

SUBDIVISION – ONE LOT INTO TWO LOTS AND ANCILLARY WORKS



**1 HUNTER STREET, MUSWELLBROOK
LOT 1 DP995228**

STATEMENT OF ENVIRONMENTAL EFFECTS

14 June 2025

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Photo front page: Aerial of 1 Hunter Street, Muswellbrook (source: Google)

Acknowledgement of Country

P A Goldin & Associates Pty Ltd acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We acknowledge the Wonnarua people, the Traditional Custodians of the land on which the subdivision is proposed, and all peoples and nations from lands affected.

We pay our respects to their Elders past and present and emerging.

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List of Abbreviations

Abbreviation	Description
BCA	Building Code of Australia
CM Act	<i>Coastal Management Act 2016</i>
CEMP	Construction Environmental Management Plan
DA	Development Application
DCCEEW	Department of Climate Change, Energy, the Environment and Water (NSW)
DPC	Department of Premier and Cabinet
DPHI	Department of Planning, Housing and Infrastructure
EPA	Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2021</i>
ESD	Ecologically Sustainable Development
HS	Muswellbrook Heritage Study
LGA	Local Government Area
MDCP	Muswellbrook Development Control Plan 2009
MLEP	<i>Muswellbrook Local Environmental Plan 2009</i>
NCC	National Construction Code
NPW Act	<i>National Parks and Wildlife Act 1974</i>
NPW Regulation	<i>National Parks and Wildlife Regulation 2009</i>
NPWS	National Parks and Wildlife Service (part of EES)
OEH	(Former) Office of Environment and Heritage
POEO Act	<i>Protection of the Environment Operations Act 1997</i>
Resilience and Hazards SEPP	State Environmental Planning Policy (Resilience and Hazards) 2021
SEE	Statement of Environmental Effects
SEPP	State Environmental Planning Policy
SoHI	Statement of Heritage Impact
TI SEPP	State Environmental Planning Policy (Transport and Infrastructure) 2021

1 Introduction

1.1 Introduction

This Statement of Environmental Effects (SEE) accompanies a Development Application (DA) lodged for a proposed subdivision of one (1) lot into two (2) lots and ancillary works at 1 Hunter Street, Muswellbrook, NSW 2333 (Lot 1 DP 995228) – (the subject site).

The Plans and supporting documentation that accompany this DA are shown in Table 1 below:

Table 1: Plans and supporting documentation			
Subdivision Plans prepared by MM Hyndes Bailey & Co.			
Sheet No.	Rev.	Name	Date
224133/Sheet 1		Proposed Subdivision of Lot 1 in DP995228	16/04/2025
<ul style="list-style-type: none">Statement of Heritage Impact, prepared by Vivian Sioutas Architecture, dated 05/06/2025 (SoHI)Traffic Impact Assessment, prepared by Intersect Traffic, dated 14 May 2025.Preliminary Site Investigation –Lot 1 of DP 995228, prepared by Compaction & Soil Testing Services Pty Ltd, dated 24 May 2024 (Reference: SII 5183-AA).Preliminary Site Investigation – Shed Area of Lot 1 of DP 995228, prepared by Compaction & Soil Testing Services Pty Ltd, dated 24 May 2024 (Reference: SII 5183-AB).Flood Impact and Risk Assessment, prepared by Torrent Consulting, dated 7 February 2025.Biodiversity Development Assessment Report, prepared by RestoreAG, dated 12 June 2025.			

A Pre-lodgement Meeting was held on 31 July 2024 for the proposed subdivision. Minutes of the meeting dated 9 August 2024 were provided that provide a summary of matters discussed and key issues that Council draws attention to. A copy of the Minutes may be found in Appendix A of this SEE. It is considered the information submitted with the DA meets the requirements of Council.

A mapped watercourse is located within the far north-eastern corner of the subject site and to the south-west of the subject site. Although no works are proposed in or within 40m of the identified watercourses, referral to NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW-Water) is required under section 91(2) of the *Water Management Act 2000*.

The subject SEE has been prepared pursuant to Section 4.12 of the EP&A Act and Part 3 of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation). It addresses the planning issues associated with the development proposal and specifically to

assess the likely impact of the development on the environment in accordance with the requirements of Section 4.15 of the EP&A Act.

This Statement has been divided into five sections. The sections include an introduction, analysis of the site and locality; a description of the proposal; strategic context, analysis of the relevant statutory framework, an environmental planning assessment pursuant to s.4.15 of the EP&A Act; and conclusion.

It is considered that the proposed development should be approved for the following reasons:

- The proposed development is permissible under the relevant environmental planning instrument and satisfies the objectives of the zoning, and relevant clauses in *Muswellbrook Local Environmental Plan 2009* (MLEP);
- The proposed development complies with the relevant clauses in *Muswellbrook Development Control Plan 2009* (MDCP);
- There are no statutory or physical impediments to the approval of the development;
- The matters for consideration under section 4.15(1) of the EP&A Act have been satisfactorily addressed in this SEE;
- The proposed subdivision and ancillary works will have a minimal impact on the heritage significance of the subject site as detailed in the Statement of Heritage Impact (SoHI) accompanying the DA;
- The proposed development is considered to be in the public interest. The proposal, if approved, will facilitate the reactivation of the factory on proposed Lot 3001 and future residential development on proposed Lot 3002;
- Overall, the assessment of the proposal has demonstrated that the development does not have any significant impact, and it is recommended that approval be granted.

1.2 Development History – subject site

The following provides a summary of previous approvals for the site (source Muswellbrook Shire Council Agenda Papers and Council search).

Please note that the proposed subdivision will not adversely impact the ability of the existing factory operations to comply with the current DA approvals.

Table 2: previous Approvals on Subject Site

Year	No.	Description	Determination	Determination Date
1988	10888 BA	Extension to shop, and new office	Approved	16/06/1988
1991	149 BA	Erection of Industrial Additions	Approval	25/06/1991
1994	172	Manufacture of Wine	Approved	22/12/1994
1997	10181 (1)	Demolition of the boiler house and associated redundant pipework	Approval	24/12/1997
1997	335 (1)	Demolition of the boiler house and associated redundant pipework	Approved Conditions	14/01/1998
2002	61 (1)	Erection of Storage Tanks and Weighbridge	Refused by Council at a Council meeting	13/05/2002

Year	No.	Description	Determination	Determination Date
2002	239 (1)	Alteration winery building	Approved	10/02/2003
2002	239 (2)	Section 96 modification – Alteration and/or Additions	Approved	12/06/2003
2002	239 (3)	Section 96 modification – Expansion of wine making & associated facility	Refused by Council at a Council meeting	10/12/2007
2002	239 (4)	Section 96 modification – amend multiple conditions relating to storage tanks, landscaping and car parking	Refused by Council at a Council meeting	14/02/2011
2002	239 (5)	Section 96 modification – modification of warehouse, modification of existing amenities building to provide disabled access and amenities.	Approved by Delegated Authority	14/05/2011
2002	239 (6)	S96(2) modification – application for distillery use and clarification on beverage production	Approved by Council at a Council Meeting	12/05/2014
2005	354 (1)	Boiler house	Approved	13/02/2006
2005	147 (1)	LPG cylinder dock for filling and loading	Approved	10/10/2005
2012	98 (1)	Winery building	Approved by Delegated Authority	27/09/2012
2012	98 (2)	S96 (2) modification – addition of two (2) x 46,000 L industrial tanks	Approved by Council at a Council Meeting	08/07/2013
2013	256 (1)	Installation of new & reconfigured wine tanks	Approved by Council at a Council Meeting	12/05/2014
2013	256 (2)	S96 (2) Modification – Rearrangement of approved wine tanks including addition of 5 tanks	Approved	13/06/2017
2018	18 (1)	Water treatment and recycling plant ancillary to existing winery and distillery	Approved	09/04/2019

1.3 The Site

The subject site is known as 1 Hunter Street, Muswellbrook, NSW 2333 (Lot 1 DP 995228).

The owner of the land is Oak Property Investments Pty Ltd.

The site is located in the northern edge of the town of Muswellbrook within the Muswellbrook Shire Local Government Area (LGA) in the Upper Hunter region of NSW.

Muswellbrook is approximately 258km north-west of the Sydney CBD and 126km north-east of Newcastle (refer to Figure 1 below).

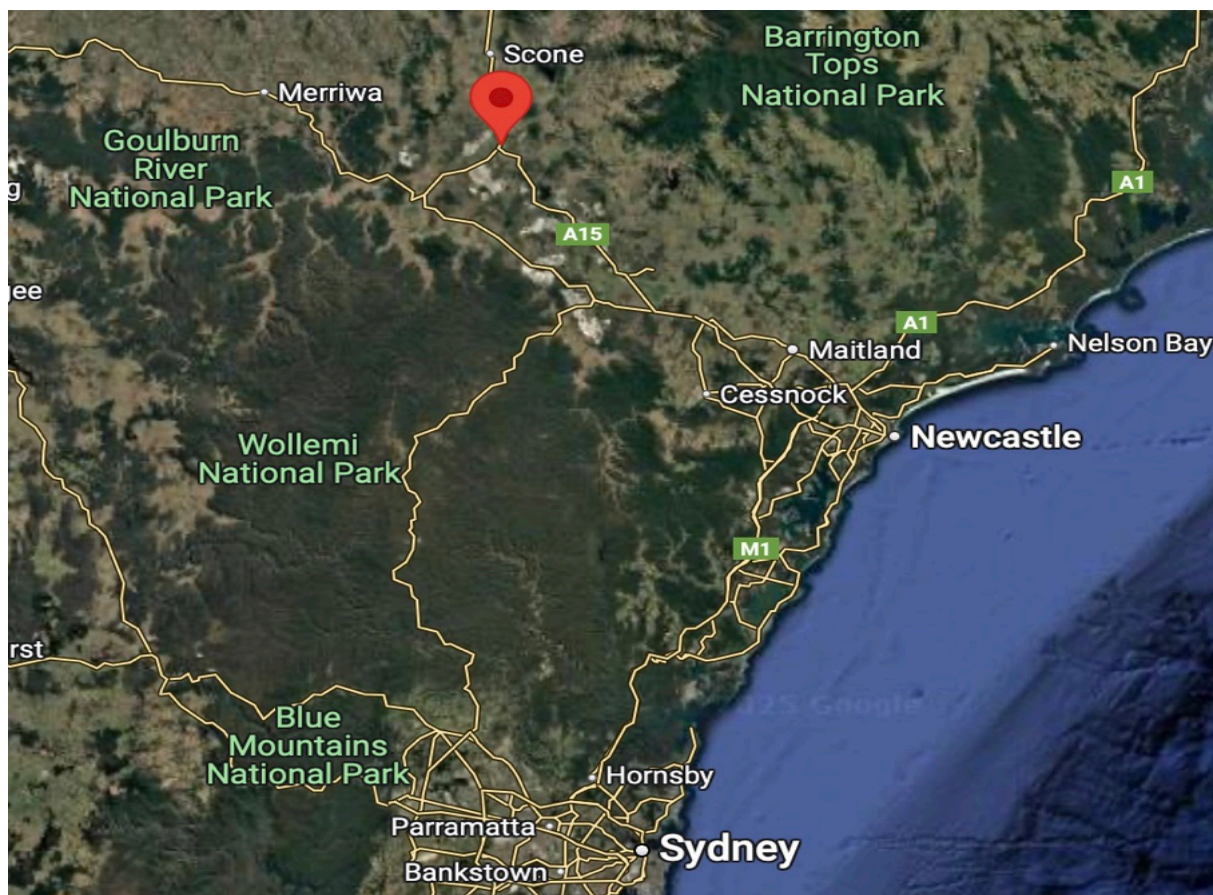


Figure 1: Location in relation to Sydney and Newcastle.

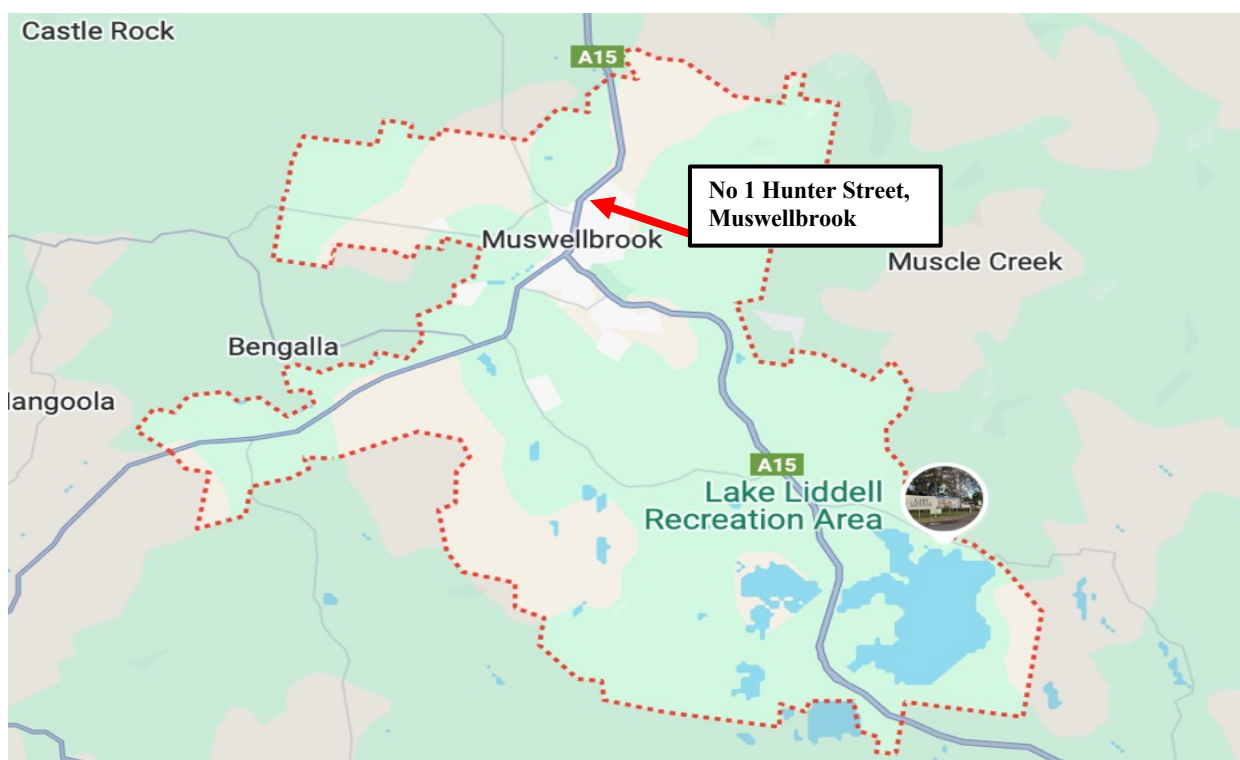


Figure 2: Dotted line outlines Muswellbrook Shire LGA with subject site indicated (Source Google Maps).

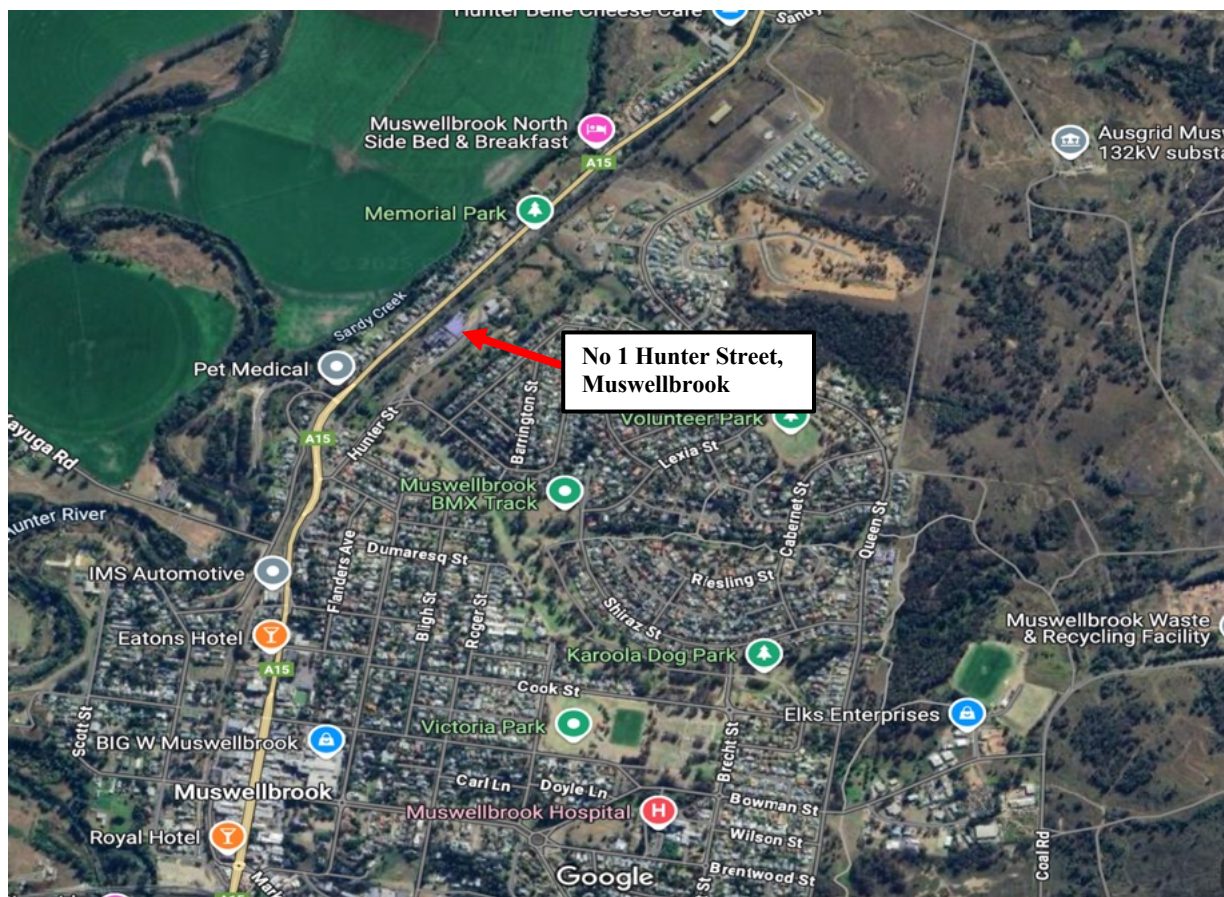


Figure 3: Location of subject site identified on aerial (Source Google Maps)



Figure 4: Lot 1 DP 995228 outlined with yellow line.

The subject site is occupied by the former Oak Factory with infrastructure enabling a winery and distillery. There are also 2 warehouses, industrial shed, brick building, two shed, carpark, four residential dwellings, LPG cylinder, and large areas of vacant land on the site, as shown in Figure 5 and Figure 6.

1.3.1 Site Analysis

Survey of site

The following survey plan shows the location of existing structures, vegetation, topographical contour lines, existing road access, and existing power network.

Elevations on the site vary from around 150m AHD to 169m AHD, and it has a gentle slope to east and south-east.

The site is irregular in shape having an area of 9.608 ha. It has a boundary on the western side to the Hunter railway corridor, and residential properties to the east in Cousins Street. New England Highway adjoins the railway to the west, and residential properties are located in the vicinity to the south and north. Access to the subject site is via Hunter Street.

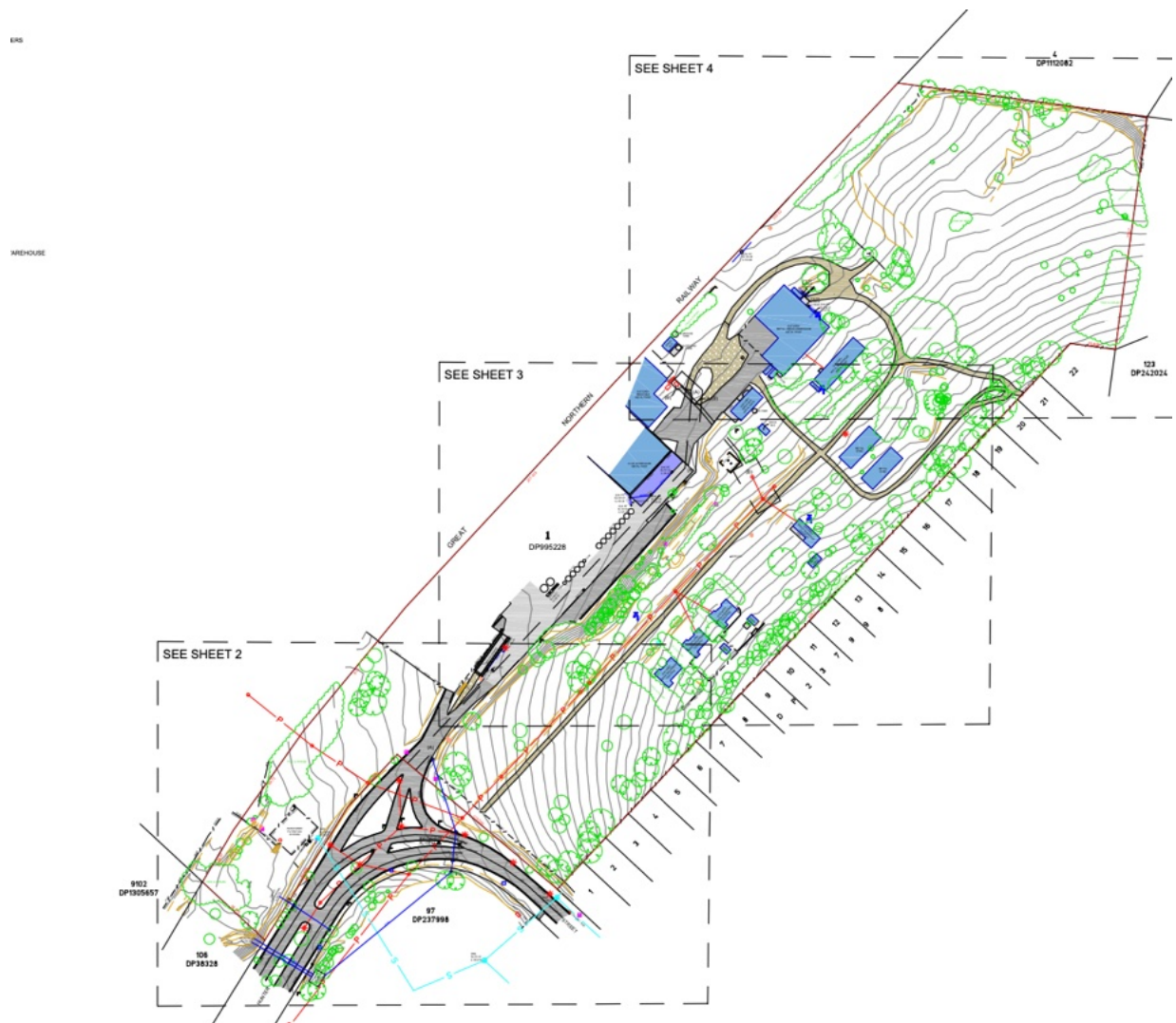


Figure 5: Survey Plan - MM Hyndes Bailey & Co.

