

Planning Services

Gateway Determination Report

LGA	Muswellbrook
PPA	Muswellbrook Shire Council
NAME	Muswellbrook Bypass Realignment
NUMBER	PP_2018_MUSWE_001_00
LEP TO BE AMENDED	Muswellbrook Local Environmental Plan 2009
ADDRESS	Various
DESCRIPTION	Lot 2 DP 249566; Lot 119 DP 613480; Lot 3 DP 249566; Lot 171 DP 571356; Lot 13 DP 249564; Lot 1A DP 16352; Lot 302 DP 715492; Lot 400 DP 1034562; Lot 56 DP 1025497; Lot 98 DP 1181251; Lot 1 DP 1167081; Lot 1 DP 249566; Lot 5 DP 1134398; Lot 5 & 6 DP 26760; Lot 1 DP 46760; Lot 7 DP 629631; Lot 12 DP 839233; Lot 1391 DP 590130; Lot 3 DP 1220491; Lot 1 DP 1135590; Lot 4 DP 1220491; Lot 7004 DP 1051571; Lot 7 DP 249566; Lot 4 DP 249566, Muswellbrook.
RECEIVED	28 August 2018
FILE NO.	EF18/32030
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

INTRODUCTION

Description of planning proposal

Roads and Maritime Services have undertaken further work to refine the land required for the Muswellbrook bypass. The proposal updates the location of the proposed corridor for the Muswellbrook bypass and zones it SP2 Classified Road, and zones land formerly identified as being needed for the bypass to match the zones of adjoining land.

Figure 1 over shows the existing corridor in red and the proposed new corridor in yellow.

Site description

The site covers multiple properties from the New England Highway south east of Muswellbrook to land north of Muswellbrook as shown on figure 1 under and as outlined further in the Planning Proposal (**Attachment A**).

