



**muswellbrook
shire council**

PLANNING PROPOSAL

Muswellbrook Local Environmental Plan 2009 Amendment No. 11

April 2014

Prepared by:

Muswellbrook Shire Council

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**Updated by Planning Infrastructure to include waste management Facility rezoning after RMS
withdrew its objection**

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P L A N N I N G P R O P O S A L

This Planning Proposal explains the intended effect of, and provides justification for the proposed amendment to Muswellbrook Local Environmental Plan (LEP) 2009. This planning proposal has been prepared in accordance with Section 55 of the Environmental Planning and Assessment Act 1979 and the NSW Department of Planning and Infrastructure guidelines.

PART 1 - OBJECTIVES OR INTENDED OUTCOMES

The objectives of this planning proposal are to amend Muswellbrook LEP 2009 to:

- (1) rezone and reclassify part of Lot 82 DP 262393 to facilitate the development of an aged care facility (Item 1)
- (2) correct mapping anomalies - split zoning (Item 2)
- (3) correct minor anomalies identified in the Land Use Table (Item 3)
- (4) rezone part of Lot 102 DP 578075 and part of Lot 1 DP 1149806 to allow development of a waste management facility (Item 4)
- (5) update relevant LEP maps affected from the above amendments

Below is a summary of the individual items being proposed in this planning proposal.

Item 1:

The need for an integrated aged care facility in Muswellbrook has been confirmed by Council and preliminary investigations identified a suitable site in 2009. Subsequently, the land known as “Brennan Park” (Lots 82 and 83 DP 262393) was identified and rezoned part Lot 82 and Lot 83 from RE1 Public Recreation to R1 General Residential and also reclassified part Lot 82 and Lot 83 from ‘public land’ to ‘operational land’ for the development of an aged care facility.

Limited information was available on the proposed aged care development at the time (such as the number of high/low care beds, the number of independent units for example). The dividing line that was drawn across Lot 82 to use one part for an aged care facility and the other part for public park was located as accurately as possible in accordance with the information available at that time.

A concept design for the site has now been developed, taking into account site constraints, demand factors, required facilities and site capacity. The concept plan indicates that the southern site boundary needs to be further expanded to accommodate the expected demand in a timely and staged manner. Accordingly, this planning proposal seeks to rezone a minor portion of Lot 82 from RE1 Public Recreation to R1 General Residential and to reclassify part of the Lot 82 from public land to operational land in line with the proposed zoning boundary, as shown in Part 4 - Map A.

Item 2:

Council has identified that an administrative amendment is required to Land Zoning Map Sheet LZN_005B to make an adjustment to the location of the zoning boundaries of the following lots.

- Lot 56 ALT DP 869289
- Lot 7 DP 999054
- Lot 8 ALT SEC 10 DP 758351

- Lot 1 DP 798331
- Lots 10, 11 and 12 SEC 10 DP 758351

This amendment proposes to remove split zoning from above lots by rezoning minor areas from RU1 Primary Production zone to RU5 Village zone to correct mapping anomaly as shown in Part 4 - MAP B.

Item 3:

Council has identified that an administrative amendment is required to the Land Use Table under the Part 2 of the MLEP 2009 to correct minor anomaly in RU1 Primary Production zone.

“Intensive plant agriculture” is currently listed as both “permitted with consent” and “permitted without consent” in the RU1 Primary Production under the MLEP 2009 Land Use Table. This amendment proposes to remove “Intensive plant agriculture” from “permitted with consent” in the RU1 Primary Production zone to correct a drafting error.

Item 4:

Council proposes to utilise an existing open cut mining void currently owned by the Muswellbrook Coal Company as a future landfill site and a Memorandum of Understanding was signed in 2010 on this between Muswellbrook Shire Council and Muswellbrook Coal Company.

The proposed landfill site covers part Lot 102 DP 578075 and part Lot 1 DP 1149806, which are currently zoned as E3 Environmental Management and RU1 Primary Production, respectively. Waste management facilities are prohibited within the E3 Environmental Management zone under the Muswellbrook LEP 2009. Therefore, Council proposes to rezone a part of the above lots to SP2 Infrastructure (Waste Management) with the intention to develop a waste management facility as shown in the attached maps.

PART 2 - EXPLANATION OF THE PROVISIONS

The amendment proposes the following changes to Muswellbrook LEP 2009 instrument and maps:

<i>Item No.</i>	<i>Amendment Applies To MLEP 2009:</i>	<i>Explanation of the Provision:</i>
Item_1	Land Zoning Map Sheet LZN_008A	Amend Land Zoning Map Sheet LZN-008A by rezoning minor area of Lot 82 DP 262393 from RE1 Public Recreation zone to R1 General Residential zone as shown in Part 4 - MAP A.
	Floor Space Ratio Map FSR_008A	Amend Floor Space Ratio Map FSR_008A to reflect maximum floor space ratio as 0.5: 1.
	Height of Building Map HOB_008A	Amend Height of Building Map HOB_008A to reflect maximum building heights as 8.5 metres.
	Land Reclassification (Part Lots) Map Sheet RPL_008A	Amend Land Reclassification (Part Lots) Map _008A to indicate part Lot 82 as operational land to comply with the Department’s Standard Instrument LEP mapping technical requirements.
	Schedule 4 Classification and reclassification of public land	Amend and update Schedule 4 Part 2 to reflect the above amendment.

Item No.	Amendment Applies To MLEP 2009:	Explanation of the Provision:
Item_2	Land Zoning Map Sheet LZN_005B	<p>Amend Land Zoning Map Sheet LZN-005B by rezoning minor areas of the following lots from RU1 Primary Production zone to RU5 Village zone as shown in Part 4 - MAP B.</p> <ul style="list-style-type: none"> - Lot 56 ALT DP 869289 - Lot 7 DP 999054 - Lot 8 ALT SEC 10 DP 758351 - Lot 1 DP 798331 - Lots 10, 11 and 12 SEC 10 DP 758351 <p>This will remove split zonings from the above lots to address this mapping discrepancy.</p>
	Floor Space Ratio Map FSR_005B	Amend Floor Space Ratio Map FSR_005B to reflect maximum floor space ratio as 0.5: 1.
	Height of Building Map HOB_005B	Amend Height of Building Map HOB_005B to reflect maximum building heights as 8.5 metres.
	Lot Size Map LSZ_005B	Amend Lot Size Map LSZ_005B to reflect minimum lot size as 750 square metres.
Item_3	Land Use Table RU1 Primary Production Zone	<p>This amendment proposes to remove “Intensive plant agriculture” from “permitted with consent” in the RU1 Primary Production zone to avoid duplication.</p> <p>This is an administrative error; “Intensive plant agriculture” is currently listed in both “permitted with consent” and “permitted without consent” under the MLEP 2009.</p>
	LEP maps	This amendment proposes to revise and update all relevant LEP maps in above Items 1, 2 and 3 to comply with the Department’s Standard Instrument LEP mapping technical requirements.
Item 4	Land Zoning Map Sheet LZN_008A	Amend Land Zoning Map Sheet LZN-008A by rezoning part Lot 102 DP 578075 from E3 Environmental Management zone and part Lot 1 DP 1149806 from RU1 Primary Production zone to SP2 Infrastructure (Waste Management).
	Height of Building Map HOB_008A	Amend Height of Building Map HOB_008A to reflect maximum building heights as 13 metres.
	Lot Size Map LSZ_008A	Amend Lot Size Map LSZ_008A and remove the minimum allotment size to be consistent with the Gateway determination