Structures on the site

The current land use of the site is Winery and Distillery (approved use under DA239/2002).

The subject site is occupied by the former Oak factory with infrastructure suitable for beverages including wine, spirits and milk. The factory includes two bottling lines, an evaporation and refrigeration plant, a water treatment plant and a gas boiler.

The following figure shows the structures on site:

- Former Oak Factory
- Large warehouse (1)
- Smaller warehouse (2)
- Industrial shed
- Brick building
- Two sheds (1) and (2)
- Carpark
- Four dwellings (1), (2), (3) & (4)
- LPG cylinder dock for filling and loading (Approved DA 2005/147)
- Large areas of vacant land on the site.

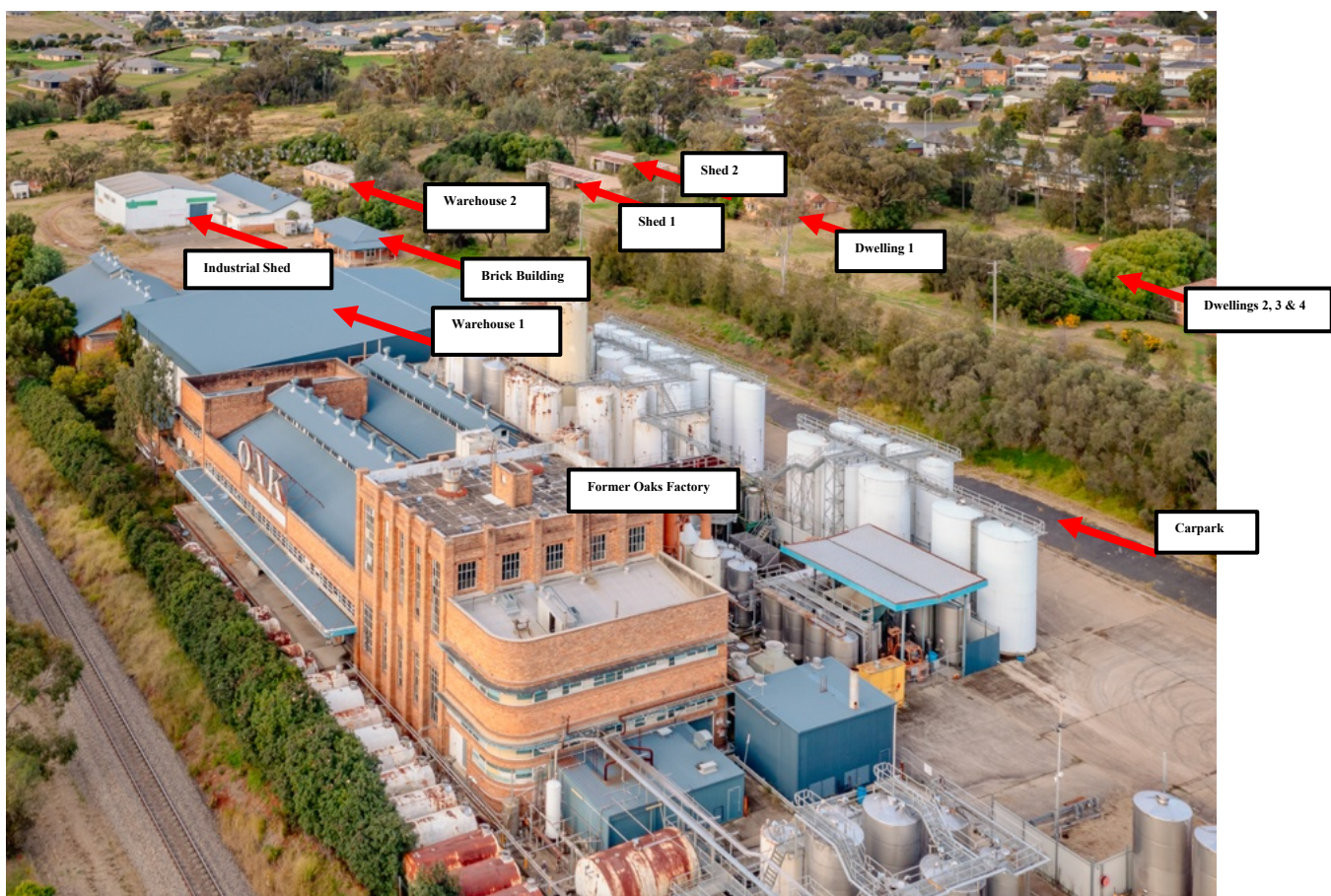


Figure 6: The existing structures on the subject site.



Figure 7: Location of LPG cylinder dock for filling and loading (Approved DA 2005/147)



Figure 8: Three existing dwellings on the subject site with red roofs



Figure 9: Shows location of Warehouse 2, Sheds 1 and 2, and Dwelling 1 (Labels from Figure 6 above in this SEE).

Significance of the subject site

The “Oak Milk Factory” and the entire Lot 1, DP 995228 are identified as a local heritage item in Schedule 5 Part 1 of the *Muswellbrook Local Environmental Plan 2009* (MLEP) (Item No 197).

The Oak Factory is listed as a notable 20th Century building on the Australian Institute of Architects list. This is a non-statutory register with no legal, heritage or planning implications imposed on the land or property owner.

The “Oak Milk Factory” is included in the 1996 Muswellbrook Heritage Study (HS) prepared by the EJE Group for the Muswellbrook Shire Council. The Inventory item states that the factory was designed by the Hunter Valley Co-operative Dairy Company to meet greatly increased milk production from the Upper Hunter. Construction of the factory commenced in 1945 and continued through to 1953 and included milk treatment sections, condensing room, drying rooms, butter room, refrigeration, boilers, laboratory and an employees amenities block. Production of dairy products, in particular powdered milk, continued at the factory until June 1994 when, as a division of Australian Co-operative Foods Ltd, operation ceased. Utilising much of the stainless steel equipment, the factory area has been recently converted to wine production by Simon Gilbert Wine Services.

The Statement of Significance in the HS states that historically the building has regional significance as an indicator of an outmoded production process, only 50 years old. Aesthetically, the building is representative of type at a state level with regional rarity. Scientifically, it is representative of surviving examples of its type elsewhere although there are few survivors. It has regional scientific significance for its potential to reveal information which could contribute to an understanding of the rapid expansion of dairy-related secondary industry in the early and mid-20th century in the Upper Hunter Valley and for its equally rapid decline. It is an indicator of the processes used and scale of operation.

A Statement of Heritage Impact (SoHI) has been prepared and accompanies the DA.

Catchment location

The subject site is located within the local catchment of an unnamed watercourse that runs through Karoola Park and adjacent to the southern boundary of the Site. The watercourse then crosses Hunter Street, the Main Northern Railway and the New England Highway in discharging to the Hunter River downstream. The Hunter River sits approximately 400m west of the site.

A second minor watercourse draining a small local catchment runs along the northern site boundary before crossing the railway and highway before discharging to Sandy Creek. Sandy creek runs south into the Hunter River and sits approximately 120m west of the site.

The Figure below shows the local catchment and the location of mapped watercourses. A mapped watercourse is located within the far north-eastern corner of the subject site and to the south-west of the subject site.

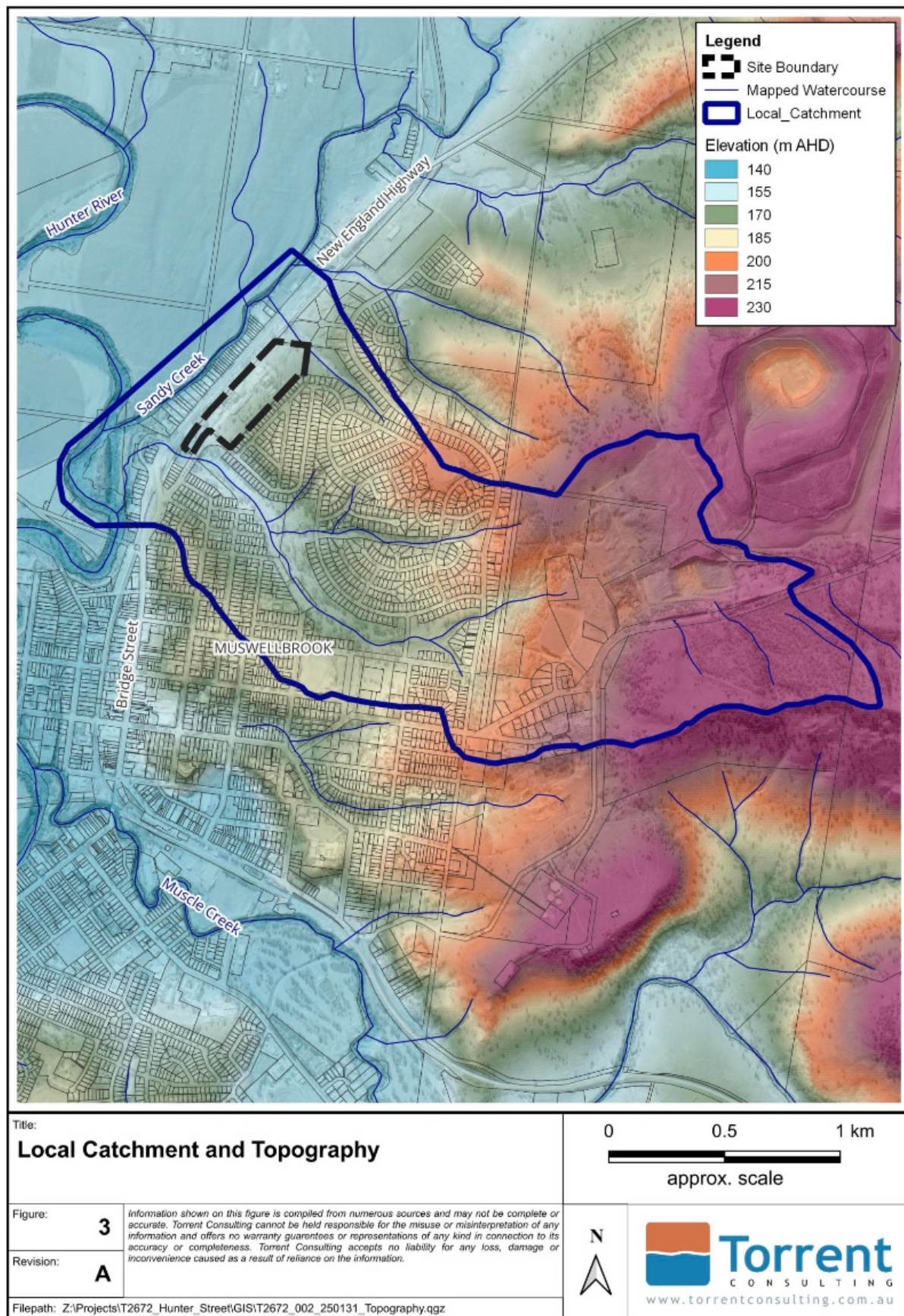


Figure 10: Local Catchment and Topography (Source Torrent Consulting).

Vegetation

A Biodiversity Development Assessment Report accompanies the DA and describes the vegetation on site as consisting primarily of planted windrows of *Corymbia* and *Eucalyptus* species (primarily *Corymbia citriodora* and *Eucalyptus cladocalyx*) along the eastern boundary, planted windrows of *Acacia* and *Casuarina* species in the centre of the site and along the northern boundary, as well as planted ornamental species in the gardens of the residential dwellings.

Exotic shrub species classified high threat weeds (HTW) including *Lycium ferocissimum* (African boxthorn) and *Olea europaea* subsp. *cuspidata* (African olive) are also present. Cleared sections of the site primarily consist of exotic grass and forb species.

Native vegetation on the site includes patches of regenerating *Acacia salicina* as well as native grass and forb species. Connectivity of the site is limited to small bands of exotic vegetation along the road reserve and drainage lines.

Soils and Geology

The site is located on upper Permian conglomerate of the Braxton Formation which can include conglomerate, sandstone and siltstone (Summerhayes 1983). Both the Roxburgh (YP-rx) and Hunter (A-hu) soil landscape are mapped on the site. With Yellow Podzolic soils occurring on mid slopes (Roxburgh area) and alluvial soils in the flatter areas on the site (Hunter landscape).

The Surrounding Environment

The site is located within a mixed infrastructure (railway and highway), light industrial (Former Oaks Factory) and residential area.

Adjoining development includes:

- The railway line to the west, with the New England Highway adjoining the Hunter railway line to the west, with residential development along New England Highway. The New England Highway is part of the inland Sydney to Brisbane National Land Transport Network and the primary route connecting the Upper Hunter with Maitland and Newcastle.
- Residential dwellings are located to the south west of the subject site on the south western side of Hunter Street – namely 2-14 Hunter Street, with a vacant lot (zoned RE1 Public Recreation) to the north of 14 Hunter Street;
- A wide landscaped area between the one-way sections of Hunter Street adjoins to the east of the subject site with Karoola Park (zoned RE1 Public Recreation) further to the east at that location. Residential development is located to the south and east of Karoola Park. Residential development is located in Cousins Street approximately 100m to the east of Hunter Street.



Figure 11: Showing location of Rail and Highway, and existing residential development

1.4 Proposed Development

1.4.1 Scope of Works

The DA seeks approval for a proposed subdivision of one (1) lot into two (2) lots and ancillary works at 1 Hunter Street, Muswellbrook, NSW 2333 (Lot 1 DP 995228).

In detail the DA includes:

- Subdivision of one lot into two (proposed Lots 3001 and 3002) – refer to Plan No. 224133/Sheet 1, prepared by MM Hyndes Bailey & Co.

The proposed subdivision will not adversely impact the ability of the existing factory operations to comply with the current DA approvals.

- 2.4m high boundary screening fence between proposed Lots 3001 and 3002.

The proposed fence will be lap and cap paling construction.

- Demolition of Shed 1, Shed 2 and Warehouse 2 (as labelled in Figures 6 and 9)

The demolition is recommended in order to clean up potential contamination on proposed Lot 3002 as identified in the Report entitled: *Preliminary Site Investigation – Shed Area of Lot 1 of DP 995228*, prepared by Compaction & Soil Testing Services Pty Ltd, dated 24 May 2024.

The demolition of the sheds including the disposal of waste, is to be undertaken by a qualified contractor, with provision of a waste management plan by the contractor to council prior to demolition works being undertaken and legal disposal.

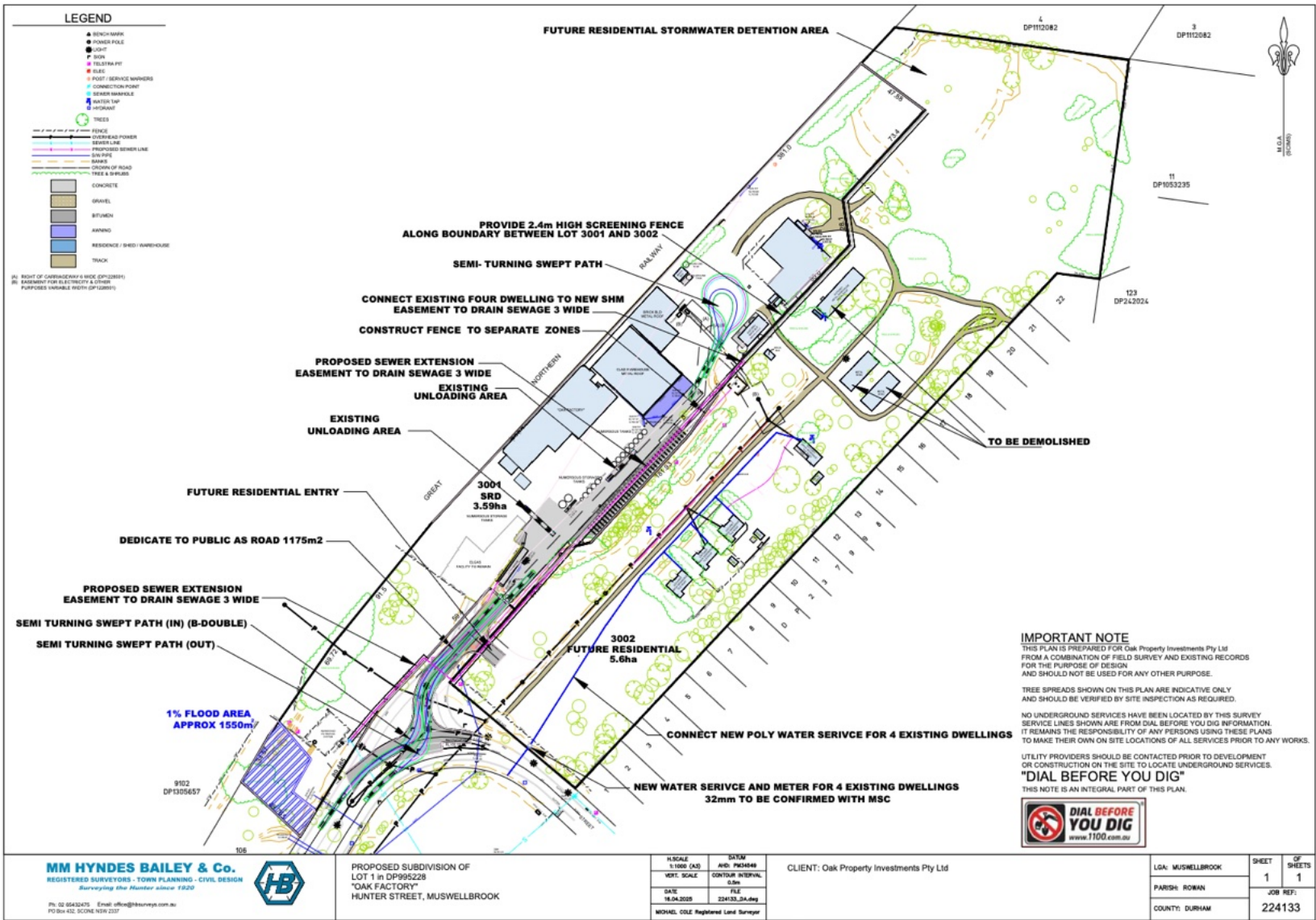
A remediation action plan may be included as a condition of consent.

- Works related to the existing four (4) dwellings (as existing services come from the “former Oaks Factory”)
 - Proposed sewer extension and easement to drain sewage 3m wide to the existing 4 dwellings on proposed Lot 3002. Connect existing four dwelling to new SHM easement to drain sewage 3m wide.
 - Connect new poly water service for 4 existing dwellings. Existing water pipes would be cut and new service out to Hunter Street.
 - New water service and meter for 4 existing dwellings 32mm to be confirmed with MSC.
 - New electrical/NBN service to 4 existing dwellings
 - Access to dwellings – minor upgrade of access to 4 existing dwellings via a new connection from the new residential driveway road.
- Minor stormwater works as a result of proposed intersection road works (i.e. road drainage pits relocated)- as detailed in SWC drawings. All other site stormwater will remain unchanged as result of the proposed subdivision.
- Road access point to proposed Lots 3001 and 3002 to be dedicated to Council (as public road – 1,175 meters square).
- Upgrade of intersection road to the front gate including turning swept path IN and OUT for semi-trailors.
- Flooding – A restriction on the Title - such that no building works will be permitted within the 1% AEP area as shown on the plans and in the flooding report.

The following Figures show the existing Certificate of Title and the DA Subdivision Plan.



Figure 13: DA Subdivision Plan No. 224133/Sheet 1, prepared by MM Hyndes Bailey & Co.



2 Strategic Context

2.1 Hunter Regional Plan 2041

The Hunter Region includes the local government areas of Cessnock, Dungog, Lake Macquarie, Maitland, MidCoast, Muswellbrook, Newcastle, Port Stephens, Singleton and Upper Hunter. Muswellbrook is identified as a strategic centre in the Plan



Figure 14: Hunter Region

The Hunter Regional Plan 2041 (HRP) sets out a 20-year strategic planning blueprint to ensure the ongoing prosperity of the Hunter's vibrant and connected communities. The HRP builds on the HRP 2036 and responds to the rapid change experienced by the Hunter and its communities. The objective is to promote sustainable growth, connected communities, resilience and a region that all residents have a stake in.

