



14<sup>th</sup> June 2018

Ms Carolyn McNally  
Secretary  
NSW Department of Planning and Environment  
GPO Box 39  
SYDNEY NSW 2001

**Re: NORTHBANK ON MURRAY PLANNING PROPOSAL – WENTWORTH SHIRE  
PP\_2018\_WENTW\_001\_00/IRF18/1565**

We, together with our co-owners, Des and Joyce Lush, are the proponents of the Northbank on Murray Planning Proposal at Gol Gol in Wentworth Shire NSW. This Planning Proposal was unanimously approved by Wentworth Shire at its Council Meeting on 17 May 2017. I also attach newspaper coverage of the Planning Proposal which evidences the extremely supportive response given to the Planning Proposal by the Wentworth community. Council subsequently wrote to the Department on 29 January 2018 further endorsing the Planning Proposal.

On 28 May 2018 the Department of Planning Western Region Office sent the attached letter through to Council attaching the Determination on the Northbank Planning Proposal. No documents apart from this have been recorded on the Department of Planning LEP Tracking website.

We have concerns with the process behind the 28 May 2018 letter and Gateway Determination. We believe these concerns are very serious and the Department of Planning (DPE) should address these concerns and reconsider the matter. Without consideration of all information provided by the proponents we fail to see how Grand Junction and Des and Joyce Lush can be accorded procedural fairness.

### **DPE'S OBLIGATIONS IN RELATION TO PROCESS**

We submit DPE must act in accord with the principles of procedural fairness in addition to complying with the DPE's Code of Conduct. DPE should also act consistently with the NSW 2021 Plan and DPE's own Strategic Planning Strategies including the Far Western Region Plan.

### **A. PROCEDURAL FAIRNESS**

In "Good Conduct and Administrative Practice – Guidelines for State and Local Government (2nd Edition)" NSW Ombudsman sets out guidance to public officials in relation to expected standards of conduct.

[https://www.ombo.nsw.gov.au/\\_data/assets/pdf\\_file/0016/3634/Good-Conduct-2nd-edition-amended.pdf](https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0016/3634/Good-Conduct-2nd-edition-amended.pdf)

These Guidelines includes 4.6 "Correcting mistakes", 4.8 "Providing redress for maladministration" and 5.4 "Providing procedural fairness". In particular 5.4.2 states decisions must be made "acting only on the basis of logically probative



evidence". This is a fundamental rule of procedural fairness articulated in by the High Court in ABC V Bond (1990).

We submit that the Gateway Determination has not been made based on logically probative evidence. "Absent probative evidence, the decision fails to meet the test of reasonableness, logicity and rationality" (Para 52-080 Development and Planning Law in NSW, John Whitehouse).

In relation to the Planning Report this is due both to reliance on incorrect information and omission of essential information.

The most significant of these relates to the Gateway Determination and Attached Letter failing to consider information provided by the proponent. For example the Gateway Determination letter states that:

*"In July 2017, the Department of Planning and Environment advised that the planning proposal did not provide adequate justification on potential social, economic, environmental and servicing implications to proceed. It was requested further detailed information should be undertaken prior and a revised planning proposal be prepared. **The Department has not received any additional information or a revised Planning Proposal**".*

The last line of the above paragraph is false as detailed in Council's letter of 29 January 2018 and the attached email from Wayne Garnsey dated 8 November 2018 which references our Submissions of 6 November 2017 (also attached). Our Submissions detailed errors in the Department's analysis of the Planning Proposal and inconsistencies with the Far Western Regional Plan. In September 2017 a teleconference was held with the Department which is also not mentioned. Numerous emails have provided updated information to Damien Pheiffer of DPE including the Destination Management Plan references to Northbank.

The Planning Proposal had been revised in April 2017 and the Department of Planning agreed that the issues raised in the 6 November correspondence would be considered before any revised Planning Proposal was required. In addition the Department's July 2017 letter suggested an alternative to a revised Planning Proposal in stating "Alternatively, a smaller scale proposal or staged proposal may be considered".

