



**muswellbrook  
shire council**

# **PLANNING PROPOSAL**

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**Muswellbrook Local Environmental Plan 2009 Amendment No. 11**

**DECEMBER 2013**

Prepared by:

**Muswellbrook Shire Council**

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# PLANNING PROPOSAL

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**

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

- (1) rezone part of Lot 102 DP 578075 and part of Lot 1 DP 1149806 to allow development of a waste management facility (Item 1)
- (2) rezone and reclassify part of Lot 82 DP 262393 to facilitate the development of an aged care facility (Item 2)
- (3) correct mapping anomalies - split zoning (Item 3)
- (4) correct minor anomalies identified in the Land Use Table (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:**

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 Part 4 - Map A.

### **Item 2:**

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 B.

**Item 3:**

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 C.

**Item 4:**

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.

## 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 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) as shown in Part 4 - MAP A.
	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 to reflect minimum lot size as 600 square metres.
Item_2	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 B.
	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 Map	Amend Land Reclassification Map (part lots) _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_3	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 C.</p> <ul style="list-style-type: none"> <li>- Lot 56 ALT DP 869289</li> <li>- Lot 7 DP 999054</li> <li>- Lot 8 ALT SEC 10 DP 758351</li> <li>- Lot 1 DP 798331</li> <li>- Lots 10, 11 and 12 SEC 10 DP 758351</li> </ul> <p>This will remove split zonings from the above lots to address this mapping discrepancy.</p>

<b>Item No.</b>	<b>Amendment Applies To MLEP 2009:</b>	<b>Explanation of the Provision:</b>
	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_4	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.

## **PART 3 - JUSTIFICATION FOR THE PROVISIONS**

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### **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:**

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).

#### **Item 2:**

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 3:**

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 4:**

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.

### **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, Item 2 and Item 3 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 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

#### **Item 2:**

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.

## 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 contamination.	Items - 1, 2 and 3: None of the lands are known to contain contaminants. However, further 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 2 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 1 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 1 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>Item 3 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 both above rezoning will result in the loss of minor portion of land zoned for rural purposes.</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
<b>1 - Employment and Resources</b>		
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.	<p>This direction applies to Items 1 and 3 of this planning proposal.</p> <p>Item 1: 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 1600m<sup>2</sup> 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>Item 3:</p> <p>6900m<sup>2</sup> 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>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 Items 1 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.</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 Items 1 and 3 of this planning proposal.</p> <p>Item 1:</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 1600m<sup>2</sup> 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>Item 3:</p> <p>Item 3 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, 6900m<sup>2</sup> 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>Any perceived inconsistencies with this direction are considered to be of minor significance.</p>
<b>2 - Environment and Heritage</b>		
2.1 Environment Protection Zones	The objective of this direction is to protect and conserve environmentally sensitive areas.	<p>This direction applies to Item 1 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 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 1 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.
<b>3 - Housing, Infrastructure and Urban Development</b>		
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 2 and 3 of this planning proposal.</p> <p>Item 2: Item 2 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 3: Item 3 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>Items 1 and 3 of planning proposal are 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 by incompatible future adjoining land uses	Planning Proposal not affected by this direction.

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.
<b>4 - Hazard and Risk</b>		
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.	This direction applies to Items 1 and 3 of this planning proposal.  Item 1 and 3 are located within the Muswellbrook Mine Subsidence District and further consultation with Mine Subsidence Board will be undertaken in post Council receiving a gateway determination.
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 3 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 1 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.  Consultation with the NSW Rural Fire Services will be undertaken in post Council receiving a gateway determination. This also can be dealt with development application stage.
<b>5 - Regional Planning</b>		
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.

<b>6 - Local Plan Making</b>		
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 2 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 2 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.
<b>7 - Metropolitan Planning</b>		
<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.

## **Section C - Environmental, social and economic impact**

### **Item 1:**

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.

### **Item 2:**

4000m<sup>2</sup> 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 3 and 4:**

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.

## **Section D - State and Commonwealth Interests**

**Item 1:**

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

**Item 2 and 3:**

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 4:**

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

The requirement for consultation with State and Commonwealth public authorities will be undertaken if directed by the Department of Planning and Infrastructure. The Gateway determination will provide direction for Council on which of the government agencies are specifically required to be consulted with in respect of this proposal.

