

9.4 DIRECTOR PLANNING AND ENVIRONMENT REPORT AND SUPPLEMENTARY MATTERS

9.4.1 PLANNING PROPOSAL TO RECLASSIFY LAND AT CENTRE ROAD, MOAMA (PP-2022-2347)

File Number: -

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RECOMMENDATION

That Council endorse staff to finalise the proposed Amendment 16 of the Murray Local Environmental Plan 2011 including any alteration to the Planning Proposal which may be required throughout the course of the LEP amendment process for Lot 3 DP813704, Centre Road, Moama.

BACKGROUND

On 20 March 2018 under a General Manager's Supplementary Confidential Report, it was it was unanimously carried as 'Clause 1 -Economic Development' to:

“...

1. *Note the Commercial-in-Confidence information provided in the report on current economic development.*
1. *Approve the acquisition of suitable land to provide for potential commercial activities near the township of Moama.*
2. *Authorise the General Manager to negotiate within allowable price ranges for the acquisition of the land and sign any required legal documents to facilitate the acquisition...”*

As a result of this resolution, Lot 3 DP813704, Centre Road, Moama (the subject land) was purchased by Council on 29th August 2018 under a Memorandum of Understanding entered into with a third party. Under that agreement, the third party proposed to purchase the subject land from Council and subsequently establish an ethanol plant on site. The third party chose not to pursue the purchase of the land from Council and has now ceased their plans to establish an ethanol plant in Moama. Council has retained ownership of the subject land with aim to eventually provide a site for future commercial activities near the Moama township.

In accordance with Section 31(2A) of the *Local Government Act 1993*:

(2) Before a council acquires land, or within 3 months after it acquires land, a council may resolve (in accordance with this Part) that the land be classified as community land or operational land.

(2A) Any land acquired by a council that is not classified under subsection (2) is, at the end of the period of 3 months referred to in that subsection, taken to have been classified under a local environmental plan as community land. [emphasis added]

Unfortunately, due to an internal Council oversight, the land was not classified as 'operational' within the three-month period from settlement and the land has automatically reverted to a 'community' land classification. While at this stage Council has no formal plans for the site, Council remains intent on eventually utilising the site to provide commercial/economic development activities close to Moama. To move forward with planning for this site, the land is required to be classified as 'Operational'.

The subject land is zoned RU1 primary production and until the end of January 2022 was actively farmed under a lease agreement with the original Vendor. Based on the distance of this land from

the town centre, this land is not suitably located to facilitate any community use, and was never intended to be utilised for a community use.

To facilitate the proposed reclassification, a Planning Proposal has been drafted by Habitat Planning (Attachment 1) to amend Schedule 4, Part 1 of the Murray Local Environmental Plan 2011 (MLEP 2011) to reclassify this land from “community” to “operational”. The zoning of the land is not proposed to be amended as part of this proposal, and no Local Environmental Plan Mapping is required to be amended.

DISCUSSION

Site characteristics

The subject land is identified as Lot 3 DP813704, Centre Road, Moama. The land is zoned RU1 Primary Production and is affected by a minimum lot size of 120 hectares under the Murray Local Environmental Plan 2011. The land is not known to contain any items of local heritage significance or Aboriginal heritage significance and is not covered by Council’s biodiversity mapping, bushfire prone land mapping or flood prone land mapping. The lot has an approximate area of 200 hectares and is located approximately 13km north-east of Moama’s town centre. Figure 1 below shows the locality of the land (the land is indicated by the red shading).



Figure 1 – Locality map

The site has vehicle access from Mathoura Line Road and straddles the Moama/Balranald Railway Line in the south-west corner of the site. Figure 2 shows 2021 aerial imagery of the property. As cited in the attached Planning Proposal:

“...The land has minimal physical improvements apart from some boundary fencing, two dams, silos and scattered paddock trees...The topography of the land is generally flat and the site contains no significant landforms. Vegetation on-site generally consists of non-native groundcovers given the previous agricultural use of the land, however it is noted that several scattered remnant trees does exist towards the northern boundary of the site...”



Figure 2 – Aerial photography of the site

The land is unencumbered by any easements or restrictions however the Title currently lists Dealing AN841662 ‘LEASE TO PETER QUINN RURAL CONTRACTING PTY LTD’. The lease enabled the former Vendor to continue farming the site. This lease was terminated on 31 January 2022 by Council resolution and Council is in the process of having the encumbrance removed from the Title. There are no active development approvals effecting the site.