The vision of the HRP is to create vibrant neighbourhoods, centres, towns and villages with communities close to jobs, shopping and services, supported by public transport and walking and cycling options. The plan further seeks to support the right of Aboriginal residents to economic self-determination, diversify the Hunters mining, energy and industrial capacity, conserve heritage, landscape and environmentally sensitive areas and plan for business and services at the heart of healthy, prosperous and innovative communities.

The HRP provides strategic pathways to achieve the relevant objectives, with Objective No. 6 having particular relevance to the proposed development.

OBJECTIVE 6: *Conserve heritage, landscapes, environmentally sensitive areas, waterways and drinking water catchments.*

The proposal will retain much of the existing “former Oaks Factory” infrastructure, thereby ensuring the ability to understand the historic use of the site as a dairy processing plant is retained.

2.2 Local Strategic Planning Statement – Muswellbrook Shire Council

The Local Strategic Planning Statement (LSPS) consists of:

- 3 key themes that identify the higher-order objectives for strategic land use planning in the LGA.
- 19 planning priorities that identify the main issues to be addressed to deliver the Vision and Themes.
- A set of Planning Principles for each planning priority that guide decisions on planning proposals and land use planning.
- Measurable Actions that outline specific projects that will be added to Council’s work programs to implement the LSPS.

Both Planning Priority 7 and 8 of the LSPS are relevant to the proposed development:

Planning Priority 7: Industrial land is developed in an orderly manner, which meets future needs, and is provided with appropriate infrastructure.

Having vacant industrial land available provides opportunities for new and emerging industries. Current employment opportunities in the Shire are strongly focused toward mining; more diversification is necessary to limit future shocks expected in that sector. Preparation of an Economic Development Strategy would identify the type of land and infrastructure required for future businesses.

Planning Priority 8: Our Town Centres and Villages are places of economic growth, business diversification and employment opportunities.

Council’s vision is that Muswellbrook will strengthen and grow as the Regional Centre of the Upper Hunter, and as a centre for:

- ♣ *Excellence for education;*
- ♣ *Retail, commercial, educational, cultural, arts, entertainment, and residential development;*
- ♣ *Sport and recreation;*
- ♣ *Supporting the mining, agribusiness and agricultural sectors.*

The proposed development will facilitate the continued use of the former Oaks Factory on existing industrial land on proposed Lot 3001 and also facilitate residential development in the future on proposed Lot 3002.

2.3 Muswellbrook Shire Council Heritage Strategy 2023 – 2026

Muswellbrook Shire Council Heritage Strategy (HS) is relevant to the proposed development, particularly Action 2 of recommendation No 9.0.

9.0 Promote sustainable development as a tool for heritage conservation

Aims:

Proactive heritage and sustainable development in your local area.

Actions:

- 1) Promote heritage and sustainable development in the Shire by providing heritage advice service to members of the public and to council staff.
- 2) Council to promote and encourage the adaptive re-use, or infill, or sympathetic additions to historic buildings. Consider extending the waiving or reduction in DA charges and fees for positive projects that support those principles in the Muswellbrook area.
- 3) Encourage sustainable heritage tourism commercial ventures or state projects associated with the adjacent National Parks.

The former Oak Milk Factory is listed as a local heritage item on the Muswellbrook Local Environmental Plan 2009. The SoHI accompanying the DA states:

The remaining dairy infrastructure including hoppers, bottling lines, evaporation and refrigeration plant and gas boiler will all remain on the same lot as the main factory building. This will ensure the ability to understand the historic use of the site as a dairy processing plant is retained.

The proposed subdivision will facilitate the new owner to invest in the existing infrastructure in the factory.

2.4 Muswellbrook Community Strategic Plan 2025-2035

The Muswellbrook Community Strategic Plan (MCSP) is relevant to the proposed development, particularly “We are a thriving economy”.

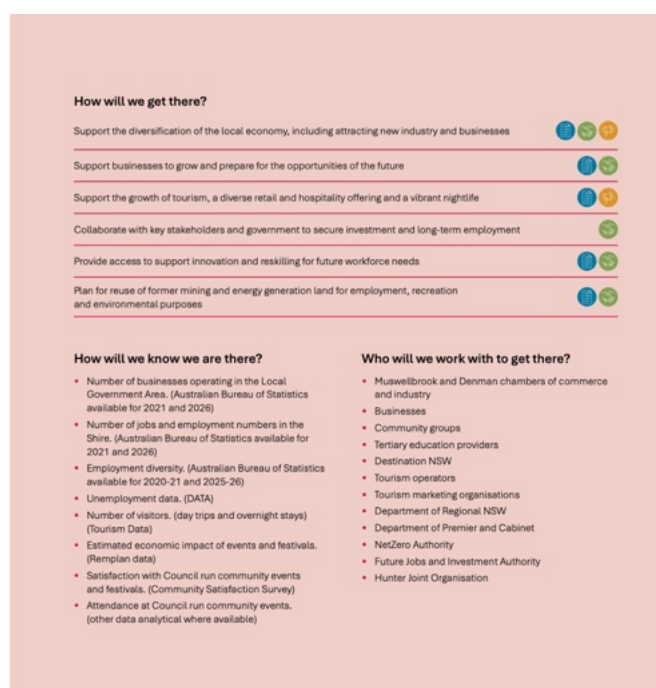


Figure 15: Extract MCSP

The proposal will assist the existing operations within the “former Oaks Factory” to grow. By separating the factory from its underutilised land to the east, will facilitate the new owner to invest in the existing infrastructure in the factory.

2.5 Muswellbrook Shire Council Local Housing Strategy 2024

Direction 1 of the Local Housing Strategy 2024 (LHS) is relevant to the proposed development.

Direction 1 – Development and renewal of housing in existing suburbs

Infill development refers to the development of new housing within established urban areas like towns and suburbs. Renewal refers to the redevelopment of ageing or decaying urban areas and buildings. Infill and renewal in Muswellbrook is an opportunity to leverage well-placed, underutilised land, or revitalise and modernise housing to ensure it is more suitable for the community's changing needs.

Developing within the existing urban footprint means that sites are likely to have access to infrastructure needed to build a house, such as sewer, water and electricity. The cost to develop housing may be lower as a result, improving affordability.

The key barrier to infill development and asset renewal in Muswellbrook is high developments costs, which when combined with low willingness or capacity to pay, makes delivery of new housing unprofitable. This suggests that the traditional model of market-led development is unlikely to occur at the scale needed.

This direction focuses on development within the town of Muswellbrook, particularly in areas:

- *Close to established centres*
- *Characterised by older housing stock that may be appropriate for renewal*
- *With higher rates of unoccupied dwellings*

One of the purposes of the proposed subdivision is to enable the orderly redevelopment of the eastern portion of the land parcel (proposed Lot 3002) for residential development via a future DA.

The existing vacant land on the subject site is underutilised and is located immediately adjacent to existing residential development in Cousins Street, within an existing residential area of the town of Muswellbrook. Existing infrastructure is available for connection in relation to sewer, water and electricity.

3 Statutory Planning Framework

A range of environmental planning legislation and instruments are applicable to the proposal. These are described below.

3.1 Environmental Planning and Assessment Act 1979

The EP&A Act is the principal planning and development legislation in NSW. As the proposed works will require development consent, the Muswellbrook Shire Council will be the consent authority and the proposal will be assessed under Division 4, Part 4 of the EP&A Act. Section 4.15 of the EP&A Act requires that the consent authority take into account the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

This SEE has been prepared to meet the requirements of Section 4.15 of the EP&A Act noted below, which require a consent authority “to take into consideration such of the following matters as are of relevance to the development the subject of the development application”:

(a) *the provisions of:*

(i) *any environmental planning instrument, and*

(ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

(iii) *any development control plan, and*

(iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*

(iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*

that apply to the land to which the development application relates,

(b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*

(c) *the suitability of the site for the development,*

(d) *any submissions made in accordance with this Act or the regulations,*

(e) *the public interest.*

Table 3: Section 4.15(1) Matters for Considerations

Section	Comment
<i>Section 4.15(1)(a)(i) any environmental planning instrument, and</i>	The MLEP is the relevant Environmental Planning Instrument (EPI) applying to the subject site, which is assessed in Section 3.2 of this SEE.
<i>Section 4.15(1)(a)(ii) any proposed</i>	There is no relevant proposed instrument that

<i>instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and</i>	is or has been under public consultation.
<i>Section 4.15(1)(a)(iii) any development control plan, and</i>	The Muswellbrook Development Control Plan 2009 (MDCP) applies to the subject site and is addressed in Section 3.3 of this SEE
<i>Section 4.15(1)(a)(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and</i>	No planning agreement or draft planning agreement has been entered into under Section 7.4 of the EP&A Act.
<i>Section 4.15(1)(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),</i>	The EP&A Regulation is addressed in Section 3.1.2 of this SEE.
<i>Section 4.15(1)(b)-(c)</i>	These matters are addressed in section 4 and sub-section 4.6 of this SEE.
<i>Section 4.15(1)(d)</i>	No consultation has been undertaken by the applicant.
<i>Section 4.15(1)(e)</i>	This matter is addressed in Section 4.8 of this SEE.

As stated above, consent authority for the proposed development is the Muswellbrook Shire Council.

3.1.1 Section 4.46 of EP&A Act – Integrated Development

Section 4.46 of the EP&A Act defines ‘integrated development’ as matters that require consent from the consent authority and one or more authorities under related legislation. In these circumstances, prior to granting consent, the consent authority must obtain from each relevant approval body their General Terms of Approval (GTA) in relation to the development, pursuant to section 42 of the EP&A Regulation.

Table 4 below provides commentary on whether any part of the proposed development triggers a need for Council to obtain GTA’s from other approval bodies.

Table 4: Integrated Development Review

Legislation	Comment	GTAs
<i>National Parks and Wildlife Act 1974</i>	An Aboriginal Heritage Information Management System (AHIMS) Search was undertaken on 7 February 2025. A copy of the search is provided in Appendix C of this SEE. No items or sites of	No

	<p>indigenous archaeological significance were found within a radius of 50m of the subject site.</p> <p>The proposed lot boundary and ancillary works proposed are located in areas of previous significant disturbance and are unlikely to show any visual signs of objects. It is therefore considered there is only a low risk that the proposal would disturb, damage, or destroy Aboriginal objects.</p> <p>If any burials/skeletal remains, shell middens or stone artefacts are found, all work is to cease immediately, and the relevant parties notified.</p> <p>Best practice would be to provide for a condition attached to any consent granted to implement an unexpected finds protocol to be implemented during works.</p>	
<i>Protection of the Environment Operations Act 1997</i>	The implementation of appropriate environmental protection works will ensure that no licence will be required.	No
<i>Rural Fires Act 1997</i>	The site is not mapped as a bushfire hazard area.	No
<i>Water Management Act 2000</i>	<p>A mapped watercourse is located within the far north-eastern corner of the subject site and to the south-west of the subject site.</p> <p>Although no works are proposed in or within 40m of the identified watercourses, referral to NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW-Water) is required under section 91(2) of the <i>Water Management Act 2000</i>.</p>	Yes
<i>Fisheries Management Act 1994</i>	No works proposed as part of this Application will harm defined marine vegetation or impede the movement or development of marine life within the identified watercourses. Therefore, no integrated approval is required under the <i>Fisheries Management Act 1994</i> .	No
<i>Heritage Act 1977</i>	<p>The SoHI states:</p> <p><i>The former Oak Milk Factory, Hunter Street Muswellbrook is NOT listed on the State Heritage Register. Therefore Section 57 of the Heritage Act 1977 does not apply.</i></p> <p>Therefore, no integrated approval is required to address this legislation.</p>	No

<i>Mines Subsidence Compensation Act 1961</i>	The land is not within a mine subsidence district.	No
<i>Petroleum (onshore) Act 1991</i>	No production lease is being sought.	No
<i>Mining Act 1992</i>	No mining lease is being sought.	No
<i>Roads Act 1993</i>	The proposal is neither located on or along a State Classified Road therefore no approved under this act is required.	No

In summary, the proposed development is identified as integrated development under section 4.46 of the EP&A Act for the following purposes:

- *Water Management Act 2000* (s91) - as a mapped watercourse is located within the far north-eastern corner of the subject site and to the south-west of the subject site. Referral to NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW-Water) relevant to a requirement for a controlled activity approval over waterfront land.

3.1.2 Environmental Planning and Assessment Regulation 2021

The proposal has been prepared in accordance with the provisions of the EP&A Regulation. Division 1 of Part 3 of the EP&A Regulation stipulates how a DA must be “made”. This DA satisfies the relevant criteria of the Regulation as follows:

Table 5: Development application requirements

Section 23 – Persons who may make development applications	Comment
<p>(1) A development application may be made by—</p> <p>(a) the owner of the land to which the development application relates, or</p> <p>(b) another person, with the consent of the owner of the land.</p>	<p>The owner of the land has provided consent in accordance with Clause 23(1) of the EP&A Regulation to allow for the DA to be made.</p>

Section 24 – Content of development applications	Comment
<p>(1) A development application must—</p> <p>(a) be in the approved form, and</p> <p>(b) contain all the information and documents</p>	<p>The DA includes all relevant information including detailed plans and SEE.</p> <p>This DA is submitted via the NSW planning portal.</p>

required by— (i) the approved form, and (ii) the Act or this Regulation, and (c) be submitted on the NSW planning portal.	
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Section 25 – Information about concurrence or approvals	Comment
<p>A development application must contain the following information—</p> <p>(a) a list of the authorities —</p> <p>(i) from which concurrence must be obtained before the development may lawfully be carried out, and</p> <p>(ii) from which concurrence would have been required but for the Act, section 4.13(2A) or 4.41,</p> <p>(b) a list of the approvals of the kind referred to in the Act, section 4.46(1) that must be obtained before the development may lawfully be carried out.</p>	<p>The DA requires approval from the consent authority, being Muswellbrook Shire Council.</p>

Section 61 of the EP&A Regulation prescribes a number of matters that must be taken into consideration by a consent authority in determining a development application, for the purposes of Section 4.15 of the EP&A Act. A review of these matters indicates that none are relevant to the proposed development.

3.1.3 State Environmental Planning Policy (Biodiversity and Conservation) 2021

The *State Environmental Planning Policy (Biodiversity and Conservation) 2021* (SEPP Biodiversity and Conservation) represents the consolidation of several former SEPPs including the SEPP Vegetation in Non-Rural Areas, and Sydney Regional Environmental Plan no. 20 Hawkesbury-Nepean River, which apply to the site.

Chapter 2

Chapter 2 (Vegetation in non-rural areas) of the SEPP Biodiversity and Conservation applies to the clearing of vegetation in non-urban areas, and does not include Muswellbrook LGA.

Chapter 4

Chapter 4 (Koala Habitat Protection 2021) aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline. This SEPP applies to land identified in Schedule 2 and includes Muswellbrook Local Government Area.

In accordance with Section 3.8, the council's determination of the development application must be consistent with the approved koala plan of management that applies to the land. Muswellbrook is part of the Central Coast Koala Management Area.

A Biodiversity Development Assessment Report, prepared by RestoreAG, dated 20 May 2025 was prepared and accompanies the DA. In relation to koalas, the consultants undertook koala scat searches. All trees of any species that are known to be utilised by koala or otherwise considered to be of some importance for koala conservation or management purposes were assessed. In addition, 4 acoustic recorders (Songmeters) were deployed across the site for 10 nights from 27 October to 6 November 2024 yielding a total of 40 recorder nights.

The report concluded that no koalas were detected through SAT surveys or by acoustic recording.

No further consideration of this SEPP is required as part of this application.

3.1.4 State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 3

Chapter 3 of the *State Environmental Planning Policy (Resilience and Hazards) 2021* (Resilience and Hazards SEPP) relates to the remediation of land. Clause 3.12 states that a consent authority must consider the following –

- (a) Current circulars or guidelines published by the Department of Planning relating to hazardous or offensive development, and
- (b) Whether any public authority should be consulted concerning any environmental and land use safety requirements with which the development should comply, and
- (c) In the case of development for the purpose of a potentially hazardous industry – a preliminary hazard analysis prepared by or behalf of the applicant, and
- (d) Any feasible alternatives to the carrying out of the development and the reasons for choosing the development of the subject of the application (including and feasible alternatives for the location of the development and the reasons for choosing the location the subject of the application), and
- (e) Any likely future use of the land surrounding the development.

The proposed development is a subdivision and the “former Oaks Factory” and its current operation is not a potentially hazardous industry.

Chapter 4

Chapter 4 of the Resilience and Hazards SEPP applies to remediation of land. Clause 4.6 Contamination and remediation to be considered in determining development application.

(1) A consent authority must not consent to the carrying out of any development on land unless—

(a) it has considered whether the land is contaminated, and

(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and

(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

(2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.

The Minutes of the Pre-lodgement meeting dated 9 August 2024 stated “**Potential site contamination** – the site has a longstanding history of commercial and agricultural use. A site contamination assessment prepared by an appropriately qualified person will be important to informing the potential for any residential subdivision for the site.

Accompanying the DA are two Preliminary Site Investigation reports, namely:

- *Preliminary Site Investigation –Lot 1 of DP 995228, prepared by Compaction & Soil Testing Services Pty Ltd, dated 24 May 2024 (Reference: SII 5183-AA).*
- *Preliminary Site Investigation – Shed Area of Lot 1 of DP 995228, prepared by Compaction & Soil Testing Services Pty Ltd, dated 24 May 2024 (Reference: SII 5183-AB).*

The report Referenced as SII 5183-AA is for the proposed Lot 3001, and the report referenced as SII 5183-AB is for the “Shed Area” of the subject site.

Report referenced as SII 5183-AA

Report referenced as SII 5183-AA states that the report relates to “...the areas subject to the proposed development, that is, the back of the site and towards the centre and east areas of the site, to the east of the milk factory....”

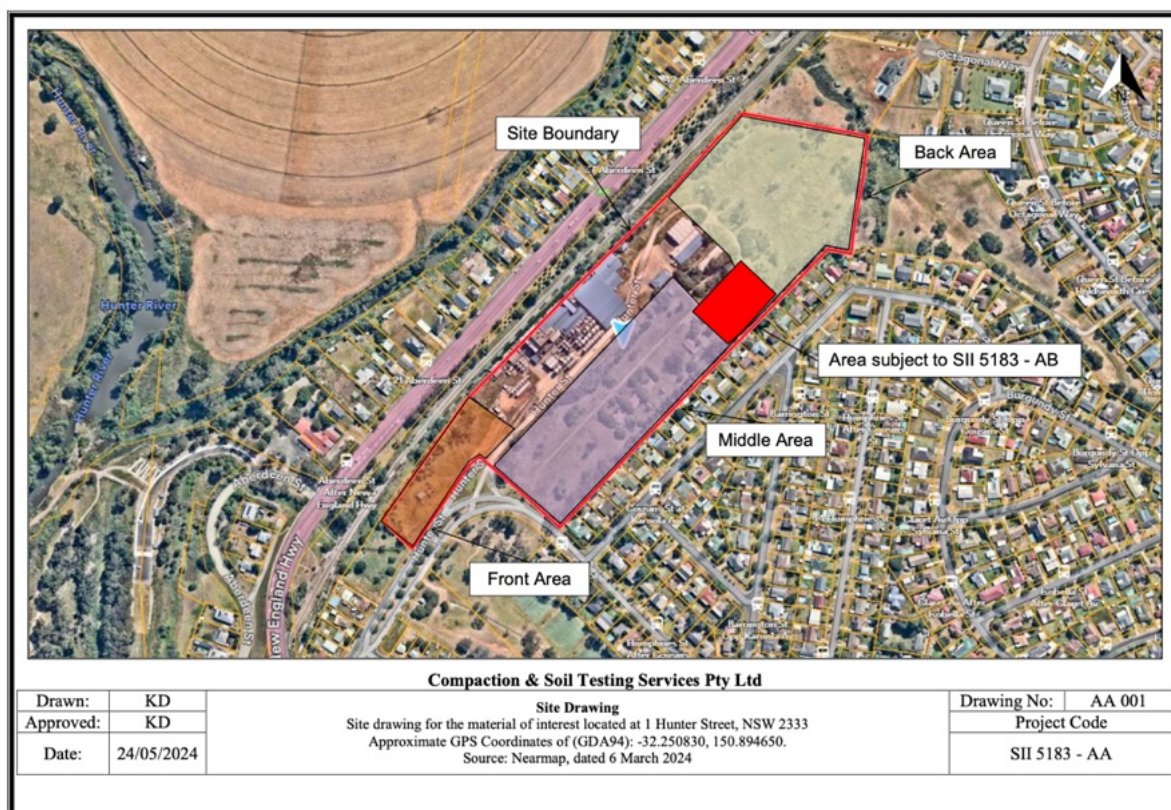


Figure 16: Area subject to Report - Reference: SII 5183-AA

Twenty (20) boreholes were dug as shown in the following figure.

