

29 April 2022

Murray River Council  
PO BOX 906  
MOAMA NSW 2731

Attention: Chris O'Brien – Senior Town Planner

**Via Email**

Dear Chris,

**Re: Planning Proposal Addendum – PP-2021-7085  
Cygnet Lane, Murray Downs**

I am writing in response to the Gateway Determination issued by the Department of Planning, Industry and Environment (DPIE) under section 3.34(1) of the *Environmental Planning and Assessment Act 1979* on the 24 December 2021.

The gateway determination contained a number of matters at condition 1 that have been required to be addressed prior to community consultation being undertaken in accordance with section 3.34(2)(c) of the Act. To assist in addressing the matters specified in condition 1 they have been addressed in this letter as an addendum to the original planning proposal submitted to Council.

The gateway determination at condition 1 stated the following.

1. *Prior to community consultation the planning proposal dated September 2021 is to be updated 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; and*
- (c) *assess the site against the Wakool DCP 2013 and the Murray Downs Floodplain Risk Management Study and Plan dated January 2017. Council is to be satisfied that the proposal will not increase the flood hazard.*

These matters have been addressed accordingly below to satisfy the requirements of condition 1.

**1. 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;**

**1.1. Murray River Council Local Strategic Planning Statement**

The Murray River Council Local Strategic Planning Statement 2020-2040 (LSPS) establishes Council's 20-year vision for land use planning and growth focusing on the key themes of social, environmental and economic considerations. The LSPS establishes the community's priorities and aspirations which will guide Council's planning decisions on future land use activities.

The LSPS will inform future reviews of Council's Local Environmental Plan (LEP) and Development Control Plan (DCP), as well as identifying strategic planning investigations required to support future development.

The LSPS is based on three key themes as follows:

- A robust, growing and innovative economy.
- Liveable communities with social capital.
- Environment, heritage and climate change.

**Table 1 – Consideration of the Murray River Council Local Strategic Planning Statement**

Priority	Applicable to the Planning Proposal	Comment
<b>Theme 1 – A robust, growing, and innovative economy</b>		
<b>Priority 1 – Grow, strengthen and sustain agriculture</b>	Yes	<p>The subject planning proposal is consistent with the Murray LSPS as it supports the following actions and objectives of Priority 1 as follows;</p> <ul style="list-style-type: none"> <li>• <i>promote and grow emerging agricultural activities and enterprises</i></li> <li>• <i>encourage agribusiness diversification and value-adding by recognising the range of modern agricultural enterprises and facilitating their growth</i></li> <li>• <i>allow for innovation and the expansion of industries that work in synergy with agriculture</i></li> </ul> <p>As such it is considered to be consistent with the aims and objectives of the priority as the rezoning of the land will enable industries that work in synergy with agriculture and will enable agribusiness diversification as a result. The development that ultimately supports the actions outlined above.</p>
<b>Priority 2 – Grow and strengthen tourism</b>	Not applicable to the subject Planning Proposal	Not applicable
<b>Priority 3 – Create an ‘open-for-business’ identity</b>	Yes	<p>The proposal is consistent with Priority 3 as it will enable Council to actively utilise the land for the use for industrial purposes. The Murray LSPS states that “<i>anecdotal evidence indicates commercial activity is being diverted from Murray Downs to Swan Hill, based on land availability and transport connectivity.</i>” and “<i>Council will investigate the potential to release new industrial and commercial land to attract investment to the area.</i>”</p> <p>Additionally, the LSPS states that to achieve this priority Council will “<i>support the redevelopment or release of land for commercial/industrial use</i></p>

Priority	Applicable to the Planning Proposal	Comment
		<p><i>in Barham and Murray Downs, and provide opportunities different to those provided elsewhere”</i></p> <p>As such it is considered that the subject planning proposal is consistent with the aims and objectives of the priority.</p>

## Theme 2 – Liveable Communities with Social Capital

<b>Priority 4 – Housing growth, supply and density</b>	Not applicable to the subject Planning Proposal	Not applicable
<b>Priority 5 – Recreation and open space</b>	Not applicable to the subject Planning Proposal	Not applicable
<b>Priority 6 – Servicing and utility infrastructure</b>	Not applicable to the subject Planning Proposal	Not applicable as there are no specific matters to be considered by the planning proposal.

## Theme 3 – Environment, heritage, and climate change

<b>Priority 7 – Identify and protect environmental values</b>	Not applicable to the subject Planning Proposal	Not applicable
<b>Priority 8 – Celebrate culture and heritage</b>	Yes, as consideration of matters regarding Aboriginal Cultural Heritage is required under the NSW <i>National Parks and Wildlife Act 1974</i> .	<p>The Planning Proposal is consistent with the vision and actions of this Planning Priority as consideration of Aboriginal Cultural Heritage Values has been undertaken.</p> <p>Following a review of the subject, the likelihood of items of Aboriginal Cultural Heritage being present on-site is considered low as the subject land is heavily disturbed and does not contain any identified landscape features.</p>
<b>Priority 9 – Climate change and natural hazards</b>	Applicable to the subject Planning Proposal as the land is identified as being partially flood prone.	The planning proposal is considered to be consistent with this priority as development of the site would not exacerbate the risk of flooding or impact of flooding. Any development proposed could appropriately mitigate the impacts of flooding through an appropriately designed and considered development.



