

COUNCIL ASSESSMENT REPORT

Panel Reference	2018WES009 DA
DA Number	DA2018/39
LGA	Federation Council
Proposed Development	Proposed Eco-Tourist Facility (Conservation holiday resort of transportable cabins)
Street Address	803 Spring Drive, Corowa
Applicant/Owner	Ben Fryer, Warrawidgee Pty Ltd
Date of DA lodgement	23/2/2018
Number of Submissions	13
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Clause 6: Eco-tourist facilities over \$5 million.
List of all relevant s4.15(1)(a) matters	• Environmental Planning and Assessment Act 1979 • Environmental Planning and Assessment Regulation 2000 • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy No 44—Koala Habitat Protection • State Environmental Planning Policy No 55—Remediation of Land • Murray Regional Environmental Plan No.2 – Riverine Land • Corowa Local Environmental Plan 2012 • Corowa Shire Development Control Plan 2013 • Corowa Shire Developer Contribution Plans 2006
List all documents submitted with this report for the Panel's consideration	1. Draft Determination 2. Development Application and Supporting Documents as originally lodged (Planning Report dated February 2018 with Attachments including Plans, Statement of Environmental Effects, Aboriginal Cultural Heritage Due Diligence, Bush Fire Assessment Report, Flora & Fauna Assessment, Water & Sewerage Infrastructure, Opportunities & Constraints Analysis, Landscape Plans) 3. Additional Information lodged 18/12/18 including cover letter dated 6 December 2018, Contour Plan, Draft Biodiversity Conservation Trust Management Plan, Revised Development Master Plan (including staging plan), Revised Landscape Master Plan, Draft Recommendations for Warrawidgee Island Ecological & Cultural Heritage Assessment 2017, Aboriginal Cultural Heritage Assessment - advice, Ozzi Kleen Sewerage Treatment System – technical specification, Traffic Impact Assessment Report, Feasibility Study, Management Plan, Water Licence – details, Flood Plan map, Stormwater Drainage Strategy, Revised Bush Fire Assessment. 4. Agency Referral Responses 5. Community Consultation Responses 6. Site Location, Aerial and Zoning Maps
Report prepared by	G Salvestro
Report date	23 April 2019

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not Applicable**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Not Applicable**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **No**

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report.

ASSESSMENT REPORT

1. Executive Summary

1.1. Reason for Report

The application has been referred to the Planning Panel as the development is for the purpose of an eco-tourist facility that has a capital investment value (CIV) of more than \$5 million, as required under Clause 6 of Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011. The application form indicates a CIV of \$10 million.

1.2. Proposal

The proposal is described as an Eco-Tourist Facility (Conservation holiday resort of transportable cabins) comprising 165 tourist accommodation type buildings, associated recreation and ecological/cultural activities/works to be constructed over 6 stages. The accommodation includes 60 traditional caravan and camping sites, 30 manufactured cabins (cottages), 14 single room safari tents, 33 eco-cottages, 6 self-contained lodges and 22 eco-studios.

1.3. The Site

The subject site is a 316.2 hectare parcel described as Lot 3 DP791136, known as "Warrawidgee" 802 Spring Drive, Corowa, and is split into 2 parts by Boiling Down Creek. The northern part comprises 70.8 hectares and the southern (island) part comprises 245.4 hectares. The site is located approximately 7.5km west of the town centre of Corowa and is zoned E3 Environmental Management.

1.4. Evaluation

S4.15 matters have been considered and the main issues summarised as follows:

- SEPPs 44 & 55 are not satisfied.
- MRP No2 is not satisfied.

- CLEP2012 is not satisfied in respect of permissibility, meeting the objectives of the E3 Zone, satisfying clauses 5.10, 5.13, 7.4, 7.5, 7.6, 7.7 and 7.9.
- DCP provisions are not all satisfied.
- The likely impacts of the proposal are considered, in general, not satisfactory.
- The site is generally not suitable for the proposal in its current form.
- There were 13 submissions from the local community objecting to the proposal and 8 agency responses that have raised various areas of concern in relation to the proposal.
- The public interest has not been satisfied.

1.5. Conclusion

Following assessment of the proposal and having regard to the matters for consideration under section 4.15 of the Environmental Planning and Assessment Act 1979, the proposed development is recommended for refusal for reasons as outline in the assessment report.

2. **Proposal Details**

- 2.1. The proposal involves the establishment of an eco-tourist facility across a 316.2-hectare parcel of land traversed by Boiling Down Creek. The northern part of the site will include the following accommodation components as shown on the submitted plans:

- 60 x traditional caravan and camping sites
- 30 x manufactured cabins (cottages) – 17 x 2 bed and 13 x 3 bed configuration
- 14 x single room safari tents with ensuite
- 33 x 2 bedroomed environmentally sustainable cottages
- 6 x self-contained 4 bedroomed lodges for groups
- 22 x environmentally sustainable single bedroomed eco-studios

A total of 165 tourist accommodation type buildings are proposed with an approximate potential to accommodate between 520 to 600 persons based on the information provided in the submitted documents, noting the variable accommodation configurations of traditional caravan and camping sites. The DA documentation indicates that all the buildings will be transportable/movable type, with the exception of the existing structures.

- 2.2. Other proposed site features and amenities to be located on the northern part of the site include:

- Reception and managers residence with boom gate
- 2 x swimming pools
- Day spa
- Gym
- BBQ area and camp kitchen
- Meeting hall and kitchen area
- Ablutions block
- Stage area and large viewing deck
- Children's play area
- Conversion of existing farm dwelling to a café/restaurant and information centre
- Part demolition/renovation of existing shearing shed for undercover area
- Retention of existing cattle yards and route to grazing areas – farming experience
- Main access road – 8m wide sealed
- Other internal access roads – crushed granite

- Pedestrian paths
- Waste water treatment sites x 3
- Potable water treatment area
- Waste collection area
- Wetland/Stormwater treatment areas x 2
- Car parking areas – 63 associated with Cottage sites, 94 additional identified as carparking areas for eco-studios, safari tents, lodges and resort staff, 2 bus parking bays.
- Other associated infrastructure and site establishment works
- Possible future entrance road realignment.

It is noted on the development master plan that the eastern wetland/stormwater area is located within the creek allotment and not within the site boundary of Lot 3.

- 2.3. The southern, or “island”, part of the site is proposed to be used for passive recreation activities in conjunction with the preservation and enhancement of its natural features. The activities proposed include:

- Guided and self-led educational bush walking
- River canoeing, canoe trail and launch areas
- Bike riding & cycle trails
- Self-led cultural heritage education trails
- Potential guided and/or self-led horse riding
- Potential guided Aboriginal experience
- Swimming and fishing
- Interpretive and directional signage
- Day camping areas

- 2.4. The proposal is to be constructed in stages, as shown on the submitted plans. There is no timeframe indicated on the progressive establishment of each stage of the development. There is no indication on when works are to be completed on the southern part of the site (“island”). Staging sequence involves:

Stage 1: 60 x Caravan Sites, 2 x 2-bed cottages, 4 x 3-bed cottages, 6 x 8-person lodges, reception & manager’s residence, Ablutions Block, kitchen/mess hall/meeting space, shearing shed undercover area, BBQ & Camp Kitchen, Stage/Viewing Deck, Pool, Playspace, primary access road & carparks, entrance to site, essential infrastructure including other roadways & pathways, waste water treatment sites x 2, potable water treatment site, waste collection point, stormwater management

Stage 2: 9 x 2-bed cottages, 4 x 3-bed cottages & associated infrastructure

Stage 3: 5 x 2-bed cottages, 5 x 3-bed cottages, 14 x safari tent sites & associated infrastructure including carpark

Stage 4: 33 x 2-bed eco-cottages, conversion of old farm house to café/restaurant, & associated infrastructure

Stage 5: 6 x eco-retreat studios, 2nd pool, day spa, gym 2nd waste water treatment site & other associated infrastructure including carpark

Stage 6: 16 x eco-retreat studios, & associated infrastructure including carparks

3. Subject Site and Locality

- 3.1. The subject site comprises Lot 3 DP791136, known as “Warrawidgee” 802 Spring Drive, Corowa NSW. It is located approximately 7.5km west of the town centre of Corowa.
- 3.2. Lot 3 has a total area of 316.2 hectares, split in two parts by Boiling Down Creek. The northern part comprises approximately 70.8 hectares with frontage to Spring Drive and southern boundary with Boiling Down Creek. The southern part (or

“island”) comprises approximately 245.4 hectares and is bounded by Boiling Down Creek to the north and the Murray River to the south (see Attachment 6 to this report for site, locality aerial and zoning maps). The deposited plan for Lot 3 indicates a reserved road 20.115m wide that traverses the southern part of the lot. This road is currently a Crown road with an enclosure permit for grazing purposes.

- 3.3. Boiling Down Creek does not form part of the subject site, being an anabranch of the Murray River.
- 3.4. The property is currently used for agricultural purposes, similar to immediately adjoining properties and land uses.
- 3.5. The surrounding land includes agricultural holdings to the immediate north, east and west. Murray Valley Regional Park (MVRP) adjoins the western boundary of the southern (island) part of the subject land. The Murray River forms the southern boundary of the site.
- 3.6. Two rural small holdings adjoin the site to the east that contain existing dwellings. Other rural dwellings exist on adjoining farms. A total of 6 dwellings would be located within 500 metres of the subject site property boundary.
- 3.7. The site is zoned E3 - Environmental Management, with adjoining lands also zoned E3 as well as E1 – National Parks and Nature Reserves (MVRP), W1 – Natural Waterways (Murray River), SP2 – Infrastructure (Spring Drive) and RU1 – Primary Production.
- 3.8. The site has vehicular access from Spring Drive. Access across Boiling Down Creek is via an existing bridge structure.
- 3.9. The northern part of the site has been extensively cleared for agricultural purposes and contains an existing dwelling, shearing shed and other farm outbuildings. Remnant natural vegetation is concentrated towards and along the banks of Boiling Down Creek.
- 3.10. The southern (island) part of the site is within the Murray River floodplain. It has been partly cleared for grazing purposes. The majority of site is characterised by existing native vegetation, typical of the immediate riverine environs.
- 3.11. The site is located partly within the 1/100yr flood planning area and is also partly identified as bushfire prone land (Buffer & Vegetation Category 1).
- 3.12. The site is identified within LEP mapping and applicable provisions as subject to local provisions relating to Earthworks, Flood planning, Terrestrial biodiversity, Wetlands, Development on river front areas, Development on river bed and banks of the Murray River, and Essential services.

