



New South Wales Government
Independent Planning Commission

Gateway Determination Review Request for 6811 Sturt Highway Mallee

Gateway Determination Advice Report

Adrian Pilton (Chair)

15 September 2020

1 INTRODUCTION

1. The NSW Independent Planning Commission (**Commission**) received a request from the NSW Department of Planning, Industry and Environment (**Department**), dated 12 August 2020, for advice pursuant to section 2.9(1)(c) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* in relation to a Gateway Determination in respect of 6811 Sturt Highway, Mallee (Part Lot 1 DP 1182353) (the **Site**) within the Wentworth Shire Local Government Area (**LGA**)
2. Grand Junction Pty Ltd (the **Proponent**) submitted a request for a planning proposal with Wentworth Shire Council (**Council**) on 17 November 2016, seeking to amend the *Wentworth Local Environmental Plan 2011 (WLEP)* to facilitate tourism and commercial uses at the Site (**Planning Proposal**). In May 2017 the Council submitted the Planning Proposal to the Department, seeking a Gateway determination.
3. On 12 February 2018, as delegate of the Minister for Planning and Public Spaces (**Minister**), the Department issued a Gateway Determination that the Planning Proposal should not proceed (the **Gateway Determination**).
4. On 28 April 2020, the Proponent wrote to the Department requesting a review of the Gateway Determination.
5. The matter was referred by the Department to the Commission for advice. The accompanying letter requested that the Commission:

review the decision and prepare advice concerning the merits of the request. The advice should include a clear and concise recommendation confirming whether, in the Commission's opinion, the Department's decision should stand.

6. Peter Duncan AM, Acting Chair of the Commission, nominated Adrian Pilton (Chair) to constitute the Commission providing advice on the review of the Gateway determination.

1.1 Site and Locality

7. The Department's Gateway Determination Report (**Department's Report**), dated 26 April 2018, states:

The subject site is located in the Wentworth Shire on the New South Wales and Victorian border, approximately 1km east of the town of Gol Gol and 5kms north east of Mildura (located in Victoria). The town of Gol Gol had a population of 1,523 persons and Mildura had a population of 32,738 persons in 2016.

The subject site is dissected by the Sturt Highway, with approximately 630ha sited north of the highway and 63ha south of the highway. The planning proposal notes current and previous uses include sheep grazing, cultivation and a gravel quarry.

The land is currently zoned predominantly RU1 Primary Production. A small area of the site is zoned W1 Natural Waterways at the Murray River and land to the north of the site is zoned E3 Environment Management. It should be noted the planning proposal states the subject site is zoned RU1 Primary Production in its entirety.

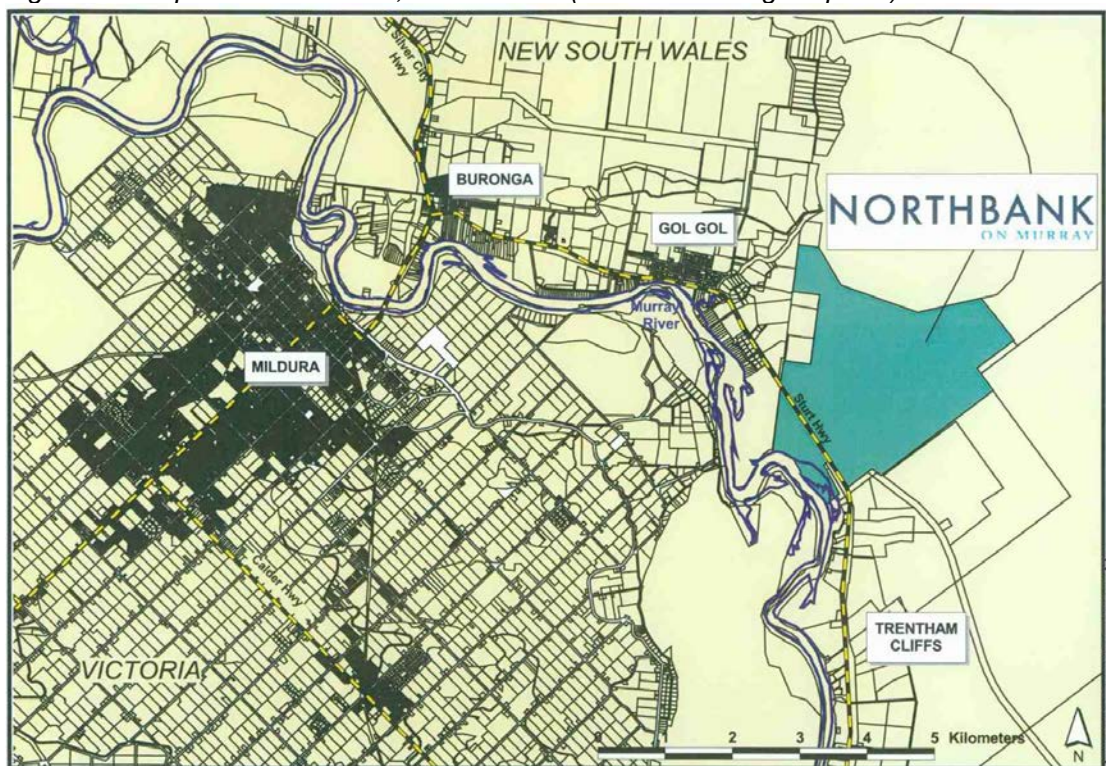
8. The Commission notes the following clarification regarding the site boundary and zoning outlined in the Ethos Urban report, dated 10 July 2020:

The planning proposal refers to the site as being Lot 1 DP 1182353. This seems to be clear on the Deposited Plan map that accompanied the planning proposal (below left), however a search of the NSW Government Spatial Services website (Sixmaps) shows a different lot boundary on the Murray River in the south east corner of the site (below right) and includes areas zoned W1 Natural Waterways under Wentworth LEP 2011. This required clarification as the consent master plan image also shows some development in this location.