The Gateway Determination and attached letter omit that the Planning Proposal and associated documentation was very clear that after the Gateway Stage the proponent proposed to provide extensive supporting reports including:

- Economic Assessment
- Biodiversity Assessment
- Aboriginal Cultural Heritage Assessment
- Servicing/Infrastructure Strategy

Detailed analysis by the proponent of the SEPPs and Section 9.1 Directions has been



overlooked by the Department. The best example of this is the Gateway Determination stating there is inconsistency with SEPP 44 Koala Habitat. Grand Junction details in its 6 November 2017 letter that there are no records of koala sightings on the property or in Wentworth Shire. We have previously stated a Biodiversity Assessment could incorporate confirming that there are no koalas in this location.

We believe that we should be accorded redress in accord with CI 4.6 "Good Conduct and Administrative Practice – Guidelines for State and Local Government (2nd Edition)" NSW Ombudsman.

## **B. DEPARTMENT'S CODE OF CONDUCT**

Clause 4.2 of the Department's Code of Conduct requires the Department to "treat members of the public and our colleagues fairly and consistently, in a non-discriminatory manner with proper regard for their rights and obligations".

A fundamental point we are making is that the Gateway Determination is in no way consistent with other Planning Proposals endorsed by the DoP, whether that is in Wentworth or Statewide. A specific example of this relates to SEPP 44 Koala Habitat which the Gateway Determination states the Northbank Planning Proposal is inconsistent with. However, apart from no koalas being in Wentworth Shire, no other Wentworth Planning Proposal has been rejected on the basis of inconsistency with SEPP 44.

We request that our Planning Proposal be assessed by consistent standards and framework to other Wentworth Planning Proposals.

## **C. CONSISTENCY WITH NSW GOVERNMENT STRATEGIC PLANNING POLICIES**

The Gateway Determination is inconsistent with or fails to consider DPE's Strategic Planning Policies and NSW Government Strategies.

We do not believe it is controversial to say that the DPE, at all levels, has very little understanding of Wentworth Shire as it is so different to Sydney and Eastern NSW. DPE clearly understands harbourfront casinos, skyscrapers, urban subdivisions and open cut mines, all of which impact the environment a thousand times more than the Northbank Planning Proposal. The Northbank Planning Proposal is one of a very small number of Planning Proposals statewide that have been recommended by a Council and returned by the Department. It is odd that Council's and the communities strong support for the Planning Proposal has been ignored when statewide much larger projects with much higher environmental impacts are passed through the Gateway by DoP.

Northbank on Murray will support the sustainability and growth of the small community of Gol Gol in far south west NSW. The EPA Act in Object 5(a)(i) talks of ".....cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment". Please note the reference to towns and villages, not just cities. It is our view that the Department has inadequately considered the social and economic welfare of the community in the



case of Northbank on Murray.

NSW Planning Western Region also has no vision for Wentworth Shire which is inconsistent with Object 5(a)(I) of the EPA Act. Being based 800km from Wentworth in Dubbo it would be unusual if NSW Planning Western Region understood Wentworth. It is unreasonable to tie Wentworth Shire's future to State and DPE Plans when the Department's efforts in relation to Wentworth are no more than tokenism. One illustration of this is the "rusty old ute" image used to promote the Far West Regional Plan.

In addition Northbank on Murray will encourage regional tourism which are key elements of the NSW 2021 Plan and the Departments Western Region Plan and we submit these matters have also been inadequately considered. Northbank has been designated as a Priority Project by Destination NSW.

The NSW 2021 Plan has as Goal 3 "DRIVE ECONOMIC GROWTH IN REGIONAL NSW". Further it states "Our strategy is to encourage decentralization – steady and strategic growth in our regions. This will require a focus on regional infrastructure and job creation. Actions to support job growth include....Develop Regional Action Plans which harness business opportunities and address impediments to growth in each region.....Support regional business growth through tailored programs and local facilitation services.....Our strategy to increase the population in regional NSW will support balanced population growth across the State, invigorating regional economies and relieving congestion pressures within Sydney".

The Gateway Declaration makes no reference to the NSW 2021 Plan and is inconsistent with it as it discourages regional investment and job creation.