History of the site

The site has previously been utilised for broad-acre agricultural purposes. There has been no recent rezoning or land use change effecting the property since the RU1 zoning applied under the Principal Murray LEP 2011.

Planning Proposal adequacy assessment

The Planning Proposal has been assessed against all relevant provisions and is consistent with the following:

- Murray River Council Local Strategic Planning Statement 2020-2040
- Murray River Council Community Strategic Plan 2022-2032
- Riverina Murray Regional Plan 2036
- Applicable State Environmental Planning Polices
- Applicable Section 9.1 Ministerial Directions
- Practice Note “PN 16-001 - Classification and reclassification of public land through a local environmental plan” and associated “Attachment 1 - Information checklist for proposals to classify or reclassify public land through an LEP”.

The comments and assessment contained within the Planning Proposal align with Council’s evaluation of the Proposal. The transfer of the land to Council ownership was initiated purely to support the commercial activity expansion close to Moama, with no intent to ever utilise the land as a ‘community’ use. As the land has never been previously utilised for a public use or public reserve,

there is no effectual loss of active or passive community space associated with the subject reclassification to operation land.

Strategic and site-specific merits of the reclassification

There are no current plans in place for the site, however it is anticipated that any immediate use of the land would align with the original strategic intent to attract agricultural servicing industries to Moama. The site locality (Ham Road- Centre Road area) is specially mentioned with Council's Local Strategic Planning Statement as a potential area to house a future heavy industry hub. These statements within Planning Priority 3 of the LSPS were made on the basis that the planned ethanol plant on the subject land would come to fruition. Given the absence of the ethanol plant development, the long-term strategic capacity of this area (and this land) will be investigated on its merits within Council's upcoming Economic Development Strategy, the drafting of which is in its infant stages.

The initial investigation and purchase of this land in 2018 was based on the site's advantageous access to the rail and road network, the past use of the site for farming, and the lack of constraints associated with hazard, biodiversity, and heritage. The RU1 Primary Production zoning of the site lends itself to various uses which align with the original intent of purchase, and negate any short term need to rezone. Potential future uses of the site under the current zoning RU1 zone are set out in Table 1.

Table 1 – RU1 uses supporting the original strategic intent of purchase

LAND USE	DEFINITION UNDER THE MURRAY LEP 2011
<i>Air transport facilities</i>	<i>air transport facility</i> means an airport or a heliport that is not part of an airport, and includes associated communication and air traffic control facilities or structures
<i>Airport</i>	<i>airport</i> means a place that is used for the landing, taking off, parking, maintenance or repair of aeroplanes, and includes associated buildings, installations, facilities and movement areas and any heliport that is part of the airport.
<i>Airstrips</i>	<i>airstrip</i> means a single runway for the landing, taking off or parking of aeroplanes for private aviation only, but does not include an airport, heliport or helipad.
<i>Freight transport facilities</i>	<i>freight transport facility</i> means a facility used principally for the bulk handling of goods for transport by road, rail, air or sea, including any facility for the loading and unloading of vehicles, aircraft, vessels or containers used to transport those goods and for the parking, holding, servicing or repair of those vehicles, aircraft or vessels or for the engines or carriages involved.
<i>Heavy industries</i>	<p><i>heavy industry</i> means a building or place used to carry out an industrial activity that requires separation from other development because of the nature of the processes involved, or the materials used, stored or produced, and includes—</p> <ul style="list-style-type: none"> (a) hazardous industry, or (b) offensive industry. <p>It may also involve the use of a hazardous storage establishment or offensive storage establishment.</p> <p><i>hazardous industry</i> means a building or place used to carry out an industrial activity that would, when carried out and when all measures proposed to reduce or minimise its impact on the locality have been employed (including, for example, measures to isolate the activity from existing or likely future development on other land in the locality), pose a significant risk in the locality—</p> <ul style="list-style-type: none"> (a) to human health, life or property, or (b) to the biophysical environment.