4. Local Planning Control and Statutory Land Use Classification

4.1. Local Environmental Plan:

Corowa Local Environmental Plan 2012

4.2. Zoning:

Zone E3 Environmental Management

4.3. Land Use Definition:

Eco-tourist facilities

4.4. Statement of Permissibility:

The land use is permissible with consent, subject to the test of consistency with the land use definition, zone objectives and clause 5.13.

5. Background

- 5.1. The subject development application was lodged with Council on 23 February 2018. The local community and referral agencies were notified of the proposal from 7 March 2018. The public exhibition period closed on 12 April 2018.
- 5.2. A request for additional information was made to the applicant on 20 June 2018 in relation to the following issues:
 - Definition of an eco-tourist facility and objectives of Clause 5.13 of the Corowa Local Environmental Plan 2012 (CLEP 2012)
 - Staging of Development Application
 - Consistency with the Specific Principles of the Murray Regional Environmental Plan No. 2 – Riverine Land (MREP2)
 - Consistency with Clause 7.6 of the CLEP 2012 in relation to setback
 - Consistency with Chapter 10 of the Corowa Development Control Plan 2013 in regards to:
 - Visual Amenity - Standards 4 & 6:
 - Riparian Environment – Standard 1:
 - Water quality & resources – Standard 1 & 2:
 - Flora & fauna – Standard 1:
 - Landscaping – Standard 3 & 4:
 - Management Plans – Standard 1 & 2:
 - Assessment of Noise Impacts
 - SEPP55 and Land Contamination
 - AHIMS and Cultural Heritage Impacts
 - Fish Habitats and Impact
 - Waste Management
 - Provision of Infrastructure
 - Traffic and Site Access
 - Flooding
 - Potable Water
 - Sewerage
- 5.3. On 18 December 2018, revised development plans and supporting information was provided to Council to assist in the assessment of the application.
- 5.4. The additional information was forward to relevant agencies for further comment.

6. Community Consultation

- 6.1. Adjoining landowners were advised of the application and public notice given on 7 March 2018.
- 6.2. 13 submissions objecting to the proposal were received. The issues raised covered the following summary points:
 - The proposal is not an eco-tourist facility
 - Right-to-farm of adjoining properties impacted
 - Local rural amenity destroyed
 - Water supply and usage in drought conditions
 - High density and use intensity damaging to the natural environment

- Increased demand on emergency services for fire and ambulance/SES associated with bush fires, flooding and on-site accidents
- Management of liquid and solid waste from tourists/operators
- Damage to the landscape
- Visual impact on rural scenery
- Potential to stop the public using the creek adjacent to the resort
- 100 metre set back is required from the creek bank
- Eco-tourist facilities are to be located on flood-free land
- Will take prime-crop and pasture land out of the food production line
- Contamination of land needs investigation as previously the site of a rendering plant
- Need for toilet facilities on the island (240 ha site)
- Canoe and kayak access to Boiling Down Creek dangerous
- Stormwater runoff from the site will be directed to the 2 wetlands
- Adverse economic impact on existing visitor accommodation in Corowa
- Crime and safety issues created for adjoining farms
- Recreational fishing and fishing habitat adversely impacted
- Noise, odour and dust generated by potentially 600 people in a small area
- Increase in traffic on Spring Drive with potential of increasing accidents
- Impact on the valuation of adjoining farms
- The term “close proximity to the town” is not justifiable
- Awareness of the provisions in the Murray REP and Corowa LEP concerning the development of Eco-tourist facilities

6.3. Discussion in relation to the submissions received is included in the Assessment section below.

7. Referrals

7.1. Public Authorities & Agencies: The proposal was referred to the following agencies for comment and/or, where necessary, concurrence. Responses are discussed in relation to CI 4.15 matters below.

- NSW Office of Water (DI-Water)
- Natural Resources Access Regulator (DI-Water-NRAR)
- Roads & Maritime Services (RMS)
- Rural Fire Service – NSW (RFS)
- Office of Environment & Heritage (OEHS)
- Murray Darling Basin Authority (MDBA)
- Department of Primary Industries – Fisheries (DPI-Fisheries)
- Environmental Protection Authority (EPA)
- Destination NSW (DNSW)
- Murray Regional Tourism Board (MRTB)
- Department of Sustainability and Environment, North East Region (DSE-Vic)

7.2. Council internal referrals: The proposal was referred internally to relevant Council departments. Any responses are discussed in relation to CI 4.15 matters below.

8. Statutory Considerations

8.1. The following statutory planning controls and guidelines have been considered in the assessment of this development application.

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2000
- Protection of the Environment Operations Act 1997
- Biodiversity Conservation Act 2016

- Fisheries Management Act 1994
- Rural Fires Act 1997
- National Parks and Wildlife Act 1974
- Roads Act 1993
- Water Management Act 2000
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (State and Regional Development) 2011
- State Environmental Planning Policy No 36-Manufactured Home Estates
- State Environmental Planning Policy No 44-Koala Habitat Protection
- State Environmental Planning Policy No 55-Remediation of Land
- Murray Regional Environmental Plan No.2 - Riverine Land
- Corowa Local Environmental Plan 2012
- Corowa Shire Development Control Plan 2013
- Corowa Shire Developer Contribution Plans 2006
- Federation Shire Contaminated Land Management Policy

9. Environmental Planning & Assessment Act 1979 – Relevant Matters

9.1. Part 1 Clause 1.7 – Biodiversity Conservation & Fisheries Management

The Biodiversity Conservation Act 2016 (BCAct2016) came into full effect on 25 February 2018. As this application was lodged with Council on 23 February 2018 it is not subject to the biodiversity assessment requirements of the BCAct2016. Nevertheless, consideration of biodiversity impact is relevant to this application. A Flora and Fauna Assessment has been submitted in relation to the proposal that contains observations and recommendations for consideration in the assessment of this application.

In relation to Fisheries Management, the applicant submits that as there are no proposed works on the banks of the Murray River or Boiling Down Creek and noting the separation distance to the built environment, it is not unreasonable to conclude that there will be no impact on aquatic species. Further discussion on the assessment of this position is made in sections below.

9.2. Part 4 Clause 4.13 – Consultation & concurrence

The application was notified to relevant agencies for comment in March 2018 and again in January and February 2019 following the receipt of additional information.

9.3. Part 4 Clause 4.14 – Consultation & development consent – certain bush fire prone land

The proposed development is located on land mapped as bush fire prone. The nature of the proposal falls within the definition of special fire protection purpose and bush fire safety authority is required. A revised Bush Fire Risk Assessment Report (BFRAR) has been lodged and referred to RFS. The BFRAR recommends an asset protection zone (APZ) of 50 metres around the accommodation buildings.

At the time of writing this report, no response has been received from RFS.

9.4. Part 4 Division 4.8 – Integrated Development

The applicant has indicated that, on making this development application, the development was Integrated Development as it would require approvals from the Office of Environment & Heritage and Roads & Maritime Services. Council notified those relevant agencies of the application in March 2018.

RMS has subsequently advised that the application is not integrated development as Council is both the consent and approval authority in this instance.

Summary of integrated development considerations is provided in the table below.

**Integrated Development
s4.46 Table**

Act	Provision	Approval	Comment
<i>Coal Mine Subsidence Compensation Act 2017</i>	s 22	approval to alter or erect improvements, or to subdivide land, within a mine subsidence district	Not Applicable
<i>Fisheries Management Act 1994</i>	s 144	aquaculture permit	Not Applicable
	s 201	permit to carry out dredging or reclamation work	Not Applicable
	s 205	permit to cut, remove, damage or destroy marine vegetation on public water land or an aquaculture lease, or on the foreshore of any such land or lease	Applicable. The application has not clearly indicated whether a permit is required. DPI-Fisheries have raised concerns in relation to the potential impact of the proposal and object to DA consent being issued until all issues are addressed. A permit may be required.
	s 219	permit to:	
		(a) set a net, netting or other material, or	Not Applicable
		(b) construct or alter a dam, floodgate, causeway or weir, or	Not Applicable
		(c) otherwise create an obstruction, across or within a bay, inlet, river or creek, or across or around a flat	Not Applicable
<i>Heritage Act 1977</i>	s 58	approval in respect of the doing or carrying out of an act, matter or thing referred to in s 57 (1)	Not Applicable. The site does not include a listed item.
<i>Mining Act 1992</i>	ss 63, 64	grant of mining lease	Not Applicable
<i>National Parks and Wildlife Act 1974</i>	s 90	grant of Aboriginal heritage impact permit	Applicable. OEH has raised concern over the potential impact of this proposal on potential cultural heritage items. However, the application has not clearly indicated whether an Aboriginal object, under the terms of the NPWAct1974, was known to exist before the application was made. Clause 4.46(2) suggests that the development is not integrated at this stage. OEH may require a permit.
<i>Petroleum (Onshore) Act 1991</i>	s 16	grant of production lease	Not Applicable
<i>Protection of the Environment Operations Act 1997</i>	ss 43 (a), 47 and 55	Environment protection licence to authorise carrying out of scheduled development work at any premises.	Not Applicable. The proposal is not scheduled works.
	ss 43 (b), 48 and 55	Environment protection licence to authorise carrying out of scheduled activities at any premises (excluding any activity described as a "waste activity" but including any activity described as a "waste facility").	Not Applicable. The proposal does not involve a scheduled activity.
	ss 43 (d), 55 and 122	Environment protection licences to control carrying out of non-scheduled activities for the purposes of regulating water pollution resulting from the activity.	Not Applicable. There are no identified non-scheduled activities that require licencing.
<i>Roads Act 1993</i>	s 138	consent to:	
		(a) erect a structure or carry out a work in, on or over a public road, or	Applicable.
		(b) dig up or disturb the surface of a public road, or	Applicable.
		(c) remove or interfere with a structure, work or tree on a public road, or	Applicable.
		(d) pump water into a public road from any land adjoining the road, or	Not Applicable