The Proponent, in the submission to the IPC has advised that the billabong area (zoned W1 Natural Waterways) is part of Lot 1 DP 1182353. The Proponent has also advised that this area, as part of the Murray River floodplain is to be excluded for the planning proposal.

9. The Site location, as submitted, is shown in Figure 1 below. The site plan does not include the revisions suggested by the Proponent and discussed at paragraph 11.

Figure 1 – Proposed site location, as submitted (source: Planning Proposal)



1.2 The Planning Proposal

10. The Planning Proposal seeks to rezone the Site to SP3 Tourist, B3 Commercial Core and B4 Mixed Use, as well as removing the 10,000ha minimum lot size from the subject site. The B3 Commercial Core and B4 Mixed Use zones are proposed to be added as new zone types to the WLEP. The proposed land use zones are shown Figure 2 below.

Figure 2: Proposed land use zoning map, as submitted (source: Planning Proposal)



11. The Proponent's submission dated 5 July 2020 included suggested revisions to the Planning Proposal, including withdrawal of the submitted concept masterplan and revising the Site boundary to exclude land within the Murray River floodplain. No revised plans were provided to the Commission for its advice. The suggested revisions are described as follows:

...we withdraw the concept plan.

... we suggest the part of the site in the Murray River Floodplain be excluded from the Planning Proposal.

...As per above we propose the riverine area be excluded from the Planning Proposal.

...We have now proposed to exclude all redgum habitat from the Planning Proposal

The Commission has considered the Planning Proposal as submitted and has also provided commentary on whether the suggested revisions would resolve key issues identified by the Department.

1.3 History of the Planning Proposal and Gateway Determination

12. A brief chronology of the Planning Proposal and Gateway Determination is provided below in Table 1, based on information provided with the Department's Report.

Table 1 - History of the Planning Proposal and Gateway Determination (sourced from: Department's Background Chronology)

November 2016	Planning Proposal submitted to Council.
February 2017	Consultants Aurecon provided Council with assessment of Planning Proposal.
March 2017	Council requested that Proponent provides further studies and information as recommended in Aurecon report.
April 2017	Proponent responded to Wentworth Shire Council and did not provide requested information or reports.
May 2017	Council submitted the planning proposal to the Department to seek a Gateway determination.
28 May 2018	Gateway determination – that the Planning Proposal should not proceed.
3 December 2019	Chief Planner completed review of proposal - determining that the planning proposal in its current form does not contain enough information to identify relevant environmental, social, economic and other site considerations.
28 April 2020	Proponent formally requested Gateway Determination review.
5 July 2020	Proponent provided submission regarding Commission's consideration of the Planning Proposal.
10 July 2020	Consultants Ethos Urban provide an independent review of the proposal.
29 July 2020	Council provides submission regarding the Gateway Determination Review.

1.4 The Department's Decision

13. The Department's Gateway Report found that the Planning Proposal should not proceed for the following reasons:

- *inconsistency with the strategic framework for the future Far West in particular:*
 - a) *Far West Regional Plan 2036 – Directions 12, 14, 15, 17 and 21.*
 - b) *SEPP (Rural Lands) 2008;*
 - c) *SEPP 44 – Koala Habitat;*
 - d) *SEPP 50 – Canal Estate Development;*
 - e) *SEPP 55 – Remediation of Land; and*
 - f) *Murray Regional Environmental Plan No.2 – Riverine Land.*
- *inadequate information is provided to determine consistency with Section 9.1 Directions 1.1 Business and Industrial Zones, 1.2 Rural Zones, 1.5 Rural Lands, 2.1 Environment Protection Zones, 2.3 Heritage Conservation, 3.1 Residential Zones, 3.4 Integrating Land Use and Transport, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection and 5.10 Implementation of Regional Plans; and*
- *the potential for environmental, social and economic impacts are considered to be unacceptable.*
- *the required site investigations have not been completed nor has the required detail been provided to support the proposal.*

2 THE COMMISSION'S CONSIDERATION

2.1 The Commission's Meetings

14. As part of its review, the Commission met with various persons as set out in Table 2. Transcripts or minutes of all meetings were made available on the Commission's website.

Table 2 – Commission's Meetings

Meeting	Date of Meeting	Transcript/Notes Available on
Department	27 August 2020	3 September 2020
Proponent	27 August 2020	1 September 2020
Council	3 September 2020	4 September 2020

2.2 Site Inspection

15. There is no statutory requirement for the Commission to conduct a site and locality inspection when carrying out its functions. A decision was made by the Chair of the Panel not to conduct a site inspection during the current COVID-19 circumstances, on the basis that it was possible to make an informed decision based on meetings with stakeholders and the material identified in paragraph 16, below.

