



murray river
council

Planning Proposal

PP-2022-4007

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16 December 2022

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BACKGROUND

At Murray River Council's Ordinary Meeting held on Tuesday 22 November 2022, Council resolved that the subject 'Planning Proposal' be submitted to NSW Department of Planning and Environment (DPE) with a request for Gateway Determination to amend the Murray Local Environmental Plan 2011 (Murray LEP 2011). The subject planning proposal seeks to rezone Lot 1 DP 793207, Cobb Highway, Moama from RU1 Primary Production to IN1 General Industrial. The Planning Proposal also seeks to amend the Minimum Lot Size provisions affecting the land from 500 Hectares to no Minimum Lot Size provisions, and to reclassify the land from Community Land to Operational Land.

Council formally submitted the Planning Proposal to DPE via the NSW Planning Portal on Thursday 11 November 2022 requesting a Gateway Determination be made. A Gateway Determination was subsequently issued by DPE on Friday 9 December 2022 which includes a number of conditions to be met.

DISCUSSION

In accordance with the Gateway Determination, prior to community consultation, the planning proposal is to be updated to:

- a. amend the Project Timeline of the proposal to reflect the submission of the proposal in November 2022 and subsequent milestones for finalisation in twelve (12) months, and*
- b. undertake preliminary contamination investigations to satisfy Council the subject land is suitable or can be made suitable for the future industrial use of the site.*

A copy of the amended Project Timeline, and preliminary contamination investigations is therefore outlined below:

TIMELINE

The below table provides an updated overview of the timeline with respect to the lodgement and assessment of the planning proposal.

Project Milestone	Anticipated Timeframe
Lodgement Lodge Planning Proposal with council and make any necessary adjustments or changes prior to council accepting the plan	Completed November 2022
Council Report (seeking Gateway Determination) Council planning officers to prepare a report to council seeking council endorsement of the Planning Proposal and referral to DPE seeking the issuing of a Gateway Determination.	Completed November 2022
Request Gateway Determination Council to request a Gateway Determination from DPE to proceed to Planning Proposal to public exhibition (including any delegation of plan-making powers to council)	Completed Uploaded to Planning Portal 24 November 2022
Gateway Determination received	9 December 2022
Pre-exhibition requirements Ensure conditions of gateway determination are met prior to public exhibition	Pre exhibition requirements returned to DPE for approval on 16 December 2022
Consideration by DPE and confirmation to move to public consultation	2 weeks By approx. 6 January 2023
Public Exhibition Undertake public exhibition of Planning Proposal in accordance with the conditions of the Gateway Determination.	3 weeks to prepare and place a public notice in the newspaper and create Your Say consultation page By approx. 27 January 2023 4 weeks to publicly exhibit the Planning Proposal. Ending by approx. 24 February 2023
Consultation with Transport for NSW	January – February 2023
Public Hearing Undertake public hearing in accordance with the conditions of the Gateway Determination and section 47G of the <i>Local Government Act 1993</i> .	6 weeks to provide public notice prior to the hearing 7 April 2023
Consider Submissions & Finalise Document Council planning officers to consider, respond and report on submissions received and issues raised (if any) and where necessary, recommended relevant changes to the Planning Proposal.	2 weeks to collate, consider and respond to submissions received (if any). By approx. 21 April 2023

Council Report (consideration of submissions) Council planning officers to prepare a report to council post public exhibition that considers any submissions received.	4 weeks to prepare council report and include on council agenda. By approx. 5 May 2023
Submission to DPE/Parliamentary Counsel Forward Planning Proposal to DPE/Parliamentary Counsel for finalisation following public exhibition.	4 weeks By approx. 2 June 2023
Notification Finalisation/gazettal of Planning Proposal	2 weeks By approx. 16 June 2023

PRELIMINARY CONTAMINATION INVESTIGATION

Contamination is required to be addressed as a matter of consideration when preparing a planning proposal as referenced in a number of documents and legislation applying to the rezoning process. Contamination was addressed in the Planning Proposal with reference to the *State Environmental Planning Policy (Resilience and Hazards) 2021*. To elaborate on the comments already provided reference has been made to Clause 4.4 of the Section 9.1 Directions which requires consideration of contaminated land when a planning proposal is prepared. The current version of the 9.1 Direction Clause 4.4 outlines the following:

Objective

The objective of this direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.

