

Muswellbrook Local Environmental Plan 2009 (Miscellaneous Spot Rezoning) - Waste Management Facility, Aged Care Facility, Removal of split zones and RU1 Land Use table amendment

Proposal Title :	Muswellbrook Local Environmental Plan 2009 (Miscellaneous Spot Rezoning) - Waste Management Facility, Aged Care Facility, Removal of split zones and RU1 Land Use table amendment		
Proposal Summary :	The Planning Proposal aims to make the following amendments to the Muswellbrook LEP 2009:- 1. rezone 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). It will also amend the height of building and minimum lot size maps. 2. Rezone part of Lot 82 DP 262393 from RE1 Public Recreation zone to R1 General Residential. It will also amend the height of building and floor space ratio maps. The part being rezoned R1 Residential will also be reclassified from community to operational lands. 3. Rezone 7 properties from part RU1 Primary Production zone to entirely RU5 Village zone to remove the split zone. It will also amend height of building, floor space ratio and minimum lot size maps to be consistent with the adjoining urban zone. 4. Amend the RU1 Land Use Table to make "Intensive plant agriculture" permitted without consent. "Intensive plant agriculture" is currently permitted both without consent and permitted with consent under the MLEP 2009.		
PP Number :	PP_2013_MUSWE_002_00	Dop File No :	13/16123

Proposal Details

Date Planning Proposal Received :	03-Dec-2013	LGA covered :	Muswellbrook
Region :	Hunter	RPA :	Muswellbrook Shire Council
State Electorate :	UPPER HUNTER	Section of the Act :	55 - Planning Proposal
LEP Type :	Housekeeping		

Location Details

Street :	Item 1, 2 & 3		
Suburb :	Various properties	City :	Muswellbrook LGA
		Postcode :	2333
Land Parcel :	Item 1 - Part lot 102 DP 578075 and part Lot 1 DP 1149806, Item 2 - Part Lot 82 DP 262393 & Item 3 Part Lot 56 ALT DP 869289, Part Lot 7 DP 999054, Part Lot 8 ALT SEC 10 DP 758351, Part Lot 1 DP 798331 & Part Lots 10, 11 and 12 SEC 10 DP 758351		

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DoP Planning Officer Contact Details

Contact Name : Trent Wink
Contact Number : 0249042716
Contact Email : trent.wink@planning.nsw.gov.au

RPA Contact Details

Contact Name : Pathum Gunasekara
Contact Number : 0265493860
Contact Email : Pathum.Gunasekara@muswellbrook.nsw.gov.au

DoP Project Manager Contact Details

Contact Name :
Contact Number :
Contact Email :

Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	N/A	Consistent with Strategy :	
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment :

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment :

Supporting notes

Internal Supporting Notes : **Item 1 - The planning proposal aims to amend the minimum lot size map from 80ha to 600sm. Council should be advised that the preference is to remove the minimum lot size for the land being rezoned SP2 Infrastructure (Waste Management) to facilitate the future subdivision of the Waste Facility (approximately 32ha).**

External Supporting Notes :

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Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : The statement of objectives indicates that the planning proposal seeks to rezone a number of properties and to correct an administrative error in the RU1 Land Use Table which currently permits "Intensive plant agriculture" both with consent and without consent.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : The explanation of provisions outlines the proposed amendments to the Muswellbrook LEP 2009. The proposed amendments are considered acceptable, except for part of item no.1, which intends to amend the minimum lot size map from 80ha to 600sqm. Council should be advised to remove the minimum lot size requirement for the land being rezoned SP2 Infrastructure (Waste Management) to facilitate the future subdivision of the Waste Facility (approximately 32ha). Subdivision will be permitted with consent under clause 2.6 of the Muswellbrook LEP 2009.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.2 Rural Zones

1.3 Mining, Petroleum Production and Extractive Industries

1.5 Rural Lands

2.1 Environment Protection Zones

3.1 Residential Zones

4.2 Mine Subsidence and Unstable Land

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

6.2 Reserving Land for Public Purposes

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 55—Remediation of Land

SEPP (Housing for Seniors or People with a Disability) 2004

e) List any other matters that need to be considered :

Have inconsistencies with items a), b) and d) being adequately justified?

If No, explain :

SEPP No 55—Remediation of Land

Comment: Council has formed the opinion that none of the lands are known to contain contaminants. However, further assessment will be undertaken as part of any future development applications.

