



22 April 2021

Hunter Valley Doors  
"Kings" Creek" Yarrawa Road  
Denman NSW 2328

Dear Sir,

**Request for Property Information, Dwelling Entitlement – Lot: 8 DP: 1106497,  
Ferndale Road, Yarrawa.**

I refer to your request for property information regarding the permissibility of a dwelling house at Lot 8 in DP 1106497, dated 19 March 2021.

Council has reviewed its property information records relating to this parcel of land and can provide the following information regarding the permissibility of a dwelling on the land.

The land subject to your inquiry is zoned RU1 Primary Production under the Muswellbrook Local Environmental Plan (LEP) 2009. Land within the RU1 Primary Production Zone is subject to provisions under Clause 7.5 of the Muswellbrook LEP 2009 that restrict the erection of dwellings.

Council Officers have reviewed the provisions of Clause 7.5 of the Muswellbrook LEP 2009 in relation to Lot 8 in DP 1106497 and have identified that the land complies with the provisions of Clause 7.5 which would allow Council to consider a development application for the erection of a dwelling on the land.

Council Officers are satisfied that sub-clause 7.5(2)(b) provides an avenue under which Council may consider a development application for the erection of a dwelling for the land. Sub-clause 7.5(2)(b) enables a development application to be lodged for the erection of a dwelling on land where that land is:

*"a lot created before this Plan (Muswellbrook LEP 2009) commenced and on which the erection of a dwelling house was permissible immediately before that commencement,"*

In researching your enquiry Council Officers have identified:

- The Lot (Lot 8 DP 1106479) was created on the 22 January 2007 as part of a subdivision approved by Council under DA 343/2002.
- The Muswellbrook LEP 2009 did not come into force until 2009 after the creation of Lot 8 DP 1106479.
- Immediately before the commencement of the Muswellbrook LEP 2009 the principle environmental planning instrument governing the development of the land and the erection of a dwelling on it was the Muswellbrook LEP 1985.
- Under the provisions of the Muswellbrook LEP 1985 the land was zoned 7(d) Environmental Protection and the erection of a dwelling house within this zone was governed by Clause 15 of the Muswellbrook LEP 1985.

- Clause 15 of the Muswellbrook LEP 1985 permitted the erection of a dwelling on land zoned 7(d) Environmental Protection where the land in question has an area not less than 40 hectares.
- The Deposited Plan for the property indicates that the land has an area of 41.25 hectares, greater than the prescribed minimum size of 40 hectares.
- Given Lot 8 DP 1106479 is a lot created before the commencement of the Muswellbrook LEP 2009 with an area which complies with the provisions governing the permissibility of dwellings under the plan in force prior to the Muswellbrook LEP 2009's commencement the land is viewed as being benefited by a dwelling entitlement.

In view of the above points Council Officers are satisfied that **the land is benefited by a dwelling entitlement under Clause 7.5 of the Muswellbrook LEP 2009.**

Although this letter acknowledges the land as being currently benefited by a dwelling entitlement you are reminded that it does not authorise the erection of a dwelling. The construction of any dwelling on the land will require development consent from Council under the provisions of the *Environmental Planning and Assessment Act 1979*.

In determining any development application for the land, it would be necessary for Council to assess the proposed development against relevant provisions of the Muswellbrook LEP 2009, Muswellbrook Development Control Plan and other planning considerations prescribed under Section 4.15 of the *Environmental Planning and Assessment Act 1979*. Where a development application does not satisfy the relevant assessment criteria Council would be required to refuse the proposed development.

In view of the sites location and zoning any person considering the preparation of a development application for the site should give consideration to the provision legal and practical access to land and the identification and consideration of development constraints related to bushfire risk. Where you wish to obtain further information in relation to the preparation or lodgement of a development application for the site it is recommended that you consult with Council Officers through Council's pre-lodgement development application services.

If you require any further information or clarification in relation to this correspondence feel free to contact Council's Project Planner Tanya Jolly on (02) 6549 3776.

Yours faithfully,



Hamish McTaggart  
**Development Co-ordinator**  
**Date: 22 April 2021**