**Integrated Development
s4.46 Table**

Act	Provision	Approval	Comment
		(e) connect a road (whether public or private) to a classified road	Applicable. Advice from RMS indicates that the proposal is not integrated as they are not the consent or approval authority. RMS offer no objection provided conditions as outlined are issued with any DA consent.
<i>Rural Fires Act 1997</i>	s 100B	authorisation under section 100B in respect of bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes	Applicable. The proposal includes 2 or more caravans or manufactured homes that fall within the definition of special fire protection purposes. A BFSR required.
<i>Water Management Act 2000</i>	ss 89, 90, 91	water use approval, water management work approval or activity approval under Part 3 of Chapter 3	Applicable. Although the latest development plan indicates the removal of the proposed lookout/canoe pickup structure, NRAR indicate that a Controlled Activity Approval would be required for the stormwater/wetland treatment, pedestrian & bicycle paths, and small vehicle bridge within the island. NRAR require more information prior to issue of CAA.
Other Considerations:			
Clause 4.46(2)	NP&W Act 1974	Were any Part 6 Aboriginal Objects known to exist immediately before the DA was lodged? Check with OEH.	Yes, the submitted documents indicate that 3 objects were located during survey of the subject site prior to DA lodgement. The development is then integrated development. Confirmed with OEH.
Clause 4.46(3)	Roads Act 1993	Does the development require consent from the Council and also approval of the Council? - Check with RMS.	Yes. The development is then not integrated development. Confirmed with RMS.
CONCLUSION		Is this integrated development?	Yes - based on the information provided at lodgement of the DA. Note also there are matters raised during the consultation and referral stage of the assessment process that may require one or more approvals under the relevant Acts listed in this section.

10. Environmental Planning & Assessment Regulation 2000 – Relevant Matters

10.1. Part 6 Division 1 - Development applications generally

Following lodgement and notification of the application, Council requested more information in accordance with Clause 54. The applicant has subsequently provided additional information to assist Council's assessment of the application.

10.2. Part 6 Division 3 – Integrated Development

Both OEH and RMS requested further information which was subsequently provided by the applicant. OEH and RMS have responded accordingly and their comments are outlined and considered below.

11. Evaluation – 4.15 Matters

Sec 4.15(1)(a)(i) the provisions of any environmental planning instrument (EPI)

11.1. State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

Comment: BASIX provisions would apply to components of the proposed development with the exception of the transportable dwelling structures. Energy efficiency requirements will be required to be addressed prior to the issue of a Construction Certificate.

11.2. State Environmental Planning Policy (Infrastructure) 2007

Comment: Division 17 Roads & Traffic is relevant to the proposal. The application was referred to NSW Road and Maritime Services (RMS) for comment. RMS advised that an appropriate Traffic Impact Assessment (TIA) was required to support the proposal. A TIA was subsequently prepared and lodged with the additional information response. RMS has reviewed the supplied development documentation and TIA, with the following comments noted:

“A development of the scale and type proposed has the potential to generate substantial traffic during the construction phase of the development therefore it is considered appropriate that the intersection treatment with Spring Drive and the access roadway be constructed prior to the commencement of construction of the Structure/buildings for the proposed development. It would be appropriate to require a management plan to be prepared to provide measures to suppress dust generation from the access road to the satisfaction of the Council and Roads and Maritime Services.

The submitted documentation provides limited information in relation to any proposed signage for the development. On this basis any signage that is proposed to be visible from the road reserve of Spring Drive shall be subject to a further Development Application and referral to Roads and Maritime Services for comment.”

RMS raise no objection to the proposal subject to conditions as listed in their correspondence dated 6 March 2019.

The proposal as submitted satisfies the relevant provisions of this SEPP.

11.3. State Environmental Planning Policy (State and Regional Development) 2011

Comment: The proposal is for an eco-tourist facility with a development value of \$10 million. This falls within the specification of clause 6 of Schedule 7 of the SEPP, being “eco-tourist facilities over \$5 million”. The proposal is regionally significant development and the Western Regional Planning Panel has the role of the consent authority in relation to this application.

The processing of the subject application is in accordance with the provisions of this SEPP.

11.4. State Environmental Planning Policy No 44-Koala Habitat Protection

Comment: The former Corowa Shire is listed within Schedule 1 of this SEPP and the subject land exceeds the threshold level, requiring consideration in relation to potential or core koala habitat. A 3-step process is outlined in the SEPP to assist Council in applying relevant development provisions in the consideration of Koala habitat protection.

Step 1 – is the land potential koala habitat? As outlined in the submitted planning report, the subject land satisfies criteria that deems the land “potential koala habitat”.

Step 2 – is the land core koala habitat? The submitted planning report and supporting documents do not provide sufficient information to satisfy Council as to whether or not the land is a core koala habitat. In particular, the submitted information has not been prepared by a person with appropriate qualifications and experience as outlined in the SEPP.

Step 3 – Can development consent be granted in relation to core koala habitat? Based on the submitted information, Council is not satisfied that it can make a proper determination in relation to Step 2 and therefore cannot proceed with Step 3.

The proposal as submitted does not satisfy the provisions of this SEPP.

11.5. State Environmental Planning Policy No 55-Remediation of Land

Comment: Council must take into consideration any potential land contamination that has or may have occurred on the proposed development site. In particular, where the land concerned has involved activities listed in Table 1 of the SEPP55 guidelines, then Council will require further investigation. This is also outlined in Council's Contaminated Land Management Policy.

The subject land has been used for agricultural activities, which is listed in Table 1 of the SEPP55 guidelines and Appendix 2 of Council's Policy. In addition, from information gained through the public consultation period for this application, there is historical evidence to suggest that part of the site has been used for a rendering plant and a sheep dip.

The applicant's contention, that no further investigation of the land under SEPP55 is warranted, is not accepted. At a minimum, a Preliminary Site Investigation is required to be prepared by a suitably qualified and licenced person. This was outlined in the more information letter provided to the applicant on 20 June 2018.

The proposal as submitted does not satisfy the provisions of this SEPP.

11.6. Murray Regional Environmental Plan No.2 - Riverine Land

Comment: The MREP applies to the land and aims "to conserve and enhance the riverine environment of the River Murray for the benefit of all users". The River Murray is defined as:

***River Murray** means the Murray River, the waters and the bed and banks of its tributaries and associated water bodies (including related anabranches, creeks, lagoons, lakes, billabongs and wetlands), as shown on the map.*

Definitions are provided to define words and expressions used in this plan in order to ensure the aims and objectives of the plan are achieved. Also, the plan clearly indicates that its content does not permit development which is prohibited by another environmental planning instrument. It would be inappropriate to interchange terminology between instruments that would have the effect of impacting a consent authority's ability to determine the permissibility of a development proposal. The applicant's contention that the definitions contained in the MREP must prevail over the CLEP is, therefore, not accepted.

Part 2 Planning principles and Part 3 Planning requirements and consultation apply when a consent authority determines a development application.

Cl 9: General principles

Comment: The aims, objectives and planning principles of this plan have been considered in assessing this application, as outlined in the discussion below.

There is no endorsed River Management Plan relevant to the proposal and site.

The Murray Darling Basin Authority has considered the proposal and has raised concerns in relation to:

- River and erosion control work in the vicinity of Boiling Down Creek
- Proposed water sport activities adjacent to MDBA erosion control works that may not be compatible with the proposed activities and may be considered potentially hazardous.

The applicant has indicated that, generally, the proposal has a low risk of contaminating the river and there should be no cumulative impact on the River

Murray. In support of this statement, reference is made to the proposal Landscape Master Plan and Management Plan that has been prepared in partnership with the Biodiversity Conservation Trust (BCT). These documents are in draft form only. Correspondence from the BCT to Council confirms that the Management Plan has no legal status and would have some limitations as it was associated with a specific funding agreement that was not successful in this case.

CI 10: Specific principles

Comment: The proposal has addressed the specific principles in the planning report accompanying the application.