SEPP (Housing for Seniors or People with a Disability) 2004 - Item 2 rezones land from RE1 Public Recreation to R1 General Residential for an aged housing development. Consistency with this SEPP will be assessed as part of a future development application.

State Environmental Planning Policy (State and Regional Development) 2011 - Item 1 rezones land for a future Waste Management Facility. It is likely to be categorised as a State Significant Development under this SEPP.

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Minister's s117 Directions

1.2 Rural Zones

Comment: Item 1 is consistent with this Direction because it rezones rural land to SP2 Infrastructure for a future waste management facility.

Item 3 is inconsistent with this direction by rezoning 6900sm of land zoned RU1 Primary Production to RU5 Village to remove the split zoning. It is recommended that the D-G's delegate approve this inconsistency as a matter of minor significance because the land has limited agricultural potential and is under fragmented ownership.

1.3 Mining, Petroleum Production and Extractive Industries

Comment: Council should consult the Department of Primary Industries - Minerals and Petroleum about this planning proposal because it is rezoning rural and environmental lands that may restrict the potential development of resources.

1.5 Rural Lands

Comment: The planning proposal is considered consistent with this Direction and the Rural Planning Principles listed in SEPP (Rural Lands) 2008 because the rural and environmental lands being rezoned have only limited agricultural potential. Item 1 rezones land previously an open cut mine from E3 Environmental Management to SP2 Infrastructure to permit the future development of a Waste Management Facility. Item 3 rezones rural land which is in fragmented ownership, has limited agricultural potential and adjoins an existing urban area.

2.1 Environment Protection Zones

Comment: Item 1 is inconsistent with this direction because it rezones land from E3 Environmental Management to SP2 Infrastructure (Waste Management). It is recommended that the D-G's delegate approve this inconsistency as a matter of minor significance because the land consists of an open cut mining void and does not contain any significant vegetation.

3.1 Residential Zones

Comment: The planning proposal (item 2 & 3) is consistent with this direction.

4.2 Mine Subsidence and Unstable Lands

Comment: Council should consult the Mine Subsidence Board because item 1 & 3 are located within the Mine subsidence District.

4.3 Flood Prone Land

This direction is relevant to Item 3 which rezones flood prone land from RU1 Primary Production to RU5 Village to remove the split zoning. It is recommended that the D-G's delegate approve this inconsistency as a matter of minor significance because it does not permit a significant increase in development on flood prone land. Furthermore, any future dwellings will be located on the higher land currently zoned RU5 Village and built above the flood planning level of 107.25m AHD, which is consistent with the Floodplain Development Manual 2005.

4.4 Planning for Bushfire Protection

Comment: Item 1 rezones bushfire prone land for a future waste management facility. Council needs to consult with the NSW Rural Fire Service before undertaking community consultation to satisfy the requirements of Direction 4.4 Planning for Bushfire Protection.

6.2 Reserving Land for Public Purposes

Comment: Item 2 rezones approximately 4000sm of land from RE1 Public Recreation to R1 General Residential with the intention to develop an aged care facility in Muswellbrook. Council previously rezoned the majority of the site to R1 General Residential under Amendment No.1 to Muswellbrook LEP 2009. Council advises that there is 131ha of land zoned as RE1 Public Recreation within the Muswellbrook

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township, which is considered sufficient for active and passive recreation purposes. It is recommended that the Director General's delegate approves the rezoning of RE1 Public Open Space.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : The Dept's GIS team has prepared exhibition maps for Council

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : Council proposes a 14 day exhibition period, which is supported

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : The Muswellbrook Comprehensive LEP was gazetted on 17 April 2009

Assessment Criteria

Need for planning proposal : **Yes. The preparation of a Planning Proposal is the most appropriate mechanism to investigate whether the proposed amendments should proceed.**

Item 1 Council's existing Waste Management Facility is expected to reach capacity in 2020. A Memorandum of Understanding was signed between Council and the Muswellbrook Coal Company in 2010 to investigate the potential of developing another waste management facility in close proximity to its existing facility.

Item 2 Council previously rezoned the majority of the site "Brennan Park" to R1 General Residential under Amendment No.1 to Muswellbrook LEP 2009 for the potential development of an aged care facility. This planning proposal aims to rezone an additional 4000sm to accommodate the concept plan which has been developed to take into account the site constraints and required facilities. Council advises that there is 131ha of land zoned as RE1 Public Recreation within the Muswellbrook township, which is considered sufficient for active and passive recreation purposes. The land being rezoned residential also needs to be reclassified to operational lands.