PART 3 - JUSTIFICATION FOR THE PROVISIONS

Section A - Need for the planning proposal

The amendments outlined in the planning proposal are not the result of a strategic study or report.

Item 1:

The need for an integrated aged care facility in Muswellbrook has been confirmed by Council and preliminary investigations identified a suitable site in 2009. Subsequently, the land known as “Brennan Park” (Lots 82 and 83 DP 262393) was identified and rezoned part Lot 82 and Lot 83 from RE1 Public Recreation to R1 General Residential and also reclassified part Lot 82 and Lot 83 from public land to operational land for the development of an aged care facility.

Limited information was available on the proposed aged care development at the time (such as the number of high/low care beds, the number of independent units for example). The dividing line that was drawn across Lot 82 to use one part for an aged care facility and the other part for public park was located as accurately as possible, informed by the most accurate information available at that time.

A concept design for the site has now been developed, taking into account site constraints, demand factors, required facilities and site capacity. The concept plan indicates that the southern site boundary needs to be further expanded to accommodate the expected demand in a timely and staged manner. Accordingly, this planning proposal seeks to rezone a minor portion of Lot 82 from RE1 Public Recreation to R1 General Residential and to reclassify part of the Lot 82 from public land to operational land.

A preliminary assessment indicates that approximately 131 hectares of land has been zoned as RE1 Public Recreation within Muswellbrook township as active and passive recreational purposes. In this context, it is considered that the recreational lands at Muswellbrook are surplus to needs. The proposed rezoning of open space land for residential purpose will result in the loss of 0.3% (0.4 hectare) of open space land currently zoned in Muswellbrook. Despite the RE1 Public Recreation zone, the subject part of the land is not used for recreational purposes due to its topography.

The amendment to the delineation between the land zones and classifications is consistent with the original intended use of the land and does not materially change the long standing established and accepted use of the land. The change will enable the efficient and sustainable development of a core community land use in the form of an aged care facility.

Item 2:

Council has identified that an administrative amendment is required to Land Zoning Map Sheet LZN_005B to make an adjustment to the location of the zoning boundaries of the following lots.

- Lot 56 ALT DP 869289
- Lot 7 DP 999054
- Lot 8 ALT SEC 10 DP 758351
- Lot 1 DP 798331
- Lots 10, 11 and 12 SEC 10 DP 758351

The subject properties are bounded by Sandy Creek to the west and a flood protection levee bank also runs across these properties. Amendment No. 15 of the Muswellbrook LEP 1985 was aimed to regularise land uses on/along the Denman levee bank. As a result of this amendment, approximately 40 properties located along the Sandy Creek were partially rezoned as 7(L1) Environmental Protection General L1 (Alluvial Areas).

Subsequently, when the Muswellbrook LEP 2009 introduced, the above split zoning was removed from the properties subject to the Amendment No 15, and controls were introduced to the Muswellbrook DCP to ensure protection and continuation of the Denman levee bank.

Muswellbrook DCP Section 13 - Flood Prone Land states that, minimum floor levels for all developments in the township of Denman protected by the levee shall be 107.25m AHD (Australian Height Datum). Where new buildings or additions are proposed within 40m of the existing levee a structural engineer's certificate shall be submitted with a construction certificate certifying that the proposed structure has been designed to withstand the flood pressures.

This amendment proposes to remove split zoning from the above lots by rezoning minor areas from RU1 Primary Production zone to RU5 Village zone to address minor mapping discrepancy.

Item 3:

Council has identified that an administrative amendment is required to the Land Use Table under the Part 2 of the MLEP 2009 to correct minor anomaly in RU1 Primary Production zone.

"Intensive plant agriculture" is currently listed as both "permitted with consent" and "permitted without consent" in the RU1 Primary Production under the MLEP 2009 Land Use Table. This amendment proposes to remove "Intensive plant agriculture" from "permitted with consent" in the RU1 Primary Production zone to address minor drafting error.

Item 4

Muswellbrook Shire Council operates, and is the authority responsible for, the management of the Muswellbrook Waste Management Facility which is located approximately 3km north east of the centre of Muswellbrook on Coal Road. The facility has been progressively used for landfilling and for resource recovery operations since 1993. Forecasts indicate that the current Muswellbrook landfill will reach its capacity in 2020.

Economic growth in the region has seen the amount of waste deposited each year grow considerably. With three adjacent shires approaching their landfill capacity there is the need for a sub-regional waste management facility. Muswellbrook Shire Council sees this as an opportunity to offer its current and proposed landfill as a way to meet this regional demand.

In this context, Council proposes to utilise an existing open cut mining void currently owned by the Muswellbrook Coal Company as a future landfill site and a Memorandum of Understanding was signed in 2010 between Muswellbrook Shire Council and Muswellbrook Coal Company.

The proposed landfill site covers part Lot 102 DP 578075 and part Lot 1 DP 1149806, which are currently zoned as E3 Environmental Management and RU1 Primary Production, respectively. Waste management facilities are prohibited within the E3 Environmental Management zone under the Muswellbrook LEP 2009. Therefore, Council proposes to rezone a part of the above lots to SP2 Infrastructure (Waste Management) with an intention to develop a sub-regional waste management facility as a State Significant Development. The new landfill proposal forms a logical extension to the existing waste management facility which is currently zoned as SP2 Infrastructure (Waste Management).

LEP map amendments:

Council has identified that maps including Land Zoning Map (LZN_008A, LZN_005B), Floor Space Ratio Map (FSR_005B), Height of Building Map (HOB_008A, HOB_005B), Lot Size Map (LSZ_008A, LSZ_005B) and Land Reclassification Map are required to amend and update as a result of the above Item 1 and Item 2 to comply with the Department's Standard Instrument LEP mapping technical requirements.

It is considered that the current planning proposal is the best means of achieving the desired outcomes as it will facilitate the development of a regional waste management facility and also an integrated aged care facility to service the needs of the local community.