## **PART 4 - MAPPING**

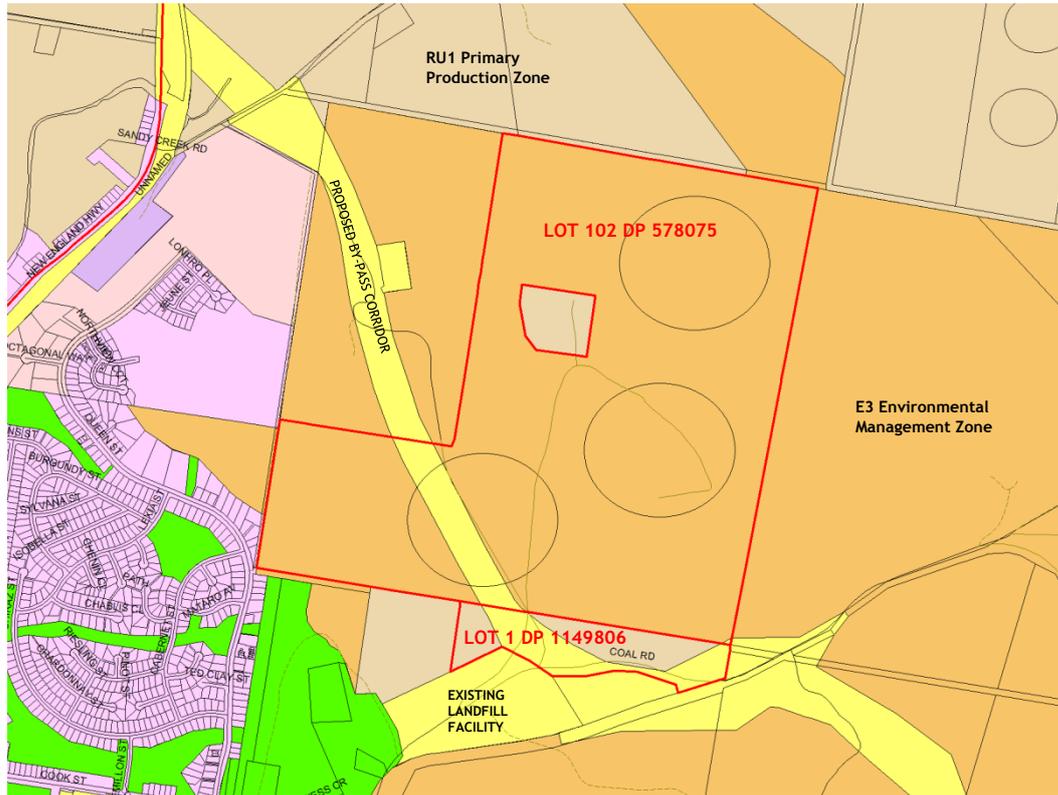
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To achieve the intent of the planning proposal, it is proposed to amend the following LEP maps. Council requests the Department to assist with the preparation of the mapping associated with the proposed amendments to comply with the Department's Standard Instrument LEP mapping technical requirements.

