preparation of an employment lands study to help identify demand and suitable locations for employment and industrial uses in the area.

The planning proposal sets out that additional industrial land, particularly industrial zoned land in proximity to Swan Hill, is immediate and cannot wait for Council to complete the employment study or other relevant reports.

The Department acknowledges that the site is the only remaining RU1 primary production use on the Swan Hill Road frontage with the remainder of lots currently zoned IN1 General Industrial and developed for general industrial uses. It is more desirable to develop the site for industrial uses in this case.

3 Strategic assessment

3.1 Regional Plan

The planning proposal has undertaken an assessment against the Riverina Murray Regional Plan on pages 6-7.

Table 4 provides an assessment of the planning proposal against relevant aspects of the regional plan.

Table 4 Regional Plan assessment

Regional Plan Objectives	Justification
Direction 1 – Protect the region's diverse and productive agricultural land	While the amendments are inconsistent with this direction, Council's planning proposal indicates that the site adjoins an industrial estate that has evolved along Swan Hill Road. The smaller lot size of Lot 11 and its proximity to existing industrial uses makes it less ideal for productive agricultural uses. Impact on agriculture and the justification to rezone the land against the applicable rural directions is to be considered on balance in that there is a proposed loss of approximately 3ha of rural land against the ample availability of rural land in this area.
Direction 3: Expand advanced and value-added manufacturing	The planning proposal will rezone the land to general industrial, enabling the use of the site for a variety of light or rural industrial uses. The Department acknowledges that the site's proximity to productive agricultural land to the east and its co-location with other existing industrial uses that form a part of an industrial estate, also present opportunities for collaboration and value-added manufacturing which is desirable and in keeping with the direction.
Direction 24 – Create a connected and competitive environment for cross-border communities.	The planning proposal notes that the rezoning is the result of a shortage or lack of this type of industrial zoned land in Murray Downs and Swan Hill area. The Department acknowledges that the rezoning would support the cross-border towns by accommodating new industrial uses adjacent to an existing industrial estate in Murray Downs. The site is thereby considered to be in an optimal location for industrial zoned.

3.2 Local

Council's assessment report (page 131) demonstrates the proposal's consistency with relevant local plans and endorsed strategies. The planning proposal report has not addressed the endorsed Murray River Council Local Strategic Planning Statement 2020 -2040 (LSPS) and the Department endorsed Wakool Shire Land Use Strategy 2010. The Department recommends a condition as part of the Gateway Determination for the planning proposal to be updated to reference these local strategies.

Notwithstanding, the Department having considered the proposal against the relevant local strategies find it consistent with the following strategic directions and objectives, as stated in Table 5 below.

Table 5 Local strategic planning assessment

Local Strategies	Justification
Murray River Council Local Strategic Planning Statement 2020 - 2040	<p>The planning proposal is broadly consistent with the LSPS which recognises a shortage of industrial and employment lands in Murray Downs and surrounds. Specifically, the planning proposal aligns with the following priorities and actions of the LSPS:</p> <ul style="list-style-type: none"> • Priority 3 – Create an ‘open-for-business’ identity <ul style="list-style-type: none"> – Action 3.2 – Develop an LEP which better facilitates business and employment growth opportunities including for the agribusiness, manufacturing, retail, healthcare and support services, retail and hospitality industries and sectors. – Action 3.4 – Investigate releasing and/or redeveloping commercial/industrial land in Barham and Murray Downs
Wakool Shire Land Use Strategy 2009 and Supplementary Information	<p>This strategy was endorsed by the Department on 24/03/2011. While this is a dated local strategic planning document, it does identify future land use options for Murray Downs. The strategy identifies additional development opportunities for industrial land uses in Murray Downs although not the site at that time.</p>
Murray River Council Community Strategic Plan 2018 - 2028	<p>The planning proposal is consistent with this plan and gives effect to the following objective and strategy:</p> <p>Objective 4.1 - Encourage and support economic development across a range of sectors</p> <p>Strategy 4.1.3 - Identify new opportunities and actively encourage investment in agriculture, agribusiness, value added manufacturing [...]</p>

3.3 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 6 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Business and Industrial Zones the aim is to encourage employment growth in suitable locations	Yes	<p>The proposal is in keeping with this direction as it identifies demand for industrial zoned land in the Murray Downs area and will facilitate delivery of industrial lands in suitable locations to ensure economic growth in the area is not hampered. The site is considered a suitable and logical location relative to alternate sites in the area given its proximity to the existing Murray Downs industrial estate.</p>