- *Access* – the development does not propose to alienate or obstruct public access. Human & stock access management are intended to remain as existing. Various agencies have raised concern over this matter and have requested further information. Note an existing crown road traverses the southern part of the site that is leased.
- *Bank Disturbance* – the proposal indicates that no disturbance to the bank or removal of riparian vegetation is proposed. However, the development plans indicate that new pathways are to be constructed and vegetation enhancement proposed.
- *Flooding* – the proposal provides general comment on flooding. There is no specific report addressing this section in detail other than commentary and plans indicating the majority of works to be above the mapped floodplain boundary. Referral agencies have raised concern in this respect.
- *Land degradation* – the proposal has addressed this matter generally. Referral agencies have raised concerns in relation to potential impacts from site activities on the quality of terrestrial and aquatic habitats.
- *Landscape* – the proposal development plans indicate areas of enhancement and protection.
- *River related use* – the proposal indicates the bulk of the development is located on the northern site area. The recreation activities proposed are in relation to the proposed development and do not include public access to the foreshore.
- *Settlement* – the proposal has a potential to introduce a significant number of visitors to the immediate area. Whilst the accommodation areas are indicated as outside of the floodplain (1/100yr) boundary, the settlement is within an existing productive agricultural environment. Interface issues are potentially relevant. Existing services and facilities are available to the site, however, a reasonable distance from the nearest town centre. The proposal has addressed this matter generally.
- *Water quality* – various agencies have raised concerns over the potential impact of the development on the River Murray. The applicant has provided additional information including a Plan of Management for the site, however the details are not specific in relation to the concerns raised by the agencies.
- *Wetlands* – the proposal has addressed this topic generally by indicating that the development will have no impact on the function or health of these wetlands. The lack of detail in this respect is a concern. Various agencies have similar concerns.

Comment: Consultation has been undertaken in accordance with this Part, and to relevant agencies where specifically indicated.

Relevant development descriptions as provided in the *Planning Control and Consultation Table* and evident in the activities proposed by the eco-tourist facility are considered below. The definition of “River Murray” is noted above.

- **BANK AND/OR BED WORK** – the proposal does not specifically indicate that works are proposed, however the development description and plans suggest that bank works would be required to establish the facilities planned (including access ways, canoe launching areas and other recreation activities). Council consent is required and the proposal was advertised.
- **CARAVAN PARK/CAMPING GROUND** – The proposed eco-tourist facility contains areas to be used as a caravan park and camping ground, therefore, it is contended that the activity is captured under this definition and will be subject to approval under the Local Government Act 1993. Council consent is required and the proposal was advertised. Permanent facilities are shown as not located on 1/100yr flood liable land. The plans indicate pathways and vegetation enhancement along the river frontage. There are no boat launching ramps indicated on the development plans, other than canoe launch areas on the southern part (island).
- **DESTRUCTION OF NATIVE VEGETATION** – Council consent is required for activity as described. Consultation undertaken with several agencies raising concern over impact issues and requirements for further detailed studies addressing those specific matters for consideration, including a Vegetation Management Plan. The proposed activities may involve removal of native vegetation in certain areas indicated on the development plans.
- **MARINA (SMALL)** – the original development plans included a canoe pickup area, which has been removed on the latest plans. However, canoeing and kayaking are still listed as activities in Boiling Down Creek adjacent to the facility and it would seem logical and imperative that the operators provide a rescue boat to be located close to the Creek. This situation would require the operators to provide a mooring point or some apparatus on the banks of the River to launch the boat in emergency situations. Council consent is required and the proposal was advertised.
- **RECREATION FACILITY ADJOINING RIVER MURRAY OR ON FLOOD LIABLE LAND** – the proposal involves recreation and leisure activities on both parts of the site and within flood liable land. Council consent is required and the proposal was advertised. MDBC was consulted and raised concerns including more information prior to any construction.
- **SINGLE MOORING** – the proposal does not specifically indicate any proposed mooring location. However, as water based activities are proposed in association with the facility, including canoeing and kayaking, there may be a requirement to provide a rescue boat for use in emergency situations that would require mooring. Council consent is required and the proposal was advertised.
- **STORMWATER DRAINAGE SCHEME** – the proposal involves a stormwater management strategy that includes collection arrangements and management facilities to address the runoff requirements for the access roads, caravan park and other accommodation areas. Wetland

areas are proposed. The proposal indicates that stormwater will be treated prior to discharge to the River Murray system. Council consent is required and the proposal was advertised.

- *TOURIST RELATED ACTIVITY* – the proposal involves accommodation and restaurant/café that will be adjacent to the River Murray. These activities are prohibited if in or on the River Murray. The development plans indicate that those activities are setback from the bank of Boiling Down Creek and therefore not in or on the River Murray. Council consent is required and the proposal was advertised. Several agencies have indicated concerns relating to potential impacts on the River Murray and further requirements to ensure adequate environmental protection safeguards are implemented. There are community concerns in relation to adequacy of infrastructure provision and appropriateness of landscaping as proposed.
- *WASTE DISPOSAL FACILITY* – onsite collection and treatment of waste is proposed, including sewage and general waste. Treatment plant details and waste collection areas are indicated on the development plans and supporting documents. Council consent is required and the proposal was advertised.

CI 14 requires consideration of building setbacks. Generally, buildings outside urban zoned areas should be set well back from the bank of the River Murray. This includes Boiling Down Creek. The objectives of this provision are to:

- *maintain and improve water quality,*
- *minimise hazard risk and the redistributive effect on floodwater associated with the erection of buildings on the floodplain,*
- *protect the scenic landscape of the riverine corridor,*
- *improve bank stability, and*
- *conserve wildlife habitat.*

The matters to be considered when determining the location of buildings under this plan, in addition to the planning principles, include effluent disposal (septic and stormwater) and landscaping treatment.

There is no development standard included in this plan that quantifies an appropriate setback from the bank of the River Murray.

The CLEP2012 includes a definition of river front area. As the land is zoned E3 – Environmental Management, the river front area is defined as the land within 100 metres of the high bank of the river. The definition of “river” in the LEP means the Murray River, which the LEP clarifies as including anabranches.

For the purposes of implementing both the MREP and CLEP, the definitions of “River Murray” and “Murray River” respectively describe the same elements and areas of concern. In addition, the aims and objectives of both plans, in respect of these common elements, are aligned in relation to water quality, environmental protection and impact mitigation. As noted above, it is not within the scope of the MREP to permit development that is potentially prohibited by another EPI, in this case the CLEP.

Taking into consideration the objectives of this clause and the concerns raised by various agencies and the local community, Council is of the opinion that the proposal is not set well back from the bank of the River Murray. The reasons for taking this position is that Council is not satisfied that impacts in relation to water quality, hazard risk minimisation, landscape protection, bank stability and wildlife habitat have been adequately addressed in the development proposal.

Concluding Comments:

The proposal as submitted does not satisfy the provisions of the MREP as it fails to adequately address the planning principles and controls of the plan, particularly in relation to setback and potential impacts on the riverine environment of the River Murray.

11.7. Corowa Local Environmental Plan 2012

Relevant clauses of the CLEP2012 are considered below.

Cl 1.4: Definitions

The following definitions are relevant in considering this proposal:

eco-tourist facility means a building or place that:

(a) provides temporary or short-term accommodation to visitors on a commercial basis, and

(b) is located in or adjacent to an area with special ecological or cultural features, and

(c) is sensitively designed and located so as to minimise bulk, scale and overall physical footprint and any ecological or visual impact.

It may include facilities that are used to provide information or education to visitors and to exhibit or display items.

Note. See clause 5.13 for requirements in relation to the granting of development consent for eco-tourist facilities.

*Eco-tourist facilities are not a type of **tourist and visitor accommodation**—see the definition of that term in this Dictionary.*

tourist and visitor accommodation means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:

(a) backpackers' accommodation,

(b) bed and breakfast accommodation,

(c) farm stay accommodation,

(d) hotel or motel accommodation,

(e) serviced apartments,

but does not include:

(f) camping grounds, or

(g) caravan parks, or

(h) eco-tourist facilities.

camping ground means an area of land that has access to communal amenities and on which campervans or tents, annexes or other similar portable and lightweight temporary shelters are, or are to be, installed, erected or placed for short term use, but does not include a caravan park.

caravan park means land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed.

river means the Murray River.

Note. For the purposes of this Plan, the river includes the waters and the bed and banks of the river, its tributaries as well as associated watercourses and waterbodies, including anabranches, lagoons, lakes, billabongs and wetlands.

river bank means the limit of the bed of a river.

river front area means the land between the river front building line and the bank of the nearest river or if there is no river front building line:

- (a) in Zone R1 General Residential, Zone R2 Low density residential, Zone R5 Large Lot Residential and Zone B2 Local Centre—the land within 40 metres of the high bank of the river, or
- (b) in Zone RU1 Primary Production, Zone RU3 Forestry and Zone E3 Environmental Management—the land within 100 metres of the high bank of the river.

Comment: In assessing this proposal, there are two fundamental questions that initially require consideration, that is:

1. As presented, does the proposal meet the land use definition criteria?

The development application has been lodged for the purposes of an “eco-tourist facility”. The proposal must satisfy the land use definition criteria listed under (a), (b) and (c).

Criteria (a) is satisfied as the proposal will be providing temporary or short-term accommodation to visitors on a commercial basis. The proposed caravan, camping, cabin and eco-cottage sites are typical of this type of visitor accommodation.

Criteria (b) is satisfied as the proposal will be located in or adjacent to an area with special ecological or cultural features. The creek, river and island, together with surrounding land including the regional park, contain special ecological and cultural features.

The proposal also includes facilities that will educate and inform visitors, and also areas for display and exhibition purposes.

Criteria (c) requires the consent authority to be satisfied that the facility is sensitively designed and located so as to minimise bulk, scale and overall physical footprint and any ecological or visual impact.

The statutory construction of the LEP also requires the consent authority to be satisfied that each of the elements set out in clause 5.13(3) are met in order to allow the development to fulfil the test of consistency outlined in the land use definition (see *Camberlee Investments Pty Ltd v Shoalhaven City Council* [2017] NSWLEC1585).

Following assessment against the criteria contained in clause 5.13(3) items (a) – (k) (see below), it is considered that the proposal fails in its current form to satisfy the clause objectives. Accordingly, the proposal is not consistent with the land use definition and must be characterised and described in more accurate detail to enable development assessment and determination.