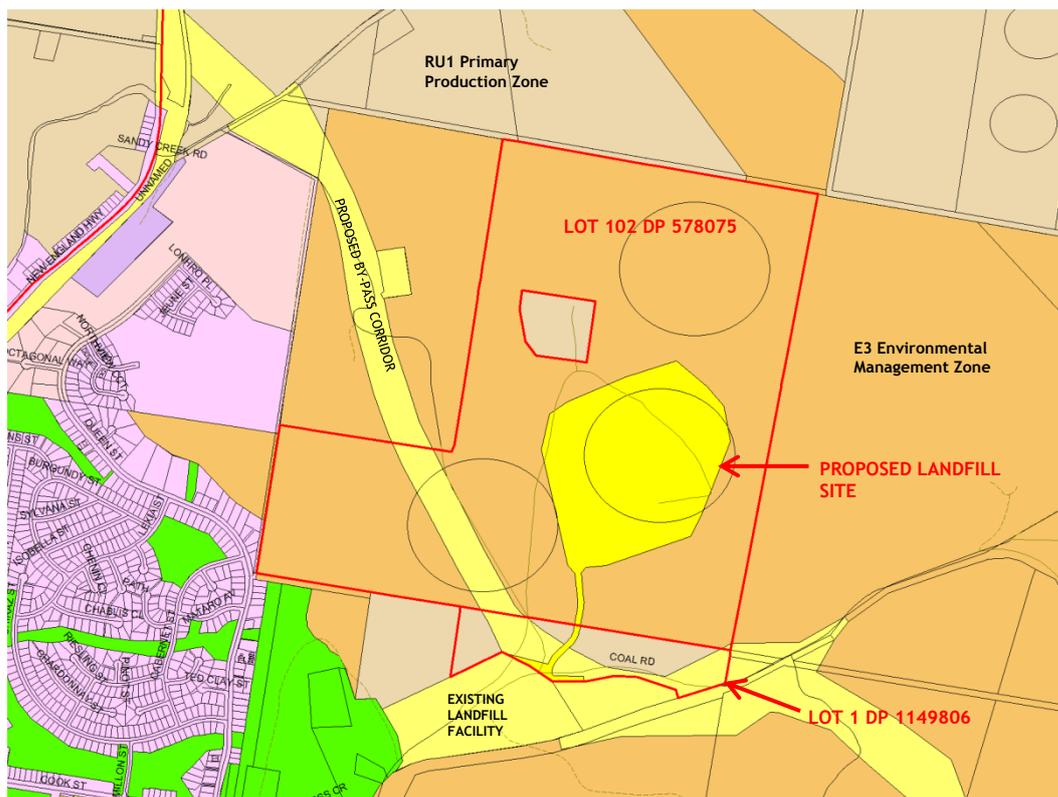
<b>Map Sheet</b>	<b>Map Identification Number</b>
<b>Land Zoning Map</b>	
LZN_005B	5650_COM_LZN_005B_020_20120328
LZN_008A	5650_COM_LZN_008A_020_20130419
<b>Floor Space Ratio Map</b>	
FSR_005B	5650_COM_FSR_005B_020_20120328
<b>Height of Buildings Map</b>	
HOB_005B	5650_COM_HOB_005B_020_20120328
HOB_008A	5650_COM_HOB_008A_020_20120412
<b>Lot Size Map</b>	
LSZ_005B	5650_COM_LSZ_005B_020_20120328
LSZ_008A	5650_COM_LSZ_008A_020_20130530
<b>Land Reclassification Map</b>	
RPL_008A	