Section B - Relationship to strategic planning framework

The Upper Hunter Strategic Regional Land Use Plan (UHSRLUP) is applicable to the Muswellbrook Local Government Area. None of the proposed amendments impact upon the objectives or strategies of the UHSRLUP.

The planning proposal is consistent with Council's Community Strategic Plan 2013-2023 and the following components of the plan are particularly relevant to this proposal:

Item 1:

The long term goals as specified in the plan are:

- Goal 3 - Our residents feel safe, secure and included in environments where they can connect socially and are supported by their neighbours
- Goal 14 - Advocate for aged services and facilities

The strategies to achieve this are:

- Advocate for the construction of a new and expanded aged care facility with the Shire
- Continue to provide community owned land at a subsidised rate to facilitate the construction of an enlarged facility

The location of proposed aged care facility and waste management facility has been also identified in Council's Land Use Development Strategy - Built Environment component (adopted by Council on 13 May 2013) for such uses.

Item 4:

The long term goals as specified in the plan are:

- Goal 4 - that our community infrastructure is appropriate, sustainable and well maintained
- Goal 19 - Invest in critical infrastructure

The strategies to achieve this are:

- Finalise investigations into acquisition of a new landfill void, and as required, secure approval to operate the landfill as an extension of the existing landfill
- Investigate opportunities to participate in regional or subregional cooperation in waste collection contracts

Consistency with applicable State Environmental Planning Policies:

An assessment of relevant SEPPs against the planning proposal is provided in the Table 1 below.

SEPP	RELEVANCE	CONSISTENCY AND IMPLICATIONS
SEPP 1 - Development Standards	The SEPP makes development standards more flexible. It allows councils to approve a development proposal that does not comply with a set standard where this can be shown to be unreasonable or unnecessary.	This does not apply to the Muswellbrook LGA as per Clause 1.9 (2) of the MLEP 2009.
SEPP 4 - Development without Consent and Miscellaneous Complying Development	The SEPP allows relatively simple or minor changes of land or building use and certain types of development without the need for formal development applications. The types of development covered in the policy are outlined in the policy.	This does not apply Clause 6 and Parts 3 and 4 to the Muswellbrook LGA as per Clause 1.9 (2) of the MLEP 2009.
SEPP 6 - Number of Storeys in a Building	The SEPP clarifies the reference to storey, floors and levels.	Nothing in this planning proposal affects the aims and provisions of this SEPP.
SEPP 21 - Caravan Parks	The SEPP provides for development for caravan parks.	Nothing in this planning proposal affects the aims and provisions of this SEPP.
SEPP 22 - Shops and Commercial Premises	The SEPP provides for the change of use of commercial premises.	Nothing in this planning proposal affects the aims and provisions of this SEPP.
SEPP 30 - Intensive Agriculture	The SEPP provides considerations for consent for intensive agriculture.	Nothing in this planning proposal affects the aims and provisions of this SEPP.
SEPP 32 - Urban Consolidation (Redevelopment of Urban Land)	The SEPP makes provision for the redevelopment of urban land suitable for multi-unit housing and related development.	Nothing in this planning proposal affects the aims and provisions of this SEPP.
SEPP 33 - Hazardous and Offensive Development	The SEPP provides considerations for consent for hazardous & offensive development.	Nothing in this planning proposal affects the aims and provisions of this SEPP.
SEPP 44 - Koala Habitat Protection	This SEPP applies to land across NSW that is greater than 1 hectare and is not a National Park or Forestry Reserve. The SEPP encourages the conservation and management of natural vegetation areas that provide habitat for koalas to ensure permanent free-living populations will be maintained over their present range.	Nothing in this planning proposal affects the aims and provisions of this SEPP.
SEPP 55 - Remediation of Land	This SEPP applies to land across NSW and states that land must not be developed if it is unsuitable for a proposed use because of	Items - 1, 2 & 4: None of the lands are known to contain contaminants. However, further

	contamination.	investigations will be necessary to support any future development of the subject sites. If the land is contaminated and requires remediation, Council is satisfied that the land will be remediated before the land is used for any subsequent development. This can be dealt with at Development Application stage.
SEPP 60 - Exempt and Complying Development	This SEPP aims to provide for exempt development and complying development in certain LGAs that have not provided for those types of development through a LEP.	This does not apply to the Muswellbrook LGA as per Clause 1.9 (2) of the MLEP 2009.
SEPP 64 - Advertising and Signage	The SEPP aims to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish.	Nothing in this planning proposal affects the aims and provisions of this SEPP.
SEPP 65 - Design Quality of Residential Flat Development	The SEPP relates to residential flat development across the state through the application of a series of design principles. Provides for the establishment of Design Review Panels to provide independent expert advice to councils on the merit of residential flat development.	Nothing in this planning proposal affects the aims and provisions of this SEPP.
Housing for Seniors or People with a Disability 2004	The SEPP aims to encourage provision of housing for seniors, including residential care facilities. The SEPP provides development standards.	Item 1 proposes to rezone a portion of part Lot 82 from RE1 Public Recreation to R1 General Residential with the intention to develop an aged care facility. It is considered that the additional aged care capacity facilitated by the proposal will provide a net community benefit while satisfies the site related requirements in Part 2 of this SEPP.
Building Sustainability Index: BASIX 2004	The SEPP provides for the implementation of BASIX throughout the State.	Nothing in this planning proposal affects the aims and provisions of this SEPP.
Mining, Petroleum Production & Extractive Industries 2007	The SEPP aims to provide proper management of mineral, petroleum and extractive material resources and ESD.	Nothing in this planning proposal affects the aims and provisions of this SEPP.
Major Development 2005	The SEPP defines certain developments that are major projects to be assessed under Part 3A of the Environmental Planning and Assessment Act 1979 and determined by the Minister for Planning. It also provides planning provisions for State significant sites. In addition, the SEPP identifies the council consent authority functions that may be carried out by Joint Regional Planning Panels (JRPPs) and classes of regional development to be determined by JRPPs.	Item 4 proposes to rezone part Lot 102 DP 578075 and part Lot 1 DP 1149806 to SP2 Infrastructure (Waste Management) with the intention to develop a regional waste management facility as a State Significant Development. It is considered that the proposed waste management facility will be assessed in accordance with the provisions of this SEPP.
Temporary Structures 2007	The SEPP aims to ensure that suitable provision is made for ensuring the safety of persons using temporary structures.	Nothing in this planning proposal affects the aims and provisions of this SEPP