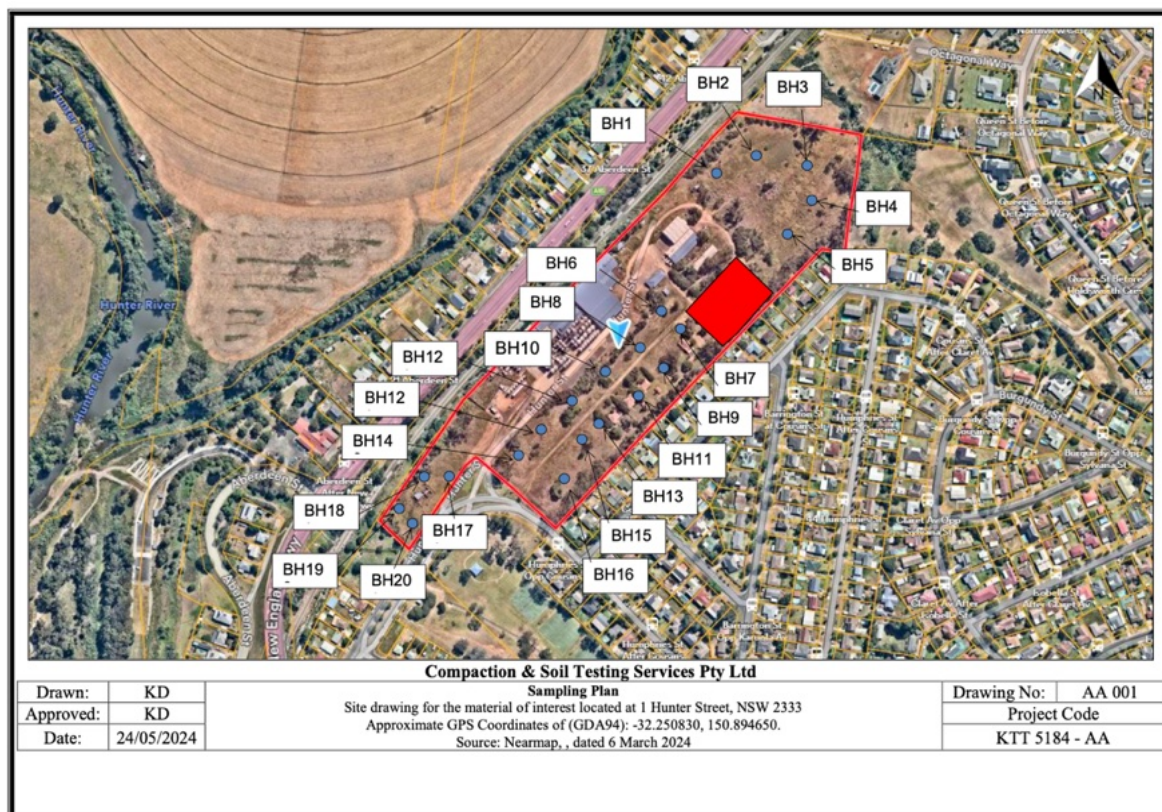


Figure 17: Boreholes location Report Reference: SII 5183-AA

The report makes the following conclusion and recommendations:

Based on the conducted assessment, CSTS has concluded that the site known as 1 Hunter Street, Muswellbrook NSW 2333, excluding the area subject to SII 5178 – AB, can be made suitable, from a contamination perspective, for residential land use with soil access opportunities, providing the following recommendations are implemented.

- *If any demolition of existing structures is to be undertaken it should be conducted in accordance with the recommendations of the asbestos-containing materials survey conducted by Hazmat Services Pty Ltd in 2023.*
- *The site is generally made clean from anthropogenic deposits such as the rubbish in the back area of the site.*

CSTS recommends that, during the process of development, should any indicators of potential contamination be encountered, this office is to be contacted immediately for further assessment. Should there be any change in the proposed development, all conclusions and recommendations are to be reviewed. Specifically, if the proposed development will involve an alternate final land use, the findings of this report will require revision and further assessment may be necessary.

Report referenced as SII 5183-AB

The second report (referenced as SII 5183-AB) states that the report relates to “...the area of the two rectangular, dilapidated sheds on the eastern portion of the site. The designated area of investigation had an area of approximately 3000m². ”

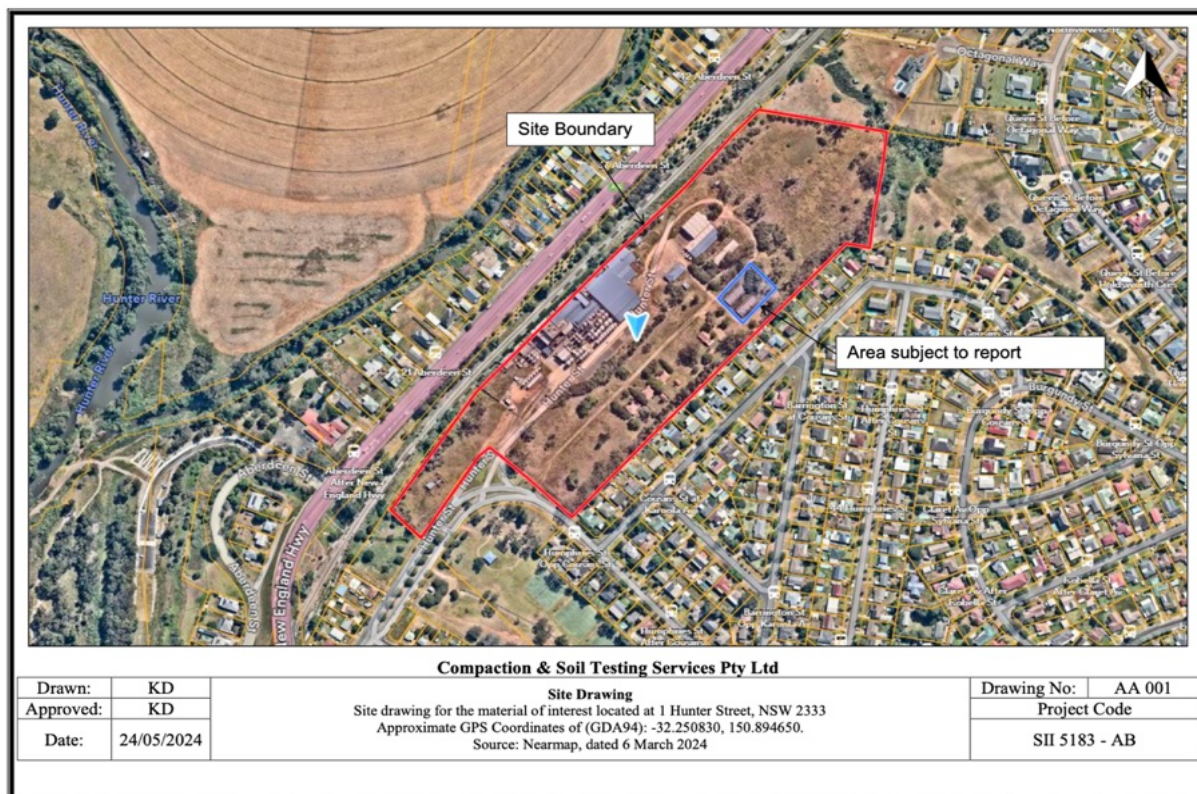


Figure 18: Black arrow shows area subject to Report - Reference: SII 5183-AB

Eight (8) boreholes were dug as shown in the following figure.

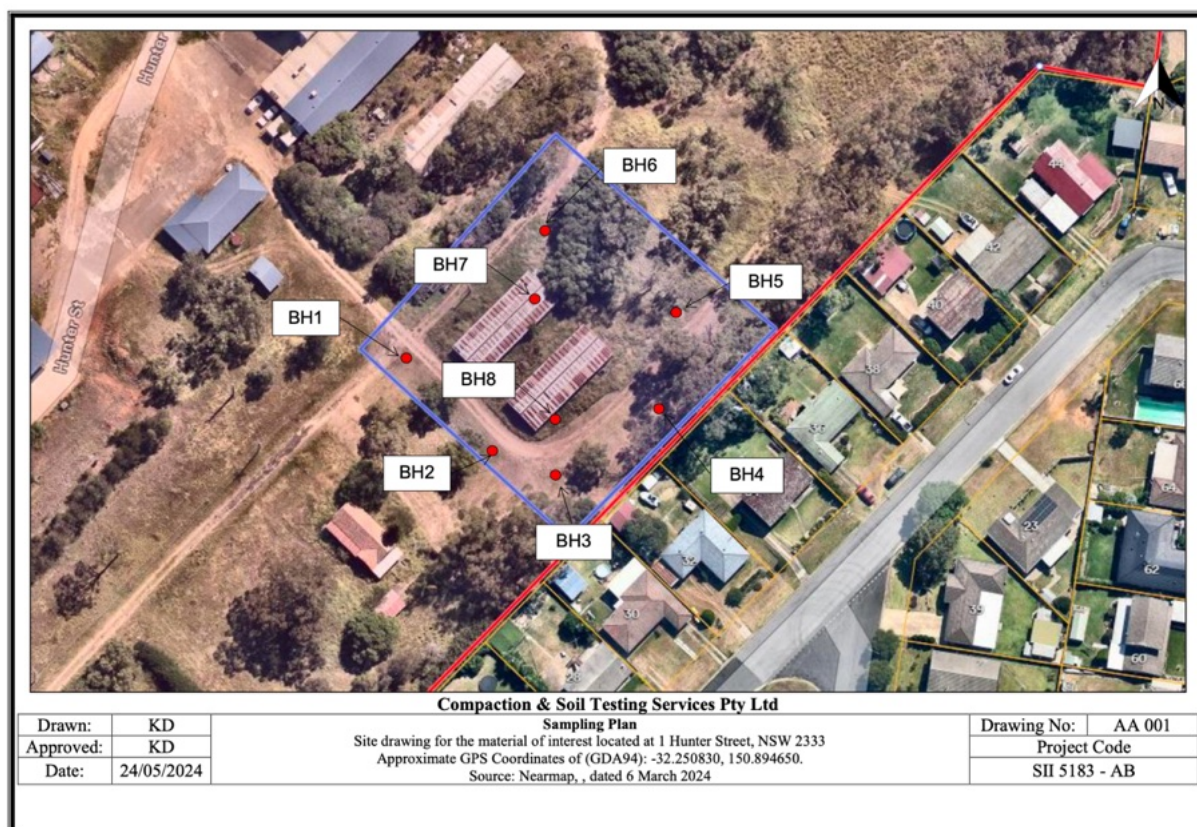


Figure 19: Location of Boreholes Report Reference: SII 5183-AB

The report makes the following conclusion and recommendations:

Based on the conducted assessment, CSTS has concluded that the shed area of the site known as 1 Hunter Street, Muswellbrook NSW 2333 requires further investigation post-demolition as the concentration of zinc in sample BH8 was found to exceed the adopted ecological criteria. The following recommendations should be implemented:

- *A hazardous materials building inspection to confirm the presence or absence of asbestos and other hazards within the existing structures should be undertaken.*
- *Demolition of existing structures is to be undertaken it should be conducted in accordance with relevant Safe Work NSW legislation.*
- *A detailed investigation into the area to determine the potential for contamination after demolition of the sheds is completed.*

CSTS recommends that, during the process of development, should any indicators of potential contamination be encountered, this office is to be contacted immediately for further assessment. Should there be any change in the proposed development, all conclusions and recommendations are to be reviewed. Specifically, if the proposed development will involve an alternate final land use, the findings of this report will require revision and further assessment may be necessary.

It is considered that subject to the recommendations of the two Preliminary Site Investigation reports, the site can be made suitable for the proposed uses.

3.1.5 State Environmental Planning Policy (Transport and Infrastructure) 2021

Division 5, Subdivision 2 Development likely to affect an electricity transmission or distribution network

Section 2.48 – Determination of development applications – Other development

The existing site is connected to overhead reticulated electricity, connecting to the infrastructure within the site. Penetration of the ground within 2m of underground electrical infrastructure triggers referral the electricity supply authority is triggered pursuant to Section 2.48(1)(a). It is not anticipated that referral to the electricity authority is warranted in this instance given there is no underground infrastructure within proximity to the works that we are aware of.

Division 12A, Subdivision 2 Development adjacent to pipeline corridors

Section 2.76 – Determination of development applications

The proposed development is not in the vicinity of a ‘licensed’ pipeline corridor as defined under Section 2.76 (2). Accordingly, the proposed development does not trigger referral to any pipeline operator pursuant to Section 2.76.

Division 15 Subdivision 2 -Clause 2.98 Development adjacent to rail corridors

The subject site is located in proximity to a rail corridor. Consequently, the *State Environmental Planning Policy (Transport & Infrastructure) 2021* (T&I SEPP) is applicable to the development.

Clause 2.98 of the T&I SEPP addresses development adjacent to rail corridors. The clause states:

“(1) This clause applies to development on land that is in or adjacent to a rail corridor, if the development:

- (a) Is likely to have an adverse effect on rail safety, or
- (b) Involves the placing of a metal finish on a structure and the rail corridor concerned is used by electric trains, or
- (c) Involves the use of a crane in air space above any rail corridor, or
- (d) Is located within 5 metres of an exposed overhead electricity power line that is used for the purpose of railways or rail infrastructure facilities.”

The proposed development is not considered to have any detrimental impact upon the operation of the rail corridor as the “former Oaks Factory” is an existing operation and no development is proposed that triggers Clause 9.98.

The development would have no impact on any exposed overhead electricity power line that is used for the purpose of railways or rail infrastructure facilities.

In accordance with Clause 2.99 of the T&I SEPP, the proposal is not for the purposes of residential accommodation, place of public worship, hospital, educational establishment or centre based childcare facility.

Given the above, the proposal is considered to satisfy the requirements of Clause 2.97 and Clause 2.99 of the T&I SEPP and can be supported in this regard.

Division 17 Roads and Traffic – Subdivision 2 Development in or adjacent to road corridors and road reservations

Access to the site is gained via Hunter Street.

A Traffic Impact Assessment, prepared by Intersect Traffic, dated 14 May 2025 accompanies the DA.

The proposal is neither located on or along a State Classified Road nor identified as traffic generating development.

In accordance with Section 2.122, development listed in Schedule 3 is identified as traffic-generating development. As the site has frontage to a local road – Hunter Street (being a non-classified road); and does not propose to construct any dwellings, the development is not classified as traffic generating development, and therefore does not warrant referral to TfNSW.

Division 20 Stormwater Management Systems -

Division 20 ‘Stormwater management systems’ of the SEPP is relevant to the proposed works. In this Division— stormwater management system means:

- (a) works for the collection, detention, harvesting, distribution or discharge of stormwater (such as channels, aqueducts, pipes, drainage works, embankments, detention basins and pumping stations), and
- (b) stormwater quality control systems (such as waste entrapment facilities, artificial wetlands, sediment ponds and riparian management), and
- (c) stormwater reuse schemes.

The proposed development does include minor stormwater works as a result of the proposed intersection road works (i.e. road drainage pits relocated). However, the works are minor and to an existing stormwater management system. Under Section 2.138 of the T&I SEPP development for the purpose of a stormwater management system may be carried out by any person with consent on any land.

3.2 Local Environmental Plans

Muswellbrook Local Environmental Plan 2009

The MLEP applies to the subject site, and the following assesses the proposed development in relation to the relevant clauses.

Clause 2.6 of the MLEP requires development consent for subdivision, the subject of this SEE.

The proposed development is defined as ‘subdivision’, which is permissible pursuant of Clause 2.6 of the MLEP 2009.

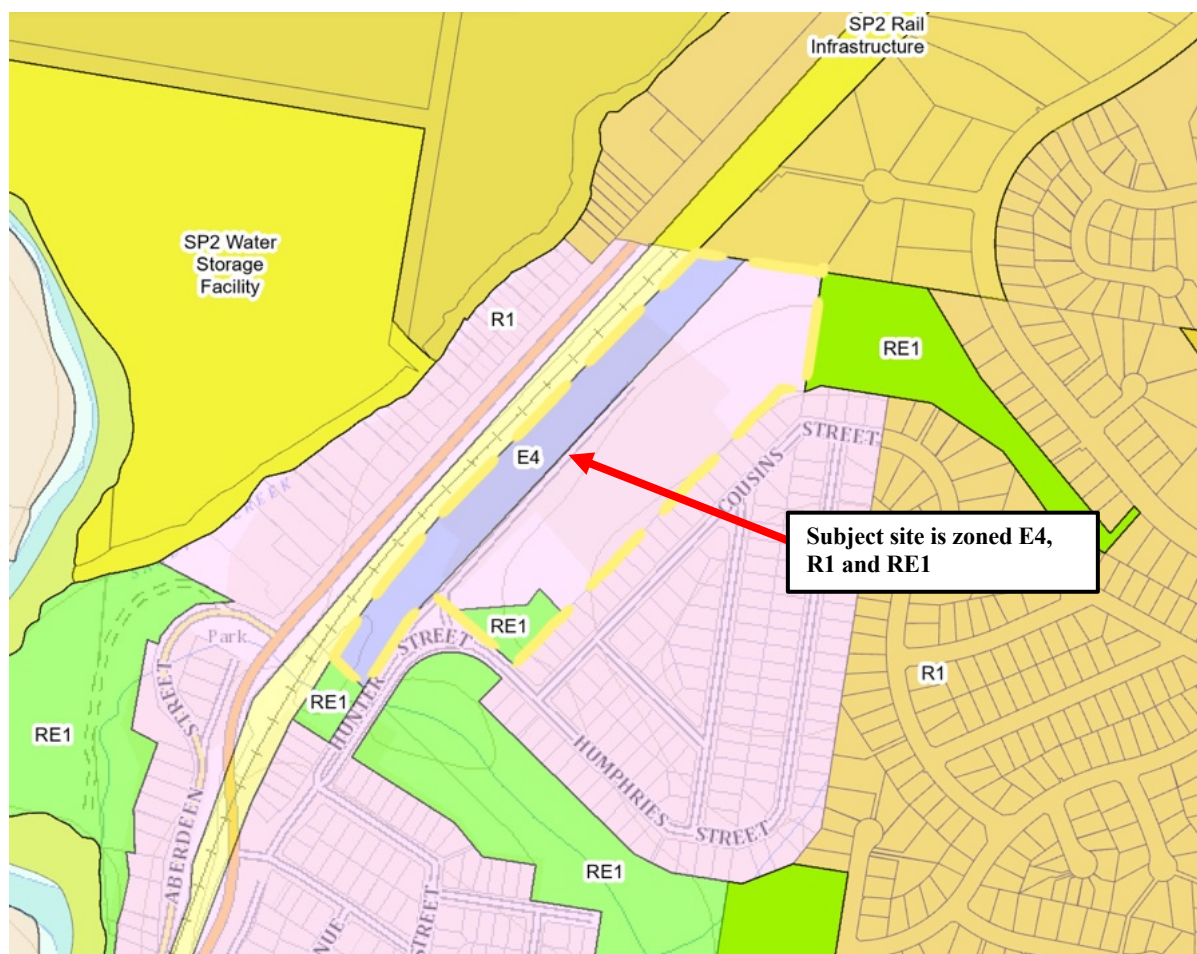


Figure 20 Land zoning map Sheet LZN_008A. Subject site outlined by yellow dotted line (Source Planning Portal).

The subject land is zoned part IN2 Light Industrial (now E4), part R1 General Residential, and part RE1 Public Recreation.

Note that the zoning equivalent change for IN2 Light Industrial is E4 General Industrial.

Zone objectives and permissibility

Clause 2.3 of MLEP 2009 requires a consent authority to have due regard to the land use objectives of a zone when determining a development application.