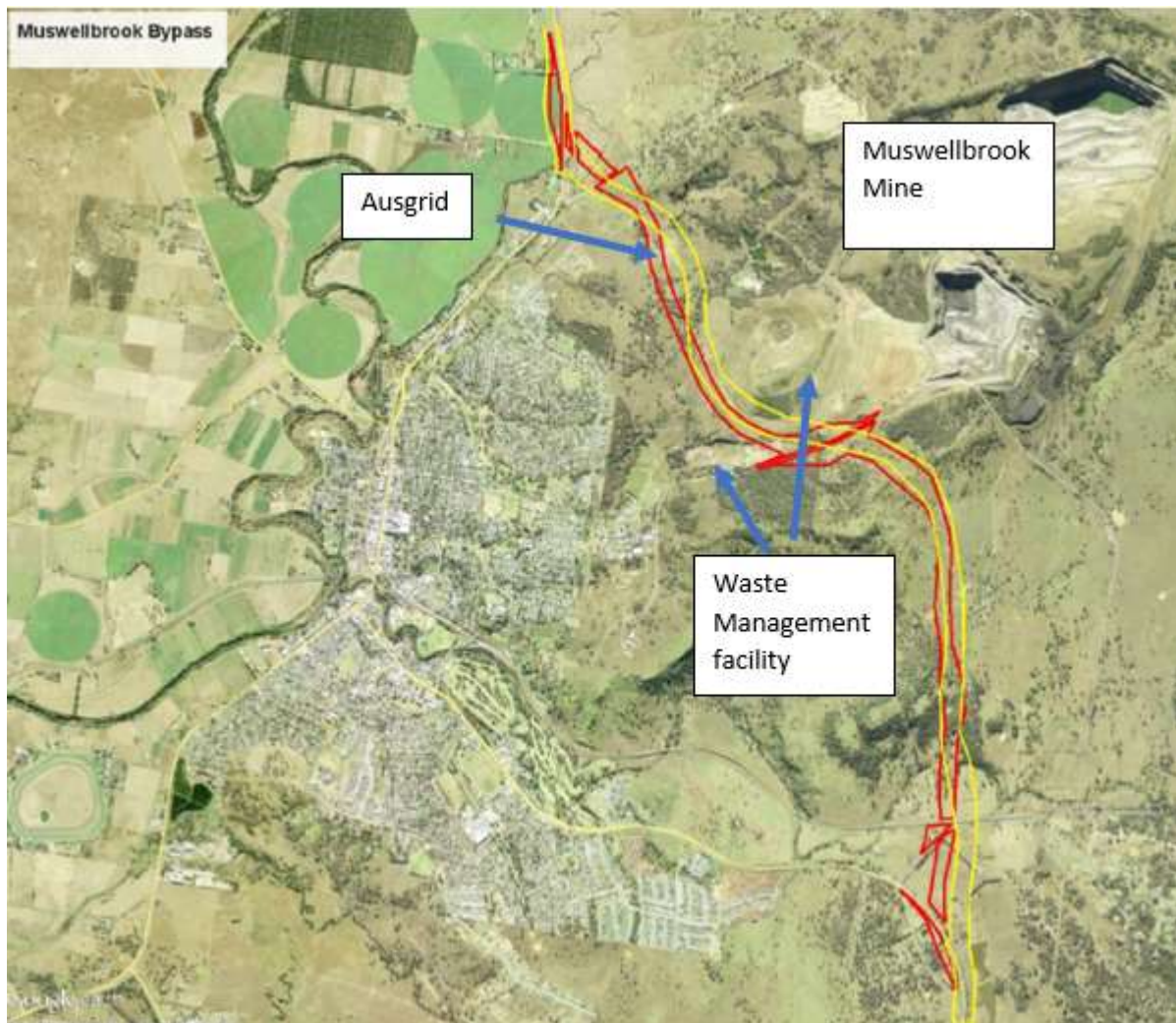


Figure 1 – Existing (red) and proposed (yellow) bypass corridor

Existing planning controls

The existing bypass corridor is zoned SP2 Special Purposes (Classified Road). The majority of the surrounding land is zoned E3 Environmental Management with separate pockets of Special Uses Zone for waste management facility either side of the corridor as shown on **Attachments B1** and **B2**.

The existing corridor is identified as land to be acquired on the Land Reservation Acquisition maps. Within the existing corridor a height of buildings of 13m and minimum lot size of 600sq/m applies. The surrounding rural and environmental lands generally have height of buildings of 12m and a minimum lot size of 80ha.

Surrounding area

The corridor generally passes through rural lands, crossing the Hunter Rail Line and passing between Council's waste management facility to the west and the

Muswellbrook mine to the east (see figure 1). An undeveloped area of R5 large lot residential land adjoins the corridor to the north.

Summary of recommendation

The proposal responds to more detailed road design work that has enabled a more refined road corridor to be identified. The proposal should proceed as submitted as it maps the future bypass corridor with greater certainty.

PROPOSAL

Objectives or intended outcomes

The proposal updates the location of the proposed corridor for the Muswellbrook New England Highway bypass.

Explanation of provisions

The proposal zones the bypass as SP2 Classified Road zone, and zones land formerly identified as being needed for the bypass to match the zones of adjoining land. Changes to the minimum lot size and height of buildings maps are also proposed which is consistent with the approach taken with the existing corridor identified in the LEP.

Mapping

The following maps will be amended to implement the changes proposed:

Amendment Applies to	Explanation of provision
Land Zoning Map – Sheets LZN_008 and LZN_008A	To rezone land to SP2 Classified Road; SP2 Waste Management Facility; E3 Environmental Management; and RU1 Primary Production.
Height of Buildings Map – Sheets HOB_008 and HOB_008A	Amend maps so that the permitted height for development on the bypass corridor will be 13m and development on land removed from the corridor will have a permitted height of 12m, the same as adjoining land.
Lot Size Map – Sheets LSZ_008 and LSZ_008A	Amend maps so that the permitted minimum lot size for the corridor will be 600sqm and the land removed from the corridor will have a permitted minimum lot size of 80ha, the same as adjoining land.
Land Reservation Acquisition Map – Sheets LRA_008 and LRA_008A	Amend the maps to show the land now reserved for the bypass corridor.

There are no changes required prior to community consultation.

NEED FOR THE PLANNING PROPOSAL

Roads and Maritime Services (RMS) have undertaken more detailed investigation into the proposed route and have refined the bypass route location. The proposal responds to a request from RMS to adjust the bypass route on Council's LEP. This

request is based on the supporting report, Muswellbrook Bypass Options Report July 2018 in which the Roads and Maritime Services considered 5 bypass options.

The route to be include in the LEP was identified as the best route following consideration of constraints, traffic and economic analysis. The proposal provides greater certainty for the community, affected land owners and the NSW state government and is the most appropriate way to implement the proposed changes to the bypass route.

STRATEGIC ASSESSMENT

Hunter Regional Plan 2036 (HRP)

The proposal and is consistent with these relevant directions:

- Direction 4 Enhance inter-regional linkages to support economic growth
 - The proposal provides a reservation for the proposed Muswellbrook bypass which will create travel time efficiencies for regional transport connections.
- Direction 20 Revitalise existing communities
 - The bypass when constructed will enable planning and place-making for Muswellbrook's main street to enhance amenity and attractiveness (Actions 20.2 and 20.3).
- Direction 26 Deliver infrastructure to support growth and communities
 - The proposal implements Action 26.3, to protect existing and planned infrastructure corridors.

New England Highway Strategy

This transport corridor strategy was prepared by RMS and adopted in 2017 and aims to create an efficient road transport corridor that has the capacity for future growth. The Strategy specifically identifies as one of its priorities to 'Look after the liveability of towns for communities along the road corridor', including to 'investigate options for a bypass of Muswellbrook'.

The proposal is consistent with this strategy and implements one of its actions.

Local

There is no specific reference to the bypass in the local planning strategy. The proposal is considered consistent with Council's CSP 2017 – 2027 in relation to community infrastructure.

Section 9.1 Ministerial Directions

Direction 1.2 Rural Zones. The proposal is inconsistent with clause (4)(b) of this direction as the proposal contains provisions that will increase the permissible density of the land, including changes in the height of buildings. It is recommended that the Secretary can be satisfied that the inconsistency is of minor significance given the existing reservation and proposed intention of the planning proposal.