2.3 Material considered by the Commission

16. In this review, the Commission has carefully considered the following documentation (**Material**):
- the Planning Proposal, dated 17 November 2016
 - the review of the Planning Proposal on behalf of Council, prepared by Aurecon, dated 23 February 2017
 - the Department's Gateway Determination report, dated 26 April 2018
 - the Department's Gateway Determination, dated 28 May 2018
 - the Department's letter from the Deputy Secretary of Planning Services to the Council, dated 28 May 2018
 - the Department's letter from the NSW Chief Planner to the Proponent, undated
 - the Department's letter from Chief Planner to Proponent, undated
 - the Proponent's Gateway Review Application, dated 28 April 2020
 - the Proponent's submission, dated 5 July 2020
 - the review by Ethos Urban, dated 10 July 2020
 - Council's submission in a letter to the Department dated 29 July 2020
 - the Department's letter of referral, dated 12 August 2020
 - the Department's Gateway Review Justification Assessment Report, undated
 - the Department's background chronology, provided with letter of referral, dated 12 August 2020
 - the Proponent's comments to the Commission, dated 25 August 2020
 - the Proponent's comments to the Commission, dated 26 August 2020
 - the Proponent's comments to the Commission, dated 27 August 2020
 - the Proponent's comments to the Commission, dated 9 September 2020
 - the Proponent's comments to the Commission, dated 10 September 2020
 - Council's comments to the Commission, dated 8 September 2020
 - Council's comments to the Commission, dated 9 September 2020

2.4 Consistency with Strategic Framework

17. The Department's Report stated that the Planning Proposal was:

Inconsistent with the strategic framework for the future of the Far West, in particular:

- a) Far West Regional Plan 2036 – Directions 12, 14, 15, 17 and 21.*
- b) SEPP (Rural Lands) 2008;*
- c) SEPP 44 – Koala Habitat;*
- d) SEPP 50 – Canal Estate Development;*
- e) SEPP 55 – Remediation of Land; and*
- f) Murray Regional Environmental Plan No. 2 – Riverine Land.*

Inadequate information is provided to determine consistency with the Section 9.1 Directions – 1.1 Business and Industrial Zones, 1.5 Rural Zones, 1.5 Rural Lands, 2.1 Environment Protection Zones, 2.3 Heritage Conservation, 3.1 Residential Zones, 3.4 Integrating Land Use and Transport, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection and 5.10 Implementation of Regional Plans.

18. Each of these plans, instruments and directions are considered individually below.

2.4.1 Far West Regional Plan 2036

Proponent's Comments

19. The Planning Proposal states:

The Draft Far West Plan was not released at the initial time of submission of the NorthBank Planning Proposal. The Draft Far West Plan does however fully endorse the Planning Proposal as Tourism is a key part of this strategy. Specifically, actions in the Draft Far West Plan consistent with Northbank are: "5.2 Prepare a tourism growth strategy serving peak and off-peak markets - 5.3 Identify opportunities for tourism and associated land uses in local plans".

Council's Comments

20. The Aurecon report prepared on behalf of the Council states:

There is currently no regional strategy or regional plan in force relevant to the site. However, the Planning Proposal should consider its concurrence with the Draft Far West Regional Plan. Relevant directions in this Draft plan include, Direction 1 of this Plan is to Grow the economic potential of the agribusiness sector while Direction 5 is to Promote tourism opportunities...The Planning Proposal should include an economic assessment that provides an analysis of the potential employment and earning value of the site.

Department's Report

21. The Department's Report found that the Planning Proposal was inconsistent with Directions 12 (Enhance the productivity of employment lands), 14 (Manage and conserve water resources for the environment), 15 (Manage land uses along key river corridors), 17 (Manage natural hazard risks) and 21 (Strengthen communities of interest and cross-regional relationships) of the Far West Regional Plan 2036 (**FWRP**).

Commission's Advice

22. The Commission agrees with the Department's finding that the Planning Proposal as submitted conflicts with Direction 14 of the FWRP (Manage and conserve water resources for the environment). The Commission notes that the Proponent's suggested revisions discussed at paragraph 11, which include withdrawal of the concept masterplan (which included the proposed manmade lakes) may resolve potential contributors to water resource impacts. However, the Commission finds that the potential scale and intensity of development at the Site has the potential to generate significant impacts on water resources which have not been adequately addressed.
23. The Commission agrees with the Department's finding that the Planning Proposal as submitted conflicts with Direction 15 (Manage land uses along key river corridors) of the FWRP. Potential impacts on river corridors is a key consideration for establishing the merit of the proposal, as it could limit the development and land uses sought at the Site and therefore should be addressed prior to a Gateway Determination. The Proponent's suggested revisions (paragraph 11) to the Planning Proposal include removal of land within the Murray River floodplain. However, the revised Site would still be closely related to the Murray River and the suggested revisions do not, in the Commission's view, resolve the identified inconsistency with Direction 15 of the FWRP.
24. The Commission agrees with the Department's finding that the Planning Proposal as submitted conflicts with Direction 17 (Manage natural hazard risks) of the FWRP. The Commission notes that the flood and bushfire risks associated with the Planning Proposal would be reduced through the suggested revisions (paragraph 11) by excluding the most vegetated land and flood prone land alongside the Murray River from the Site. Subject to the suggested revisions, bushfire and flood risk could reasonably be assessed after a Gateway Determination as these risks are considered unlikely to preclude or significantly limit the range of development and land use sought.
25. The Commission agrees with the Department's findings that the Planning Proposal does not demonstrate consistency with Directions 12 (Enhance the productivity of employment lands) and 21 (Strengthen communities of interest and cross-regional relationships) of the FWRP as it does not include a detailed assessment of the economic or transport context of the Site. Directions 12 and 21 are key considerations for establishing the merit of the Planning Proposal and should be addressed prior to a Gateway Determination.