2. Under the circumstances, is the land use definition appropriate?

The particular purpose of the development proposal, as put forward by the applicant, is for an “eco-tourist facility”. As the development involves other identifiable components, they require closer analysis to enable a complete understanding of the characterisation of the development (*DPE PS13-001* has been used as a guide to development characterisation).

The proposed staged construction of the development is also reason why land use character analysis is important in the assessment of this application, as each stage could potentially sustain itself independently of the dominant purpose “eco-tourist facility”, thereby characterising the proposal as a “mixed-use” development rather than an “eco-tourist facility”.

For the proposal to sit comfortably within the “eco-tourist facility” definition, each component of the proposal must be considered ancillary or subservient to the

dominant purpose (i.e. an eco-tourist facility). The development proposes 165 accommodation types that comprise:

• 60 caravan sites and 30 movable dwellings (cottages/cabins)	54.6%
• 14 tent sites	8.5%
• 55 eco-cottages/studios	33.3%
• 6 four bedroomed self-contained lodges	3.6%

The proposed layout and immediate setting of the caravan sites, movable dwellings and tent sites, together with the communal amenities and recreation areas, would typify the character and amenity of a “*caravan park*”. This represents 63.1% of the accommodation mix.

The 55 eco-cottages/studios that are proposed to be located in a more natural and ecologically sensitive setting are considered acceptable in meeting the land use definition of an “*eco-tourist facility*”. They represent 33.3% of the accommodation mix.

The submitted plans do not provide layout details of the 6 lodges. Their location and setting would suggest a more appropriate description as “*motel*” type accommodation (being a form of “*tourist and visitor accommodation*”).

The proposal does incorporate features that will educate and provide information to visitors.

The staging of the proposal indicates that Stage 1 will involve the establishment of all of the caravan sites plus 6 movable cottages/cabins and all of the lodge accommodation, as well as the majority of the infrastructure works. Stages 1 – 3 will involve all of the caravan sites, camping areas, cottages/cabins, lodges and key infrastructure. Stages 4-6 involve the eco type cottages/studios.

*Do the components serve the dominant purpose or do they serve their own purpose?
Could the components operate independently without the need to connect with the dominant purpose?*

The nature and layout of the caravan park, cabins and camping area would indicate that they could operate independently without the need to connect to the special ecological and cultural areas of the site. These uses would then be termed independent uses on the same land and the overall proposal a “*mixed use development*”.

A group of 2 or more caravans or manufactured homes/cabins could also be referred to as a “*manufactured home estate*” under other legislation, however, this land use description is not specifically defined under the CLEP. A manufactured home is a form or “*movable dwelling*” that is prohibited in the E3 zone, as are “*caravan parks*”. No further consideration is required on this topic at this stage as both the CLEP and other relevant legislation including *SEPP36-Manufactured Home Estates* would prohibit these activities on the subject land.

Concluding Comments:

Whilst the proposal may have some general connection to the special ecological and cultural features of the southern part of the site (island), in relation to the overall eco-tourism experience outlined in the development description, it is Council’s opinion that:

1. The proposal does not satisfy the land use definition criteria of an “*eco-tourist facility*” as the proposal is not sensitively designed and located so as to minimise bulk, scale and overall physical footprint and any ecological or visual impact; and

2. The characterisation of the proposal would lead to the conclusion that the development is best described as a “*mixed-use development*” incorporating a “*caravan park*”, “*camping grounds*”, “*tourist and visitor accommodation*” and “*eco-tourist facilities*”.

CI 2.3: Zone objectives and Land Use Table

The site is zoned E3 Environmental Management. The objectives of the zone are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To ensure development is compatible with the flood hazard and riparian corridor of the Murray River.*

The proposal is for an eco-tourist facility, which is permissible with consent in the E3 zone, subject to satisfying the land use definition criteria and specific requirements outlined in CI 5.13 of the LEP.

In characterising the proposal, Council is of the opinion that the development would be more appropriately described as a “*mixed-use development*” incorporating a “*caravan park*”, “*camping grounds*”, “*tourist and visitor accommodation*” and “*eco-tourist facilities*”, for reasons as outlined in the section above.

A “*caravan park*” and “*tourist and visitor accommodation*” are prohibited uses in the E3 zone.

“*Camping grounds*” and “*eco-tourist facilities*” are permissible with consent.

The proposal, in its current form, does not meet the objectives of the zone. Council is not satisfied that the development as lodged could be successfully modified in a manner to avoid the land use characterisation described above and, in turn, adequately meet the objectives of the E3 zone.

CI 5.10: Heritage conservation

The objectives of this clause are:

- (a) *to conserve the environmental heritage of Corowa,*
- (b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) *to conserve archaeological sites,*
- (d) *to conserve Aboriginal objects and Aboriginal places of heritage significance.*

Objectives (b), (c) and (d) are relevant to this proposal. The objectives are considered to be met provided Council is satisfied with the following relevant criteria under 5.10.

There are no listed heritage items identified on the subject site. CI 5.10(3)-(7), (9) & (10) are not applicable to the proposal. CI 5.10(8) may be applicable, however, there is inadequate information provided in the DA documentation to enable an assessment to be made.

There are conflicting statements in the DA documentation where the applicant’s cultural heritage expert indicates that two significant sites were identified on the subject land, however, within the planning report there are statements that no significant items were found. OEH has also raised concern and has indicated that an Aboriginal Cultural Heritage Assessment Report (ACHAR) is required to

satisfactorily assess the proposal. The applicant has suggested that the requirement for an ACHAR should be conditioned to require completion prior to construction.

Council is not satisfied that the appropriate cultural heritage investigations have been adequately undertaken to enable further consideration under this provision. Accordingly, the objectives above are not satisfied by the development in its current form.

CI 5.13: Eco-tourist facilities

The objectives of this clause are:

- (a) to maintain the environmental and cultural values of land on which development for the purposes of eco-tourist facilities is carried out,*
- (b) to provide for sensitively designed and managed eco-tourist facilities that have minimal impact on the environment both on and off-site.*

The objectives are considered to be met provided Council is satisfied with the following criteria under 5.13(3)(a)-(k):

- (a) there is a demonstrated connection between the development and the ecological, environmental and cultural values of the site or area, and*

Comment: The connection between the development and the ecological, environmental and cultural values of the site are somewhat blurred by the deficiency in some areas of environmental assessment provided in the submitted documentation, including the impacts associated with the extent and nature of the residential accommodation, recreational activities, facilities and site works. The caravan sites and cottages/cabins are a dominating land use in scale and bulk when compared to the eco-cultural "island". A caravan park is prohibited development in the E3 zone. The proposal has a physical connection; however, it does not effectively demonstrate an enduring and reliant connection with the eco-cultural values of the site and local area.

The extent and nature of the rehabilitation works and conservation measures that will be required to enhance the environmental values and attributes of the site will be substantially hindered by the proposed level of development activity and operational pressure from visitors to the site. This includes short term and day visits and the listed range of recreational activities on the creek bank and island (eg horse and mountain bike trails).

- (b) the development will be located, constructed, managed and maintained so as to minimise any impact on, and to conserve, the natural environment, and*

There is a lack of clarity in the proposal in relation to:

- the extent and nature of monitoring of rehabilitation works and how they progress to enriching desired outcomes within a predicted timeframe;
- who will adjudicate and determine satisfactory progress or outcomes or in force actions to be taken to reach the target specified; and
- what consequences would follow for failure to reach the standards specified for rehabilitation of the site.

The management plan provided with the additional information has a very small component dedicated to environmental management.

- (c) *the development will enhance an appreciation of the environmental and cultural values of the site or area, and*

Given the proposed range of recreational activities, the emphasis seems to be on recreation rather than on environmental appreciation from an ecological perspective. The perspective engendered by the proposal is one of recreation in a good natural setting visually, with a range of natural recreational opportunities (e.g. walking, riding, canoeing, fishing).

- (d) *the development will promote positive environmental outcomes and any impact on watercourses, soil quality, heritage and native flora and fauna will be minimal, and*

The proposal may achieve positive environmental outcomes subject to the necessary standards and provisions in the range of required management plans and certified plan items being installed, operated and maintained to the standards imposed in any development consent. This aspect of the development will require close scrutiny during both the construction and operational stages. At this stage there are too many issues raised by referral agencies and the local community to satisfy Council in relation to this item.

- (e) *the site will be maintained (or regenerated where necessary) to ensure the continued protection of natural resources and enhancement of the natural environment, and*

The supporting documentation clearly shows an intent to achieve protection of natural resource and enhancement of the environment. However, based on the points made above it seems premature to arrive at a satisfactory level of understanding that all relevant environmental issues and potential adverse impacts have been addressed, and the site, natural resource and natural environment will be protected and enhanced.

- (f) *waste generation during construction and operation will be avoided and that any waste will be appropriately removed, and*

This will require an approved construction and operational management plan. A draft management plan has been submitted, however is lacking in considerable detail when considering the sensitivities of the site. Conditions may be imposed on the development to ensure it is managed and the works undertaken are acceptable and appropriate.

- (g) *the development will be located to avoid visibility above ridgelines and against escarpments and from watercourses and that any visual intrusion will be minimised through the choice of design, colours, materials and landscaping with local native flora, and*

A landscaping masterplan has been provided that outlines conceptual works to enhance the site. The scale and footprint of the development associated with the need to selectively remove vegetation along the Boiling Down Creek bank will create a visual intrusion for those using the creek. The creek will continue to be a public accessible place. DPI has also has raised similar concerns. The proposed thinning of river redgums to create a vista through to the "island" is an action contradictory to maintaining and enhancing the natural environment.

- (h) *any infrastructure services to the site will be provided without significant modification to the environment, and*

The proposal outlines, in a general manner, the provision of essential infrastructure services. Onsite water and waste treatment is proposed. The

use of solar panels is mentioned, however, no significant details on effective provision on site. Conditions may be formulated and imposed on the development to ensure it is managed and the works undertaken in an acceptable and appropriate manner.