Application

This direction applies when a planning proposal authority prepares a planning proposal that applies to:

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

Direction 4.4

(1) A planning proposal authority must not include in a particular zone (within the meaning of the local environmental plan) any land to which this direction applies if the inclusion of the land in that zone would permit a change of use of the land, unless:

- (a) the planning proposal authority has considered whether the land is contaminated, and*
- (b) if the land is contaminated, the planning proposal authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and*
- (c) if the land requires remediation to be made suitable for any purpose for which land in that zone is*

permitted to be used, the planning proposal authority is satisfied that the land will be so remediated before the land is used for that purpose.

In order to satisfy itself as to paragraph 1(c), the planning proposal authority may need to include certain provisions in the local environmental plan.

(2) Before including any land to which this direction applies in a particular zone, the planning proposal authority is to obtain and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines.

Note: In this direction, contaminated land planning guidelines means guidelines under clause 3 of Schedule 6 to the EP&A Act.

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

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

Given that the site is going from RU1 zone to IN1 zone, the risk of contamination would appear low as any future development of the land will not be for a sensitive land use. See the IN1 General Industrial Land Use Table below for further information:

2 Permitted without consent

Environmental protection works

3 Permitted with consent

Depots; Freight transport facilities; Funeral homes; Garden centres; General industries; Hardware and building supplies; Heliports; Industrial training facilities; Kiosks; Landscaping material supplies; Light industries; Neighbourhood shops; Oyster aquaculture; Places of public worship; Plant nurseries; Roads; Rural supplies; Take away food and drink premises; Tank-based aquaculture; Timber yards; Vehicle sales or hire premises; Warehouse or distribution centres; Any other development not specified in item 2 or 4

4 Prohibited

Agriculture; Air transport facilities; Airstrips; Amusement centres; Camping grounds; Car parks; Caravan parks; Centre-based child care facilities; Commercial premises; Community facilities; Eco-tourist facilities; Educational establishments; Entertainment facilities; Exhibition homes; Exhibition villages; Farm buildings; Function centres; Health services facilities; Helipads; Home-based child care; Home businesses; Home occupations; Home occupations (sex services); Information and education facilities; Pond-based aquaculture Public administration buildings; Registered clubs; Residential accommodation; Respite day care centres; Tourist and visitor accommodation; Wharf or boating facilities

As outlined in the IN1 Zone Land Use Table, sensitive land uses including residential accommodation, Tourist and visitor accommodation, Educational establishments, and Health Services Facilities are all prohibited within the zone, therefore these uses will be unable to be applied for or approved. It is also noted any future Development Application applying to the land is also required to adequately address the *State Environmental Planning Policy (Resilience and Hazards) 2021*. It will be the responsibility of the Proponent to provide evidence to the Consent Authority that the requirements of the *State Environmental Planning Policy (Resilience and Hazards) 2021* have been met prior to the issuing of any development consent. Given the above, the planning proposal authority is satisfied that the land is suitable in its current state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used.

CONCLUSION

The Planning Proposal is a suitable outcome for the land and Murray River Council. The planning proposal is consistent with the objects of the *Environmental Planning and Assessment Act 1979* and will allow for the sustainable and economic use and development of the land within Murray River Council. The planning proposal is consistent with the aims of the Murray Local Environmental Plan 2011 and other Environmental Planning Instruments relevant to the Council. It is considered Condition 1 a) and b) have now been met therefore Council requests confirmation the Planning proposal is now able to proceed to community consultation and all other required actions in order to complete the Planning Proposal within the appropriate timeframe.

Please contact Council if you require any additional information.



Chris O'Brien
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16 December 2022