Infrastructure 2007	The SEPP provides a consistent approach for infrastructure and the provision of services across NSW, and to support greater efficiency in the location of infrastructure and service facilities.	It is not proposed to include any provisions which would be inconsistent with the SEPP.
Rural Lands 2008	The SEPP aims to facilitate economic use and development of rural lands, reduce land use conflicts and provides development principles.	<p>Item 2 proposes to remove split zoning from Lot 56 ALT DP 869289, Lot 7 DP 999054, Lot 8 ALT SEC 10 DP 758351, Lot 1 DP 798331, Lots 10, 11 and 12 SEC 10 DP 758351 by rezoning minor areas from RU1 Primary Production zone to RU5 Village zone.</p> <p>The above rezoning will result in the loss of minor portion of land zoned for rural purposes.</p> <p>Item 4 proposes to rezone part Lot 1 DP 1149806 from RU1 Primary Production zone to SP2 Infrastructure for the development of a waste management facility.</p> <p>The proposed changes under this planning proposal are considered as minor significance and are considered to be consistent with the intent of this SEPP.</p>
Exempt and Comply Development Codes 2008	The SEPP provides exempt and complying development codes that have State-wide application, identifying, in the General Exempt Development Code, types of development that are of minimal environmental impact that may be carried out without the need for development consent; and, in the General Housing Code, types of complying development that may be carried out in accordance with a complying development certificate.	<p>Additional and supporting information to the MLEP 2009.</p> <p>Nothing in this planning proposal affects the aims and provisions of this SEPP.</p>
Affordable Rental Housing 2009	The SEPP provides for an increase in the supply and diversity of affordable rental and social housing in NSW.	Nothing in this planning proposal affects the aims and provisions of this SEPP

Consistency with applicable Ministerial Directions (s.117 directions):

An assessment of relevant S117 Directions against the planning proposal is provided in the Table 2 below.

DIRECTIONS	AIM OF DIRECTION	CONSISTENCY AND IMPLICATIONS
1 - Employment and Resources		
1.1 Business and Industrial Zones	Encourage employment growth in suitable locations, protect employment land in business and industrial zones, and support the viability of identified strategic centres.	Planning Proposal not affected by this direction.
1.2 Rural Zones	The objective of this direction is to protect the agricultural production value of rural land.	This direction applies to Items 2 & 4 of this planning proposal.

		<p>Item 2:</p> <p>6900m² of land proposed to be rezoned from RU1 Primary Production zone to RU5 Village zone to remove split zoning. It is not considered to be suitable for agricultural purposes due to its topography and also close proximity to the existing residential area.</p> <p>Item 4:</p> <p>This proposes to rezone part Lot 1 DP 1149809 from RU1 Primary Production to SP2 Infrastructure for the development of an access road for proposed waste management facility within Lot 102 DP 578075. It is proposed to rezone 1600m² of land this purposes.</p> <p>The subject land is currently not being used for any agricultural purposes and part of this land is also affected by the proposed by-pass corridor.</p> <p>The above amendments are considered of minor significance and its impacts to the rural zone also negligible.</p>
1.3 Mining, Petroleum Production and Extractive Industries	The objective of this direction is to ensure that the future extraction of State or regionally significant reserves coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.	<p>This direction applies to Item 4 of this planning proposal. It is proposed to utilise an open cut mining void as a future landfill site. The coal reserves within subject area had been extracted previously and remaining void is proposed to be used for above purpose.</p> <p>The proposal is not viewed to restrict the potential development of resources of coal or other extractive materials which are of State or regional significance. When consulted, the Department of Primary Industries raised no objection to this rezoning</p>
1.5 Rural Lands	The objective of this direction is to protect the agricultural production value of rural land and facilitate the economic development of rural lands for rural related purposes.	<p>This planning proposal affects land within an existing rural zone and applies to Item 2 & 4 of this planning proposal.</p> <p>Item 2:</p> <p>Item 2 proposes to remove split zoning from lots including Lot 56 ALT DP 869289, Lot 7 DP 999054, Lot 8 ALT SEC 10 DP 758351, Lot 1 DP 798331, Lots 10, 11 and 12 SEC 10 DP 758351. In total, 6900m² of land proposed to be rezoned from RU1 Primary Production zone to RU5 Village zone to remove split zoning. The above lots are considered to be suitable for agricultural purposes due to its topography and also close proximity to the existing residential area.</p> <p>Item 4:</p> <p>This amendment proposes to rezone a part Lot 1 DP 1149806 from RU1 Primary Production zone to SP2 Infrastructure for the development of an access road for proposed waste management facility within Lot 102 DP 578075. It is proposed to rezone 1600m² of land this purposes. Despite the RU1 Primary Production zoning, the subject land is not specifically used agricultural purposes in recent years. A part of this land is also affected by the proposed by-pass corridor.</p> <p>Any perceived inconsistencies with this direction are considered to be of minor significance.</p>
2 - Environment and Heritage		
2.1 Environment Protection Zones	The objective of this direction is to protect and conserve environmentally sensitive areas.	<p>This direction applies to Item 4 of this planning proposal.</p> <p>The proposed landfill site covers part Lot 102 DP 578075 which is currently zoned as E3 Environmental Management zone and the northern part of the Lot 102 is being identified as Terrestrial Biodiversity. It is proposed to rezone part of Lot 102 to SP2 Infrastructure (Waste Management) with the intention to develop a sub-regional</p>

		<p>waste management facility.</p> <p>It should be noted that the areas identified as Terrestrial Biodiversity within Lot 102 will be remained as E3 Environmental Management zone and only the existing mining void will be rezoned for proposed uses.</p> <p>Despite the current zoning as E3 Environmental Management of Lot 102, it currently exists as a void of an open cut mine and it is cleared of vegetation.</p> <p>For these reasons, it is considered the Item 4 of this planning proposal is justified. Further environmental protection outcomes will be considered as part of future development application stage.</p>
2.3 Heritage Conservation	The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	Planning proposal not affected by this direction.
2.4 Recreation Vehicle Areas	The draft LEP amendment does not enable land to be developed for the purpose of a recreation vehicle area (within the meaning of the Recreation Vehicles Act 1983).	Planning proposal not affected by this direction.
3 - Housing, Infrastructure and Urban Development		
3.1 Residential Zones	Encourage a variety and choice of housing types to provide for existing and future housing needs, make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and minimise the impact of residential development on the environment and resource lands.	<p>This direction applies to Items 1 and 2 of this planning proposal.</p> <p>Item 1:</p> <p>Item 1 seeks to rezone a minor portion of Lot 82 from RE1 Public Recreation to R1 General Residential and also to reclassify it from public land to operational land.</p> <p>Item 2:</p> <p>Item 2 proposes to remove split zoning from lots including Lot 56 ALT DP 869289, Lot 7 DP 999054, Lot 8 ALT SEC 10 DP 758351, Lot 1 DP 798331, Lots 10, 11 and 12 SEC 10 DP 758351 which are currently zoned as RU5 Village zone and RU1 Primary Production zone.</p> <p>Item 2 of planning proposal is considered to be consistent with the intent of this direction. Any perceived inconsistencies with this direction are considered to be of minor significance.</p>
3.2 Caravan Parks and Manufactured Home Estates	The objective of this direction is to provide for a variety of housing types, and provide opportunities for caravan parks and manufactured home estate.	Planning proposal not affected by this direction and it does not involve any caravan parks or manufactured home estates.
3.3 Home Occupations	The objective of this direction is to encourage the carrying out of low impact small businesses in dwelling houses.	Planning Proposal not affected by this direction.
3.4 Integrating Land Use and Transport	The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs subdivision and street layouts achieve the sustainable transport objectives.	The existing transport information meets the objectives of this direction and the proposal is not considered to have an adverse impact in regard to integrating land use and transport. This can be dealt with at development application stage.
3.5 Development near Licensed Aerodromes	The objectives of this direction to ensure the efficient and safe operation of aerodromes, ensure their operation is not compromised	Planning Proposal not affected by this direction.