- (i) *any power and water to the site will, where possible, be provided through the use of passive heating and cooling, renewable energy sources and water efficient design, and*

The proposal indicates that solar panels together with energy efficient building design will promote passive heating and cooling, with a continued reliance on grid backup systems. Conditions imposed on the development may be formulated to ensure it is managed and the works undertaken in an acceptable and appropriate manner.

- (j) *the development will not adversely affect the agricultural productivity of adjoining land, and*

Several submissions from the local community have raised concern about potential impacts on their right-to-farm in the area as a consequence of permitting this development. Biosecurity issues are a concern also. There is potential for impact from this development, considering the significant number of potential visitors to the site.

The aspects of the noise, light, odour and dust generated during construction and operation of the development need further clarification.

Based on the current level of information provided, it is not satisfactory to formulate a determinative judgement on whether the impacts on adjoining land and its agricultural activity or production will be detrimentally affected by the proposal.

- (k) *the following matters are addressed or provided for in a management strategy for minimising any impact on the natural environment:*
 - (i) *measures to remove any threat of serious or irreversible environmental damage,*
 - (ii) *the maintenance (or regeneration where necessary) of habitats,*
 - (iii) *efficient and minimal energy and water use and waste output,*
 - (iv) *mechanisms for monitoring and reviewing the effect of the development on the natural environment,*
 - (v) *maintaining improvements on an on-going basis in accordance with relevant ISO 14000 standards relating to management and quality control.*

A draft management plan has been provided, however, is not sufficient to address all the above items.

Concluding Comments:

The supplied planning documentation provides an outline of the intentions of the proposal to meet the eco-tourism criteria with broad statements of general compliance with development criteria and implementation of mitigation measures to avoid detrimental impact on the local sensitive natural and cultural environment. However, as also expressed in responses from various agencies, there are information gaps and overall concern that the proposal may pose a threat to the environmental and cultural values of the immediate local area. Accordingly, the proposal in its current form does not meet the CI 5.13 objectives. The proposal, then, does not meet the qualifications to be characterised as an “eco-tourist facility”.

CI 7.2: Flood planning

The objectives of this clause are:

- (a) to minimise the flood risk to life and property associated with the use of land,*
- (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,*
- (c) to avoid significant adverse impacts on flood behaviour and the environment.*

Part of the site is within the "Flood Planning Area" as shown on the Flood Planning Map. The proposal would generally satisfy the provisions under CI 7.2(3)(a)-(e) as the main part of the facility (accommodation and service areas) will be located outside of the flood hazard area. Works with in the southern (island) part of the site are related to establishing walkways and certain embellishments to facilitate recreation and cultural experiences. Any consent would be subject to the submission of a flood risk management plan to ensure any impacts during construction and operation are mitigated.

CI 7.4: Terrestrial biodiversity

The objective of this clause is to maintain terrestrial biodiversity by:

- (a) protecting native fauna and flora, and*
- (b) protecting the ecological processes necessary for their continued existence, and*
- (c) encouraging the conservation and recovery of native fauna and flora and their habitats.*

The site is partially mapped as subject to terrestrial biodiversity considerations, which generally includes the creek and river foreshore areas. Council must be satisfied that the proposal will not have an adverse impact on flora and fauna communities and any adverse impacts are minimised. Issues have been raised by OEH and Fisheries in relation to the potential impacts of this proposal on terrestrial biodiversity. At this stage Council is not satisfied that the development has been designed, site and will be managed to avoid any significant adverse environmental impact. In its current form the proposal does not meet the objectives of this clause.

CI 7.5: Wetlands

The objective of this clause is to ensure that wetlands are preserved and protected from the impacts of development. The site is partly included on applicable wetland mapping, generally along the foreshores of the Murray River and Boiling Down Creek. Council must be satisfied that the proposal is considered in reference to impacting significant existing native fauna and flora, quality habitats and general water flows.

The proposal includes the establishment of wetland areas on the eastern and western parts of the site, together with an onsite stormwater drainage system. Various agencies have raised concern in this regard, particularly in relation to location and potential impact on the river systems and users further downstream.

At this stage Council is not satisfied that the development is designed, sited and managed to avoid any significant adverse environmental impact.

CI 7.6: Development on river front areas

The objectives of this clause are:

- (a) to support the natural migration of the river channel, including riverine processes,*
- (b) to protect and improve the bed and bank stability of rivers,*

- (c) *to maintain or improve the water quality of rivers,*
- (d) *to protect the amenity, scenic landscape values and cultural heritage of rivers,*
- (e) *to protect public access to riverine corridors,*
- (f) *to conserve and protect riverine corridors, including wildlife habitat.*

“River front areas” are defined in the LEP (see discussion on CI 1.4 definitions above), for land within Zone E3, as land within 100 metres of the high bank of the river. The “river” is defined, for the purposes of the LEP, as meaning the Murray River and includes the waters and the bed and banks of the river, its tributaries as well as associated watercourses and waterbodies, including anabranches, lagoons, lakes, billabongs and wetlands. Boiling Down Creek is an anabranch of the river. The development has been planned based on a 40 metre setback arrangement. Approximately 42 of the accommodation structures are located within 100 metres of the high bank of the river. This clause does not permit those structures in this area.

The applicant’s opinion is that the definition of “river” does not include the anabranches of the Murray River. Council’s view is that the definitions and notes in the LEP have been structured to ensure appropriate administration of the content of this plan and that the anabranches are part of the “river” definition.

Council is not satisfied that the proposal will meet the objectives of this clause for the following reasons:

- the site layout does not comply with the provisions of CI 7.6(2);
- the bulk and scale of the proposal will potentially have an unacceptable impact on the surrounding riverine environment and not be compatible with the surrounding area; and
- there are unresolved concerns, as raised by various agencies, that the proposal will have a potentially detrimental impact on natural and cultural environmental attributes of the site and local area.

CI 7.7: Development on river bed and banks of the Murray River

The objectives of this clause are:

- (a) *to manage and maintain the quality of water in the Murray River,*
- (b) *to protect the environmental values, scenic amenity and cultural heritage of the Murray River,*
- (c) *to protect the stability of the bed and banks of the Murray River,*
- (d) *to limit the impact of structures in or near the Murray River on natural riverine processes and navigability of the river.*

For the purposes of administering this LEP, Council is of the opinion that the Murray River includes its tributaries and associated watercourses, anabranches and the like. The provisions of the LEP are consistent with the applicable MREP.

As discussed in various sections above, Council is not satisfied at this stage that the proposed has been design to minimise environmental impact on the local area including the riverine environment of the Murray River. For this reason, Council is not satisfied that the proposal satisfies the provisions of this clause.

CI 7.9: Essential services

The development proposes the following arrangements for essential services:

- (a) *the supply of water:* use of existing general water licence (30mg/l) to access irrigation water, raw water collection and treatment onsite.

- (b) *the supply of electricity*: upgrading of existing overhead supply together with option for alternative power supply sources including solar panels/battery storage. Opportunities for a small solar farm to be subject to further investigation and separate application.
- (c) *the disposal and management of sewage*: onsite sewage treatment system (Ozzi Kleen) with grey water reuse on site.
- (d) *stormwater drainage or on-site conservation*: on site drainage design directed to two wetlands prior to discharge to Boiling Down Creek.
- (e) *suitable road access*: use of existing access to Spring Drive with upgrades and embellishments as shown on the development plans.
- (f) *other services*: existing telecommunication lines and mobile services are available to the site, however their expansion and augmentation have not been verified to adequately service the proposed development.

Despite a request for more information in respect of the above infrastructure services, Council is not satisfied that the applicant has undertaken sufficient investigation and appropriate design capacity analysis to ensure essential services will be fit for purpose in relation to the proposed development, in particular water supply, electricity, sewage and stormwater. The development will potentially generate essential service demand from approximately 600 visitors, based on the projected accommodation capacity of the proposal.

Sec 4.15(1)(a)(ii) the provisions of any proposed EPI (notified)

11.8. There are no draft EPI's to be taken into consideration.

Sec 4.15(1)(a)(iii) the provisions of any development control plan

11.9. Corowa Shire Development Control Plan 2013

Relevant chapters of DCP2013 include Chapter 10 Riparian Land and Chapter 11 Flood Risk Management. The carparking provisions contained in Chapter 4 and notification policy requirements in Chapter 12 are also applicable to the proposal.

Chapter 4 – Carparking Provisions: The development plans and supporting documents indicate a sufficient provision of carparking for this proposal in accordance with Table 4.1 of the DCP. A traffic impact assessment report accompanies the proposal verifying the satisfactory provision of carparking and access arrangements.

Chapter 10 – Riparian Land: The guidelines contained in this chapter are to be read in conjunction with CLEP Clauses 7.5, 7.6 & 7.7, as well as the MREP No.2.

- *10.1 Visual amenity* – the applicant has indicated that the revised development plans proposes not to remove any existing vegetation, apart from weed control. A revised landscape plan has been provided that describes the visual impact of the proposal. The bulk and scale of the development, together with potential impact on the visual amenity of the locality when viewed from a public space, such as Boiling Down Creek, are still a concern.
- *10.2 Riparian Environment* – the matters listed under this section have been discussed in other sections of this report. The applicant has not provided any further specialist opinions to satisfy Council or other various agencies, other than general statements contained in their more information response.
- *10.3 Water quality & resources* – Council's opinion is that the development is within the 100 metre setback from the river/creek area and does not

satisfy these guidelines in relation to potential impact. Some parts of the development are consistent with the guidelines; however, the development would require a redesign to satisfy all the guideline criteria. The plan of management lodged with the more information response has minimal detail in relation to satisfying the criteria under point 2 of 10.3.