Direction 1.3 Mining, Petroleum Production and extractive Industries. The proposal is potentially inconsistent with clause (3)(b) of this direction as the proposal zones land across a mining lease and is close to an existing operating coal mine (Muswellbrook

Mine). It may potentially restrict the development of the coal resource. It is recommended that the Secretary can be satisfied that the inconsistency is of minor significance given the proposal is refining an existing bypass reservation boundary that has been identified by RMS since 2000 in bypass option reports.

Direction 1.5 Rural Lands. The proposal is inconsistent with clause (3)(b) of this direction as the proposal contains provisions that will make changes to the application of the RU1 Primary Production Zone and the minimum lot size provisions. It is recommended that the Secretary can be satisfied that the inconsistency is of minor significance given the proposed intention of the planning proposal.

Direction 4.2 Mine Subsidence and Unstable Land. Part of the site is within a mine subsidence district and Council has not consulted with Subsidence Advisory NSW, hence the proposal is inconsistent with this Direction.

Direction 4.4 Planning for Bushfire Protection. Part of the site is classed as bushfire prone land – vegetation category 1 and vegetation buffer, hence this Direction applies. NSW Rural Fire Service will be consulted to address this Direction, noting the planning proposal will not increase the intensification of land uses on the site.

Direction 6.2 Reserving Land for Public Purposes. The changes to the proposed bypass route on the Land Reservation Acquisition Maps are at the request of the public authority (RMS). The proposal is considered to be consistent with this direction as the Gateway determination will issue the necessary approval.

State environmental planning policies

SEPP 55 – Remediation of Land applies to the proposal. Clause 6 requires contamination and remediation to be considered in a rezoning proposal. As the proposal involves identifying land for a future traffic bypass, in accordance with clause 6(b), it is considered that the land is suitable in its contaminated state for the purposes of the permitted uses within the proposed zone.

The proposal is consistent with all other SEPP's.

SITE-SPECIFIC ASSESSMENT

Social

The proposal identifies a proposed bypass route which generally aligns with the existing route.

The social impacts are not anticipated to be substantial. The visual impacts of the waste facility and existing mine and the revitalisation of the main street, will be assessed when the construction of the bypass is lodged for development assessment.

Environmental

The proposal identifies a proposed bypass route. The environmental impacts of the construction of the bypass will be considered and assessed in detail when development approval is sought.

Economic

RMS advised that the revised bypass route includes a more economically feasible route.

The existing and proposed bypass bisects Biophysical Strategic Agricultural Land (BSAL) and equine Critical Industry Cluster lands at either end of the bypass near where it will reconnect with the New England Highway. There are no significant anticipated impacts because of this new bypass on BSAL lands, nor on the economic viability of these lands.

Infrastructure

There is no funding of state infrastructure implications with this proposal.

CONSULTATION

Community

Council do not propose any specific community consultation requirements. While the proposal meets the requirement of what may be classified as low impact, given the significance of the bypass to the community, it is recommended that a 28 day exhibition period be determined.

Agencies

Council have not proposed any consultation with government agencies. The following agencies are to be consulted:

- NSW Department of Industry (Division of Resources and Energy) - 1.3 Mining, Petroleum Production and Extractive Industries
- NSW Rural Fire Service - 4.4 Planning for Bushfire Protection

TIME FRAME

Council identify in the project timeline a seven (7) month timeframe. This timeframe does not allow for any flexibility or delays, hence a nine (9) month timeframe for completion is considered appropriate.

LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the local plan-making authority, and this is supported as the proposal implements a state government agency request.

CONCLUSION

The planning proposal responds to a request by RMS to amend the existing bypass corridor boundaries to identify a more refined bypass corridor as a result of more detailed road design work. The proposal should proceed as submitted as it mapped the future bypass corridor with greater certainty.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. **agree** that any inconsistencies with section 9.1 Directions (1.2 Rural Zones and 1.5 Rural Lands) are justified in accordance with the terms of the Directions; and
2. In relation to section 9.1 Direction 6.2 Reserving Land for Public Purposes, **agree** to the change in reservation of land for public purposes on the basis that the changes are at the request of Roads and Maritime Services who is the relevant public authority.
3. **note** that the consistency with section 9.1 Directions 1.3 Mining, Petroleum Production and Extractive Industries and 4.4 Planning for Bushfire Protection is unresolved and will require agency consultation.

It is recommended that the delegate of the Minister for Planning, determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 28 days and include relevant and publicly available documentation from Roads and Maritime Services to provide additional context and justification of the chosen bypass route.
2. Consultation is required with the following public authorities:
 - NSW Department of Primary Industry (Division of Resources and Energy) – regarding section 9.1 Direction 1.3 Mining, Petroleum Production and Extractive Industries
 - NSW Rural Fire Service – regarding Section 9.1 Direction 4.4 Planning for Bushfire Protection
3. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
4. The time frame for completing the LEP is to be **9 months** from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council should be the local plan-making authority.



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