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

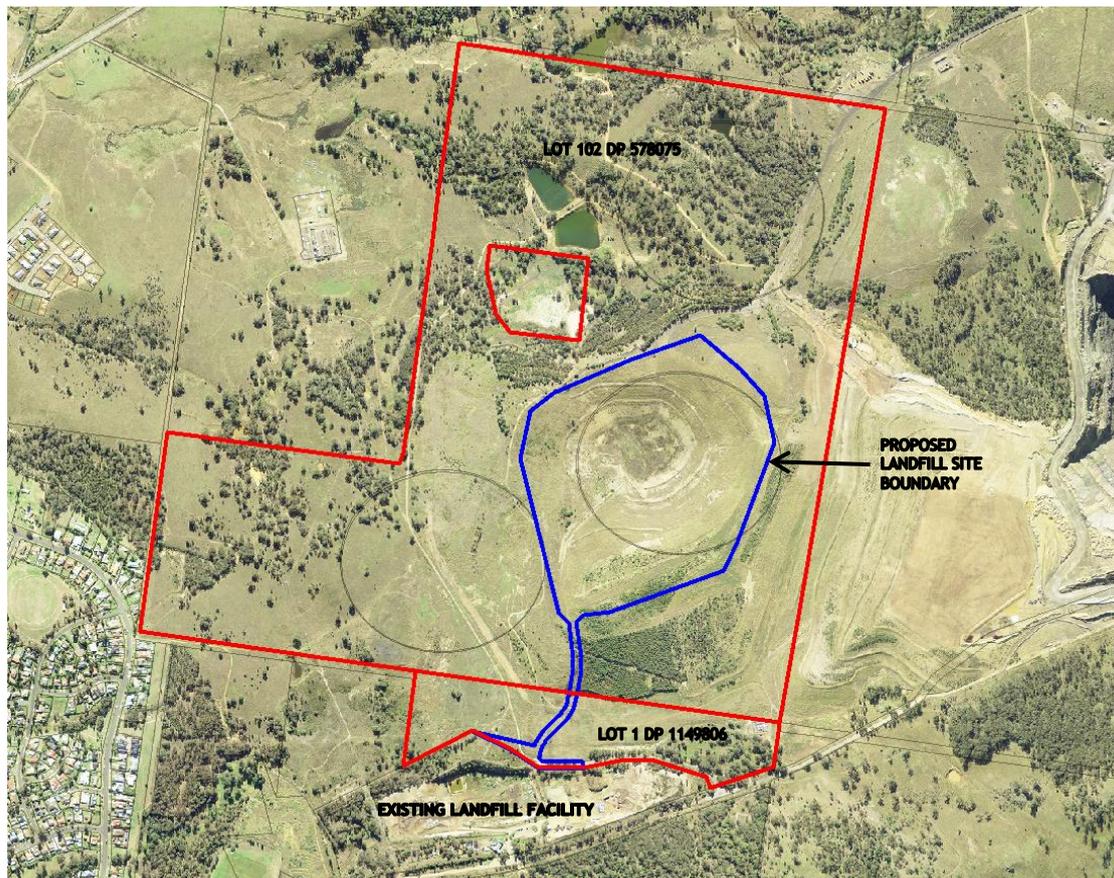
(a) - Current Land Zoning Map Sheet LZN-008A (part) - Muswellbrook



(b) - Proposed Land Zoning Map Sheet LZN-008A (part) - Muswellbrook



(c) - Aerial photography



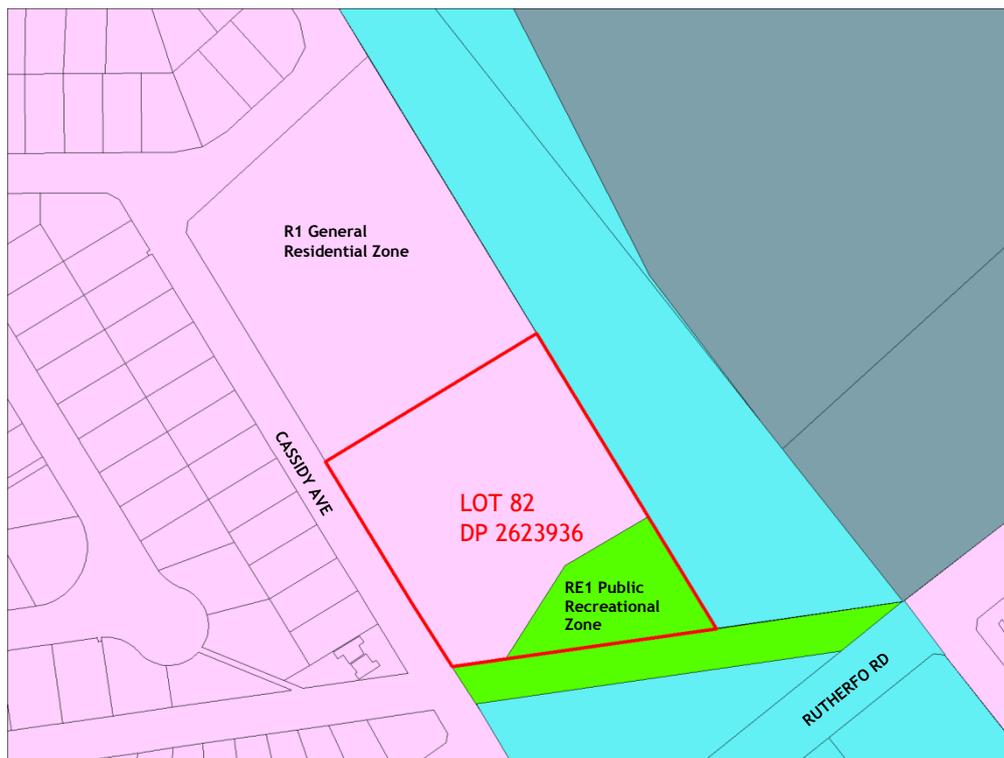
*Note: Owners' consent is attached as appendix A.*