	by incompatible future adjoining land uses	
3.6 Shooting Ranges	The objective of this direction is to maintain appropriate levels of public safety and amenity, reduce land use conflict and identify issues that must be addressed when rezoning land adjacent to an existing shooting range.	Planning Proposal not affected by this direction.
4 - Hazard and Risk		
4.1 Acid Sulphate Soils	The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulphate soils.	Planning Proposal not affected by this direction. There are no known sites relevant to this planning proposal which contain acid sulphate soils.
4.2 Mine Subsidence and Unstable Land	The objective of this direction is to prevent damage to life, property and the environment on land identified as unstable or potentially subject to mine subsidence.	Item 1 & 4: Item 1 and 4 are located within the Muswellbrook Mine Subsidence District. The Mine Subsidence Board were consulted and issues raised will be addressed at the development application stage.
4.3 Flood Prone Land	The objectives of this direction are to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and that the provisions of an LEP on flood prone land are commensurate with flood hazard and include consideration of the potential flood impacts both on and off the subject land.	This direction applies to Item 2 of this planning proposal and it is proposed to remove split zoning from lots including Lot 56 ALT DP 869289, Lot 7 DP 999054, Lot 8 ALT SEC 10 DP 758351, Lot 1 DP 798331, Lots 10, 11 and 12 SEC 10 DP 758351 in Palace Street Denman. The above properties are bounded by Sandy Creek to the west and flood protected levee bank also runs across these properties. In accordance with the Muswellbrook DCP Section 13 - Flood Prone Land, Minimum floor levels for all developments in the township of Denman protected by the levee shall be 107.25m AHD (Australian Height Datum). Where new buildings or additions are proposed within 40m of the existing levee a structural engineer's certificate shall be submitted with a construction certificate certifying that the proposed structure has been designed to withstand the flood pressures, including debris and buoyancy forces, imposed in the event of an adjacent levee failure. Overall, the proposal is considered consistent with the direction as it does not permit a significant increase in development on land that is likely to be subject to flooding. This aims to correct mapping anomalies and any inconsistency with this direction is justified and of minor significance.
4.4 Planning for Bushfire Protection	The objectives of this direction are to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, to encourage sound management of bush fire prone areas.	This direction applies to the Item 4 of this planning proposal as the subject site is recognized as bush fire prone land and any development of the land will require appropriate fire protection assessment prior to such development of the land. The NSW Rural Fire Services were consulted and issues raised can be dealt with at development application stage.
5 - Regional Planning		
5.1 Implementation of Regional Strategies	The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.	Planning proposal not affected by this direction.

6 - Local Plan Making		
6.1 Approval and Referral Requirements	The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	Planning Proposal not affected by this direction.
6.2 Reserving Land for Public Purposes	The objectives of this direction are to facilitate the provision of public services and facilities by reserving land for public purposes, and facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.	<p>This direction applies to Item 1 of the planning proposal. It proposes to rezone minor portion of Lot 82 DP 262393 (approximately 4000 sq.m.) from RE1 Public Recreation to R1 General Residential and reclassify it from public land to operational land with the intention to develop an integrated aged care facility in Muswellbrook.</p> <p>Despite the open space zoning, the subject part of the land is not used for public recreation purposes. It is considered that the additional aged care capacity facilitated by the proposal will provide a net community benefit.</p> <p>Item 1 is considered as minor significance and is considered to be consistent with the intent of this direction.</p>
6.3 Site Specific Provisions	The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.	Planning Proposal not affected by this direction.
7 - Metropolitan Planning		
<i>No directions in this section apply to this planning proposal.</i>		

The above table outlines whether the proposed items are consistent with the S.117 Directions, and a number of inconsistencies were identified. However, it is considered that the inconsistencies are of minor significance and it has been demonstrated that the objectives of each relevant direction can be satisfied.

The Gateway determination issued by the Minister's delegate on 18 December 2013 agreed that the planning proposal's inconsistencies with S117 Directions 1.2 Rural Zones, 2.1 Environment Protection Zones and 4.3 Flood Prone Land are of minor significance. In respect to Direction 6.2 Reserving Land for Public Purposes, I approve the rezoning of RE1 Public Open Space to R1 General Residential. No further approval is required in relation to these Directions.

Section C - Environmental, social and economic impact

Item 1:

4000m² of land proposed to be rezoned and classified from RE1 Public Recreation zone to R1 General Residential zone and public land to operational land respectively with the intention to development of an aged care facility.

It is considered that the additional aged care capacity facilitated by the proposal will provide a net community benefit. The rezoning and reclassifications will enable the land to be sold and provide for the proceeds of the sale to be reinvested into more benefit to the public.

The planning proposal is considered unlikely to result in any adverse social or economic impacts. The construction of a contemporary and larger aged care facility will have a net social and economic benefit for the Muswellbrook LGA. Further, it is unlikely that critical habitat or threatened species, populations or ecological communities or their habitat will be adversely affected by the proposal

Item 2 and 3:

No adverse environmental effects are anticipated as a result of the above LEP administrative amendments. The administrative amendments assist the community to correctly identify land zones, land uses permitted and prohibited in zones within the LGA. Further, the proposed land uses are similar in nature to the existing adjoining land use, therefore it is not anticipated that any adverse social or economic effects will be generated by the above amendments proposed.

In summary, no significant adverse social, economic or environmental impacts have been identified as likely to result due to the proposal.

Item 4

The new landfill proposal forms a logical extension to the existing landfill site and also will form part of a coordinated delivery of resource recovery and waste management within Muswellbrook and Upper Hunter region as a way to meet the regional demand while diversifying local economic base.