Table 6: Compliance with Clause 2.3 of MLEP

Zone Objectives	Compliance with Zone Objectives	Permissibility in MLEP	Permissibility Compliance
<p><u>E4 General Industrial zone</u></p> <p>The land use zone objectives for the E4 General Industrial zone are as follows:</p> <ul style="list-style-type: none"> • <i>To provide a range of industrial, warehouse, logistics and related land uses.</i> • <i>To ensure the efficient and viable use of land for industrial uses.</i> • <i>To minimise any adverse effect of industry on other land uses.</i> • <i>To encourage employment opportunities.</i> • <i>To enable limited non-industrial</i> 	<p>It is considered that the development proposal is not contrary to the objectives of the Zone, as the current use of the existing factory on the site is not being changed.</p>	<p>In terms of permissibility in the E4 General Industrial zone, the MLEP states the following:</p> <p>2 Permitted without consent</p> <p><i>Building identification signs; Environmental protection works; Flood mitigation works; Sewage reticulation systems; Water reticulation systems</i></p> <p>3 Permitted with consent</p> <p><i>Air transport facilities; Car parks; Crematoria; Depots; Environmental facilities; Freight transport facilities; Garden centres; General industries; Goods repair and reuse premises; Hardware and building supplies; Heavy industrial storage establishments; Highway service centres; Industrial retail outlets; Industrial training facilities; Industries; Information and education facilities; Kiosks; Landscaping material supplies; Light industries; Local distribution premises; Neighbourhood shops; Oyster aquaculture; Places of public worship; Plant nurseries; Pond-based aquaculture; Public administration buildings; Recreation areas; Recreation facilities (indoor); Roads; Rural industries; Service stations; Sex services premises; Signage; Storage premises; Take away food and drink premises; Tank-based aquaculture; Timber yards; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Vehicle sales or hire premises; Warehouse or distribution centres; Wholesale supplies</i></p> <p>4 Prohibited</p> <p><i>Any development not specified in item 2 or 3</i></p>	<p>The proposal complies.</p> <p>Subdivision is permissible with development consent pursuant of Clause 2.6 of the MLEP 2009.</p> <p>Roads are permitted with consent in Zone E4 General Industrial zone.</p> <p>All ancillary works (as described in the Scope of Works) are ancillary to the primary purpose of the development, that being a subdivision.</p>
<p><u>R1 General Residential zone</u></p> <p>The land use zone objectives for the R1 General Residential zone are as follows:</p> <ul style="list-style-type: none"> • <i>To provide for the housing needs of the community.</i> • <i>To provide for a variety of housing types and densities.</i> • <i>To enable other land uses</i> 	<p>It is considered that the development proposal is not contrary to the objectives of the Zone, as a DA for a future residential subdivision will be lodged with Council at a</p>	<p>In terms of permissibility in the R1 General Residential zone, the MLEP states the following:</p> <p>2 Permitted without consent</p> <p><i>Home occupations</i></p> <p>3 Permitted with consent</p> <p><i>Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dual</i></p>	<p>The proposal complies.</p> <p>Subdivision is permissible with development consent pursuant of Clause 2.6 of the MLEP 2009.</p> <p>Roads are permitted within consent in Zone R1 General Residential zone.</p> <p>All other land uses (as described in the Scope of</p>

<p>that provide facilities or services to meet the day to day needs of residents.</p> <ul style="list-style-type: none"> • To enable sensitive infill development of other housing types. • To allow people to carry out a reasonable range of activities from their homes, where such activities do not adversely affect the living environment of neighbours. • To promote the principles of ecological sustainable development including energy and water efficient subdivision and housing design. • To minimise the impact of non-residential uses and ensure these are in character and compatible with surrounding development. • To ensure that development is carried out in a way that is compatible with the flood risk of the area. 	<p>later date on proposed lot 3002.</p>	<p>occupancies; Dwelling houses; Educational establishments; Environmental facilities; Environmental protection works; Exhibition homes; Exhibition villages; Flood mitigation works; Group homes; Health consulting rooms; Home-based child care; Home businesses; Home industries; Hostels; Kiosks; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; Residential flat buildings; Respite day care centres; Roads; Secondary dwellings; Semi-detached dwellings; Seniors housing; Sewage reticulation systems; Shop top housing; Tank-based aquaculture; Water recycling facilities; Water supply systems</p> <p>4 Prohibited</p> <p>Any development not specified in item 2 or 3</p>	<p>Works) are ancillary to the primary purpose of the development, that being a subdivision.</p>
<p><u>RE1 Public Recreation zone</u></p> <p>The land use zone objectives for the RE1 Public Recreation zone are as follows:</p> <ul style="list-style-type: none"> • To enable land to be used for public open space or recreational purposes. • To provide a range of recreational settings and activities and compatible land uses. • To protect and enhance the natural environment for recreational purposes. • To encourage the development of public open spaces in a way that addresses the community's diverse recreation needs. • To identify land that is suitable for future public recreation use and that can be brought into public ownership as a consequence of development contributions. 	<p>It is considered that the development proposal is not contrary to the objectives of the Zone.</p>	<p>In terms of permissibility in the RE1 Public Recreation zone, the MLEP states the following:</p> <p>2 Permitted without consent</p> <p>Environmental facilities; Environmental protection works</p> <p>3 Permitted with consent</p> <p>Air transport facilities; Aquaculture; Camping grounds; Caravan parks; Centre-based child care facilities; Community facilities; Educational establishments; Emergency services facilities; Entertainment facilities; Flood mitigation works; Food and drink premises; Function centres; Information and education facilities; Kiosks; Markets; Public administration buildings; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Respite day care centres; Roads; Sewage reticulation systems; Signage; Water recycling facilities; Water supply systems</p> <p>4 Prohibited</p> <p>Any development not specified in item 2 or 3</p>	<p>The proposal complies.</p> <p>The entire RE1 Public Recreation zone is included in proposed Lot 3002 and will not be affected by the proposed subdivision.</p>

<ul style="list-style-type: none"> • To provide linked open space for ecosystem continuity, local community recreation, off-road transport and waterway protection. • To provide space for integrated stormwater treatment devices for flow and water quality management, whilst enhancing urban and rural amenity. 			
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Clause 4.1 – Minimum subdivision lot size

Clause 4.1 of the MLEP provides for the minimum subdivision lot size which are shown on the MLEP Lot Size Map.

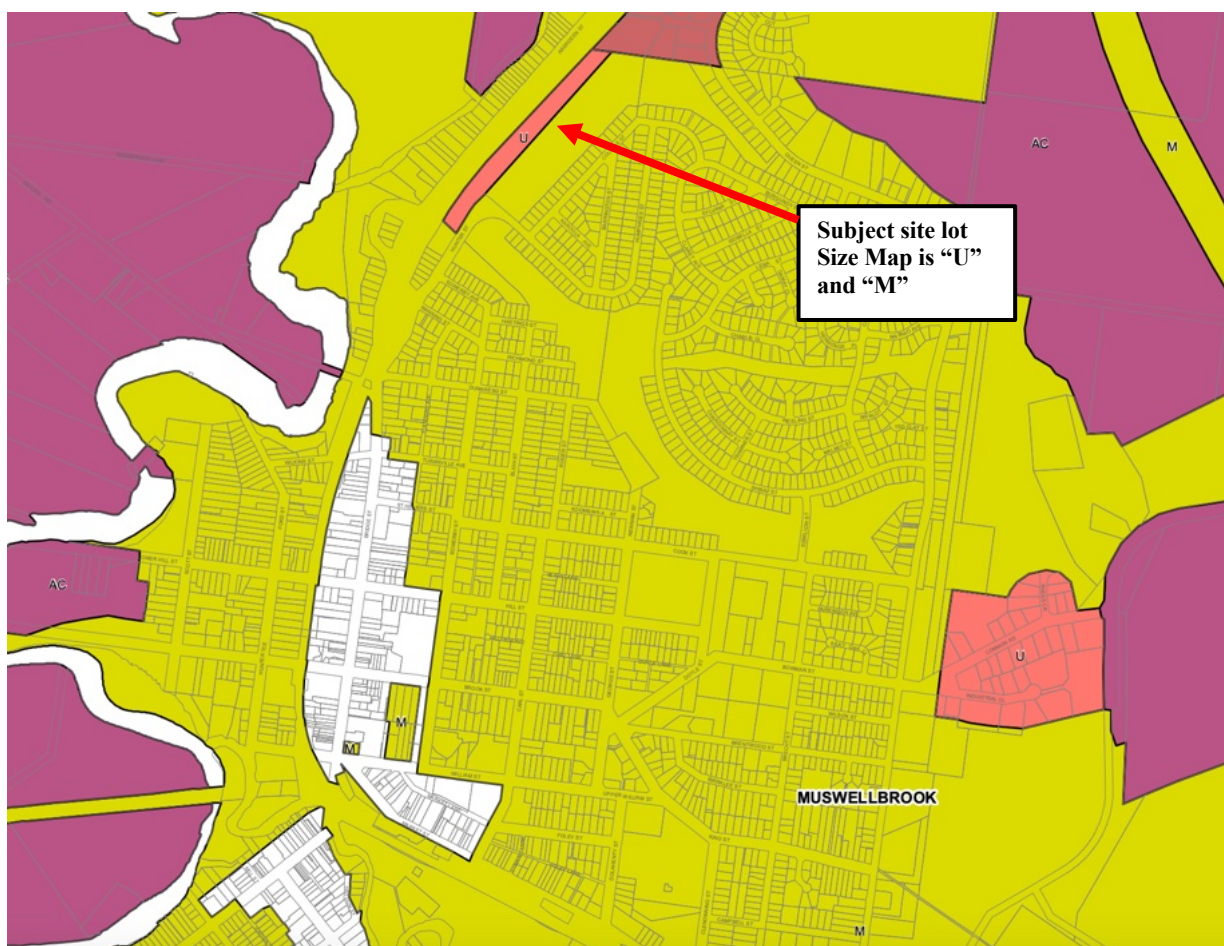


Figure 21: Lot size map – Sheet LSZ_008A showing subject site “U” and “M”.

The relevant Lot Size Map (Sheet LSZ_008A) shows that the minimum lot size required for the subject site is shown as “U” or 1000 sqm in the E4 General Industrial zoned land, and “M” or 600 sqm in the R1 General Residential zoned land.

The total area of the existing site is 9.608 ha, and the following table provides the proposed lot sizes.

Table 7: Subdivision Compliance with MLEP

Proposed lot	Minimum lot size in MLEP	Lot size proposed	Compliance
3001	1000 sqm	3.59 ha	Yes
3002	600 sqm	5.6 ha	Yes

The proposed subdivision has been designed to enable retention of the current industrial use on proposed Lot 3001, and for a future residential subdivision at a later stage on proposed lot 3002.

Proposed lot 3001 has been designed to ensure functionality of the existing factory of the site as well as providing space for any future development at a later stage.

Proposed lot 3002 has been designed to enable a future residential development layout consistent with the surrounding development pattern and which would be the subject of a later DA.

Clause 5.10 – Heritage Conservation

The “Oak Milk Factory” and the entire Lot 1, DP 995228 is identified as a local heritage item in Schedule 5 Part 1 of the MLEP (Item No I97) and shown on MLEP Heritage Map _Sheet HER_008.

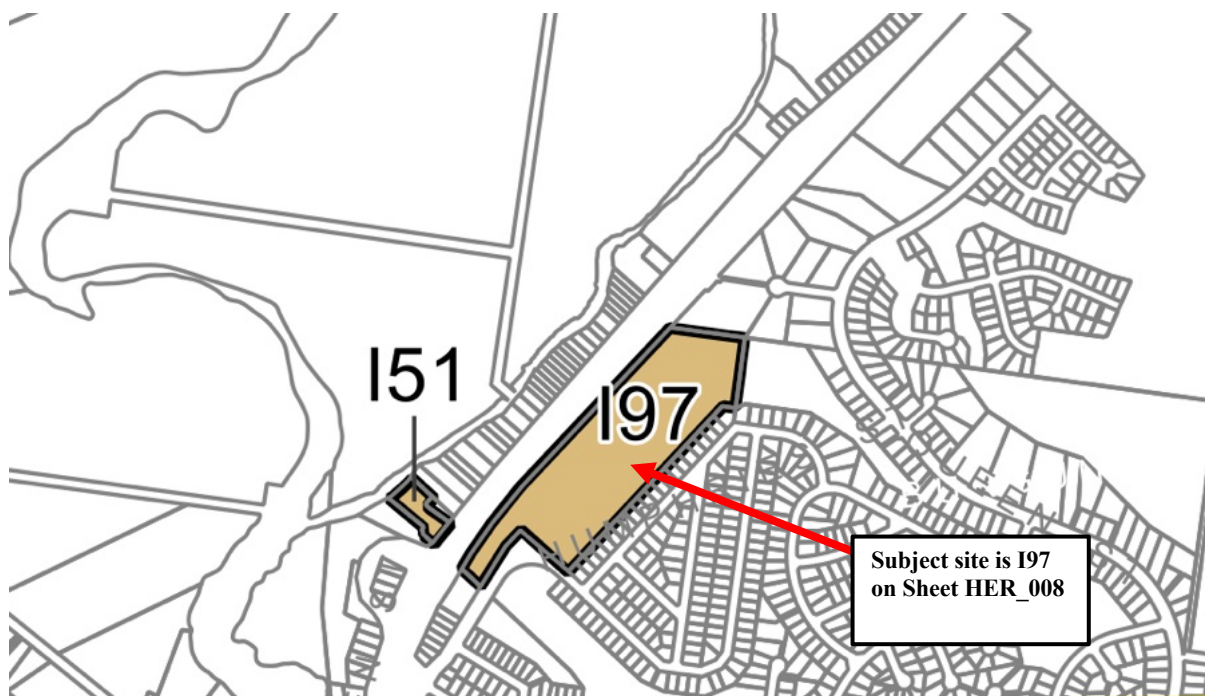


Figure 22: Heritage Map – Sheet HER_008

The Oak Factory is listed as a notable 20th Century building on the Australian Institute of Architects list. This is a non-statutory register with no legal, heritage or planning implications imposed on the land or property owner.



Figure 23: Oak sign on existing factory (Source Upper Hunter: Sean Murphy)

The following table is an assessment of the proposed development in relation to the relevant sub-clauses in clause 5.10 of the MLEP.

Table 8: Assessment of Relevant sub-clauses of Clause 5.10 Heritage Conservation

Sub-clause	Provision	Compliance
5.10(1)	<p><i>(1) Objectives The objectives of this clause are as follows—</i></p> <p><i>(a) to conserve the environmental heritage of Muswellbrook,</i></p> <p><i>(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,</i></p> <p><i>(c) to conserve archaeological sites,</i></p> <p><i>(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.</i></p>	<p>A Statement of Heritage Impact (SoHI) has been prepared for the proposed development. A copy of the SoHI accompanies the DA.</p> <p>An assessment of the heritage impact of the proposed subdivision is provided in Section 6 of the SoHI, and the heritage assessment of the ancillary works is also provided in Table 11 of this SEE.</p> <p>The SoHI concludes:</p> <p><i>The purpose of the proposed subdivision is to enable the orderly</i></p>

		<p>redevelopment of the rear land parcel for residential development.</p> <p>The proposed changes, including fence, new underground services, demolition of 3 ancillary buildings and road upgrades, will have a minimal heritage impact on the former Oak Factory main building which is the focus of the site's heritage listing.</p> <p>Residential subdivision to the rear of the former Oak Factory will have no adverse heritage impact for the following reasons:</p> <ul style="list-style-type: none"> • Significant views to and from the principal elevation will not be altered • The setting of the Inter-War Functional building will be retained, the subdivision is wholly contained to the rear of the building. • The relationship between key elements will be unaffected, the main factory and related infrastructure will remain on the one title. • Residential construction to the rear of the site will not be visible from the main front elevation of the former Oak Mil Factory due to the height of the heritage item and associated dairy infrastructure. <p>The proposed subdivision and accompanying works promote sustainable development as a tool for heritage conservation as outlined in the Muswellbrook Shire Council Heritage Strategy 2023-2026. The subdivision will facilitate the new owner to invest in the existing infrastructure in the factory.</p>
5.10(2)	(2) Requirement for consent Development consent is required for any of the	The SoHI considers the effect of the proposed works on the heritage

	<p><i>following—</i></p> <p><i>(a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance)—</i></p> <p><i>(i) a heritage item,</i></p> <p><i>(ii) an Aboriginal object,</i></p> <p><i>(iii) a building, work, relic or tree within a heritage conservation area,</i></p> <p><i>(b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,</i></p> <p><i>(c) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,</i></p> <p><i>(d) disturbing or excavating an Aboriginal place of heritage significance,</i></p> <p><i>(e) erecting a building on land—</i></p> <p><i>(i) on which a heritage item is located or that is within a heritage conservation area, or</i></p> <p><i>(ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,</i></p> <p><i>(f) subdividing land—</i></p> <p><i>(i) on which a heritage item is located or that is within a heritage conservation area, or</i></p> <p><i>(ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.</i></p>	<p>significance of the item, site, conservation and heritage items in its vicinity.</p>
5.10(4)	<p><i>(4) Effect of proposed development on heritage significance</i> <i>The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the</i></p>	<p>In relation to heritage significance, the SoHI states:</p> <p><i>1. The main factory building is the focus of the heritage listing and significance on the</i></p>

	<p><i>effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).</i></p> <p><i>site.</i></p> <p><i>The E4: General Industrial zoning for this parcel of land will remain unchanged following the proposed subdivision. This will allow the ongoing use of the former Oak Milk factory and its conversion into warehouse, food premises or industrial purposes; such uses are similar to the original dairy processing plant for which the building was originally constructed.</i></p> <p><i>The proposed subdivision will not affect views to the front and side elevations of the main factory building from Aberdeen Street or from the north or south as the street frontage and lot boundaries to the front of the site will remain unchanged.</i></p> <p><i>The remaining dairy infrastructure including hoppers, bottling lines, evaporation and refrigeration plant and gas boiler will all remain on the same lot as the main factory building. This will ensure the ability to understand the historic use of the site as a dairy processing plan is retained.</i></p> <p><i>2. The historic use of the site was as a dairy processing and bottling plant, there are no significant plantings, natural features or fence lines associated with this use.</i></p> <p><i>The relationship between the key elements – main factory building and associated infrastructure will remain unchanged following the proposed subdivision, as they will all remain on the same lot and DP.</i></p> <p><i>Ancillary buildings that were not constructed during the Inter-War period will be located on the proposed, new lot to the rear. These buildings comprise non-significant residential dwellings (4 in total) and concrete blockwork sheds.</i></p> <p><i>3. The proposed subdivision includes a buffer zone to the rear of the main factory building.</i></p> <p><i>The main elevation of the factory is orientated towards Aberdeen Street and the building turns its back on the rear of the existing lot. The building was not designed to be viewed from the rear. This is evidenced by the plant and infrastructure that dominates the rear of the main building.</i></p> <p><i>The existing topography provides a natural separation along the proposed new lot boundaries, there is a distinct change in</i></p>
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		<p>ground levels along the tree line to the southeast of the unnamed road through the middle of the site.</p> <p>Single storey residential development on the proposed Lot 2 will not be visible from Aberdeen Street due to the height of the Oak factory building and associated hoppers and dairy infrastructure to its rear.</p> <p>Residential subdivision has already occurred up to the rear boundary of Lot 1 DP995228. This has had no impact on the significant views or cultural significance of the main Oak Factory as this development is also not visible from the front, main elevation of the main Oak Factory.</p>
5.10(5)	<p>(5) <i>Heritage assessment</i> The consent authority may, before granting consent to any development—</p> <p>(a) on land on which a heritage item is located, or</p> <p>(b) on land that is within a heritage conservation area, or</p> <p>(c) on land that is within the vicinity of land referred to in paragraph (a) or (b),</p> <p>require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.</p>	<p>Section 6 of the SoHI provides the Heritage Impact Assessment of the proposed development.</p>
5.10(6)	<p>(6) <i>Heritage conservation management plans</i> The consent authority may require, after considering the heritage significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.</p>	<p>The SoHI states that there is no CMP or CMS for the site.</p>

Surrounding heritage items

Local heritage item No I51 (Former butter factory) is located to the west of the subject site at 14-15 Aberdeen Street, Muswellbrook. It is located opposite the southern section of the subject site and across the railway line and New England Highway.

In relation to potential impact on heritage items the SoHI states:

Future residential construction on the proposed new lot will have no impact on the views, settings or heritage significance of the former Butter Factory at 14-15 Aberdeen Street Muswellbrook due to Aberdeen Street being between each location as well as the distance (approximately 175 metres) between the two sites. (p22)

It is considered that the proposal does not impact on the General Conservation Area further to the south of the subject site, nor any of the items within that area.

Aboriginal Cultural Heritage

The Aboriginal Heritage Information Management System (AHIMS) Search found no sites within a radius of 50m of the subject site. The AHIMS search was undertaken on 7 February 2025, and a copy is provided in Appendix C of this SEE.

The proposed lot boundary and ancillary works proposed are located in areas of previous significant disturbance. It is therefore considered there is only a low risk that the proposal would disturb, damage, or destroy Aboriginal objects.

Nevertheless, best practice would be for a condition to be placed by Council on any Consent related to the discovery of unexpected Aboriginal objects, sites or places (or potential Aboriginal objects, sites or places).

Clause 5.11 – Bush fire hazard reduction

A search was conducted using the NSW Rural Fire Service online bush fire prone land tool on 19 March 2025.

The search results stated: “The parcel of land selected is not identified as bush fire prone...”

Clause 5.16 – Subdivision of, or dwellings on, land in certain rural, residential or conservation zones

The clause does not apply to the proposed development as the subject site is not in the applicable zones.

Clause 5.21 Flood planning

Clause 5.21 relates to flood planning.

A Flood Impact and Risk Assessment (FIRA) has been prepared for the subject site by Torrent Consulting Pty Ltd dated 6 March 2025.

The FIRA assessment included development of a TUFLOW model for the local catchment runoff and has simulated design flood conditions in accordance with the ARR 2019 guidelines, specifically the ensemble method for design flood hydrology.