	<p>offensive industry means a building or place used to carry out an industrial activity that would, when carried out and when all measures proposed to reduce or minimise its impact on the locality have been employed (including, for example, measures to isolate the activity from existing or likely future development on other land in the locality), emit a polluting discharge (including, for example, noise) in a manner that would have a significant adverse impact in the locality or on existing or likely future development on other land in the locality.</p>
<p>Rural industries</p>	<p>rural industry means the handling, treating, production, processing, storage or packing of animal or plant agricultural products for commercial purposes, and includes any of the following—</p> <ul style="list-style-type: none"> (a) agricultural produce industries, (b) livestock processing industries, (c) composting facilities and works (including the production of mushroom substrate), (d) sawmill or log processing works, (e) stock and sale yards, (f) the regular servicing or repairing of plant or equipment used for the purposes of a rural enterprise. <p>agricultural produce industry means a building or place used for the handling, treating, processing or packing, for commercial purposes, of produce from agriculture (including dairy products, seeds, fruit, vegetables or other plant material), and includes wineries, flour mills, cotton seed oil plants, cotton gins, feed mills, cheese and butter factories, and juicing or canning plants, but does not include a livestock processing industry.</p> <p>livestock processing industry means a building or place used for the commercial production of products derived from the slaughter of animals (including poultry) or the processing of skins or wool of animals and includes abattoirs, knackeries, tanneries, woolscours and rendering plants.</p> <p>sawmill or log processing works means a building or place used for handling, cutting, chipping, pulping or otherwise processing logs, baulks, branches or stumps, principally derived from surrounding districts, into timber or other products derived from wood.</p> <p>stock and sale yard means a building or place that is used on a commercial basis for the purpose of offering livestock or poultry for sale and that may be used for the short-term storage and watering of stock.</p>

As the site is currently classified as community land, there is presently no capacity to realise any of the strategic intentions for this site. An operational land classification would facilitate Council's goal to attract agricultural businesses and supporting uses which would service the commercial profile of Moama. The land is not positioned to provide public benefit as a traditional community space and should the Planning Proposal not be supported, significant reassessment of the strategic and economic viability of this land as community space would be required. If the proposal is not supported Council would be accountable for managing all pest and weed management and fire hazard requirements on the land.

Timeline for completion

The timeline developed for this proposal has been completed in accordance with the Local Environmental Plan Making Guidelines (December 2021) authored by DPE. It is noted that Council continues to experience significant staff resourcing issues in strategic and statutory planning and the completion of the proposal will be subject to the capacity of staff to prioritise this proposal at the progression of each milestone.

STRATEGIC IMPLICATIONS

5. Strategic Theme 5: A place of Prosperity and Resilience

5.3 - Encourage and support economic development across the region - Economic development / Attraction of Businesses.

BUDGETARY IMPLICATIONS

There are no budgetary implications as a result of this Planning Proposal for reclassification. Budgetary implications for the eventual use of the site are to be considered separately to the subject Planning Proposal.

POLICY IMPLICATIONS

Murray River Council Asset Management Policy (POL305).

LEGISLATIVE IMPLICATIONS

Local Government Act 1993.

Environmental Planning & Assessment Act 1979.

Murray Local Environmental Plan 2011

RISK ANALYSIS

- **What can happen?**

The land remains classified as community land and the site is not usable for the intended purpose.

- **How can it happen?**

The subject Planning Proposal is not supported by Council and/or the State Government

- **What are the consequences of the event happening?**

Council will be burdened with additional community land which will serve no immediate public purpose.

- **What is the likelihood of the event happening?**

Low

- **Adequacy of existing controls?**

The Planning Proposal is the only means of achieving the reclassification. The *Local Government Act* 1993 governs the use of community land and based on this classification prohibits Council from utilising the site for the intended use or disposing of the land via sale.

- **Treatment options to mitigate the risk?**

Support the Planning Proposal and resolutions of this report.

CONCLUSION

The subject Planning Proposal has been assessed against all necessary frameworks and is considered adequate to proceed to lodgement for Gateway Determination with Department of Planning and Environment. The current 'community' classification of the land does not reflect the intended use to support commercial activities onsite, nor does it provide any community benefit as a traditional public use area. As the land has never been used or intended for a public access/community area, the Proposal will act purely to correct an administrative oversight associated with the purchase of land by Council. The Planning Proposal will facilitate an opportunity to attract

compatible rural industry close to Moama, and is considered to present a positive economic opportunity for Moama and Murray River Council

ATTACHMENTS

1. **Planning Proposal - Centre Road Reclassification (under separate cover)** 
2. **Title Search - Lot 3 DP813704 Centre Road, Moama** [↓](#) 