2.4.2 SEPP (Rural Lands) 2008 (repealed)

Proponent's Comments

26. The Commission notes that SEPP (Rural Lands) 2008 was repealed after the Gateway Determination and the new SEPP (Primary Production and Rural Development) 2019 has commenced.
27. The Application states that the Planning Proposal is:

generally consistent with the Rural Planning Principles of SEPP (Rural Lands) 2008 as:

- a) The current use of the land for cultivation and grazing is of minor significance;*
- b) The proposal will have minimal impact on agriculture in the area and will provide retail customers for farms, markets and cellar doors in the area;*
- c) The proposal will provide a good balance between the social, economic and environmental interests of the community;*

- d) *The proposal avoids constrained areas and provides for the protection and ongoing management of land with important ecological values;*
- e) *The proposal provides additional tourism opportunities and is located adjacent to an existing township; and*
- f) *The proposal will make use of existing infrastructure and will have minimal demands for services because of its location.*

Council's Assessment

28. The report prepared by Aurecon on behalf of the Council made the following recommendations with respect to SEPP Rural Lands 2008:

The Planning Proposal should include an economic assessment that provides and analysis of the potential employment and earning value of the site in its current state, during hypothetical stages of development and when it is fully developed. Consideration should also be given to economic impacts and benefits from construction of the development on a local and regional scale.

The Planning Proposal should include an assessment of the site's suitability for agricultural uses, such as those occurring on properties adjacent to the site. This should also include an assessment of the feasibility of agriculture related tourism activities and other tourism activities that are permissible at the site under its current zoning.

The proponent should consider reducing the scale of the Planning Proposal. An application for a smaller rezoning (potentially an enabling clause allowing additional tourism related land uses focussed along the Highway and Murray River frontages of the site) would create better balance in the economic development of the region.

The Planning Proposal should include a study of the biodiversity of the site by a qualified ecologist to determine if any parts of the site should be protected. Given the large scale of the site and extensive buffer/vegetated areas shown on the Master Plan, consideration should be given to protecting parts of the site with high environmental value with environmental protection zones. Any existing approvals covering clearing of the site should be provided with the Planning Proposal, or details should be provided.

The Planning Proposal should include a servicing strategy that outlines the likely demand on services that would result from the intended development and impact on existing utilities.

Any revised Planning Proposal should provide consideration of the Draft Far West Regional Plan 2016.

Department's Report

29. The Letter from the Chief Planner to the Proponent stated:

The planning proposal in its current form does not contain enough information to identify relevant environmental, social, economic and other site considerations. A planning proposal which is submitted for a Gateway Determination must provide enough information to determine whether there is merit in the proposed amendment proceeding to the next stage of the plan making process. The level of detail required in a planning proposal should be proportionate to the complexity of the proposed amendment.

Given the significance of change to the Local Environmental Plan (LEP) proposed, it is a logical conclusion that your proposal should be supported by strategic assessment and studies to demonstrate the suitability of proposed uses. Further to this positioning, an opportunity has been presented by the draft Local Strategic Planning Statement, which leaves open the opportunity for consideration of a range of tourist uses providing sufficient information has been provided.

I recognise the expansion of tourism opportunities in the Far West is promoted throughout a number of State, regional and local documents. As tourism opportunities assist in employment and business growth, we encourage you to work with council to strategically assess the merits of the proposal.

30. The Department's Assessment Report states that the Planning Proposal does not include a:

clear assessment on the current economic value of the land as an agronomic assessment has not been undertaken.

Commission's Advice

31. The Commission agrees with the Department's finding that the Proponent has provided insufficient detail to demonstrate consistency with the SEPP (Rural Lands) 2008.
32. The Commission considers that the information provided in the Planning Proposal does not demonstrate consistency with the new SEPP (Primary Production and Rural Development) 2019, which is a key consideration for establishing the merit of the Planning Proposal, as it could preclude the development and land uses sought at the Site and therefore should be addressed prior to a Gateway Determination.

2.4.3 SEPP 44 – Koala Habitat (repealed)

Proponent's Comments

33. The Proponent stated in the Planning Proposal that SEPP 44 – Koala Habitat was not applicable to the proposal. The Commission notes that SEPP 44 – Koala Habitat was repealed after the Gateway Determination and the new SEPP (Koala Habitat Protection) 2019 has commenced.

Council's Comments

34. The Aurecon report prepared on behalf of the Council states:

While it is understood that Koalas are not found in the region, statutorily this SEPP should be considered in the Planning Proposal...

The Planning Proposal should include a study of the biodiversity of the site (including Koalas) by a qualified ecologist to determine if any parts of the site should be protected. Given the large scale of the site and extensive buffer/vegetated areas shown on the Master Plan, consideration should be given to protecting parts of the site with high environmental value with environmental protection zones.

35. The Council's response to the Commission, dated 8 September 2020, provided the following additional details:

The entire site, other than the riverfront land, has been cleared of all vegetation and any [sic] therefore any existing biodiversity through a Local Lands Services clearing approval, the site is now vacant and bare.

Department's Report

36. The Department's Assessment Report states that:

...no ecological assessment has been submitted and the subject site is mapped as containing Terrestrial Biodiversity in the Wentworth Local Environmental Plan 2011. The consistency of the proposal with SEPP 44 cannot be resolved until the ecological investigations for the site have been completed.

Ethos Urban Report

37. The Ethos Urban Report states that:

Under the new SEPP, parts of the site along the Murray River foreshore are identified on the Koala Development Application map. Other parts of the site are identified as site investigation areas for the preparation of a Koala Plan of Management.

The submitted planning proposal was not accompanied by a biodiversity assessment. This was a key issue was raised by both the Department in its Determination Report and earlier by Aurecon in its review of the planning proposal.

...The southern section of the site along the Murray River foreshore (to the south of the Sturt Highway) has not been cleared and include areas mapped on the Koala Development Application Map in the Koala Habitat Protection SEPP.

As part of this review process, the Proponent was advised that a biodiversity assessment of the Murray River foreshore areas should be undertaken by a suitably qualified expert prior to the IPC Gateway review. This assessment would verify if there is potential or core Koala habitat or other threatened species populations or ecological communities.