The FIRA report included an assessment in relation to clause 5.21 of the MLEP. The FIRA stated the following:

The Muswellbrook LEP 2009 provides a framework for development of land and land use in the Muswellbrook LGA. Clause 5.21 relates to flood planning which states the following objectives:

- a) to minimise the flood risk to life and property associated with the use of land;*
- b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change;*
- c) to avoid adverse or cumulative impacts on flood behaviour and the environment;*
- d) to enable the safe occupation and efficient evacuation of people in the event of a flood.*

In supporting these objectives, the LEP includes provision that development consent must not be granted unless the consent authority is satisfied that the development:

- a) is compatible with the flood function and behaviour on the land; and*
- b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties; and*
- c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood; and*
- d) incorporates appropriate measures to manage risk to life in the event of a flood; and*
- e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses. NSW Planning has prepared a Special Flood Considerations Clause as an optional clause to include in LEPs in order to better protect and manage new development in areas that could be at risk during floods.*

The special flood considerations clause would apply to:

- sensitive and hazardous development, such as caravan parks, hospitals and seniors housing, between the flood planning area and the probable maximum flood level*
- development that is not sensitive or hazardous on land that the consent authority considers that, in a flood, may pose a particular risk to life and where people may need to evacuate, or where there are other safety concerns.*

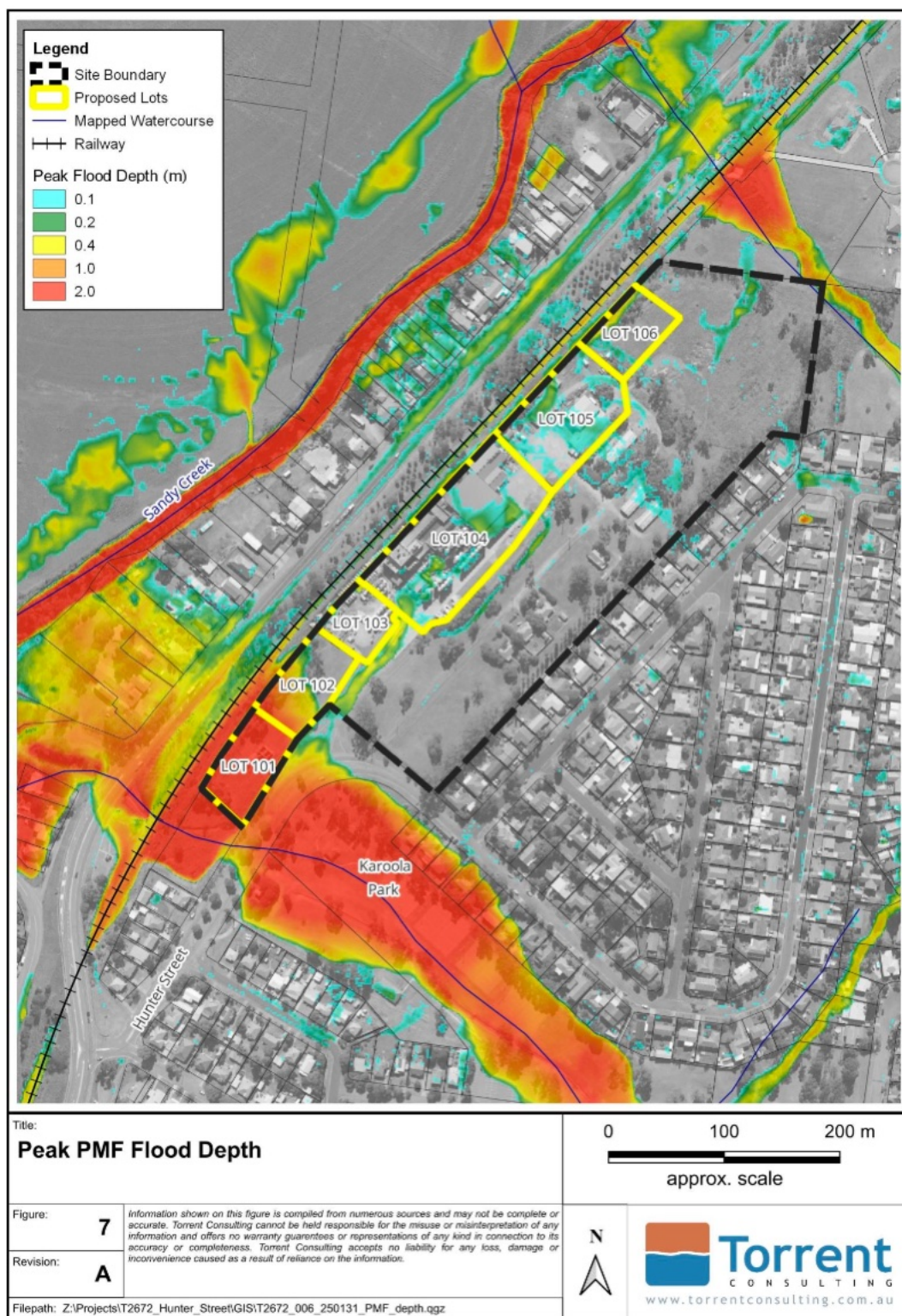


Figure 24: Peak PMF Flood Depth

The Special Flood Considerations clause has been adopted in MLEP 2009. Accordingly, a development proposal may need to consider potential flood risk to future occupation of the floodplain for all events up to and including the PMF. The future industrial or commercial land use would not be considered a sensitive land use for this location. However, the PMF conditions on the lower portion of the Site may constitute a

risk to life hazard and would need to be appropriately addressed via a Flood Emergency Response Plan.

Specific planning controls are outlined in the Muswellbrook DCP 2009 Section 13 – Floodplain

Management.

The key findings of the FIRA assessment include:

- Flood inundation of the Site in the 1% AEP event is limited to a partial area of the proposed Lot 101. All other lots are flood free at the 1% AEP level and expected to provide minimal flood planning constraint to future development.
- Flood inundation of the Site in the PMF event is limited to a partial area of the proposed Lot 102, and the full area of Lot 101. Lot 102 has flood free area above the PMF and flood free access to Hunter Street which is expected to readily address risk to life concerns. Peak PMF flood depths are typically over 3m across all of Lot 101. There is continuously rising flood egress opportunity within the lot to flood free area above the PMF. A Flood Emergency Response Plan would be required to demonstrate risk to life is appropriately managed.

The proposed development includes placing a restriction on the Title - such that no building works will be permitted within the 1% AEP area as shown on the plans and in the flooding report.

Clause 7.4 – Subdivision in Zone R1 General Residential and Zone RU5 Village

Part of the proposed subdivision is located in land zoned R1 General Residential.

Clause 7.4 states:

- (1) This clause applies to a subdivision of any land that requires development consent and is in Zone R1 General Residential or Zone RU5 Village.*
- (2) Development consent must not be granted for subdivision development on the land to which this clause applies until the land is adequately serviced with water and sewerage, or arrangements satisfactory to the consent authority have been made to service it.*

The subject site has access to all required services and utilities including water, sewer, stormwater, electricity, and telecommunications.

The proposed development is for retention of the current industrial use on proposed Lot 3001, and a future residential subdivision at a later stage on proposed lot 3002. Proposed lot 3002 is located on land zoned R1 General Residential and can be connected to services and utilities as part of the future residential subdivision at a later stage.

The ancillary works as part of the proposed development include works related to the existing four (4) dwellings located on proposed Lot 3002 (as existing services come from the “former Oaks Factory”). These works include:

- Proposed sewer extension and easement to drain sewage 3m wide to the existing 4 dwellings on proposed Lot 3002. Connect existing four dwelling to new SHM easement to drain sewage 3m wide.

- Connect new poly water service for 4 existing dwellings. Existing water pipes would be cut and new service out to Hunter Street.
- New water service and meter for 4 existing dwellings 32mm to be confirmed with MSC.
- New electrical/NBN service to 4 existing dwellings
- Access to dwellings – minor upgrade of access to 4 existing dwellings via a new connection from the new residential driveway road.

3.3 Development Control Plans

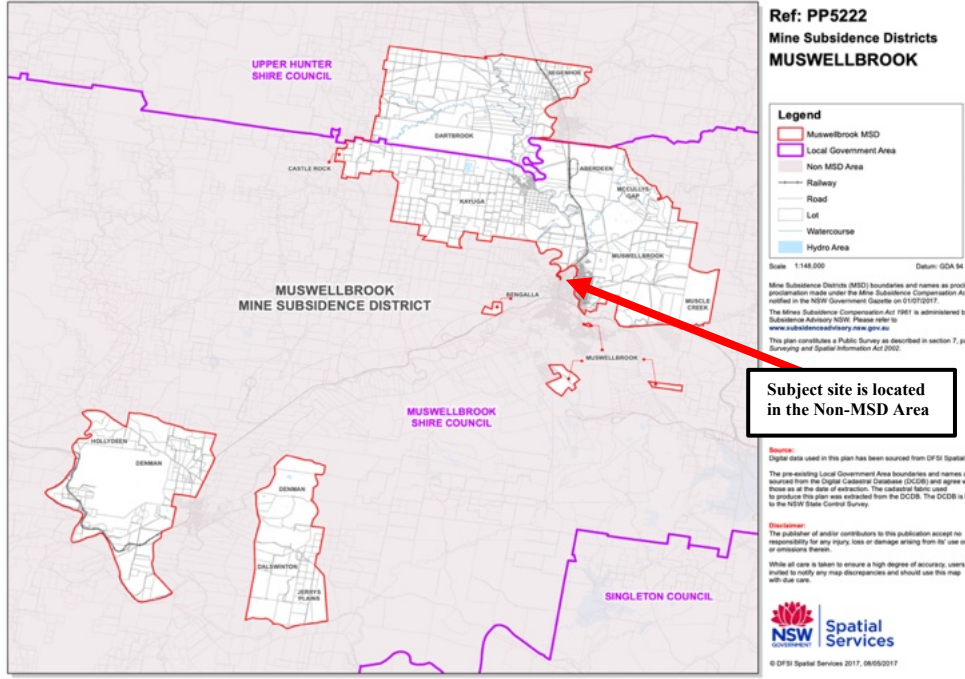
3.3.1 Muswellbrook Development Control Plan 2009

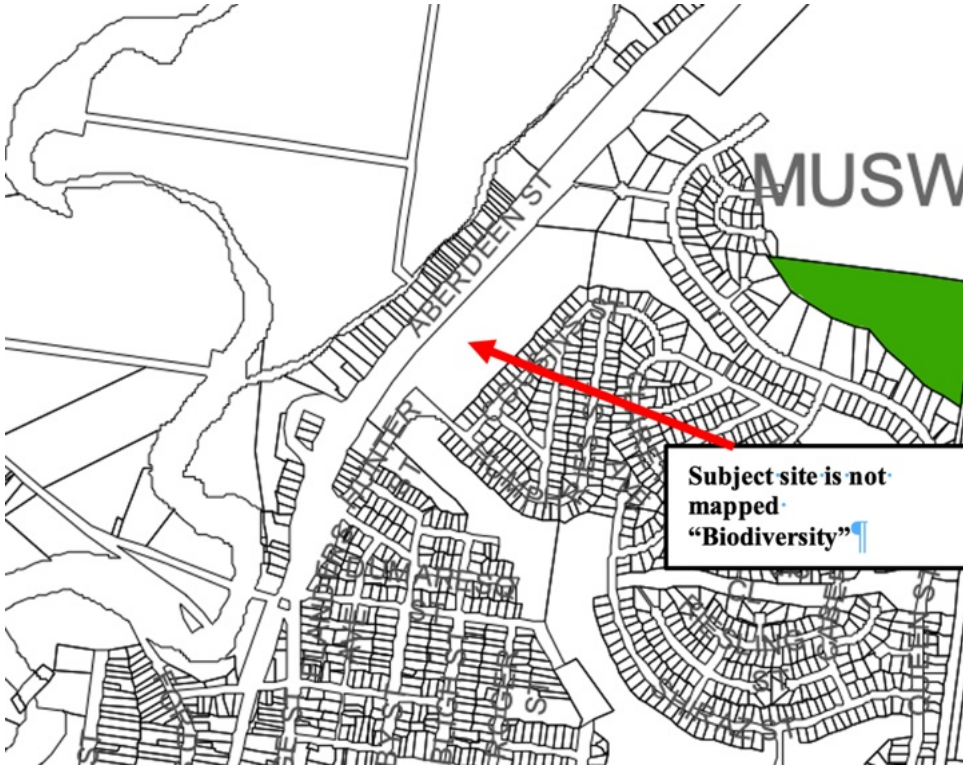
The Muswellbrook Development Control Plan 2009 (MDCP) applies to the subject site.

The relevant sections of the MDCP are assessed in the following Table.

Table 9: MDCP Assessment

MDCP Clause	Compliance
Section 3	Site Analysis
	Complies. Site analysis is provided in Section 1.3.1 of this SEE.
Section 5	Subdivision
5.3	General Requirements for Subdivision
5.3.2	Special Considerations
(i) Proclaimed Mine Subsidence District	The subject site is not located in a proclaimed Mine Subsidence District (MSD).

	 <p>Ref: PP5222 Mine Subsidence Districts MUSWELLBROOK</p> <p>Legend</p> <ul style="list-style-type: none"> Muswellbrook MSD Local Government Area Non MSD Area Road Railway Watercourse Hydro Area <p>Scale: 1:148,000 Datum: GDA 94</p> <p>Muswellbrook Mine Subsidence District (MSD) boundaries and names as proclaimed under the Mine Subsidence Compensation Act 1981 in the NSW Government Gazette on 15/03/2017. The Mine Subsidence Compensation Act 1981 is administered by the NSW State Survey. Please refer to www.subsidenceadvisory.nsw.gov.au</p> <p>This plan constitutes a Public Survey as described in section 7, of the Survey and Spatial Information Act 2002.</p> <p>Subject site is located in the Non-MSD Area</p> <p>Source: Digital data used in this plan has been sourced from DP31 Spatial Services. The pre-existing Local Government Area boundaries and names are sourced from the Digital Cadastral Database (DCDB) and agreed as those as at the date of extraction. The cadastral data used to produce this plan was extracted from the DCDB. The DCDB is a NSW State Survey.</p> <p>Disclaimer: The publisher of and/or contributors to this publication accept no responsibility for any injury, loss or damage arising from the use of or reliance on this information.</p> <p>While all care is taken to ensure a high degree of accuracy, users are advised to verify any map discrepancies and should use this map with due care.</p> <p>NSW Spatial Services © DP31 Spatial Services 2017, 06/03/2017</p>
	<p>Figure 25: MSD in vicinity of Muswellbrook</p> <p>The results of the online search of MSDs are that the subject site is not located in a MSD Area.</p>
(ii) Significant bushfire risk	<p>The results of a search of the online RFS bush fire prone land tool on 19 March 2025 states the land selected is not identified as bush fire prone.</p>
(iii) land being contaminated	<p>The Minutes of the Pre-lodgement meeting dated 9 August 2024 stated “Potential site contamination – the site has a longstanding history of commercial and agricultural use. A site contamination assessment prepared by an appropriately qualified person will be important to informing the potential for any residential subdivision for the site.</p> <p>Accompanying the DA are two Preliminary Site Investigation reports, namely:</p> <ul style="list-style-type: none"> <i>Preliminary Site Investigation –Lot 1 of DP 995228, prepared by Compaction & Soil Testing Services Pty Ltd, dated 24 May 2024 (Reference: SII 5183-AA).</i> <i>Preliminary Site Investigation – Shed Area of Lot 1 of DP 995228, prepared by Compaction & Soil Testing Services Pty Ltd, dated 24 May 2024 (Reference: SII 5183-AB).</i> <p>The report Referenced as SII 5183-AA is for the proposed Lot 3001, and the report referenced as SII 5183-AB is for the “Shed Area” of the subject site.</p> <p>Method, and conclusions of both reports may be found above in Section 3.1.4 of this SEE.</p>
(iv)Flora and fauna assessment	<p>The Minutes of the Pre-lodgement meeting dated 9 August 2024 stated: Flora and fauna Assessment – established native vegetation is located</p>

report	<p><i>throughout the development site. To inform the preparation of any development application and subdivision, an ecological assessment is to be carried out in relation to the development site...</i></p> <p>A Biodiversity Development Assessment Report has been prepared and accompanies the DA.</p>  <p>Figure 26: MLEP Biodiversity Map sheet – BIO _008</p> <p>The subject site is not mapped “Biodiversity” on map sheet BIO_008 of the MLEP.</p>
(v)Direct connection to classified road or concurrence requirement	<p>The subject site is connected to Hunter Street and does not have a direct connection to a classified road.</p> <p>Traffic Impact Assessment, prepared by Intersect Traffic, dated 14 May 2025 accompanies the DA.</p> <p>A referral to TfNSW is not required.</p>
(vi)Flood risk management study	<p>A Flood Impact and Risk Assessment (FIRA) has been prepared for the subject site by Torrent Consulting Pty Ltd dated 6 March 2025.</p> <p>A copy of the FIRA accompanies the DA.</p> <p>The proposed development includes placing a restriction on the Title - such that no building works will be permitted within the 1% AEP area as shown on the plans and in the flooding report.</p>
5.3.	3Adoption of AUS-SPEC
(i)have regard to AUS-SPEC	Refer to the Traffic Impact Assessment accompanying the DA.

(ii)preliminary engineering drawings with DA	Refer to the Traffic Impact Assessment accompanying the DA.
(iii)documentation certified with AUS-SPEC	Refer to the Traffic Impact Assessment accompanying the DA.
(iv)completed works certified with AUS-SPEC	Refer to the Traffic Impact Assessment accompanying the DA.
5.3.4 Buffers	<p>The area of the proposed lots provides adequate space for buffers in future residential development applications.</p> <p>A buffer is provided in proposed Lot 3001 through the layout of the carpark to protect any future residential subdivision on proposed Lot 3002 from the existing industrial use on that lot.</p> <p>A 2.4m lapped and capped fence is also proposed on the boundary of lot 3001 and 3002.</p>  <p>Figure 27: Example of a lapped and capped paling fence</p>
5.5	Residential Subdivision in R1 General Residential zone
	Local street design, access way design, pedestrian and cyclists, utility services, stormwater management, lot size and shape, solar access and lot orientation, heritage, site works and open space, will be provided in a future DA on proposed lot 3002.

	<p>For information relating to the access to proposed Lot 3002 refer to the Traffic Impact Assessment accompanying the DA.</p> <p>Utility services are available and town water, sewer, stormwater drainage, power, telephone and gas (where appropriate) can be connected to any future residential subdivision on proposed Lot 3002.</p> <p>The ancillary works as part of the proposed development include works related to the existing four (4) dwellings located on proposed Lot 3002 (as existing services come from the “former Oaks Factory”). These works include:</p> <ul style="list-style-type: none"> • Proposed sewer extension and easement to drain sewage 3m wide to the existing 4 dwellings on proposed Lot 3002. Connect existing four dwelling to new SHM easement to drain sewage 3m wide. • Connect new poly water service for 4 existing dwellings. Existing water pipes would be cut and new service out to Hunter Street (as a temporary connection until a DA for future residential development on proposed Lot 3002) • New water service and meter for 4 existing dwellings 32mm to be confirmed with MSC. • New electrical/NBN service to 4 existing dwellings • Access to dwellings – minor upgrade of access to 4 existing dwellings via a new connection from the new residential driveway road. <p>In terms of lot size and shape for the subject DA, the proposal complies as the minimum lot size required for the subject site is 1000 sqm in the E4 General Industrial zoned land, and 600 sqm in the R1 General Residential zoned land.</p> <p>There is adequate area in proposed lot 3002 to be able to provide a residential lot design that meets the requirements of the MLEP minimum lot size and the controls of the MDCP.</p> <p>The SoHI states that any future residential subdivision on proposed lot 3002 will not detrimentally impact on the existing Oaks Factory.</p> <p>The Aboriginal Heritage Information Management System (AHIMS) Search found no sites within a radius of 50m of the subject site. The AHIMS search was undertaken on 7 February 2025.</p> <p>The proposed lot boundary and ancillary works proposed are located in areas of previous significant disturbance. It is therefore considered there is only a low risk that the proposal would disturb, damage, or destroy Aboriginal objects.</p> <p>Adequate open space will be able to be provided in any future residential development proposed on proposed Lot 3002.</p> <p>The boundaries and use of the existing land zone RE1 on the subject site are not altered by the proposed development.</p>
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5.6	Industrial Subdivision in IN1 (now E4) and IN2 zones
5.6.1 Lot sizes and shapes	<p>The subdivision design for proposed lot 3001 has been designed to ensure functionality of the existing factory on the site as well as space for any future development at a later stage on proposed lot 3001.</p> <p>In terms of lot size and shape, for the subject DA, the minimum lot size required for the subject site is 1000 sqm in the E4 General Industrial zoned land, and 600 sqm in the R1 General Residential zoned land.</p> <p>The total area of the existing site is 9.608 ha, and the proposed lot sizes are more than the minimum required by the MLEP.</p> <p>There is adequate area in proposed lot 3001 to be able to provide an industrial lot design that meets the requirements of the MLEP minimum lot size and the controls of the MDCP.</p> <p>The shape of the proposed lots is irregular, and the boundary length of each lot is shown on DA Subdivision Plan No. 224133/Sheet 1, prepared by MM Hyndes Bailey & Co.</p>
5.6.2 Access and Road layout	Refer to Traffic Impact Assessment accompanying the DA.
5.6.3 Utility Services	<p>Proposed lot No 3001 already has access to the required services and utilities.</p> <p>In terms of proposed Lot 3002 utility services are available and town water, sewer, stormwater drainage, power, telephone and gas (where appropriate) can be connected to any future residential subdivision.</p> <p>The ancillary works as part of the proposed development include works related to the existing four (4) dwellings located on proposed Lot 3002 (as existing services come from the “former Oaks Factory”). These works include:</p> <ul style="list-style-type: none"> • Proposed sewer extension and easement to drain sewage 3m wide to the existing 4 dwellings on proposed Lot 3002. Connect existing four dwelling to new SHM easement to drain sewage 3m wide. • Connect new poly water service for 4 existing dwellings. Existing water pipes would be cut and new service out to Hunter Street. • New water service and meter for 4 existing dwellings 32mm to be confirmed with MSC. • New electrical/NBN service to 4 existing dwellings • Access to dwellings – minor upgrade of access to 4 existing dwellings via a new connection from the new residential driveway road.
5.6.4 Adjoining development	Proposed lot No 3001 is unlikely to result in any adverse impacts on adjoining development, and the use on the proposed lot is not altered by the proposed development.