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

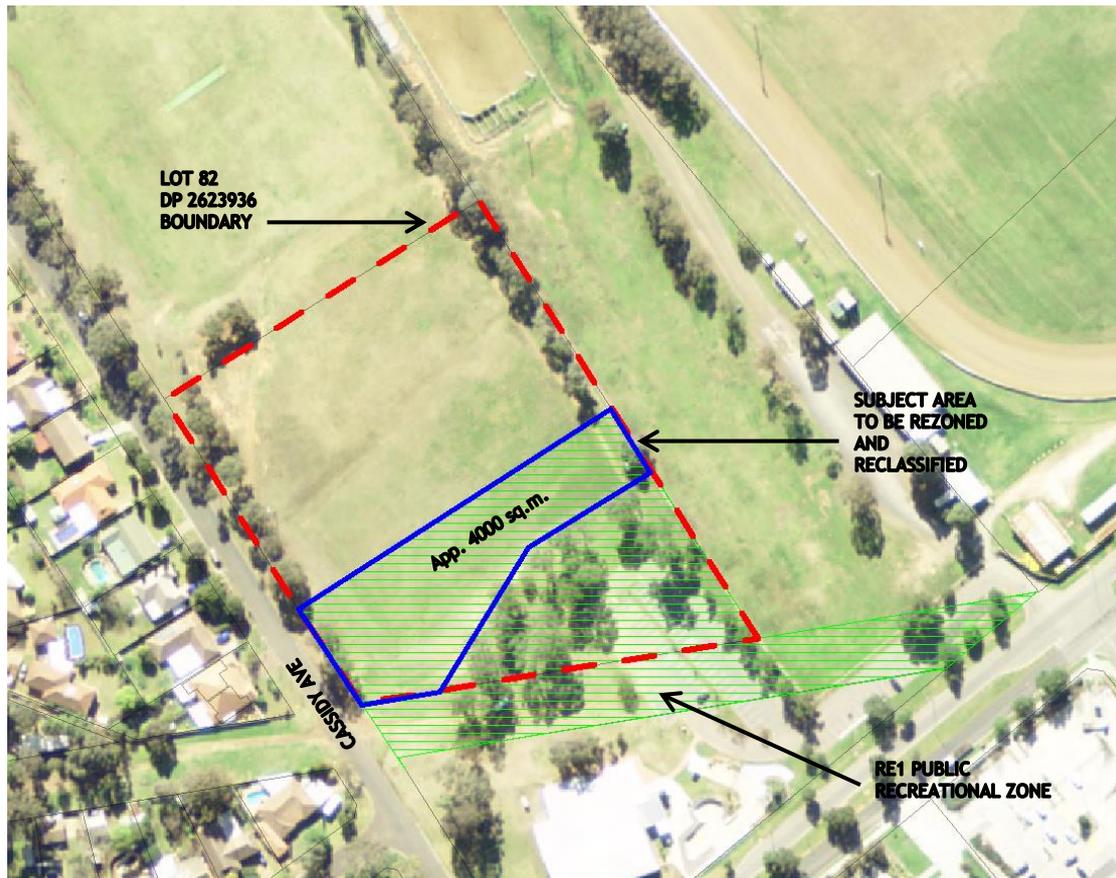
(a) - Current Land Zoning Map Sheet LZN-008A (part) - Muswellbrook