- *10.4 Regeneration* – the proposal contains details that relate to appropriate regeneration of the site in accordance with these guidelines.
- *10.5 Flora & fauna* – OEH has provided additional comment on flora and fauna management, including suggestions for conditions to be imposed if the development progresses. A plan of conservation works is recommended. Ecological thinning is not recommended.
- *10.6 Buffer areas & habitat corridors* – specialist reports including a revised landscape plan have been provided that address this development criteria. These would form part of a comprehensive plan of management. The currently supplied PoM is inadequate in this regard.
- *10.7 Liability & public safety* – these matters can be conditioned accordingly.
- *10.8 Landscaping* – an updated landscaping plan has been provided that indicates no thinning of natural vegetation and focus on indigenous species and rehabilitation. The landscaping has been proposed to soften the appearance of the buildings and structures.
- *10.9 Unauthorised structures* – these matters can be conditioned accordingly. There are no known unauthorised structures on the site.
- *10.10 Management Plans* – the currently supplied PoM is inadequate for the proposal. The BCT plan is also unauthorised and requires redrafting with BCT.

Overall, there are inadequacies listed above that would require the applicant to address prior to Council being satisfied with the proposal achieving all the applicable guidelines contained in this section of the DCP.

Chapter 11 – Flood Risk Management: The guidelines contained in this chapter are to be read in conjunction with CLEP Clauses 7.2, as well as the MREP No.2. The southern part of the site, as shown on the development plans and Council flood mapping, is subject to these DCP guidelines. There are no tourist related accommodation buildings proposed in the flood planning area. The proposal can be conditioned accordingly in relation to flood risk management for the proposed embellishment on the southern part of the site.

Chapter 12 – Notification: The proposal was notified in accordance with this chapter and the additional requirements noted under Table 12.1 of the DCP. The proposal was on public exhibition for over 30 days.

11.10. Corowa Shire Developer Contribution Plans 2006

The proposal will be subject to developer contributions where there is a demonstrated demand placed on public infrastructure and services as are result of the development progressing. If recommended for approval, the proposal will be conditioned accordingly.

Sec 4.15(1)(a)(iia) the provisions of any planning agreement

11.11. There are no planning agreements, draft or otherwise entered into under Section 7.4, to be taken into consideration.

Sec 4.15(1)(a)(iv) the provisions of the regulations (as prescribed)

11.12. Prescribed matters to be taken into consideration in relation to the subject proposal, where any demolition is to be undertaken, are the provisions of AS 2601. The development is to be conditioned accordingly.

Sec 4.15(1)(b) the likely impacts of the development

11.13. Based on the discussion above, the likely impacts of the development are summarised in the table below:

Topic	Satisfactory	Not Satisfactory	Not Relevant	Comment
Context & Setting	☐	☒	☐	The majority of the proposal is out of character with the local area.
Streetscape	☒	☐	☐	Entrance to be embellished as per landscape plans.
Traffic, access and parking	☒	☐	☐	TIA supports project. RMS have no objections, parking in accordance with DCP.
Public Domain	☐	☒	☐	Potential negative impact on public areas such as Boiling Down Creek.
Utilities	☐	☒	☐	Lack of detail on capacity levels and adequacy.
Heritage	☐	☒	☐	Cultural heritage requires further detailed study.
Other land resources	☐	☐	☒	
Water Quality & Stormwater	☐	☒	☐	Concerns raised by agencies, more detail required, potential negative impacts.
Soils, soil erosion	☒	☐	☐	The site can be managed to avoid soil erosion.
Air and microclimate	☒	☐	☐	No offensive odours are expected. Dust may be an issued but could be managed.
Flora and Fauna Trees	☐	☒	☐	Management plan required to avoid detrimental impact from works and operation.
Waste	☐	☒	☐	Further details required to confirm adequacy of waste management systems.
Energy	☒	☐	☐	Solar panels are proposed, existing grid serves the site.
Noise & vibration	☐	☒	☐	Potential impact of significant number of visitors and overnight activities. General operational impacts.
Hours of operation	☒	☐	☐	Eco walks and appreciation activities would generally be active during the day. Involves overnight stays that can be managed.
Natural hazards - Flooding - Bushfire Prone Area	☐	☒	☐	Further detail required to satisfy respective agencies of any potential impact and management of hazard areas. Bushfire controls require 50m APZ.
Technological Hazards	☐	☐	☒	N.A.
Safety, security and crime prevention	☒	☐	☐	The site will have onsite security. Surveillance will be facilitated through the low-density layout of the facility.
Social impact in locality	☒	☐	☐	Introduction of addition persons to the local area will contribute to local community development. Temporary visitors.
Economic Impact in Locality	☒	☐	☐	Construction and operation will provide economic benefit to local businesses. The proposal will generate local

Topic	Satisfactory	Not Satisfactory	Not Relevant	Comment
				employment.
Site design and internal design	☐	☒	☐	The proposal has been sited within 100m of the river/creek and does not satisfy setback provisions.
Overlooking - overshadowing	☒	☐	☐	The proposal is a single storey development and will not create overlooking or overshadowing issues.
Landscaping	☒	☐	☐	A landscaping masterplan accompanies the application and aims to embellish the site and protect local endemic species.
Construction	☐	☒	☐	Construction management plan required to limit potential impacts to the site and local area.
Private open space	☐	☐	☒	
Cumulative Impacts	☐	☒	☐	Concerns raised by various agencies of potential cumulative impact to the riverine environment.
Disabled access	☒	☐	☐	Details not provided, however the site is of sufficient size to ensure disabled access is facilitated.
Signage	☒	☐	☐	General site signage proposed to identify the premises. Interpretive and directional signage to be installed throughout site.
Setbacks, Building Envelopes	☐	☒	☐	The proposed accommodation buildings are located within the 100 metre setback standard.

Sec 4.15(1)(c) the suitability of the site

11.14. Based on the discussion above, it is considered that the site is not suitable to accommodate the proposal in its current form and, in particular, to allow the operators to sustainably manage its potential impacts.

11.15. The site's current zoning does not permit specific land use activities such as the caravan park (including caravan sites and movable dwellings) that have been characterised as a proposed dominant use of the land.

Sec 4.15(1)(d) any submissions made

11.16. *Public submissions:* A total of 13 submissions were received from the local community and are summarised in the table below. A summary list of issues raised has been provided in Section 5 of this assessment report.

No.	Content of Submission	Response
1	Objection: Report inaccuracies, consistency with SLUP, definition of development, prohibited use in E3 zone, land use conflict, right to farm, consistency with zone objectives, Boiling Down Creek Management zone, pollution of Boiling Down Creek by stormwater, management plan, removal of vegetation, land contamination - 4 sites quoted, visual & amenity impact, impact on environment, existing erosion control plan MDBA, Cl2.13(3)(a)-(k) not addressed, E3 zone 100m setback, protection of river for public good, land uses can only exist if dependent on river, island & infrastructure impact from flooding, noise, dust & traffic impacts, water supply concerns, ribbon development issues, site unsuitability, public interest not satisfied, hazards (bushfire, river, branches), security.	Noted. Each of the points raised are relevant and have been taken into consideration and dealt with in various sections of the assessment report.
2	Objection: Impact from 400+ visitors, river/creek swimming hazards, inaccuracies in DA documentation, 100m setback, thinning of trees, visual impact, noise impact, wastewater impact.	Noted. Each of the points raised are relevant and have been taken into consideration and dealt with in various sections of the assessment report.

No.	Content of Submission	Response
3	Objection: Impact to rural farming activities, environmental & amenity impacts, fish habitat impact, noise impact.	Noted. Each of the points raised are relevant and have been taken into consideration and dealt with in various sections of the assessment report.
4	Objection: Setback from river & riparian zone, river definition, 100m setback, impact on agriculture, stormwater treatment, use of creek/river by local recreation fishers, impact on use of island & bushfire, impact on local accommodation, emergency services & other local services. Definition of Eco-Tourism.	Noted. Each of the points raised are relevant and have been taken into consideration and dealt with in various sections of the assessment report.
5	Objection: impact from sewerage & stormwater, lack of contamination testing, 100m setback, impact on adjoining landowners, limited access to and impact on island, canoe access & other hazards in river/creek.	Noted. Each of the points raised are relevant and have been taken into consideration and dealt with in various sections of the assessment report.
6	Objection: Proximity to river, stormwater impact, no contamination tests, canoe safety, impact to island re traffic, pedestrians, emergency access, toilet facilities, bushfire, impact on local accommodation businesses	Noted. Each of the points raised are relevant and have been taken into consideration and dealt with in various sections of the assessment report.
7	Objection: Eco-tourism definition, contradictions in DA documents, 5-600 visitors, high density impact, impact on adjoining farming, water supply concerns, 100m setback, impact from stormwater & sewerage, impact on local businesses, concerns over management of E3 zone, contradictions in DA documents.	Noted. Each of the points raised are relevant and have been taken into consideration and dealt with in various sections of the assessment report.
8	Objection: 100m setback, lack of contamination testing re old rendering plant, impact on local farming, sewerage & stormwater impacts, impact on island re roads & toilets, eco-tourism definition.	Noted. Each of the points raised are relevant and have been taken into consideration and dealt with in various sections of the assessment report.
9	Objection: setback from river & floodplain, impact on rural land, impact on local businesses & services, sewerage & stormwater impacts, fire controls, lack of detail in the DA documentation.	Noted. Each of the points raised are relevant and have been taken into consideration and dealt with in various sections of the assessment report.
10	Objection: Bushfire hazards on island, large number of visitors, access road upgrades on subject land, water supply issues, lack of detail on fire control.	Noted. Each of the points raised are relevant and have been taken into consideration and dealt with in various sections of the assessment report.
11	Objection: Increased traffic, impact on local area, caravan park, security concerns, 500+ visitors, noxious weeds, biosecurity, viability of proposal.	Noted. Each of the points raised are relevant and have been taken into consideration and dealt with in various sections of the assessment report.
12	Objection: Impacts to rural setting & farming, creek hazards, impact on ecosystem & fish habitat, sewerage impact from 500+ visitors.	Noted. Each of the points raised are relevant and have been taken into consideration and dealt with in various sections of the assessment report.
13	Objection: Traffic impact, DCP compliance, fire risk, impact to flora & fauna, impact on creek & island.	Noted. Each of the points raised are relevant and have been taken into consideration and dealt with in various sections of the assessment report.