The proposed regional scale waste management facility is likely to result in the creation of additional jobs which will have positive flow-on social and economic effects for the local community.

The site is currently remained as an open cut coal mine void and it is cleared of vegetation. It is unlikely that critical habitat or threatened species, populations or ecological communities or their habitat will be adversely affected by the proposal.

Section D - State and Commonwealth Interests

Item 1 and 2:

The proposed minor changes to the zoning boundary will not impact on existing infrastructure. It is considered that there is adequate capacity within the existing infrastructure to accommodate the proposed changes in land use.

Item 3:

Due to the minor and administrative nature of this amendment, it does not require any increase in the public infrastructure.

Item 4:

The proposed amendments under this planning proposal are not expected to require significant upgrades to existing public infrastructure in the locality.

In accordance with the Gateway Determination dated 18 December 2013, the planning proposal and supporting documents were referred to the following public authorities for their comments.

- NSW Department of Primary industries
- NSW Rural Fire Service
- Mine Subsidence Board
- Environmental Protection Agency
- Roads & Maritime Services

A total of six (6) submissions were received in response to referral of the planning proposal during the January/February 2014 period. The issues/concerns raised in the submissions received are summarised, addressed and attached as Appendix A .

It is noted that none of the above agencies were raised concerns in relation to the public infrastructure.

RMS originally raised concerns about access to the proposed waste management facility in proximity to the proposed Muswellbrook bypass. In response, Council resolved to discontinue this part of the planning proposal and prepare a new planning proposal. After further discussions, RMS advised on the 10 March 2014 that it did not object to the proposed rezoning for the waste management facility. In the circumstances, it is considered reasonable to continue with the item 4 as part of this planning proposal because the concerns initially raised by RMS have been resolved. Also, the preparation of a new Planning Proposal is a waste of Council's resources. Council agreed to proceed with the planning proposal in accordance with the Gateway determination issued on 18 December 2013.

PART 4 - MAPPING

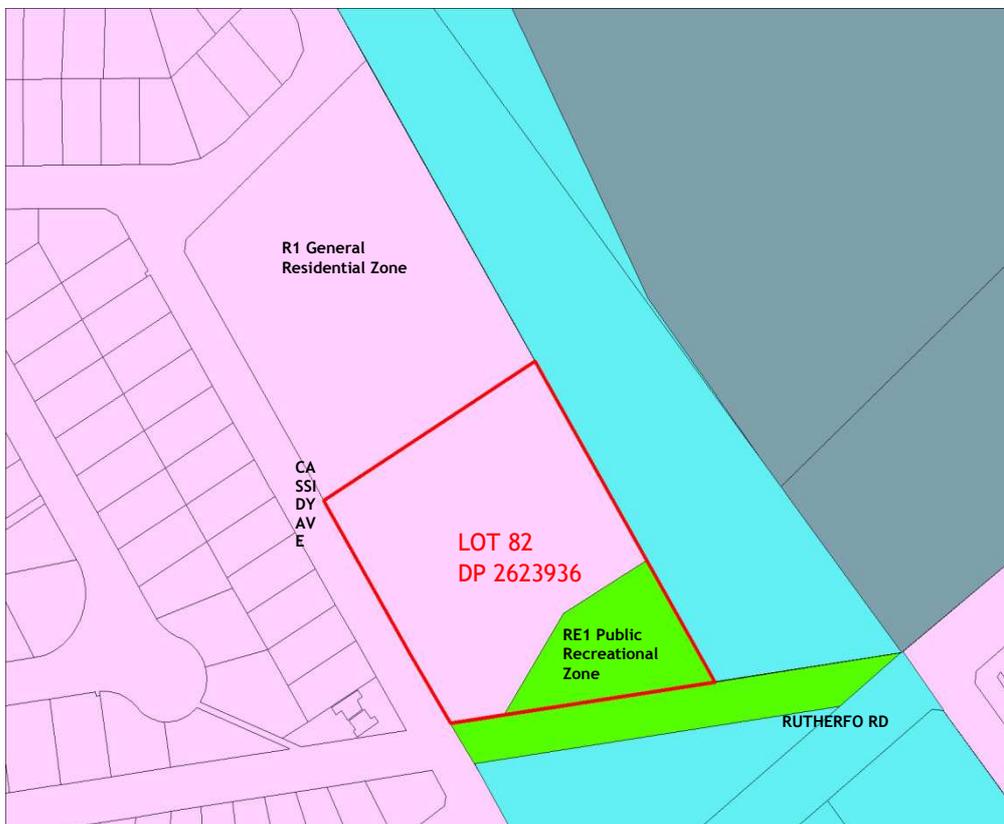
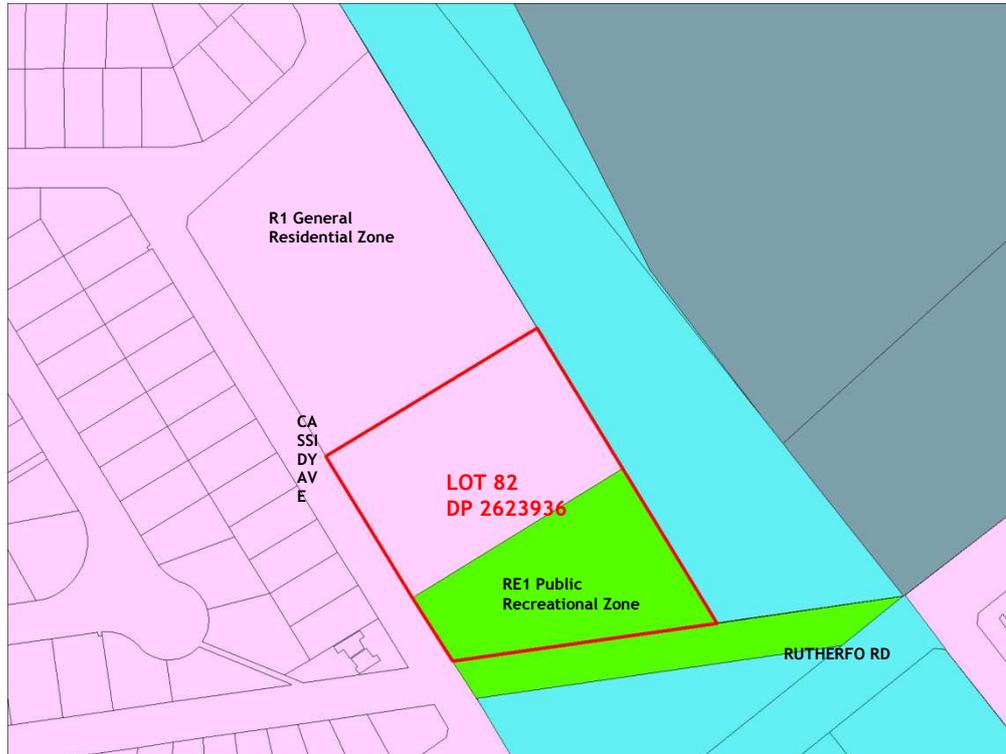
To achieve the intent of the planning proposal, it is proposed to amend the following LEP maps. Council requests the Department to assist with the preparation of the mapping associated with the proposed amendments to comply with the Department's Standard Instrument LEP mapping technical requirements. The Map Cover Sheet being prepared by planning's GIS team will provide the correct map identification numbers and dates.