In the submission to the IPC, the Proponent has advised that the planning proposal is to be amended to exclude the Murray River floodplain area from development. On this basis, the risk of impacts on the biodiversity values of this area has been significantly diminished. A full assessment of ecology under the Biodiversity Conservation Act 2016 could be deferred to DA stage, should the site be rezoned, however it is recommended that a preliminary assessment of vegetation types on the site and a risk assessment should be undertaken prior to rezoning, should the planning proposal proceed past the LEP Gateway.

Commission's Advice

38. The Commission agrees with the Department's finding that the Planning Proposal as submitted does not demonstrate consistency with SEPP 44 – Koala Habitat.
39. The Commission finds that the revised SEPP (Koala Habitat Protection) 2019 is unlikely to be applicable to the Planning Proposal as it only provides for koala plans of management and controls relating to development applications. Wentworth Council has not developed a koala plan of management pursuant to SEPP (Koala Habitat Protection) 2019.

2.4.4 SEPP 50 – Canal Estate Development

Proponent's Comments

40. The Proponent stated in the Planning Proposal that SEPP 50 – Canal Estate Development was not applicable to the proposal.

Department's Report

41. The Department's Report states:

as the planning proposal does not provide any information on the beach swimming lagoon, it cannot be determined if SEPP 50 applies to the subject site. The consistency of the proposal with SEPP 50 cannot be resolved until further information of the site has been provided.

Commission's Advice

42. The Commission agrees with the Department's finding that the Planning Proposal as submitted includes insufficient information to demonstrate either the applicability of or consistency with SEPP 50 – Canal Estate Development. SEPP 50 – Canal Estate Development is considered a key consideration for establishing the merit of the Planning Proposal as submitted, as it could preclude the development and land uses sought at the Site, and therefore should be addressed prior to a Gateway Determination.
43. The Commission notes that the Proponent's suggested revisions (paragraph 11) include removal of the concept masterplan (which included the proposed manmade lakes) and all land fronting the Murray River, and finds that the amendments could resolve the identified inconsistency with SEPP 50 – Canal Estate Development.

2.4.5 SEPP 55 – Remediation of Land

Proponent's Comments

44. In relation to SEPP – No. 55 (Remediation of Land), the Planning Proposal states that there is no evidence or history of the Site being subject to contamination.
45. The Proponent's submission dated 5 July 2020 provided additional information regarding the land use history at the Site to demonstrate a low risk of historical contaminating activities, including confirmation that agricultural activities had not occurred at the site for at least 15 years and that the site contains no yards or sheep handling infrastructure.

Council's Comments

46. The Aurecon report prepared on behalf of Council includes the following findings and recommendation regarding SEPP – No. 55 (Remediation of Land):

Previous land uses that are likely to have occurred on site may have resulted in contamination. These may have included grazing (such as potential cattle/sheep dips) or gravel extraction (such as diesel storage, machinery maintenance)...

A Stage 1 Environmental Site Assessment should be carried out to determine if previous land use activities that are likely to have occurred at the site have resulted in contamination.

Department's Report

47. The Department's Report states that the Planning Proposal:

indicates that the site was previously used as a gravel quarry. The planning proposal does not indicate if remediation of the site has been undertaken or if the site is potentially contaminated from these activities...The planning proposal does not include a preliminary site contamination assessment as required by SEPP 55. Until such an assessment has been undertaken any inconsistency of the proposal with the SEPP cannot be resolved.

Department's Gateway Review Justification Assessment Report

48. The Department's Gateway Review Justification Assessment Report states:

It is agreed that some matters such as bushfire assessment, cultural heritage and contamination assessment as identified by the Proponent and Ethos Report could be considered post-Gateway determination and prior to finalisation of the LEP amendment.

Commission's Advice

49. The Commission agrees with the Department's findings that the Planning Proposal included insufficient information to demonstrate consistency with SEPP 55 - Remediation of Land.
50. The Commission notes that clause 6 of SEPP 55 which required contamination and remediation to be considered in zoning or rezoning proposals, was repealed after the gateway determination. The Commission also notes that the Site history indicates a low risk of extensive contamination and finds that a Phase 1 contamination investigation could reasonably be provided after a Gateway Determination.

2.4.6 Murray Regional Environmental Plan No 2 – Riverine Land (deemed SEPP)

Department's Comments

51. The Department's Assessment states:

The proposal fails to address how it will minimise impact on the Murray River and the surrounding environment. The proposal is inconsistent with the Murray REP.

Commission's Consideration

52. The Commission agrees with the Department's findings above and is of the view that the Planning Proposal as submitted is inconsistent with the Murray Regional Environmental Plan No 2 – Riverine Land.
53. The Proponent's suggested revisions (paragraph 11) to the Planning Proposal include revising the Site boundaries to exclude land within the Murray River floodplain. However, the revised Site would still be closely related to the Murray River. The suggested revisions are not considered to resolve the identified inconsistency with the Murray Regional Environmental Plan No 2 – Riverine Land.

2.4.7 Section 9.1 Directions

Proponent's Comments

54. The Planning Proposal included consideration of the proposal with directions issued by the Minister for Planning to relevant planning authorities under section 9.1(2) of the Environmental Planning and Assessment Act 1979 (**Section 9.1 Directions**) (previously section 117), and found the proposal to be broadly consistent with these Directions, with the exception of 1.2 (Rural Lands). Regarding 1.2 (Rural Lands), the Planning Proposal states:

the inconsistency is viewed to be minor. Although the planning proposal does seek to rezone the land, currently RU1 Primary Production to SP3, B3 & B4, it is considered that in its current state, any loss of agricultural production value is minimal due to its low agricultural productivity. The land has been sitting dormant for a long time and not contributing to the local economy during this time.