1.2 Rural Zones and 1.5 Rural Areas. The aim is to protect the agricultural production value of rural land.	No	<p>The planning proposal is inconsistent with both Directions as it seeks to rezone rural land (RU1 Primary Production). The proposal's inconsistency with these Directions is of minor significance for the following reasons:</p> <ul style="list-style-type: none"> • in keeping with the directions and actions of the Riverina-Murray Regional Plan 2036 and the endorsed LSPS. • the site is currently being used for grazing cattle and not for high value productive agricultural uses. The site and adjoining rural zoned land are identified as Class 5 and 6 on the NSW Land and Soil Capability which means land has restricted agricultural capability and therefore unsuitable for high value agricultural production. • The planning proposal submits that there are very limited opportunities to develop this land for agricultural purposes due to the minimal size of the land (only 3ha) and its proximity to adjoining industrial developments. • Rezoning the site to be consistent with the adjoining IN1 General Industrial use may reduce any potential land use conflicts.
2.6 Remediation of Contaminated Land. The aim is to reduce the risk of harm to human health & the environment.	No	<p>The planning proposal notes that the site is used for intermittent grazing of cattle, and historically used for broadacre agriculture. Under Table 1 of the contaminated land planning guidelines, agricultural activity is identified as a use that may cause contamination of land. A Preliminary Site Investigation (PSI) Report is required to accompany a planning proposal for rezoning of any such land under this Direction.</p> <p>The Department recommends a condition in the Gateway Determination requesting a preliminary contamination investigation is undertaken to satisfy Council the subject land is suitable or can be made suitable prior to the exhibition of the planning proposal in keeping with the requirements of this Direction.</p> <p>The proposal is inconsistent with this Direction at this time.</p>
3.4 Integrating Land Use and Transport. The aim is to ensure urban development achieves specified planning objectives.	Yes	<p>The site is well connected and accessible by local and regional roads for movement of freight. Noting the site's proximity to agricultural lands, other complementary industrial uses and consumers (rural townships and regional centres), the proposed IN1 General Industrial zoning will encourage value add manufacturing and efficient supply chain movements, broadly in keeping with the objectives of this Direction.</p>

4.3 Flood Prone Land. The aim is to ensure development of flood prone land is undertaken in an appropriate manner.	No	<p>The planning proposal submits that the site is not flood prone land under the Wakool LEP but identified as flood liable land under the Wakool DCP.</p> <p>The proposal indicates that the subject land is located on the edge of the designated flood prone area and is not classified as being 'high hazard' or being located within a 'floodway'.</p> <p>The Department notes that the subject land is identified as being flood prone under the Wakool DCP 2013 and the Murray Downs Floodplain Risk Management Study and Plan dated January 2017. The Department recommends a condition be included in the Gateway determination that Council address the site against the Wakool DCP 2013 and the Murray Downs Floodplain Risk Management Study and Plan and be satisfied that the proposal will not increase the flood hazard. The proposal is inconsistent with this Direction at this time.</p>
5.10 Implementation of Regional Plans. The aim is to give legal effect to the Regional Plans.	N/A	The proposal is largely consistent with the Direction (see discussion in Section 3.1 of this report).
6.1 Approval and Referral Requirements. The aim is to ensure LEP provisions encourage efficient and appropriate assessment of development	N/A	The proposal is consistent with the Direction as it does not intend to introduce any new referral or consultation requirements.
6.2 Reserving Land for Public Purposes. The aim is to reserve land for public purposes and facilitate the removal of reservations where land is no longer required for acquisition.	Yes	The Direction applies to all planning proposals. The proposal is consistent with the Direction as it does not intend to create, alter or reduce land reserved or zoned for public purposes.

3.4 State environmental planning policies (SEPPs)

The planning proposal identifies SEPPs that apply to the proposal and provides an assessment of the proposal's consistency with the SEPP on pages 17-18. SEPPs considered relevant to the planning proposal are:

- SEPP 55 - Remediation of Land

- SEPP (Koala Habitat Protection) 2020 and 2021

The planning proposal is not inconsistent with any of the objectives within the identified SEPPs above. The specific controls and provisions in each of the SEPPs are not relevant to determining the strategic or site-specific merit of the planning proposal and may be considered as part of any future development applications on the land.

4 Site-specific assessment

The planning proposal provides site-specific assessment of the proposal in Section C, pages 7-8. This matter has been adequately addressed.

4.1 Environmental

The planning proposal is not located on bush fire prone land and does not contain any heritage listed items. Potential environmental impacts associated with the proposal are discussed in the table below.