	<p>Adjoining development includes:</p> <ul style="list-style-type: none"> • The railway line to the west of proposed Lot 3001, with the New England Highway adjoining the railway line to the west, with residential development along New England Highway; • Proposed Lot 3002 adjoins to the east and will be the subject of a future DA for residential development. A buffer is provided through the existing carpark layout on proposed Lot 3001 and a lapped and capped 2.4m fence is proposed as part of the subject DA. • Residential dwellings are located to the south west of the subject site on the south western side of Hunter Street – namely 2-14 Hunter Street, with a vacant lot (zoned RE1 Public Recreation) to the north of 14 Hunter Street; • A wide landscaped area between the one-way sections of Hunter Street adjoins to the east of the subject site with Karoola Park (zoned RE1 Public Recreation) further to the east at that location. Residential development is located to the south and east of Karoola Park. Residential development is located in Cousins Street approximately 100m to the east of Hunter Street.
Section 20 Erosion and Sediment Control	Adequate erosion and sediment control measures would be provided during any works related to the subdivision. Conditions of consent related to this matter can be placed on any consent issued for the subject DA.
Section 21 Contaminated Land	<p>Two Preliminary Site Investigation Reports have been prepared and accompany the DA namely:</p> <ul style="list-style-type: none"> • Preliminary Site Investigation – Lot 1 of DP 995228, prepared by Compaction & Soil Testing Services Pty Ltd, dated 24 May 2024 (Reference: SII 5183-AA). • Preliminary Site Investigation – Shed Area of Lot 1 of DP 995228, prepared by Compaction & Soil Testing Services Pty Ltd, dated 24 May 2024 (Reference: SII 5183-AB).
Section 24 Waste Management	<p>The proposed development includes the demolition of Shed 1, Shed 2 and Warehouse 2 (as labelled in Figures 6 and 9).</p> <p>The demolition is recommended in order to clean up potential contamination on proposed Lot 3002 as identified in the Report entitled: <i>Preliminary Site Investigation – Shed Area of Lot 1 of DP 995228</i>, prepared by Compaction & Soil Testing Services Pty Ltd, dated 24 May 2024.</p> <p>The demolition of the sheds including the disposal of waste, is be undertaken by a qualified contractor, with provision of a waste management plan by the contractor to council prior to demolition works being undertaken and legal disposal.</p>

	A remediation action plan may be included as a condition of consent.
Section 25 Stormwater Management	The proposed development includes minor stormwater works as a result of proposed intersection road works (i.e. road drainage pits relocated)- as detailed in SWC drawings. All other site stormwater will remain unchanged as result of the proposed subdivision.

In conclusion it is considered the proposed subdivision are not inconsistent with the relevant aims, objectives and controls of the MDCP.

4 Development Impact Assessment and Suitability

For the purposes of assessing the likely impacts of the development, the key relevant matters assessed include the following:

4.1 Context, Setting and Visual Amenity

Section 1.3.1 (Surrounding Environment) of this SEE describes adjoining development.

The subject site is located to the north-east of the centre of Muswellbrook. The site is located within a mixed infrastructure (railway and highway), light industrial (Former Oak Factory) and residential area.

The Main North railway and the New England Highway are both narrow, linear elements within the visual landscape. While utilitarian in design and based on functionality they both contribute to the overall character of the local area, with coal trains passing through being a reminder of the function of land in the surrounding area of Muswellbrook.

The former Oaks Factory and its infrastructure is also linear in spread along the Main North railway and its “Oaks” sign looks over the railway and into the view of motorists along the New England Highway.

Further to the north-east of the subject site is a new residential development (Northview residential estate) with rural land further to the north-east.

In terms of heritage, the Heritage Map in the MLEP shows that heritage listings are primarily focussed on the old Muswellbrook town centre, in addition to several larger landholdings to the south of it. However, the former Oak Milk Factory is listed as a local heritage item on the MLEP, and the Statement of Significance is as follows:

Historically the building has regional significance as an indicator of an outmoded production process, only 50 years old. Aesthetically, the building is representative of type at a state level with regional rarity. Scientifically, it is representative of surviving examples of its type elsewhere although there are few survivors. It has regional scientific significance for its potential to reveal information which could contribute to an understanding of the rapid expansion of dairy-related secondary industry in the early and mid-20th century in the Upper Hunter Valley and for its equally rapid decline. It is an indicator of the processes used and scale of operation.

The SoHI accompanying the DA states:

The remaining dairy infrastructure including hoppers, bottling lines, evaporation and refrigeration plant and gas boiler will all remain on the same lot as the main factory building. This will ensure the ability to understand the historic use of the site as a dairy processing plant is retained.

It is therefore considered, that in terms of context, the proposed subdivision will not alter the heritage significance of the former Oaks Factory nor detrimentally impact on the setting and context of the local area.

The SoHI accompanying the DA concludes:

The purpose of the proposed subdivision is to enable the orderly redevelopment of the rear land parcel for residential development.

Residential subdivision to the rear of the former Oak Factory will have no adverse heritage impact.

In terms of setting and views the SoHI states: “Views to the main, front elevation of the Inter-War Functional building will not be affected by the proposed subdivision, these are the principal views from the public domain.

The proposed subdivision will also not affect any views from the heritage item. There are no significant views to the rear of the building which is the location of the proposed subdivision. This is evidenced by the fact that all the dairy infrastructure is located to the rear and is between the main factory and proposed subdivision.”

Table 10: Heritage items in the vicinity of the subject site

Item No. in MLEP	Name	Address	Significance
I51	Former Butter Factory	14-15 Aberdeen Street	Local

The SoHI does not indicate the development will have a negative impact on the heritage significance of the item in the vicinity.

In conclusion, it is therefore considered that context, setting and visual amenity will not be detrimentally impacted by the proposed development.

4.2 Heritage Impact

A SoHI has been prepared for the proposed development as the “Oak Milk Factory” and the entire Lot 1, DP 995228 is identified as a local heritage item in Schedule 5 Part 1 of the MLEP (Item No I97). A copy of the SoHI accompanies the DA.

In terms of the proposed subdivision ancillary physical works, the SoHI provides comment as follows:

Table 11: Heritage assessment of proposed physical works

Proposed works	Purpose/Methodology	Heritage Impacts
2.4m high paling timber boundary fence between proposed Lots 3001 and 3002	The proposed fence will delineate the new boundary between the proposed Lots 3001 and 3002. The fence will separate the industrial and residential land uses.	<p><i>Negligible</i></p> <p>The proposed fence is:</p> <ul style="list-style-type: none"> • to the east of the main factory building • will not affect or block views to and from the main, front elevations of the main factory building • will not cause a visual separation of buildings, machinery or other equipment associated with the former dairy use of the site • will be set back from the rear of the main

		<p>factory building</p> <ul style="list-style-type: none"> • the fence is light weight construction and can be removed without adverse impact to the landscape • the fence will not alter or affect any existing buildings on the site
Demolition of Shed 1, Shed 2 and Warehouse 2	<p>Shed 1, Shed 2 and Warehouse 2 are functional, purpose-built structures used to store machinery and equipment.</p> <p>They are timber framed and clad in corrugated iron.</p> <p>These buildings are not architecturally significance, and their use was not associated with the dairy processing on the site.</p> <p>This type of generic agricultural building is common across Muswellbrook and NSW.</p> <p>The demolition of these buildings is required due to the presence of high levels of zinc in the soil. For further details please refer to the Compaction and Soil Testing Services report dated 24/5/2024.</p>	<p><i>Negligible</i></p> <p>The demolition of the Sheds 1 and 2 and Warehouse 2 will not impact the ability to understand the former dairy use on this site. These sheds were not an integral part of the processing facility. All the remaining dairy infrastructure will be retained.</p> <p>Their demolition is required due to the concentration of zinc exceeding the adopted ecological criteria.</p>
<i>Works relating to existing 4 dwellings</i>		
Proposed stormwater extension and easement to drain sewage 3m wide to the existing 4 dwellings on proposed Lot 3002.	<p>Connect existing dwellings to new easement to drain sewage. This is required as these dwellings are currently connected from the former Oak Factory.</p>	<p><i>Neutral</i></p> <p>This work is underground, will not be visible on completion and will have no adverse heritage impact.</p>
Connect new poly water service for 4 existing dwellings.	<p>Existing water pipes from former Oak Factory will be cut and new service out to Hunter Street provided. This would be a temporary connection until a DA for future residential development on proposed Lot 3002.</p> <p>These pipes are underground and will not be visible on completion of the work.</p>	<p><i>Neutral</i></p> <p>This work is underground, will not be visible on completion and will have no adverse heritage impact.</p>
New water service and meter for 4 existing dwellings 32mm to be confirmed with Muswellbrook Shire Council.	<p>The water service and meters need to be separate from the main factory building and for each individual dwelling.</p> <p>The new water service will be underground. The water meters will be closed in close proximity to each dwelling.</p>	<p><i>Neutral</i></p> <p>This work is predominantly underground and will have no adverse heritage impact. The water meters will not be visible from the main factory building which is the focus of the heritage listing on the site.</p>
New electrical/NBN service to 4 existing dwellings.	<p>It is proposed to install electrical poles and wiring along the driveway to the 4 existing dwellings within the boundary of the new Lot 3002.</p> <p>There is an existing electrical infrastructure (poles and wires) in this location.</p> <p>This work will take place to the east of</p>	<p><i>Neutral</i></p> <p>The proposed electrical poles and wiring will have no physical or visual heritage impact on the significance of the former Oak Factory.</p> <p>The poles and wires will not affect views to or from the main front elevation of the building.</p> <p>The new electrical infrastructure will be located more than 50 metres from the rear of the main</p>

	the main factory building.	factory building.
Access to dwellings – minor upgrade of access to 4 existing dwellings via a new connection from the new residential driveway road	<p>Changes to the existing access road are required to provide separate road access to the existing dwellings.</p> <p>The new access road will formalise the existing dirt driveway in the same location.</p>	<p><i>Neutral</i></p> <p>The proposed road access to the 4 existing dwellings will have no physical or visual heritage impact on the significance of the main factory building.</p> <p>The works are located to the rear of the heritage item at ground level.</p>
Minor stormwater works as a result of proposed intersection road works (ie road drainage pits relocated).	The proposed stormwater works are required due to the proposed road intersection changes. The work involved is the minor and involves the relocation of existing stormwater pits.	<p><i>Neutral</i></p> <p>The proposed stormwater works will take place over 150 metres from the main factory building. The works are at ground level and will not be visible from the heritage item on the site.</p>
New road access point to proposed Lots 3001 and 3002	<p>This proposed work is formalising the existing access to the subject site from Hunter Street. The proposed work will make the road access point compliant with current civil requirements.</p> <p>The location of the road access point will not change.</p>	<p><i>Neutral</i></p> <p><i>The proposed changes to the road access point are located over 150m from the main factory building.</i></p> <p><i>The works are located at ground level and to the rear of the significant building.</i></p> <p><i>There will be no physical or visual heritage impact from this work.</i></p>
Upgrade of intersection road to the front gate including turning swept path in and out for semi trailers	<p>Formalise the existing truck turning circle to the northeast of the main factory building.</p> <p>Create a truck turning lane from Hunter Street (to the southwest of the main factory building).</p> <p>Upgrading the intersection will improve road safety and movement of trucks on and off the subject site.</p>	<p><i>Neutral</i></p> <p>Improving road access and safety for trucks entering/exiting the subject site will support the continued use of the heritage item.</p> <p>An ongoing viable use is integral to the conservation of the heritage building and its significance.</p> <p>The works will not have any physical impact to heritage fabric or any adverse visual impact. The works will not impact any views to or from the main factory building.</p>

It is considered that the proposed development will not detrimentally impact on the heritage item on the subject site, and the SoHI concludes:

The purpose of the proposed subdivision is to enable the orderly redevelopment of the rear land parcel for residential development.

The proposed changes, including fence, new underground services, demolition of 3 ancillary buildings and road upgrades, will have a minimal heritage impact on the former Oak Factory main building which is the focus of the site's heritage listing.

Residential subdivision to the rear of the former Oak Factory will have no adverse heritage impact for the following reasons:

- *Significant views to and from the principal elevation will not be altered*

- *The setting of the Inter-War Functional building will be retained, the subdivision is wholly contained to the rear of the building.*
- *The relationship between key elements will be unaffected, the main factory and related infrastructure will remain on the one title.*
- *Residential construction to the rear of the site will not be visible from the main front elevation of the former Oak Mil Factory due to the height of the heritage item*

The proposed subdivision and accompanying works promote sustainable development as a tool for heritage conservation as outlined in the Muswellbrook Shire Council Heritage Strategy 2023-2026. The subdivision will facilitate the new owner to invest in the existing infrastructure in the factory.

4.3 Waste management and demolition

The proposed development includes the demolition of Shed 1, Shed 2 and Warehouse 2 (as labelled in Figures 6 and 9).

The demolition is recommended in order to clean up potential contamination on proposed Lot 3002 as identified in the Report entitled: *Preliminary Site Investigation – Shed Area of Lot 1 of DP 995228*, prepared by Compaction & Soil Testing Services Pty Ltd, dated 24 May 2024.

The demolition of the sheds including the disposal of waste, is to be undertaken by a qualified contractor, with provision of a waste management plan by the contractor to council prior to demolition works being undertaken and legal disposal.

A remediation action plan may be included as a condition of consent.

4.4 Biodiversity Impacts

Section 1.7 of the EP&A Act requires consideration as to whether a proposed development will have a significant effect on threatened species, populations or ecological communities relating to terrestrial and/or aquatic environments as required under Part 7 of the Biodiversity Conservation Act 2016 (BC Act), Part 7A of the Fisheries Management Act 1994 (FM Act) or matters of national environmental significance under the Commonwealth Environmental Protection Biodiversity Conservation Act 1999 (EPBC Act).

In order to fulfill the above obligations, a Biodiversity Development Assessment Report, prepared by RestoreAG, dated 12 June 2025 has been prepared and accompanies the DA.

The Biodiversity Development Assessment Report (BDAR) has assessed the current DA, as well as the future residential DA on proposed Lot 3002.

In terms of the current DA (subdivision of one lot into two lots), the BDAR Report states that “Direct impacts....will be minimal...”.

The BDAR Report concludes:

This BDAR assessed the impact of a proposed residential subdivision on Lot 1 DP995228 Hunter Street, Muswellbrook and calculated offset requirements for residual impacts following avoid and mitigation efforts.

The site has been subject to a history of extensive modification, resulting in degraded habitat value and low biodiversity values. One vegetation community was identified on the site, consistent with PCT 3431 – Central Hunter Ironbark Grassy Woodland. This vegetation aligns with the listed Biodiversity Conservation Act 2016 (NSW) (BC Act) Central Hunter Grey Box-

Ironbark Woodland in the New South Wales North Coast and Sydney Basin Bioregions TEC. This vegetation is in a very low condition and the VI < 15, therefore below the assessment threshold TECs. Consequently, no ecosystem credits are required to offset the residual impact of development.

Targeted surveys were undertaken for candidate flora and fauna species and no threatened species were recorded other than two candidate microbat species detected by ultrasonic recording, namely; Large-eared Pied Bat and Eastern cave bat. No rocky caves or overhangs were recorded on the site and it is unlikely that these species utilise the site apart from marginal foraging. Suitable breeding or roosting habitat was not identified on the site, therefore these species were excluded from further assessment.

The biodiversity credits offset obligation for the future development impacts were calculated by the BAMC (Revision 1) on 2 April 2025 using BAM Data version 80 based on inputs set out in this report. No ecosystem credits or species credits were generated for the proposed development.

The proposal is unlikely to result in direct impacts on SAIIs which are likely to contribute significantly to the risk of extinction of any threatened species or ecological community.

Direct impacts of the proposed development will be minimal and the total area of native vegetation that will be impacted by the proposed development is 4.66 ha of low condition grassland (PCT 3431). The proposed development will not require removal of any trees or hollow bearing trees. Mitigation measures will be implemented to reduce potential offsite impacts during the construction phase. Indirect impacts that may be associated with the proposed development are considered to be minor and can be mitigated through the measures described in this report.

It is therefore considered that the proposed development will not have an adverse impact on the natural environment.

4.5 Social and economic impacts

The proposed development will have a positive socio- economic impact as the proposal will provide employment during the works and provide new employment opportunities in the existing factory.

Given the nature of the proposal, and the site context, no adverse long-term socio-economic impacts are anticipated.

Subject to the development being approved, the proposed subdivision of one (1) lot into two (2) lots, and ancillary works will promote social and economic benefits.

4.6 Suitability of Site for development

The proposed development supports the continued functionality of the former Oaks Factory, on proposed Lot 3001, which is consistent with the industrial zoning of the site under MLEP and the surrounding context. Proposed Lot 3002 will provide land for a future residential subdivision which is in keeping with the residential zoning of the site and is in keeping with the adjoining land to the east.

Accordingly, the subject site is considered to be suitable for the proposed development and is consistent with the objectives of the zoning.

4.7 Submissions

The DA is required to be notified in accordance with Council's Policy.

4.8 Public interest

The preceding sections of this SEE demonstrate that the proposal is in the public interest as it provides for the orderly and economic use of zone industrial and residential land in a manner which responds to the known planning opportunities and constraints applying to the land. The proposal satisfies the provisions of MLEP and MDCP and does not result in any unreasonable impacts.

The proposed works would support the economic viability of the existing factory for existing and future users and will provide for new employment opportunities. The subdivision will provide land for a future residential DA in an established residential area.

The proposed development will not result in any unacceptable detrimental social, environmental or economic impacts upon adjoining properties.

Consequently, the proposal is considered to be in the public interest.

5 Conclusion

5.1 Conclusion

This Statement of Environmental Effects supports a development application for proposed development – subdivision of one (1) lot into two (2) lots and ancillary works at 1 Hunter Street, Muswellbrook, NSW 2333 (Lot 1 DP 995228).

The proposed development is considered to be satisfactory for the reasons outlined in this report and as summarised below:

- The proposed development is permissible under the relevant environmental planning instrument and satisfies the objectives of the zoning, and relevant clauses in MLEP;
- The proposed development complies with the relevant clauses in MDCP;
- There are no statutory or physical impediments to the approval of the development;
- The matters for consideration under section 4.15(1) of the EP&A Act have been satisfactorily addressed in this SEE;
- The proposed subdivision and ancillary works will have a minimal impact on the heritage significance of the subject site as detailed in the SoHI accompanying the DA;
- The proposed subdivision will not adversely impact the ability of the existing factory operations to comply with the current DA approvals;
- The proposed development is considered to be in the public interest. The proposal, if approved, will facilitate the reactivation of the factory on proposed Lot 3001 and future residential development on proposed Lot 3002.

Overall, the assessment of the proposal has demonstrated that the development does not have any significant impact, and it is recommended that approval be granted.

APPENDIX A – Pre-lodgement Meeting Minutes

Enquiries
Please ask for Hamish McTaggart
Direct 02 6549 3700
Our reference PL 2024/13

9 August 2024

Mm Hyndes Bailey & Co
Po Box 432
SCONE NSW 2337

Dear Sir/Madam,

**RE: Pre-lodgement Meeting for the subdivision of LOT: 1 DP: 995228, Hunter Street
MUSWELLBROOK**

I refer to your pre-lodgement meeting with Council Officers in relation to the preparation of a development application for the subdivision of the land referenced above on 31 July 2024.

I note the following Council Officers were in attendance at the meeting:

- Peter Chambers – Chief Engineer
- Andy Le – Design Engineer
- Shahzad Khizer – Asset Manager Water and Waste
- Lachlan Melichar – Regulatory Coordinator
- Brad Vale – Heritage Advisor
- Donna Watson – Senior Planner
- Hamish McTaggart – Development Coordinator

The following comments were also informed by the review of the following drawings and documents provided to Council prior to that meeting:

- Concept Plan of Subdivision Versions A & B – prepared by MM Hyndes Bailey & Co

Please find below a summary of matters discussed at the meeting and key issues that Council wishes to draw your attention to when preparing a development application for any subdivision of the site. When reviewing I'd particularly draw your attention to items 1 – 4. These items attach to the key discussion areas at the meeting around, soil quality, heritage and the sites mixed residential and industrial zonings:

1. **Potential site contamination** – the site has a longstanding history of commercial and agricultural use. A site contamination assessment prepared by an appropriately qualified person will be important to informing the potential for any residential subdivision for the site.

From advice provided to Council at the meeting it is understood that this issue has been explored and a related report prepared. Any proposed subdivision will need to have regard to the report outcomes and the related documentation submitted to Council to confirm the site is free of contamination or will be suitably remediated to support the subdivision.

2. **Heritage Impact/Conservation Management Plan** – the site is listed as a local heritage item. The heritage listing included in the Muswellbrook LEP 2009 references the item as comprising the ‘Oak Milk Factory’ and the heritage listing applying to the entirety of the property Lot 1 DP 995228.

For Council to support any subdivision of the site its impact on to the heritage item and subdivision will be a key development assessment consideration.

To inform any approach to this issue a suitably qualified Heritage Consultant should be engaged as part of the project team. It is strongly recommended that this person is engaged early in the project scoping and their expertise is utilised to inform the planning approach for the project.

As mentioned by Council’s Heritage Advisor at the pre-lodgement meeting it is requested that a Conservation Management Plan is prepared in relation to the heritage item. Information around what is involved in the preparation of Conservation Management Plan can be found online at the website NSW Government Environment and Heritage website alongside best practice guidelines.

A focus of the plan should be use opportunities for the heritage item, and potential threats to the item and its significance from the proposed development.

Outcomes of the Conservation Management Plan or any pre-scoping studies should be central to in informing the direction taken for any development application and overall strategy for the development of the site.