Council's Assessment

55. The Aurecon report prepared on behalf of Council found the Planning Proposal to be inconsistent with Directions 1.1 (Business and Industrial Zones), 1.2 (Rural Zones), 2.3 (Heritage Conservation), 4.4: (Planning for Bushfire Protection), 5.10 Implementation of Regional Plans and 6.3 (Site Specific Provisions), and partially consistent with 1.5 (Rural Lands) and 2.4 (Recreation Vehicle Areas).

Department's Report

56. The Department considered the Planning Proposal against relevant Section 9.1 Directions and found that the Planning Proposal is inconsistent with Directions 1.1 (Business and Industrial Zones), 1.2 (Rural Zones), 1.5 (Rural Lands), 2.1 (Environmental Protection Zones), 2.3 (Heritage Conservation), 3.1 (Residential Zones), 3.4 (Integrating Land Use and Transport, 4.3 Flood Prone Land, 4.4 (Planning for Bushfire Protection), 5.10 (Implementation of Regional Plans).

Commission's Advice

57. The Commission agrees with the Department's finding that the Planning Proposal is inconsistent with the Section 9.1 Directions identified in paragraph 56 above. Section 9.1 directions are key considerations for establishing the merit of the Planning Proposal, as they could preclude the development and land uses sought at the site and therefore should be addressed prior to a Gateway Determination.
58. Regarding Direction 2.3, the Department's Report states:

It is considered that until an Aboriginal cultural heritage investigation has been completed the suitability of the proposal for the land is not known and the proposal is inconsistent with this direction.

However, the Department's Report also finds that an Aboriginal Cultural Heritage Assessment Could reasonably be provided after a Gateway Determination. The Heritage section states:

The planning proposal states the site has been significantly disturbed and a letter from a Barkinji elder has been provided stating that a surface inspection has been undertaken. The planning proposal does not include an Aboriginal Cultural Heritage Assessment and evidence of consultation with the Local Aboriginal Land Council has not been provided. If the proposal was to be supported it is appropriate that an Aboriginal Cultural Heritage Assessment be undertaken.

The Ethos Urban report states:

Subsequent to the lodgement of the IPC submission, the Proponent forwarded details of AHIMS Register Aboriginal Site Recording Forms for two sites located on the property (Attachment D). One site (ID 46-3-0198) is located to the south of the Sturt Highway on the boundary of Lot 1 DP 1182353 and is a small midden. The second site (46-3- 0125) is an area located on the Murray River floodplain section of the site and is not described on the form.

..Should the planning proposal be endorsed at Gateway, it is recommended that the Proponent undertake a cultural heritage survey of the site in accordance with the Due Diligence Code of Practice for the Protection of Aboriginal Objects prior to public exhibition of the planning proposal

The Department's Gateway Review Justification Assessment Report states:

It is agreed that some matters such as bushfire assessment, cultural heritage and contamination assessment as identified by the Proponent and Ethos Report could be considered post-Gateway determination and prior to finalisation of the LEP amendment.

The Commission notes the Aboriginal Heritage Information Management System records provided by the Department after the Gateway Determination. Subject to the suggested revisions to the Site boundary (paragraph 11), the Commission finds that an Aboriginal Cultural Heritage assessment could reasonably be provided after a Gateway determination.

59. Regarding Direction 4.3, the Commission notes that the Proponent's proposed revisions (paragraph 11) would remove land within the Murray River floodplain. Subject to the suggested revisions, the Commission considers that flood risk could reasonably be assessed after a Gateway Determination.
60. Regarding Direction 4.4 (Planning for Bushfire Protection), the Commission notes that the bushfire risk at the Site may have been reduced through extensive clearing of vegetation after the Gateway determination.

The Ethos Urban report stated:

Given the extensive clearing of the site, bushfire is considered to be low risk to the site. This issue could be addressed by way of a Gateway condition for a bushfire risk assessment to be prepared prior to public exhibition, should the planning proposal be endorsed at Gateway.

The Department's Gateway Review Justification Assessment Report stated:

It is agreed that some matters such as bushfire assessment, cultural heritage and contamination assessment as identified by the Proponent and Ethos Report could be considered post-Gateway determination and prior to finalisation of the LEP amendment.

The Commission finds that, subject to the suggested revisions to the Site boundary, the bushfire risk at the Site could reasonably be assessed after a Gateway Determination.

2.5 Potential for Environmental, Social and Economic Impacts

2.5.1 Environmental Impacts

Proponent's Comments

61. The Planning Proposal was not accompanied by supporting Site studies on biodiversity, contaminated land, heritage, bushfire or flooding.

Department's Report

62. The Department's Report identified that the Planning Proposal presented unacceptable risks associated with terrestrial biodiversity, impacts upon the Murray River, and flooding, and that the proposal includes insufficient detail to demonstrate that these risks could be appropriately managed. The Department's Report states:

...The proposal has the potential for significant environmental, social and economic impacts which have not been sufficiently addressed.

Commission's Consideration

63. The Planning Proposal seeks to enable development which has the potential to be large scale, high intensity and complex. Given the scope of the Planning Proposal, the Commission considers that the level of detail provided in the Planning Proposal is disproportionately low and therefore inadequate to accurately identify the potential impacts at the Site. Accordingly, the Commission finds that significantly more information is needed prior to the making of a Gateway determination in order to establish the merits of the proposal.
64. The Commission has noted the Proponent's suggested revisions to the Planning Proposal and considers that these changes could resolve some of the issues identified by the Department, including those associated with flooding (paragraph 59).
65. The Commission agrees with the Department's finding that the Planning Proposal presents potential environmental impacts which have not been sufficiently addressed. The Commission considers that the potential for environmental impacts is a key consideration which is fundamental to establishing the merit of the Planning Proposal, as they could preclude the development and land uses sought at the Site, and therefore should be addressed prior to a Gateway Determination.