Table 7 Environmental Impact Assessment

Environmental Impact	Assessment
Flooding	As discussed in Section 3.3 of this report, the subject land forms a part of the flood planning area under the Wakool DCP 2013 and the Murray Downs Floodplain Risk Management Study and Plan dated January 2017. A condition is recommended as part of the Gateway Determination that Council assess the site against the flood considerations and be satisfied that the proposal will not increase the flood hazard.
Contamination	A Preliminary Site Investigation (PSI) Report is required to accompany a planning proposal for rezoning of land on which agricultural activities such as broadacre agriculture have been carried out. The Department recommends a condition requesting a preliminary contamination investigation is undertaken to satisfy Council the subject land is suitable or can be made suitable for the proposed future industrial use.

4.2 Social and economic

The proposal will provide the following social and economic benefits:

- ensure economic growth is not hampered due to limited availability of industrial zoned land
- create opportunities for value added manufacturing in the region, in addition to potential synergies between other existing industrial uses in proximity to the proposal
- increase jobs (construction and operational) in the region

4.3 Infrastructure

Page 8 of the planning proposal advises that the proposal will have access and can be serviced by all essential services and utilities infrastructure. The site adjoins an existing industrial estate and all infrastructure required to service an industrial use can be made available to the subject land.

5 Consultation

5.1 Community

Council proposes a public exhibition period of 28 days.

The exhibition period proposed is considered appropriate and forms part of the conditions in the Gateway determination.

5.2 Agencies

The proposal does not specifically raise which agencies will be consulted. Consultation with agencies is not considered warranted.

6 Timeframe

Council proposes a 6 month time frame to complete the LEP (page 11).

The Department recommends a condition in Gateway requesting the timeframe for the planning proposal milestones to be updated prior to exhibition to reflect the status and timing of the report.

The Department considers that nine (9) months from Gateway determination is sufficient and will provide Council adequate time for Council to satisfy the conditions, having regard to the Christmas break and to complete the LEP given a commitment to reduce processing times.

A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

As the site/planning proposal is of local and low risk nature the Department recommends that Council be authorised to be the local plan-making authority for this proposal. Council advises that the land is privately owned.

8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- The planning proposal provides positive social and economic outcomes for Murray Downs and surrounds by addressing the current shortage and lack of supply of industrial zoned lands in the local region.
- Capability of the subject land for high value agricultural uses in keeping with its current zoning (RU1 Primary Production) is limited owing to the small site area and soil capability.
- The proposal is consistent with relevant local plans, the regional plan and SEPPs.
- While the planning proposal is not supported by a local employment study, the planning proposal notes that it responds to the immediate need for industrial zoned land in the local area and waiting for a region wide employment study would not address the current shortage.

As discussed in the previous section 2, prior to community consultation Council is to prepare an addendum to the planning proposal to cover the following:

- address the endorsed Murray River Council Local Strategic Planning Statement 2020 – 2040 and acknowledge the endorsed Wakool Shire Land Use Strategy and Supplementary information.

- undertake a preliminary contamination investigation to satisfy Council the subject land is suitable or can be made suitable for the future industrial use.
- assess the subject site against the Wakool DCP 2013 and Murray Downs Floodplain Risk Management Study and Plan dated January 2017.

9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistency with section 9.1 Directions 1.2 Rural Zones and 1.5 Rural Areas are of minor significance; and
- Note that the consistency with section 9.1 Directions 2.6 Remediation of Contaminated Land and 4.3 Flood Prone Land are unresolved at this point and will require further clarification.

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

1. Prior to community consultation the planning proposal dated September 2021 is to be updated and be made available for public exhibition to:
 - a) assess the planning proposal against the endorsed Murray River Council Local Strategic Planning Statement 2020 – 2040 and acknowledge the Wakool Shire Land Use Strategy and Supplementary information as endorsed by the Department on 24 March 2011;
 - b) undertake preliminary contamination investigations to satisfy Council the subject land is suitable or can be made suitable for the future industrial use of the site.
 - c) assess the site against the Wakool DCP 2013 and the Murray Downs Floodplain Risk Management Study and Plan dated January 2017 and Council is to be satisfied that the proposal will not increase the flood hazard.
2. Consultation with agencies is not considered warranted.
3. The planning proposal should be made available for community consultation for a minimum of 28 days.
4. The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination.
5. Given the nature of the proposal, Council should be authorised to be the local plan-making authority



(Signature)

23 December 2021

(Date)

Wayne Garnsey

Manager, Western Region



(Signature)

24 December 2021

(Date)

Garry Hopkins
Director, Western Region

Assessment officer

Joina Mathew
Planning Officer, Western Region
02 82751195