In May 2017 the NSW Planning Minister released the Far West Regional Plan:

- Minister Roberts introductory letter states "Significant opportunities exist for tourism, taking advantage of unique 'outback' experiences, dynamic communities, as well as European and Aboriginal culture".
- Direction 5: Promote tourism opportunities states "The region appeals to domestic and international visitors as it offers an authentic outback experience.....Tourism opportunities that help to extend the time visitors spend in the region need to be further explored.....Tourism generates employment and business growth that contributes to better economic outcomes for Aboriginal communities.
- Action 5.6 states "Investigate development of a tourism trail between Balranald, Wentworth, Mallee Cliffs [where Northbank is located], Mungo and Yanga floodplains"
- Action 5.8 states "Align local land use and tourism strategies with the relevant Destination Management Plan [here the Murray Region Tourism Destination Management Plan and Northbank is in this Plan as a Priority Project]".
- Action 5.9 states "Identify opportunities for tourism and associated land uses in local plans"



## Grand Junction

- Action 21.6 states “Consider cross-border land use, infrastructure and tourism strategies when planning for the region.”
- The Local Government Narrative for “The region’s south – the meeting point of the Murray and Darling rivers” states priorities are “Promote tourism opportunities.....Foster strong cross-border networks and connections with neighbouring Victorian settlements, including Mildura.....Expand tourism activities and visitor experiences.....Expand tourism opportunities and experiences”

Page 11 and 12 of the Planning Proposal discusses consistency with the Murray Region Tourism Destination Management Plan and other Mildura Tourism Strategies. However the Planning Report does not consider the Destination Management Plan notwithstanding that Action 5.8 of the Far West Draft Plan requires this and the Far West Implementation Plan 2017-19 lists Action 5.8 as an “Immediate” priority with Partner responsibility by DPE. Action 5.9 is also identified as a Short Term priority but it is almost impossible that this Action can be met in DPE’s nominated timeline. Given we are in mid 2018 and it takes a approximately a year to finalise a Planning Proposal the Action will not be met unless the Northbank Planning Proposal is supported.

The Draft Murray Regional Strategy of October 2009 discussed tourism in more detail than the Far West Regional Plan does. It stated on page 33 “Continued growth in tourism is strongly supported as a way to build the economic strength of the Murray.....Tourism will strengthen the economic vitality of the Region. It will build on the environmental assets and the social and cultural identity of the Region. Tourism will be sustainable and not deplete or degrade the environment of the Murray.....Tourist development in the Region will help to make towns and villages more sustainable.....Where possible, sites identified for new large scale tourist related development will be in or adjacent to existing settlements”.

We do not believe we can be accorded procedural fairness without reconsideration of the Planning Proposal, a reasonable period being provided to respond to a revised Planning Report and the opportunity to present to the determining officer in the DoP or JRPP.

We submit the Gateway Determination should be quashed and the Planning Proposal should be considered again by Western JRPP for the Gateway Stage. This is not a review request as the initial decision has not yet been made in accord with proper procedure.

Kind regards

Yours sincerely

Bob Wheeldon

Director

# MW MILDURA WEEKLY

FRIDAY, MAY 19, 2017 VOL 11#28 MILDURAWEEKLY.COM.AU FREE EVERY FRIDAY



**MILDURA'S Jenny Cirillo, right, has won a brand new Toyota Yaris after being crowned the winner of the third annual Mildura Weekly Car and Cash Giveaway. Jenny purchased her winning entry at Chemist Warehouse, and is pictured with owner Eric Oguzkaya. See Page 19 for a full recap of last weekend's exciting finale. Photo: PAUL MENSCH**

# First step

Wentworth Shire Council backs large-scale tourist attraction at Gol Gol

THE construction of a large-scale tourism attraction at Gol Gol is one step closer to reality, after Wentworth Shire Councillors unanimously backed the 'Northbank on the Murray' concept this week.

Northbank is aiming to offer resort accommodation, cafes and

By **Vinnie Rodi**  
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restaurants, a gymnasium, shopping outlets and indoor and outdoor attractions and activities.

Northbank will also look to incorporate a four to five-star resort,

family fun and adventure options, a golf course, adventure and recreation facilities and water sport facilities.