2.5.2 Social Impacts

Proponent's Comments

66. The Proponent identifies various positive social impacts of the Planning Proposal, stating that it will:
- *assist in meeting identified tourism short falls and gaps in the district and greater region as outlined by various strategic plans;*
 - *enhance the viability of existing local businesses and support future local business opportunities;*
 - *generate additional rates and water/sewer service revenue for the Wentworth Shire Council;*
 - *provide substantial shopping facilities and infrastructure for use by Buronga Gol Gol Residents; and*
 - *promote Gol Gol, Sunraysia and Wentworth council as "go to" destinations for tourists.*

Department's Report

67. Excerpts of the Department's Assessment Report which relate to social impacts are copied below:

Until noise and visual impact studies have been undertaken and mitigation measure identified, the noise and visual impacts are considered unsatisfactory

... Other social impacts arising from the increased tourism and residential population could be addressed at a later stage. This will be dependent on the scale of the proposed development including retail and commercial use.

...For instance, workers accommodation will need to be considered given the scale of the development.

...The scale of this proposal is such that it would adversely impact on existing centres of Gol Gol .

...the inconsistencies with the directions in relation to the environment, centres hierarchy, cross border issues and hazard suggests the planning proposal is inconsistent with the Far West Regional Plan.

...The structure plan identifies that there is sufficient residential and commercial zoned land to meet demand without this proposal.

...The proposal has the potential for significant environmental, social and economic impacts which have not been sufficiently addressed.

Commission's Advice

68. The Commission agrees with the Department's finding that the Planning Proposal presents potential social impacts which have not been sufficiently addressed. The Commission considers that the potential for social impacts is a key consideration which is fundamental to establishing the merit of the Planning Proposal, as it could preclude the development and land uses sought at the Site, and therefore should be addressed prior to a Gateway Determination.

2.5.3 Economic Impacts

Proponent's Comments

69. The Planning Proposal includes the following statement regarding economic impacts:

Economic Impact Assessment. – If required, NORTHBANK considers it appropriate that an Economic Impact and Retail Study be prepared as a condition of a Gateway Approval. NORTHBANK will create employment for the area through the influx of investment and tourism dollars that the proposed developments will bring to the Gol Gol community and the Wentworth Shire Council. There are not perceived to be any negative economic impacts as a result of the proposed development.

70. The Proponent's submission dated 5 July 2020 included a document titled Northbank Strategic Support and Economic Study (prepared by the Proponent), which stated:

Ethos Urban has for the first time detailed some clear parameters for the economic analysis of a development proposal. However, in this case there is no development proposal, simply a Planning Proposal to make tourism and related business uses permissible. Also it is not possible to conduct any such study during Covid and in the short time before the IPC hearing.

As per the section above the Supporting Analysis for the Western Murray REDS [Regional Economic Development Strategy] and the supporting documents for the Murray Destination Management Plan provide much of the information identified by Ethos Urban.

That said we would be prepared to conduct further economic study after the Gateway Approval. No rezoning would proceed unless the economic study supported the project. We don't believe it is reasonable to require an economic study prior to the Gateway stage.

Council's Comments

71. Council's submission to the Commission, stated:

Wentworth Shire Council is supportive of and aims to encourage well planned and sustainable development, particularly where it provides economic and social benefits to the Wentworth Shire community and the Sunraysia community as a whole.

Department's Report

72. The Department's Report stated:

Given the scale of the proposal the economic impacts will need to be assessed on a local and regional level. The assessment is needed to gauge the demand for extensive commercial and retail development in this locality, as well as impacts on job supply. Without details regarding the timeline for development, its staging or an economic assessment, it is difficult to ascertain what the precise local and regional impacts of this proposal might be.

Commission's Advice

73. The Commission has considered the Murray Region Destination Management Plan and the Western Murray Regional Economic Development Strategy and the supporting analysis. The Western Murray Regional Economic Development Strategy identifies the Wentworth Riverfront and Eco-Resort as an infrastructure priority, stating:

Analysis of the Region's natural and human endowments, together with stakeholder consultation, identified key infrastructure projects that would help to establish the Region as a key tourist destination. These include: ... development of the Wentworth Riverfront and Eco-Resort.

74. The Proponent provided correspondence from Riverina Murray Destination NSW, confirming that the Wentworth Riverfront and Eco-Resort were components of the Northbank Planning Proposal, and stating that:

We believe this is a very strong factor to weigh in considering the consistency of the Northbank Planning Proposal with Far West Regional Plan and NSW Planning Policies.

75. The Commission has considered the strategic justification for the Planning Proposal, and notes that the Proponent has demonstrated high level support for tourism uses in the area. However, the Planning Proposal has not been supported by the detailed analysis necessary to demonstrate the strategic or site-specific merit of the Planning Proposal. The Commission agrees with the Department's finding that insufficient detail has been submitted to allow an accurate assessment of local and regional impacts of the Planning Proposal. The potential for economic impacts is a key consideration which is fundamental to establishing the merit of the Planning Proposal, as it could preclude the development and land uses sought at the Site, and therefore should be addressed prior to a Gateway Determination.

2.6 Level of Detail in Planning Proposal

Proponent's Submission

76. The Proponent's submission dated 5 July 2020 states:

We have attached an extract from the LEC Case Moorebank Recyclers v Tanlane where it was determined that neither the making of a planning proposal or a gateway determination involved the making of an environmental planning instrument. In that case requirements to consider contamination were required prior to making of the LEP but not prior to making the Gateway.