Council understands that you intend to find a use for the buildings with heritage significance as the first development priority. We endorse this approach. Council is concerned to avoid a situation in which the older brick buildings on the site do not have a use.

3. **Muswellbrook LEP Section 5.10(1)** – as referenced at the meeting related to the exploration of the above point, land use opportunities available for the heritage item are not necessarily limited by the sites land use zoning.

Sub-section 5.10(10) of the Muswellbrook LEP 2009 enables development consent to be granted for any purpose (including purposes otherwise prohibited in a related land use zone) for a heritage item where a consent authority is satisfied:

- (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and*
- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and*
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and*
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and*
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.*

The consequence of this sub-section is that a wider range of land uses may be explored by the Heritage and Planning Consultants than those prescriptively permitted within the industrial or residential zones. These opportunities may be of relevance when exploring heritage considerations related to any proposal.

4. **Land use compatibility**– an unique assessment consideration for this site is the lands mixed industrial and residential zoning. Approaches to strategic land use planning

typically avoid co-locating industrial and residential land use zones to minimise potential negative outcomes and land use conflict between the zones.

In this instance the land use zones are pre-established, and the sites mixed zoning is an opportunity and challenge that requires consideration with any development application.

It may be necessary for collaboration between your Planning, Heritage consultant and additional sub-consultants to formulate the best approach to navigate this area that will best achieve Council's assessment requirements and your client's objectives for the site and its development.

In a very preliminary context Council Officers offer the following advice/commentary when exploring this consideration and additional related complexities attached to the land's heritage listing and approved uses. As mentioned, these comments are quite preliminary, and your team may have additional thoughts/strategies when they are exploring the matter, which Council Officers would be happy to take into consideration as the project progresses

- **General approach to land use compatibility** – to support a residential development of land adjoining an industrial site a consent authority would require confidence that there are provisions in place to adequately protect the amenity of proposed residential lots. While the establishment of any related provisions should be managed to avoid inhibiting the development potential of the adjoining industrial land to the point that inhibits its own development where current or future commercial projects are to be pursued on that land.

Typical approaches to managing such an issue may be putting forward informed strategies to manage potential land use conflict challenges through measures such as:

- The design of the development (lot layout etc.)
- Incorporation of physical mitigation measures (use of screening, landscaping etc.)
- Site specific controls (use of a S88B instrument or Development Control Plan to impose site specific controls on future development eg. maximum operating hours, construction standards for future buildings, setbacks from boundaries etc.)

To prepare a considered strategy and incorporate related and relevant controls into any subsequent development it will likely be necessary to obtain advice from specialist sub-consultants.

Using the example of noise impacts – development of the site may require technical information from an acoustic engineer to undertake noise modelling based on typical noise emissions from industrial type activities and their potential to impact on adjoining residential land proposed for subdivision. The outcomes of their report/study potentially informing:

- Setback/buffer areas between any dwelling locations and the industrial area.
- Limitations to operating hours of the industrial area.
- Limitations to the types of industrial activities that it may be necessary to expressly prohibit given that (in their view) the extent of their impact on the adjoining residential land may be such that it would not be possible for a consent authority to support any application for the related activity in any scenario.
- Physical noise attenuation (where recommended) such as a noise barrier or acoustic fence between the two areas.
- Minimum construction standards for future dwellings to ensure they are designed and constructed to incorporate noise attenuation at a standard put forward by the acoustic engineer.

Measures recommended by the related consultants would then be incorporated into the development design by the project team.

- **Existing approved development** – the exploration of the land use conflict issue in relation to this site will require consideration of the existing approved developments and land uses applying to the land.

While Council Officers have not undertaken an in depth review of existing approvals for the site when preparing this advice it is understood more recent current approvals for the site permit:

- Operation of a winery/distillery (DA 2002/239 – there are multiple related DA's and modifications previously circulated)
- LPG Storage depot (DA 2005/147)

Where any existing approvals for the site are to be retained as part of the development, a comprehensive assessment of potential environmental and land use compatibility impacts related to the proposed residential subdivision will need to be carried out to inform a related development application.

Where the existing approvals are not proposed to be retained, they will need to be surrendered as part of any development application. Should development consents related to the OAK Milk Factory heritage item be surrendered it may create a need for additional nuances to be considered through the assessment of heritage impacts. Council will have reservations with a development of the site that limits the opportunity for the heritage item to be used under a current established approval without providing a pathway forward for the establishment of a new use of that item that is complimentary to its heritage significance.

- **Heritage item use and land use compatibility discussion** – as referenced throughout, any residential subdivision of the site should either retain opportunities for the current approved use of the OAK Milk Factory building or outline a pathway for a new adaptive use of the heritage item to be achieved.

To demonstrate that, the development does not inhibit the opportunity for use of the heritage item or its adaptive re-use for a purpose that is both complimentary to the item's significance and is compatible with any proposed subdivision it will likely be necessary for technical studies to be carried out related to the likely environmental impacts of any adaptive reuse strategy pursued for the item and site as an outcome of the Conservation Management Plan. These studies would be required to demonstrate that adaptive re-use opportunities put forward for the heritage building may be carried out without resulting in a significant adverse environmental impact on the residential subdivision proposed in any subdivision.

- **Potential relevant technical studies and information** – as referenced, it may be necessary for technical specialist sub-consultants to provide information to inform the consideration of land use conflict issues. The extent to which this may become necessary would be principally informed by the scope of the proposal and strategy toward navigating existing use and adaptive heritage reuse opportunities for the site.

While the approach arrived at by your team will ultimately inform what is required, the following interest areas have been bullet pointed as an overview of related areas where technical information that may be required as the issue exploration progresses:

- **Noise** – Noise Impact Assessment prepared by acoustic engineer (likely required where existing winery use retained or a variety of conceivable adaptive reuses).
- **Odour** - Odour Impact Assessment air quality consent (required where existing winery use retained)
- **Traffic and Parking assessment** – Traffic Impact Assessment prepared by traffic engineer to have regard to any existing approvals retained and/or anticipated traffic demand and servicing requirements of adaptive reuse scenarios for the heritage item (relates to any application)
- **Service arrangement** – investigate services required for the OAK Factory building in context with any subdivision design and ensure servicing arrangement to support the buildings ongoing use is provided for in a related application (relates to any application).
- **Storage of hazardous materials** – may require advice from a hazard material expert and potentially a preliminary hazard analysis (interest in this primary relates to LPG Gas storage where retained on-site as part of the subdivision)
- **Visual impact consideration** – considered assessment of visual impact (particularly where wine storage tanks are maintained on-site) to put forward a plan for maintenance work, landscaping etc to improve/manage visual amenity in context with proposed new residential subdivision.
- **Overshadowing information** – given the height of the Oak Milk Factory and related structures Council will be interested in the height of the structure being identified and a related shadow diagram to be prepared to inform the application and any conflict with residential lot layout.
- **Other areas** – this list is not intended as a conclusively list of areas that may require consideration as the project moves forward, additional areas requiring consideration may be identified by your project team as adaptive reuses of the heritage item are explored alongside this area of consideration.

5. **Building alterations to a heritage item** – the scope for works to be carried out as exempt development to a heritage item is quite limited. As the project progresses and informed by outcomes of the Conservation Management Plan it may become necessary to seek development consent to carry out physical alterations to the heritage item, structures on the site and/or winery infrastructure (potentially including the removal/demolition of related infrastructure).

Informed by your client's timing objectives there may be an interest in incorporating related building works into an application for the site or obtaining separate approvals for works. When seeking related approvals whether separately or as part of this application it will be necessary for applications to be accompanied by plans of the related works and supporting statement of heritage impact.

6. **Servicing Plan** – a Civil Engineer is to be engaged to prepare a servicing plan related to the extension of Council's water and sewer infrastructure to service the proposed development.

This plan should have regard to the existing infrastructure located on the site and alterations (where required) to support the utility requirements of existing buildings to be retained on site including the Oak Milk Factory building.

7. **Electrical Service Connection** – service planning should have regard to electrical utility requirements.

Any new residential subdivision should be serviced by below ground power in line with the requirements of Council's Development Control Plan. Accordingly, a residential subdivision will likely require the alteration/removal of the existing power line that intersects the site. In carrying out this work it may be necessary for new related electrical infrastructure to be provided to the Oak Milk Factory heritage item.

A development application involving the alteration of existing electrical infrastructure will require referral and concurrence from AUSGRID under the provisions of the SEPP (Transport and Infrastructure) 2021.

8. **Traffic Impact Assessment** – a traffic engineer will need to be engaged to prepare a traffic impact assessment in relation to any residential subdivision of the site to inform the design of the vehicle access and public road infrastructure in line with Council's Development Control Plan requirements.

Any Traffic Impact Assessment is to give consideration to the traffic and parking requirements of the OAK Milk Factory and any future proposed use to ensure adequate access and parking provisions are incorporated into the development design related to this site. Consideration of this issue should extend to considering service vehicles required to access the site and ensure that the site accommodates appropriate turning circles to enable those service vehicles including Council 9.6m waste service vehicle to enter and exit the site in a forward direction. Turning diagrams may need to be included in documentation accompanying this assessment.

In the preparation of any parking plans for the existing use of the factory, contextually must be noted that the south-west section of this industrial zone is subject to substantial flooding. The extents of this flooding should inform the location of any proposed parking, and emergency/evacuation route planning via both consultants if required.

Related to the residential subdivision consideration should be given to school buses.

9. **Stormwater Management Plan** – the proposed development will require a Stormwater management plan to be prepared by a suitably qualified Civil Engineer. This plan should consider the stormwater requirements of the Muswellbrook Development Control Plan and should inform the design of stormwater infrastructure for the proposed development.

Where it is intended to move forward with the drainage arrangement shown on concept plan B Council will be interested in the following being explored:

- Requirement for an easement – advice from Council's Roads and Drainage Technical Officer Imelda Williams confirmed that Council has an easement in place over the waterway located to the north of the site. However, that easement does not directly communicate with the proposed drainage basin location. It may be necessary for additional stormwater easements to be obtained to facilitate any drainage at this location.
- Basin discharge – the discharge of the drainage basin is to be designed to manage any potential stormwater erosion on this site or within the easement on adjoining land. This may require a consideration of the volume and velocity of stormwater currently directed through the adjoining stormwater channel and the angle of the proposed drainage outlet where it meets this channel.
- Rail culvert – consideration is to be given to the existing stormwater culvert beneath the rail corridor and the New England Highway, to the north of the site, in context with stormwater increases related to the development. Additional stormwater pooling adjacent to the culvert as a result of the proposed development has the potential to result in adverse impacts and the erosion of the stormwater channel and infrastructure. Additional works may be required to improve this infrastructure to ensure it is capable of managing any increased pressures resulting from this development.
- Cousin Street lots – there is no existing Council stormwater infrastructure at the rear of existing residential lots adjoining the site and fronting Cousins Street. Stormwater from these existing lots is directed to the street where practical. However the slope of the land affects the practicality of drainage being directed to the street in all instances and there is not an opportunity for gravity drainage from the rear of these properties to the street. It is recommended that any stormwater management plan give consideration to this existing drainage consideration and

its potential to impact on the proposed subdivision. Where here appropriate the plan should put forward recommendations to ensure the stormwater discharge from these lots is accounted for and managed in a manner to ensure the subdivision proposed is not adversely impacted by related stormwater discharge.

- **OAK Factory stormwater management** – consideration is to be given to the private stormwater infrastructure requirements of the existing OAK factory to ensure all services are located within a related lot, easement or provisions made for their relocation. Where an existing industrial use is retained as part of the application consideration is to be given to any stormwater treatment devices for the site and dependent on the findings of any assessment the potential for the project to require improvements to the existing infrastructure to achieve compliance with Council's Development Control Plan.

10. **Flood Considerations** – Where the proposed subdivision includes proposed Lots 101 and 102 it will be necessary to consider the potential impact of flooding on this land. It is recommended that a hydraulic engineer be engaged to undertake a Flood Impact Assessment in relation to the proposed development.

Related to this point, it is noted that Council's endorsed Flood Risk Management Study and Plan 2019 does not in extend to the Karoola Park precinct and identify the land as flood liable. However, anecdotal information indicates that Karoola Park is impacted by water during significant rain events with road and drainage culverts adjacent the railway and Hunter Street creating choke points for water in the vicinity of the site. This anecdotal information is further informed by Council's Hunter Beach Park design and related flooding information possessed by Council Road and Drainage Engineers which informed the design of that project. If you are interested in obtaining information related to the Hunter Beach design to assist with the project, please contact Council's Chief Engineer Peter Chambers.

11. **Integrated development** – a waterway is located on Lot 4 DP 1112082 adjoining the site. Development on waterfront land (within 40m of a waterway) is integrated development for the purposes of the Environmental Planning and Assessment Act 1979. Where required a referral will be sent to NSW Department of Planning Housing and Infrastructure Office of Water to seek General Terms of Approval.

Information will need to be provided with any application to inform Council on the proximity of the proposal to waterfront land and where necessary a Controlled Activity Permit is required the relevant Government Agency to process their assessment of the application.

12. **Flora and fauna Assessment** – established native vegetation is located throughout the development site. To inform the preparation of any development application and subdivision, An ecological assessment is to be carried out in relation to the development site. The assessment is to have regard to the requirements of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 and Biodiversity Conservation Act 2016.

Where this initial study identifies that the proposal exceeds any of the relevant biodiversity offset thresholds, it will be necessary for a Biodiversity Development Assessment Report (BDAR) to be prepared in relation to the development.

13. **Aboriginal Due Diligence** – an aboriginal cultural heritage due diligence assessment should be prepared by an appropriately qualified person to inform the preparation of any subdivision application for the site.
14. **Rail/Road Noise Assessment** – an acoustic engineer should be engaged to prepare a Noise Impact Assessment or alternate suitable information to consider the relationship of the proposed development with the NSW Government's document Development near Rail Corridors and busy roads Interim Guideline, specifically in

relation to the Northern Rail Line and New England Highway. Where necessary this should be considered cumulatively with noise impacts attached to the use of the industrial zoned part of the site.

15. **ARTC Referral** – It is considered likely that a proposal for the subdivision of the site will require referral to and concurrence from the ARTC as the rail authority for rail corridor adjoining the site.
16. **Location of existing buildings and lot boundaries** – any application is to include information that enables Council to identify the location of buildings in context with new site boundaries. In establishing building setbacks from boundaries, consideration is to be given to minimum setback fire safety requirements under the Building Code of Australia.
17. **Lots 205 – 211 contour/earth bank** – the contour banks and steep graded land that intersect proposed Lots – 205 to 211 require further evaluation when progressing any plan of subdivision. The batters of these earth banks appear to be quite steep and may not be safe to incorporate into a residential lot without additional earthworks being carried out to reshape the site grade or incorporate a retaining wall.

Council Officers will also have an interest in it being demonstrated that there are suitable building envelopes to support the future development of the lots concerned.

18. **Minimum lot sizes** – The information available to Council at this pre-lodgement meeting does not include proposed lot size details. Accordingly, a considered review of the relevant minimum lot sizes with the proposal is yet to be carried out. It will be necessary for consideration to be given to relevant minimum lot sizes as the design of the development progresses.
19. **RE1 zoned land** – under the proposed plans, the section of RE1 Public Recreation zoned land is shown to be retained in a single lot at the frontage of the development site. The Muswellbrook LEP 2009 allows for a limited arrangement of uses for RE1 zoned land.

Section 5 of Muswellbrook's Development Control Plan also includes provisions related to the dedication and availability of open space which will need to be navigated through the preparation of a development application.

Where it is intended to provide this RE1 zoned land to Council to achieve the Open Space requirements of Council's Development Control Plan, further discussions should be had through Paul Chandler Council's Technical Officer – Recreation and Property. In preliminary discussions around the utility of such a park on this land, Council Officers had uncertainty around its utility due to the close proximity to Karoola Park, and considered that the related Development Control Plan objectives may be better served through investment in the Karoola Park infrastructure.

20. **Muswellbrook LEP 2009** – the proposed development should be designed to comply with all relevant development standards specified by the Muswellbrook LEP 2009. Information should be included in any Statement of Environmental Effects to inform Council in its assessment of the proposed development against the relevant requirements of the Muswellbrook LEP 2009.
21. **Muswellbrook Development Control Plan** – The proposed development should have regard to the requirements of the Muswellbrook Development Control Plan. Information should be included in any Statement of Environments to inform Council in its assessment of the proposed development against the relevant requirements of this Development Control Plan.
22. **Environmental Impacts** – The information accompanying the development application should enable Council to fully consider all environmental impacts

associated with the proposed development. It is recommended that any statement of environmental effects considers and comments on any environmental effects with the potential to occur as an outcome of the proposed development.

23. **Statement of Environmental Effects** – it will be necessary for any development application to be accompanied by a comprehensive Statement of Environmental Effects to be prepared by your planning consultant. It will be necessary for this document to consolidate the various relevant Section 4.15 Assessment considerations and inform Council in its assessment of the application.

Given the various project intricacies this document will require consideration preparation and will be of particular importance in informing the assessment of any application.

The above points are not intended as an exhaustive list of matters relevant to the assessment of a development application, but a list of key issues identified and discussed through the course of the pre-lodgement meeting. Where a development application is lodged with Council it will be necessary for Council to assess and determine the application in accordance with the relevant assessment criteria prescribed by Section 4.15 of the Environmental Planning and Assessment Act 1979.

If you require any further information or clarification about the information contained in this letter feel free to contact the undersigned on 6549 3860 phone number or via email at hamish.mctaggart@muswellbrook.nsw.gov.au.

Yours faithfully

A handwritten signature in black ink, appearing to be 'H. McTaggart', written over a horizontal line.

Hamish McTaggart
Development Coordinator

APPENDIX B – Existing Title Lot 1 DP995228



FOLIO: 1/995228

SEARCH DATE	TIME	EDITION NO	DATE
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30/5/2025	12:19 PM	11	16/10/2024

LAND

LOT 1 IN DEPOSITED PLAN 995228
AT MUSWELLBROOK
LOCAL GOVERNMENT AREA MUSWELLBROOK
PARISH OF ROWAN COUNTY OF DURHAM
TITLE DIAGRAM DP995228

FIRST SCHEDULE

OAK PROPERTY INVESTMENTS PTY LTD (T AU226387)

SECOND SCHEDULE (6 NOTIFICATIONS)

- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 LIMITED TITLE. LIMITATION PURSUANT TO SECTION 28T(4) OF THE REAL PROPERTY ACT, 1900. THE BOUNDARIES OF THE LAND COMPRISED HEREIN HAVE NOT BEEN INVESTIGATED BY THE REGISTRAR GENERAL.
- 3 DP1228501 RIGHT OF CARRIAGEWAY 6 METRE(S) WIDE AFFECTING THE PART(S) SHOWN SO BURDENED IN DP1228501
- 4 DP1228501 EASEMENT FOR ELECTRICITY AND OTHER PURPOSES VARIABLE WIDTH AFFECTING THE PART(S) SHOWN SO BURDENED IN DP1228501
- 5 AU502919 MORTGAGE TO PERPETUAL CORPORATE TRUST LIMITED
- 6 AU502920 MORTGAGE TO PERPETUAL CORPORATE TRUST LIMITED

NOTATIONS

DP1044228 PLAN FOR LEASE PURPOSES

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

935179...

PRINTED ON 30/5/2025

THIS PLAN IS NOT A CURRENT
PLAN IN TERMS OF SEC. 327AA
LOCAL GOVERNMENT ACT, 1919.

G.D.B.

APPENDIX C – AHIMS Search



AHIMS Web Services (AWS)
Search Result

Your Ref/PO Number : 50m HunterSt
Client Service ID : 973285

PA Goldin and Associates Pty Ltd
1193 Mt Vincent Road
Ilford New South Wales 2850
Attention: Penny Goldin
Email: goldinassoc@optusnet.com.au

Date: 07 February 2025

Dear Sir or Madam:

AHIMS Web Service search for the following area at Lot : 1, DP:DP995228, Section : - with a Buffer of 50 meters, conducted by Penny Goldin on 07 February 2025.

A search of the Heritage NSW AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

0 Aboriginal sites are recorded in or near the above location.
0 Aboriginal places have been declared in or near the above location. *

If your search shows Aboriginal sites or places what should you do?

You must do an extensive search if AHIMS has shown that there are Aboriginal sites or places recorded in the search area.

If you are checking AHIMS as a part of your due diligence, refer to the next steps of the Due Diligence Code of practice.

You can get further information about Aboriginal places by looking at the gazettal notice that declared it. Aboriginal places gazetted after 2001 are available on the [NSW Government Gazette \(https://www.legislation.nsw.gov.au/gazette\)](https://www.legislation.nsw.gov.au/gazette) website. Gazettal notices published prior to 2001 can be obtained from Office of Environment and Heritage's Aboriginal Heritage Information Unit upon request

Important information about your AHIMS search

The information derived from the AHIMS search is only to be used for the purpose for which it was requested. It is not be made available to the public.

AHIMS records information about Aboriginal sites that have been provided to Heritage NSW and Aboriginal places that have been declared by the Minister;

Information recorded on AHIMS may vary in its accuracy and may not be up to date. Location details are recorded as grid references and it is important to note that there may be errors or omissions in these recordings,

Some parts of New South Wales have not been investigated in detail and there may be fewer records of Aboriginal sites in those areas. These areas may contain Aboriginal sites which are not recorded on AHIMS.

Aboriginal objects are protected under the National Parks and Wildlife Act 1974 even if they are not recorded as a site on AHIMS.

This search can form part of your due diligence and remains valid for 12 months.