Item 3 The planning proposal rezones 7 properties from part RU1 Primary Production zone to entirely RU5 Village zone to remove the split zone. The SI LEP removed the split zoning for approximately 30 properties along Sandy Creek and introduced DCP controls for the protection of the Levee bank. The removal of the split zone for the remaining 7 properties was overlooked and is consistent with the earlier approach. Future dwellings will be

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constructed on the higher land currently zoned RU5 Village and built above the flood planning level of 107.25m AHD, which is consistent with the Floodplain Development Manual 2005.

Item 4. The planning proposal amends the RU1 Land Use Table to make "Intensive plant agriculture" permitted both without consent. "Intensive plant agriculture" is currently permitted without consent and permitted with consent under the MLEP 2009.

Consistency with strategic planning framework :

The proposed amendments are considered consistent with the Upper Hunter strategic Land Use Plan and Council's Community Strategic Plan 2013-2023.

Environmental social economic impacts :

Environmental Impacts

The planning proposal should not result in unacceptable environmental impact. Item 1 rezones land from E3 Environmental Management to SP2 Infrastructure (Waste Management) for the future development of a waste management facility. The area being rezoned consists of an open cut mining void and does not contain any significant vegetation.

Social and Economic Impacts

The development of a waste management and an aged care facility should have positive social and economic benefits.

Assessment Process

Proposal type : **Minor** Community Consultation Period : **14 Days**

Timeframe to make LEP : **6 months** Delegation : **DG**

Public Authority Consultation - 56(2)(d) : **NSW Department of Primary Industries - Minerals and Petroleum
Mine Subsidence Board
NSW Rural Fire Service**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

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Documents

Document File Name	DocumentType Name	Is Public
Muswellbrook Planning Proposal 06.12.2013.pdf.pdf	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.2 Rural Zones
- 1.3 Mining, Petroleum Production and Extractive Industries
- 1.5 Rural Lands
- 2.1 Environment Protection Zones
- 3.1 Residential Zones
- 4.2 Mine Subsidence and Unstable Land
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 6.2 Reserving Land for Public Purposes

Additional Information :

It is recommended that:

1. The Planning Proposal be supported.
2. Council is to remove the minimum lot size (leave blank) for the land being rezoned SP2 Infrastructure (Waste Management) to facilitate the future subdivision of the Waste Facility from the rural residue.
3. Council is to exhibit a reclassification information map with the planning proposal to identify the land being reclassified from Community to Operational lands.
4. Community consultation is required under section 56(2)(c) and 57 of the Environmental Planning & Assessment Act 1979 ('EP&A' Act) as follows:
 - (a) the Planning Proposal be made publicly available for 14 days;
 - (b) the relevant authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be publicly available along with planning proposals as identified in section 4.5 of A guide to preparing LEPs (Department for Planning 2009).
5. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:
 - Rural Fire Service
 - NSW Department of Primary Industries - Minerals and Petroleum
 - Mine Subsidence Board

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.
6. The Director General (or delegate) approves the minor inconsistencies with the Minister's S117 Direction 1.2 Rural Zones, 2.1 Environment Protection Zones and 4.3 Flood Prone Land as matters of minor significance.
7. The Director General (or delegate) approves the rezoning of RE1 Public Open Space under the S117 Direction 6.2 Reserving Land for Public Purposes.
8. A public hearing is not required to be held into the matter by any person or body under

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section 56(2)(e) of the EP& A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing.

9. The timeframe for completing the LEP is 6 months from the date of the Gateway Determination.

Note: Council has requested delegations to exercise the Minister's plan making functions under the EPAA 1979. However, this is not appropriate because the planning proposal (Item 2) involves the reclassification of community land and requires the Governor's approval because Council advises that its interests in the land will change.

Supporting Reasons :

Item 1 The planning proposal aims to amend the minimum lot size map from 80ha to 600sm. Council should be advised to remove the minimum lot size for the land being rezoned SP2 Infrastructure (Waste Management) to facilitate the future subdivision of the Waste Facility (approximately 32ha) from the rural residue.

Signature:



Printed Name:

KO'FLAHERTY

Date:

17-12-13