## 1.2. The Wakool LEP Review – Land Use Strategy Report 2009

The Wakool LEP Review – Land Use Strategy Report 2009 (the Wakool LUS) recognises that *“there is currently limited industrial activity located on the northern side of the main road connecting the township with Swan Hill; there has been limited development activity in this precinct following initial development. However, it may be the case that this is due to the lack of well located and serviced industrial land. A Crown owned travelling stock route (TSR) occupies land between the existing industrial activity and the main road. There is potential for additional industrial activity to be accommodated on this land; it provides a high level of visibility from the main road and is easily accessible from Swan Hill.”*

The Wakool LUS advocates (Section 5.4.3) for opportunities for additional industrial and commercial activities to be made available. The Planning Proposal will facilitate the eventual use of this land as industrial land and is therefore considered consistent with the outcomes of the Wakool LUS. There is no site-specific strategy or goals identified for this area within the Wakool LUS.

## 2. 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; and

Contamination is required to be addressed as a matter of consideration when preparing a planning proposal as referenced in a number of documents and legislation applying to the rezoning process. Contamination was addressed in the Planning Proposal with reference to former *State Environmental Planning Policy No.55 (Remediation of Land)*. To elaborate on the comments already provided reference has been made to Clause 4.4 of the Section 9.1 Directions which requires consideration of contaminated land when a planning proposal is prepared. The matters outlined in the direction were not in place at the time the planning proposal was prepared. Under the current version of the 9.1 direction clause 44 requires that planning proposals prepared must address the following matters;

- (a) *land that is within an investigation area within the meaning of the Contaminated Land Management Act 1997,*
- (b) *land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*
- (c) *the extent to which it is proposed to carry out development on it for residential, educational, recreational or childcare purposes, or for the purposes of a hospital – land:*
  - (i) *in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*
  - (ii) *on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).*

The Planning Proposal is considered to be consistent with this direction as:

- the subject land is not identified as an investigation area under the Contaminated Land Management Act 1997, and
- any future development of the land will not be for residential, educational, recreational or childcare purposes, or for the purposes of a hospital.
- The land has previously been used for a purpose (agriculture) which is referred to in Table 1 of the contaminated land planning guidelines. However, the ongoing use of the land will be for industrial purposes which are considered to be generally more contaminating than broadacre agriculture.

To further confirm the previous use and operation of the land a review of historical aerial photography also found that no previous contaminating uses or potentially contaminating uses were present at the site as far back as 1961. Photography was viewed that was dated between 1961, 1976, 1991, 1996 and present-day. It is noted that broad-acre agricultural uses were rarely if not ever undertaken on the land subject to the proposed rezoning.

3. **Assess the site against the Wakool DCP 2013 and the Murray Downs Floodplain Risk Management Study and Plan dated January 2017. Council is to be satisfied that the proposal will not increase the flood hazard.**

### 3.1. **Murray Downs Floodplain Risk Management Plan and Report**

The Murray Downs Floodplain Risk Management Plan and Report (2017) notes that the site is at risk of 'low hazard' flooding. A review of the report and supporting plans notes that it does not recommend the prohibition of industrial development in flood prone areas and sets out recommendations to be considered as part of any development assessment process. The recommendations could be adapted with ease into any future design or development proposed for the subject site. It is therefore considered compliance with these matters would result in an outcome that would not result in the increase in flood hazard.

### 3.2. **Wakool Development Control Plan**

Condition 1(c) of the gateway determination also requires the consideration of the relevant development control plan. In this regard it is noted that the Wakool Development Control Plan (WDCP) is the relevant instrument applying to the land. Whilst it is not common for DCP to be addressed at a planning proposal stage some discussion has been provided for the purposes of satisfying the condition.

- Sections B.2 – Industrial Development & Higher Impact Uses, C.2 – Hazards, C.4 – Access and Parking and C.5.5 – Murray Downs are relevant to the subject site if developed for the purposes of an industrial use. To a lesser extent section b.3 – commercial, retail and other uses, section B.5 – subdivision, section B.6 – other types of development, section C.1 – natural environment, and C.3.2 – indigenous heritage & archaeology may apply to any future development of the property.
- Any future development would need to comply with the relevant controls in the DCP, however at this time no detail is relevant to the assessment of the planning proposal that would require a detailed assessment against the provisions of the DCP. This would be relevant when a development application is lodged subsequent to the finalisation and gazettal of the subject site.
- Where compliance cannot be achieved, the development would be supported by suitable justification for consideration by Council consistent with the *Environmental Planning and Assessment Amendment Act 2012*. The Amendment Act makes it clear that the principal purpose of a DCP is to provide guidance to a consent authority rather than statutory controls. If a development application does not comply with provisions in a DCP, the consent authority must be flexible in the way it applies the controls and allow for reasonable alternative solutions to achieve the objectives of those standards. Planning Circular PS13-003 provides an overview as to what weight should be given to controls within a DCP when assessing development applications

We trust that this provides sufficient information to enable satisfaction of condition 1 of the subject gateway determination.

Should you have any queries please contact the undersigned directly on 6021 0662 or [matt@habitatplanning.com.au](mailto:matt@habitatplanning.com.au).



**Matt Johnson**  
**Senior Town Planner**