Also we attach the Department's "A guide to making planning proposals" which repeatedly mentions that the Planning Proposal is meant to identify issues for further investigation after the Gateway. For example in Section 1.3 "The actual information / investigation may be undertaken after a gateway determination.

In our case we submit that, where required and relevant, further detailed information/study should occur after making of the Gateway Determination rather than before it.

Council's Submission

77. Council's submission to the Commission dated 29 July 2020, stated:

A letter was sent to the proponent detailing the outcome of the assessment and the assessment report was included. Council requested that the content of the list be considered, and further information submitted in support of the planning proposal...Following a response from the proponent stating that the further information could be conditioned as part of the gateway determination, a report was prepared for the Ordinary Meeting of Council in May 2017. The report included the Aurecon Assessment as an attachment. During the meeting Council endorsed the concept of Northbank and resolved to refer the planning proposal to the Department of Planning for consideration of a gateway determination.

Department's Report

78. The Department's Report stated:

the required site investigations have not been completed nor has the required detail been provided to support the proposal.

Ethos Urban Report

79. The Ethos Urban report stated:

There are a number of issues raised by the Department that, in our opinion, based on the information submitted, are not critical to demonstrating strategic merit or site specific merit and could be resolved post-Gateway, should the IPC endorse Gateway approval. These issues include bushfire assessment, cultural heritage assessment and a Phase 1 contamination assessment.

There are however still a number of outstanding issues for which, in our opinion, there is still insufficient information for the IPC to be able to satisfy itself that the planning proposal exhibits strategic merit and site specific merit. These issues are:

1. A lack of any definitive information of the quantum of development, timing and staging, and an economic market potential assessment that establishes and justifies the appropriate scale of the development and mix of land uses. The impact of the proposed development for tourist, residential, retail and commercial uses on the locality (Buronga Gol Gol) and wider sub-region is not quantified and therefore not adequately justified. The additional information provided by the Proponent is not considered to be adequate to establish strategic or site specific merit for the planning proposal.

2. The planning proposal does not include sufficient information to establish if the traffic generated by the development is able to be accommodated on the surrounding road network both now and into the future. In the absence of any definitive information of the quantum of development and staging, nor a traffic assessment report, the information provided by the Proponent is not considered to be adequate to establish site specific merit for the planning proposal.

3. The planning proposal does not include sufficient information to be able to establish if there is adequate existing utility services capacity to service the development, nor is there adequate information to establish if there is planned future capacity to service the development. In the absence of any definitive information of the quantum of development and staging, the information provided by the Proponent is not considered to be adequate to establish site specific merit for the planning proposal.

Commission's Advice

80. The Department's *A guide to preparing planning proposals* (issued under section 3.33(3) of the EP&A Act) states:

A planning proposal must demonstrate the strategic merit of the proposed LEP amendment. A planning proposal which is submitted for a Gateway determination must provide enough information to determine whether there is merit in the proposed amendment proceeding to the next stage of the plan making process. The level of detail required in a planning proposal should be proportionate to the complexity of the proposed amendment.

The planning proposal should contain enough information to identify relevant environmental, social, economic and other site-specific considerations.

81. The Department's guidance is clear that planning proposals must provide enough information to determine whether there is merit in the proposed amendment proceeding to the next stage of the plan making process. The Commission agrees with the Department's position that the potential scale, intensity and complexity of development at the site necessitates significant investigation of both the strategic and site-specific merit of the proposed amendment, and that insufficient information has been provided to achieve this.

3 CONCLUSION: THE COMMISSION'S ADVICE

82. The Commission has undertaken a review of the Gateway Determination as requested by the Department. In doing so, the Commission has considered submissions by both the Council and Proponent and reasons given for the determination in the Department's Report.

83. The Commission notes the suggested revisions to the Planning Proposal in the Proponent's submission dated 5 July 2020 and finds that these amendments could resolve identified inconsistencies with Far West Regional Plan 2036 Direction 17 ((Manage natural hazard risks), SEPP 50 – Canal Estate Development, and Section 9.1 Directions 2.3 (Heritage Conservation), 4.3 (Flood prone land) and 4.4 (Planning for Bushfire Protection). Subject to the proposed revisions to the Site area (paragraph 11), the Commission finds that Aboriginal cultural heritage, bushfire risk and flood risk could reasonably be assessed after a Gateway Determination. Additionally, the Commission has found that assessment of the contamination status of the Site could reasonably be provided after the Gateway determination irrespective of the suggested revisions to the site area.
84. Based on its consideration of the Material (paragraph 16), the Commission finds that the Planning Proposal as submitted includes insufficient information to establish the likely range of impacts at the site or to demonstrate strategic or site-specific merit and advises that the Gateway Determination should be upheld.
85. Were the Proponent's suggested revisions (paragraph 11) adopted, and noting the investigations (paragraph 83) which could reasonably be provided after a Gateway determination, the Commission finds that the Planning Proposal should not be supported for the following reasons:
- The Planning Proposal does not adequately demonstrate consistency with the Far West Regional Plan 2036 Directions 12, 14, 15, and 21, SEPP (Primary Production and Rural Development) 2019, Murray Regional Environmental Plan No.2 – Riverine Land, or Section 9.1 Directions 1.1, 1.2, 1.5, 2.1, 3.1, 3.4, and 5.10.
 - The potential for environmental, social and economic impacts has not been adequately addressed.
 - The Planning Proposal seeks to enable development which could be of a significant scale, intensity and complexity. The required site investigations have not been completed nor has commensurate detail been provided to support what is sought in the Planning Proposal.



Adrian Pilton (Chair)
Member of the Commission