Map Sheet	Map Identification Number
Land Zoning Map	
LZN_005B	5650_COM_LZN_005B_020_
LZN_008A	5650_COM_LZN_008A_020_
Floor Space Ratio Map	
FSR_005B	5650_COM_FSR_005B_020_
FSR_008A	5650_COM_FSR_008A_020_
Height of Buildings Map	
HOB_005B	5650_COM_HOB_005B_020_
HOB_008A	5650_COM_HOB_008A_020_
Lot Size Map	
LSZ_005B	5650_COM_LSZ_005B_020_
LSZ_008A	5650_COM_LSZ_008A_020_
Land Reclassification Map	
RPL_008A	5650_COM_RPL_008A_020_

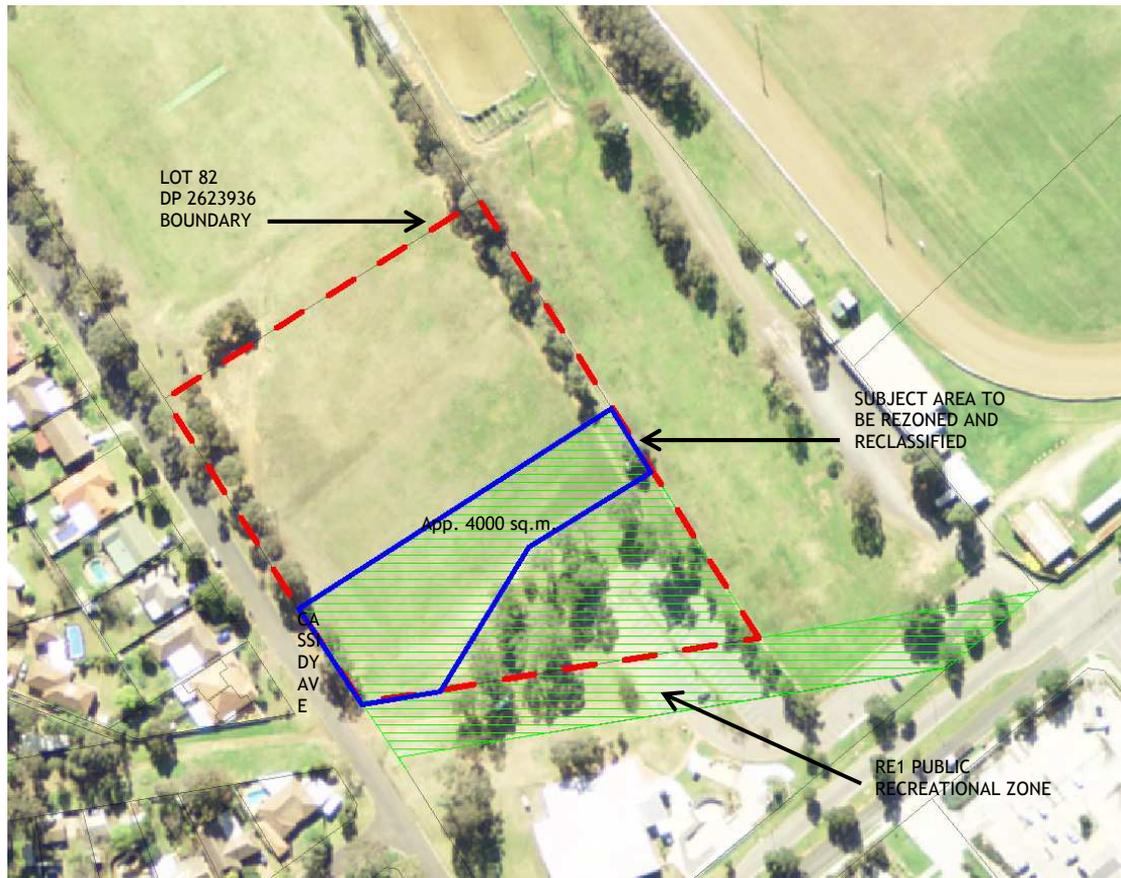
MAP A: MLEP 2009 Land Zoning Map Sheet LZN-008A

Item 1

(a) - Current Land Zoning Map Sheet LZN-008A (part) - Muswellbrook



(c) - Aerial photography



Item 2

MAP B: MLEP 2009 Land Zoning Map Sheet LZN-005B

(a) - Current Land Zoning Map Sheet LZN-005B (part) - Denman



(b) - Proposed Land Zoning Map Sheet LZN-005B (part) - Denman



Note: Owners' consent is attached as appendix C.

PART 5 - COMMUNITY CONSULTATION

The Gateway Determination dated 18 December 2013 specified that the planning proposal must be publicly exhibited for a minimum 14 days and must comply with the section 5.5.2 of 'A guide to preparing local environmental plans' (Department of Planning & Infrastructure 2013).

In accordance with determination the following action has been undertaken;

- Amended planning proposal to inclusion of a reclassification map
- The planning proposal and supporting documents were placed on public exhibition from 10 January 2014 to 24 January 2014.
- The public notices were placed in the three local newspapers and on Council's website.
- Affected and surrounding properties were notified (where applicable).
- The documents were available for inspection at Council's Administration Centre and Muswellbrook and Denman libraries.
- A public hearing was conducted on 18 February 2014.
- The planning proposal was referred to the relevant public authorities for comment.

A total of six (6) submissions were received in response to referral of the planning proposal during the January/February 2014 period. The issues/concerns raised in the submissions received are summarised, addressed and attached as Appendix A.

A report regarding the public hearing has been prepared by Mr Fletcher and is attached as Appendix B.