On Wednesday, Wentworth Shire Councillors unanimously resolved to submit the Northbank planning proposal to the New South Wales Minister for the Department of Planning and Environment for consideration of a Gateway Determination to

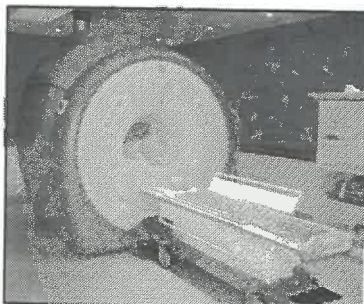
amend the Wentworth Local Environmental Plan 2011.

The planning proposal, lodged by Des and Joyce Lush and Grand Junction Pty Ltd, seeks approval to rezone a parcel of land located one kilometre from the Gol Gol township from primary production to a tourist zone, while also introducing mixed use and commercial core

zones.

And while the proponents behind the Northbank concept were pleased with Wednesday's outcome, they were quick to point out there was still "a long way to go" before the project will be shovel ready.

• Continued Page 5



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# Shire support secured

## WSC backs bold 'Northbank on the Murray' tourist park at Gol Gol

• From Page 1

"This is long process, with the next part (a Gateway Determination) more involved," Addco Property director, David Fowler, said.

Addco Property is a Sydney-based group that has been consulting with Grand Junction and the Lush family on the Northbank proposal, with Mr Fowler saying that Wednesday's decision marked the first step in a five-step planning process.

"At the end of the day we have to work through some things before we can even begin to start thinking about this project being shovel ready," he told the *Mildura Weekly* yesterday.

"Northbank, regardless, will be staged and developed over many decades, however, it was important to get the ball rolling now, which this outcome allows.

"This is step one in a long process, with achieving a Gateway Determination opening the door for community consultation. Fundamentally we believe this is an extremely good proposal, one that will benefit all stakeholders.

"Wentworth Shire, and the Gol Gol and Buronga townships in particular, is crying out for a development of this nature."

In their submission to Wentworth Council, Grand Junction stated that "with the addition of tourism demand, Buronga/Gol Gol will have the population to warrant its own retail/commercial shopping precinct that will serve tourists and existing residents and future residents."



ists and existing residents and future residents."

"Northbank can provide a destination of sufficient scale and size to allow a larger range of retail and entertainment offerings to augment existing neighbourhood offerings," the proposal reads.

"Another objective of Northbank is to reduce 'escape spending', ie. dollars of NSW money being spent in Victoria. For the majority of residents of Gol Gol and Buronga, retail and entertainment needs and wants are serviced in Mildura, Victoria.

"What this equates to is millions of dollars heading over the bridge into Victoria every month, with little of that money return-

ing to NSW."

Mr Fowler also made a presentation to Wentworth Councillors on Wednesday prior to the vote, unveiling the "key attraction" of Northbank - the 'Crystal Lagoons'. PICTURED.

"The Crystal Lagoons will become a unique attraction for Wentworth, offering a beach lifestyle for visitors," he told Councillors. "There is nothing like this in Australia."

Crystal Lagoons is an international brand, with the concept proving extremely popular in the United States.

The man-made Lagoons are considered environmentally sound, and will cover approximately

25 acres of the proposed Northbank site.

Council had previously outsourced an assessment of the Northbank proposal to the Aurecon Group prior to Wednesday's vote, with Aurecon recommending further work be undertaken to support the proposal.

Grand Junction responded to Aurecon's independent assessment by making minor changes to the proposal, before resubmitting it for consideration this week.

Aurecon's review found that the Northbank proposal was "vague and lacking consideration of critical issues, such as the economic viability and sustainability of the site... socio-economic impacts and

"Wentworth Shire, and the Gol Gol and Buronga townships in particular, is crying out for a development of this nature."

- Addco Property director, David Fowler

benefits to surrounding communities at a regional or local level."

Aurecon's review also found that without further planning and assessment, the Northbank proposal posed "considerable risk" to Wentworth Shire Council.

Grand Junction, in reply, said the Aurecon report had contained "a number of errors and omissions".