11.17. **Public Authorities & Agencies:** Responses were received from the following authorities & agencies as listed in the table below. No General Terms of Approval (GTAs) have been issued by any of the applicable authorities. Applicant advised and copy provided.

Authority/Agency	Summary of Response
Biodiversity Conservation Trust (BCT)	Referring to draft BCT management plan submitted by applicant. Noting that the plan has no legal status. It identifies many management actions on the island, however has limitations as it was associated with a specific funding agreement that was unsuccessful.
Department of Primary Industries – Fisheries (DPI-Fisheries)	Potential to significantly impact on fish and fish habitat. Objects to issuing of DA consent at this stage until issues as outlined are addressed including visual amenity, environmentally sensitive land, compliance with land use definition criteria, contradictions in planning documentation, no justification on how positive environmental outcomes will be achieved, water licence security, compliance with CLEP 100m setback, TYPE 1 fish habitat buffer zone of 100m, works within buffer zone to be avoided. More information requested. No further comments.

Authority/Agency	Summary of Response
Environmental Protection Authority (EPA)	Proposal is not a scheduled activity under PoEO Act, do not need EPL from EPA. DA condition required re preventing pollution of waters during construction & operation. No further comments.
Murray Darling Basin Authority (MDBA)	Water sport activities may not be compatible and potentially hazardous with MCBA Riparian Program works located in the vicinity & within Boiling Down Creek. Access agreements required MDBA. Stormwater, effluent, waste & earthwork management required in accordance with Council policy.
Natural Resources Access Regulator (NRAR)	Considers proposal has been designed as a traditional caravan park. Riparian corridor regeneration not completely addressed, 40m riparian corridor required. CLEP2012 5.13(3)(g) not achieved. VMP should have been provided. Removal of native vegetation from banks not supported. More information required as listed. CAA required for works as listed.
Office of Environment & Heritage (OEH)	Initial response raised concerns re removal of remnant vegetation and impact on aboriginal cultural heritage (ACH). Biodiversity impact assessment & further ACH assessment requested. Note, lodgement of application prior to 25/2/18 re part of BCAct2016 requirements avoided. Applicant provided response to OEH requests. OEH supports regeneration works as recommended, however still concerned re impacts from conservation works. ACH ground disturbance concerns, detailed ACHR required prior to determining DA, recommendations & advice provided re biodiversity, ACH & flooding. OEH note that flood-free land refers to land above the PMF not LEP flood planning map level.
Rural Fire Service – NSW (RFS)	Initial response requested BFAR with detailed site plan delineating all bush fire protection measures. Revised BFAR provided by applicant and referred to RFS. Note, no detailed site plan provided in revised BFAR. No further response from RFS.
Roads & Maritime Services (RMS)	<u>Roads</u> - Initial response requested TIA. TIA provided by applicant and reviewed. Proposal has potential to generate substantial traffic during construction, intersection treatment & access to be established prior, inc management plan, dust suppression, signage subject to further DA for RMS consideration, no objection, conditions issued to address safe access concerns. <u>Maritime</u> – no objections, subject to no discharge to impact conditions of river (PoEO regulator). Temporary access for launch & retrieval of small craft only considered. Marine Safety Act 1998 applicable.

11.18. Council Internal Submissions: Council's Environmental Health Section provided advice seeking further information on potable water system specifications, sewage treatment plant details and greywater recycling system. Applicant provided revised details of these systems.

There were no other comments submitted from other sections.

11.19. Other Submissions - EDO NSW: At the request of one of the objectors, EDO NSW has prepared an opinion on the permissibility of the development. A copy of two letters of correspondence from EDO NSW is included in the Community Consultation Responses attachment. In EDO's opinion, *the proposal does not comply with the requirements of the CLEP because it:*

- a) *Is not properly characterised as an eco-tourist facility (see the dictionary and cl 5.13 of the CLEP) and accordingly is prohibited in the E3 Zone; or*
- b) *If, contrary to our view set out in paragraph a), the Warrawidgee Development is properly characterised as an "eco-tourist facility", this type of development is prohibited within 100 metres of the high bank of the Boiling Down Creek and Murray River pursuant to cl 7.6 of the CLEP.*

Accordingly, Federation Council must determine the DA by refusing to grant development consent.

EDO NSW also has made commentary in relation to Council's notification procedures in relation to this development application.

In the second of EDO's correspondence, further commentary was made in relation to the applicant's more information response received by Council in December last. EDO restate their opinion that the DA must be refused.

Comment: EDO NSW's submission has been taken into consideration in the assessment of the development application. The views and approach taken in relation to permissibility of the proposal is similar to Council's approach as outlined in dealing with CI 4.15 matters in this assessment report. The consideration of fact and law in this respect is noted.

In relation to Council's notification processes, the DA was notified to agencies in accordance with statutory requirements, and copies of submissions following public notification forwarded for comment accordingly. Due care has been taken in ensuring that all opinions and submissions from authorities and agencies have been sought to enable the proposal to be appropriately assessed to Council's satisfaction.

Sec 4.15(1)(e) the public interest

- 11.20. The public interest is served when a proposal has been prepared and assessed in accordance with publicly endorsed standards, policies and guidelines. This includes taking into account the views of the general public in relation to the nature and any potential impact of the proposal.
- 11.21. The nature of the subject site's location significantly broadens the range of issues to be considered and the interests and endorsed policies of Federal, State and Local agencies.
- 11.22. The proposal, in its current form, does not uphold the public interest. The scale (number of accommodation units and potential visitor numbers), potential environmental impact and issues of permissibility are at odds with community views and adopted public policy as outlined in the assessment report.

12. Other Matters

12.1. Ecologically Sustainable Development

One of the objects of local environmental planning is to facilitate ecologically sustainable development.

When the proposed development is viewed through the lens of "*the precautionary principle*" - namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation", in the knowledge of the deficiency of critical information about the natural and cultural heritage of the site's environment, and the potential impact on the riverine environment, the only action available in determining the application is to refuse the application.

13. Options

- 13.1. In considering this application, the feasible options available to the consent authority are:
1. To approve the application as lodged, including additional information as provided by the applicant. Conditions of consent would require drafting and Council would have to resolve the observations made that the proposal is prohibited, or at least elements of the proposal (caravan park/cabins, tourist and visitor accommodation) are prohibited uses. Those uses could be excluded from the approval.

2. To refuse the application based on the current proposal details, for reasons that the development:
 - a. involves land use activities that are prohibited in the E3 Zone;
 - b. has not satisfied all of the land use definition criteria for eco-tourist facilities as listed under Clause 5.13 of the CLEP2012;
 - c. has not satisfied Council that it is designed, sited and managed to avoid any significant adverse environmental impact;
 - d. is proposed on a site that is unsuitable for the activities outlined on the development plans;
 - e. does not satisfy the principles of ecologically sustainable development and due to the sensitivities of the site the “precautionary principle” applies; and
 - f. is not in the public interest.
3. To defer a decision and request further information to resolve issues and concerns over permissibility, amenity impact, cultural heritage impact and other matters raised by the relevant agencies and the general community. A further report to be prepared for consideration. A revised proposal may not be substantially the same proposal as originally lodged and the current proposal would preferably be withdrawn and a new application lodged.

14. Conclusion

- 14.1. Council is not satisfied that the development has been adequately designed to fulfil the expectations of an eco-tourist facility operating on the subject site. Despite adequate time to reconsider certain issues in relation to the proposal, the applicant has submitted for determination a development that is not supported by relevant authorities and agencies, and does not satisfy Council that it is designed to avoid adverse environmental impact and achieve the objectives of the zone and other applicable sections of the relevant environmental planning instruments.
- 14.2. Characterisation of the proposal concludes that the proposal contains several dominant land use elements, in particular the caravan site and manufactured cabins, that are prohibited in the E3 zone. They comprise 63.1% of the accommodation proposed and there is no certainty, through both the site layout design and the proposed staging plan, that the development will form a “demonstrated connection between the development and the ecological, environmental and cultural values of the site or area”.
- 14.3. The application has been assessed against applicable plans and policies, taking into consideration matters under Section 4.15 of the Environmental Planning and Assessment Act 1979. Based on that assessment the subject DA2018/39 should be refused for reasons as outlined in the assessment report.

15. Recommendation

- 15.1. Recommended that, in respect of DA2018/39 (2018WES009 DA) for a proposed Eco-Tourist Facility (Conservation holiday resort of transportable cabins), the application be refused for reasons that the development:
 - a. involves land use activities that are prohibited in the E3 Zone;
 - b. has not satisfied all of the land use definition criteria for eco-tourist facilities as listed under Clause 5.13 of the CLEP2012;

- c. has not satisfied Council that it is designed, sited and managed to avoid any significant adverse environmental impact;
 - d. is proposed on a site that is unsuitable for the activities outlined on the development plans;
 - e. does not satisfy the principles of ecologically sustainable development and due to the sensitivities of the site the “precautionary principle” applies; and
 - f. is not in the public interest.
-