PART 6 - PROJECT TIMELINE

Task	Proposed timeframe						
	Dec'13	Jan'14	Feb'14	Mar'14	Apr'14	May'14	Jun'14
Issue of Gateway Determination							
Update planning proposal according to the Gateway conditions							
Preparation of draft maps for exhibition							
Report to Council for public exhibition							
Exhibition of planning proposal							
Public hearing							
Review of submissions							
Report to Council following exhibition							
Commence legal drafting of the instrument and making of draft LEP.							
Gazettal of the LEP Amendment							

Appendices:

Appendix A - Summary of submissions received from public authorities

Appendix B - Report on Public Hearing (attached separately)

Appendix C - Muswellbrook Coal Company Owner's Consent

Appendix A: Summary of submissions received from public authorities

<i>Submission</i>	<i>Comments</i>	<i>Planning Response</i>
NSW Department of Primary industries	<ul style="list-style-type: none"> ▪ Supports the amendments proposed for the Muswellbrook LEP 2009. ▪ DPI would like to Council to be aware for Item 3 (changing the split zoning) that there be no additional increase in riparian rights for this amendment. 	<ul style="list-style-type: none"> ▪ Noted. ▪ There is no additional increase in riparian rights as a consequence of the proposed amendment.
NSW Department of Primary Industries Office of Water	<ul style="list-style-type: none"> ▪ No objection to the proposed amendments. ▪ Council is advised to liaise with the Office of Water with regards to licensing and approval requirements for the proposed waste management facility as the development progresses. 	<ul style="list-style-type: none"> ▪ Noted. ▪ Noted. This matter has been referred to Council's Community Infrastructure Department for future consideration and follow-up.
NSW Department of Trade and Investment, Regional Infrastructure and Services Mineral Resources Branch (MRB)	<p><u>Item 1</u></p> <ul style="list-style-type: none"> ▪ The area to be rezoned (part Lot 82 DP 262393) overlies the same Early to Late Permian Branxton Group and Early Permian Greta Coal Measures stratigraphy and is not covered by a current coal title. <p>MRB has no issues or concerns in regard to the proposed amendments to the Muswellbrook LEP 2009.</p> <p><u>Item 4</u></p> <ul style="list-style-type: none"> ▪ The area to be rezoned (part Lot 102 DP 578075 and part Lot 1 DP 1149806) overlies Early to Late Permian Branxton Group stratigraphy and Early Permian Greta Coal Measures. 	<ul style="list-style-type: none"> ▪ Noted. ▪ Planning proposal has been referred to the MSB and their comments are addressed in below. ▪ Noted.

	<ul style="list-style-type: none"> ▪ This area is covered by Muswellbrook Coal mining titles ML 1562 and CCL713. ▪ As the subject area is covered by the Muswellbrook Mine Subsidence District, the Mine Subsidence Board (MSB) should be consulted in regards to the proposal. 	Noted
Mine Subsidence Board (MSB)	<p><u>Item 2</u></p> <ul style="list-style-type: none"> ▪ The development is not located within the Mine Subsidence District and is not subject to any restrictions imposed by the MSB. <p><u>Items 3 and 4</u></p> <p>The MSB doesn't oppose this matter.</p> <p><u>Item 4</u></p> <ul style="list-style-type: none"> ▪ This site is not directly undermined and it falls within the angle of draw for both the St Heliers and Lower Lewis seam. ▪ MSB will require all final drawings to be submitted prior to commencement of construction, contain a certification by a qualified structural engineer; to the effect that any improvement constructed meet the specifications of such final drawings will be safe, serviceable and repairable taking into account the geotechnical conditions on the site including abandoned mine workings located within the angle of draw and any uncontrolled filling of the open cut mine excavation. 	<ul style="list-style-type: none"> ▪ Noted. ▪ Noted. ▪ Noted. ▪ Further consultation will be carried out as necessary at the detailed design and development application stage.
NSW Rural Fire Service	<ul style="list-style-type: none"> ▪ No objection to the proposal in principle. ▪ Item 4 - Lot 102 DP 578075 is mapped a bushfire prone land. Future development of the site as a waste management facility should consider the aims and objectives of <i>Planning for Bushfire Protection 2006</i>. 	<ul style="list-style-type: none"> ▪ Noted. ▪ Council will consider the aims and objectives of <i>Planning for Bushfire Protection 2006</i> in developing this land.
Roads & Maritime Services (RMS)	<ul style="list-style-type: none"> ▪ No objections or requirements for the rezoning of Lot 82 DP 262393 to facilitate the development of an aged care facility or the rectification of the mapping anomalies. ▪ It is noted that Lot 102 DP 578075 and Lot 1 DP 1149806 are within the study area for the proposed Muswellbrook by-pass. RMS has received advice that there have been some changes to the proposed design for Muswellbrook bypass which may have significant impact on these lots. It is therefore recommended that Council arrange a meeting with RMS to discuss the likely impact of these design changes on the subject parcels of land prior to rezoning. 	<ul style="list-style-type: none"> ▪ Noted. ▪ A meeting was held on 24 February 2014 with the RMS to discuss this matter . ▪ During the meeting, RMS indicated their in principle support to the proposed landfill site, but raised concerns on proposed access to the landfill site. ▪
Roads & Maritime Services (RMS) Letter dated 10 March 2014	<ul style="list-style-type: none"> ▪ RMS advised that it did not object to the proposed rezoning for the waste management facility. RMS advised that it is currently investigating alternative route options for this bypass, and any realignment may require amendments to the existing LEP corridor. After final route selection, and as part of the concept design process, the proposed access road between the existing and proposed waste facilities may also need to be relocated and rezoned accordingly in the LEP amendment. 	<ul style="list-style-type: none"> ▪ In the circumstances, it is considered reasonable to continue with the item 4 as part of this planning proposal because the concerns initially raised by RMS have been satisfactorily resolved.

Appendix B - Report on Public Hearing (attached separately)

Appendix c - Owner's consent



MUSWELLBROOK COAL COMPANY LIMITED

A.C.N. 000 009 521

ABN 32 000 009 521

Established 1907

REGISTERED OFFICE
Level 28 AMP Place
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File:

10th October 2013

Pathum Gunasekara
Strategic Planner
Muswellbrook Shire Council
PO Box 122
Muswellbrook NSW 2333

Dear Pathum,

Re:- Proposed Rezoning of part Lot 102 DP 578075 and part Lot 1 DP 1149806

In response to your email on the 20th September 2013 in regard to Muswellbrook Shire Council (MSC) rezoning of part Lot 102 DP 578075 and part Lot 1 DP 1149806 to facilitate the use of an open cut mining void currently owned by the Muswellbrook Coal Company (MCC) as a future landfill site, MCC has no objection and consents to the rezoning under the following conditions:-

- The rezoning is carried out in accordance with the attached plan of subdivision and rezoning diagram provided by MSC.
- The land remains rated as per the existing zonings until the land has been subdivided and transferred to council
- MCC does not incur any additional cost for the subdivision as a result of the rezoning.

Please advise if these conditions are acceptable to MSC.

Yours faithfully

John Furner

General Manager