In a letter to Wentworth Shire Council director Health and Planning, Ken Ross, Grand Junction Planning and Environmental manager, Kathryn Baird, said: "Aurecon speaks of 'risks to both Wentworth Shire Council and adjoining Councils' without identifying what these risks are or explaining why Mildura Council should play a part in determining Wentworth's planning."

"It omits the significant potential benefits to Wentworth Council (rates, jobs, fees) or the benefits to the wider local tourism industry," Ms Baird concludes.

**1 2 3 4**

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## Planning & Environment

PP\_2018\_WENTW\_001\_00 / IRF18/1565

Mr Peter Kozlowski  
General Manager  
Wentworth Shire Council  
PO Box 81  
WENTWORTH NSW 2648


Received - 7 JUN 2018
File LI/73
Act/Off <i>Archive</i> Copy/Rel

Dear Mr Kozlowski

### Planning Proposal PP\_2018\_WENTW\_001\_00 to amend Wentworth Local Environmental Plan 2011

I am writing in response to Council's request for a Gateway determination under Section 3.34(1) of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the planning proposal to rezone land at 6811 Sturt Highway, Mallee (Lot 1 DP 1182353) to facilitate tourism and commercial uses.

As delegate of the Minister for Planning, I have now determined the planning proposal should not proceed for the reasons outlined in the attached Gateway determination.

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, Council is encouraged to strategically assess the need for a proposal of this scale. If this type of proposal is supported it should be incorporated into the strategic planning framework to ensure sustainable and design led outcomes.

In July 2017, the Department of Planning and Environment advised that the planning proposal did not provide adequate justification on potential social, economic, environmental and servicing implications to proceed. It was requested further detailed information should be undertaken prior and a revised planning proposal be prepared. The Department has not received any additional information or a revised planning proposal.

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 in its current form does not contain enough information to identify relevant environmental, social, economic and other site considerations.

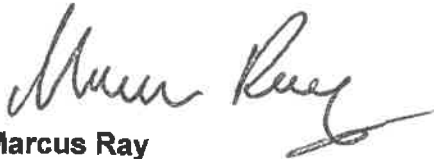
The Department has prepared, *A guide to preparing planning proposals*, which provides guidance and information on the process for preparing planning proposals.



This document may assist Council in determining the level of information required to accompany applications.

Should you have any further enquiries about this matter, I have arranged for Ms Tamara Prentice to assist you. Ms Prentice can be contacted on (02) 6641 6610.

Yours sincerely



**Marcus Ray**  
**Deputy Secretary**  
**Planning Services**

Encl: Gateway Determination  
28/01/2018



## Planning & Environment

### Gateway Determination

**Planning proposal (Department Ref: PP\_2018\_WENTW\_001\_00):** to rezone land at 6811 Sturt Highway, Mallee (Lot 1 DP 1182353) to facilitate tourism and commercial uses.

I, the Deputy Secretary, Planning Services at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act, 1979* (the Act) that an amendment to the Wentworth Local Environmental Plan (LEP) 2011 to rezone land at 6811 Sturt Highway, Mallee (Lot 1 DP 1182353) to facilitate tourism and commercial uses should not proceed for the following reasons:

1. Inconsistency 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.
2. Inadequate information is provided to determine consistency with the 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.
3. The potential for environmental, social and economic impacts are considered unacceptable.
4. The required site investigations have not been completed nor has the required detail been provided to support the proposal.

Dated *28th* day of *May*

2018.

  
Marcus Ray  
Deputy Secretary  
Planning Services  
Department of Planning and  
Environment

Delegate of the Minister for Planning



Damien Pfeiffer  
Director Regions, Western  
Department of Planning and Environment  
PO Box 58  
**DUBBO NSW 2830**

via email to: [westernregion@planning.nsw.gov.au](mailto:westernregion@planning.nsw.gov.au)

Dear Damien

**PROPOSAL TO AMEND WENTWORTH LOCAL ENVIRONMENTAL PLAN 2011 – NORTHBANK ON MURRAY**

Wentworth Shire Council has received a submission from the planning proposal proponent, Grand Junction, in response to the Department of Planning Western Region Assessment Report.