(b) - Proposed Land Zoning Map Sheet LZN-008A (part) - Muswellbrook



(c) - Aerial photography



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

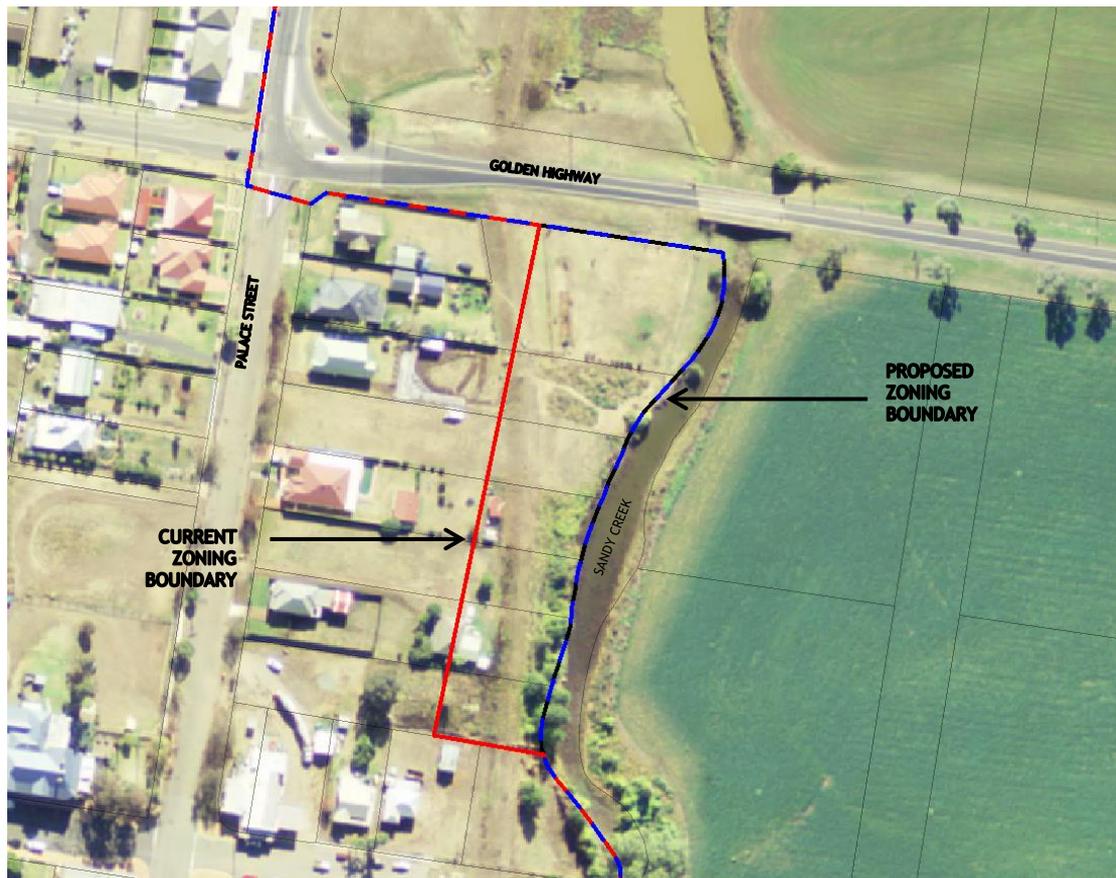
(a) - Current Land Zoning Map Sheet LZN-005B (part) - Denman



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



(c) - Aerial photography



## PART 5 - COMMUNITY CONSULTATION

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The Gateway Determination will specify the community consultation that must be undertaken on the planning proposal.

Community consultation will be undertaken in accordance with the Department's guide document '*A guide to preparing local environmental plans*'.

Notification of the planning proposal will be undertaken by the following means:

- notice in the local newspapers;
- exhibition of planning proposal and relevant documents at the council's administration centre and libraries;
- planning proposal and relevant documents to be made available on the council's web site and;
- letters advising landowners of the proposed rezoning.

## PART 6 - PROJECT TIMELINE

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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							

Council requests an authorisation to exercise its delegation of the plan making functions under *Section 59 of the Environmental Planning and Assessment Act 1979* to proceed with this planning proposal.

**APPENDIX A: Owners' Consent for Lot 102 DP 578075 and Lot 1 DP 1149806**



**MUSWELLBROOK COAL COMPANY LIMITED**

A.C.N. 000 009 521

ABN 32 000 009 521

Established 1907

**REGISTERED OFFICE**  
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BRISBANE QLD 4000

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P.O. Box 123  
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**Facsimile:** (02) 6542 5010

File:

10<sup>th</sup> 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 20<sup>th</sup> 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

A handwritten signature in blue ink, appearing to read 'John Furner'.

John Furner

General Manager