The submission Council has received includes two separate letters. One letter responds to and addresses the inconsistency of the Assessment Report with New South Wales strategic planning policies, particularly tourism. The second letter highlights errors and/or omissions contained within the report and responds to these in detail.

Grand Junction as the proponent has requested that the Department review the attached submission and arrange for representatives to meet with them and Council to discuss the way forward to allow for the progression of the proposal.

Council requests that the Department consider the merits of the submission from Grand Junction and provide a written response to both letters addressing the issues raised.

Council also requests the Department issue a Gateway Determination in accordance with the resolution made at its Ordinary Meeting 17 May 2017.

Should you wish to discuss any matter raised in this letter, please contact Michele Bos of the Health and Planning Division on 03 5027 5027.

Yours sincerely

**KEN ROSS  
DIRECTOR HEALTH & PLANNING**

**Subject:** RE: Response to Planning Report - Northbank on Murray  
**Date:** Wednesday, 8 November 2017 2:35:43 pm Australian Eastern Daylight Time  
**From:** Wayne Garnsey  
**To:** Bob Wheeldon, Ken Ross, Michele Bos  
**CC:** Kathryn Baird, David Fowler, Katrine O'Flaherty, Jenna McNabb

Bob

Thank you for your submission. I note your request for the Department to review your list of concerns prior to a meeting with Council and yourself on site.

We will contact you regarding the process and timeframe shortly.

As this is a Council planning proposal we will also be liaising with them regarding your concerns.

Should you wish to discuss this matter further please contact me on 02 68412180

regards

-----Original Message-----

From: Bob Wheeldon [<mailto:bob@wheeldon.com.au>]

Sent: Tuesday, 7 November 2017 4:34 PM

To: Wayne Garnsey <[Wayne.Garnsey@planning.nsw.gov.au](mailto:Wayne.Garnsey@planning.nsw.gov.au)>; Ken Ross <[kenr@wentworth.nsw.gov.au](mailto:kenr@wentworth.nsw.gov.au)>; Michele Bos <[Michele.Bos@wentworth.nsw.gov.au](mailto:Michele.Bos@wentworth.nsw.gov.au)>

Cc: Kathryn Baird <[kathryn@grandjunction.com.au](mailto:kathryn@grandjunction.com.au)>; David Fowler <[dhfowler@bigpond.net.au](mailto:dhfowler@bigpond.net.au)>

Subject: Response to Planning Report - Northbank on Murray

Wayne

I attach our responses to the DPE Planning Report passed onto us by Council. Would you please pass this onto Katrine O'Flaherty? We don't have her email contact.

It has taken us some time to respond to the numerous issues raised by the Planning Report. This may partially be because parts of the Planning Report made the assessment more complicated than it need be by seeking to assess the Concept Plan as if it were a Development Proposal. The Concept Plan was provided to illustrate the potential advantages from having numerous tourism activities on one site and is not a Development Application. This matter is seeking a Gateway Approval only with no development proposed at this stage.

We are seeking DPE support for an integrated tourism area in Wentworth Shire rather than any particular development. We believe Northbank is consistent with State Plans and Strategies including in particular the Far Western Regional Plan. We have agreed to numerous additional studies being required by the Gateway. Any development will need to go through the DA process at minimum so this will be a very highly regulated site.

We appreciate Northbank is unique but that is a good thing. Wentworth is a unique place with 2.6million ha of land adjacent to the river and Mildura's infrastructure - it has some significant disadvantages over other parts of NSW but it also has significant advantages. Northbank seeks to take advantage of the advantage Wentworth has - large parcels of land that can be master planned for patient development of tourism facilities. You simply don't have the opportunity for this in many places and Wentworth should not be denied its opportunity. Wentworth needs to use its advantages to create the jobs and investment it needs.

Northbank is the purest form of town planning - long term facilitation of sustainable development that integrates well with its surroundings. DPE should encourage a landowner who is prepared to take a multi-decade view of the best use of land rather than cutting it up to make a quick buck. DPE should show Northbank as an exemplar of how regional development can be facilitated.

After you have considered the attached we seek a further meeting which we believe should be held with the decision makers on site.