

Planning and Assessment

IRF20/4293

Gateway determination report

LGA	Muswellbrook
PPA	Muswellbrook Shire Council
NAME	Racecourse Road, Muswellbrook (1 home, 0 jobs)
NUMBER	PP_2020_MUSWE_001_00
LEP TO BE AMENDED	Muswellbrook LEP 2009
ADDRESS	3 Racecourse Road, Muswellbrook
DESCRIPTION	Lot 41 DP 592207
RECEIVED	8 September 2020
FILE NO.	IRF20/4293
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

1. INTRODUCTION

1.1 Description of planning proposal

The planning proposal seeks to enable construction of a dwelling at 3 Racecourse Road, Muswellbrook.

There was a historical dwelling entitlement on the site when an application for subdivision was approved in April 1977. No dwelling house was constructed and changes to planning legislation extinguished any dwelling entitlement to the land.

1.2 Site description

The site is approximately six hectares and contains infrastructure associated with equine activities (sheds, stables, small track, grazing). It does not contain a dwelling.

The site is bounded by the Hunter River to the north, crops/pasture to the east, equine uses to the west and Racecourse Road to the south. Opposite the site is land developed for 16 low density residential dwellings, which adjoin the racecourse.



Figure 1: Site (source SIX maps)

1.3 Existing planning controls

The site is zoned RU1 Primary Production in the *Muswellbrook Local Environmental Plan 2009* (figure 2). An 80 hectare minimum lot size applies (figure 3).

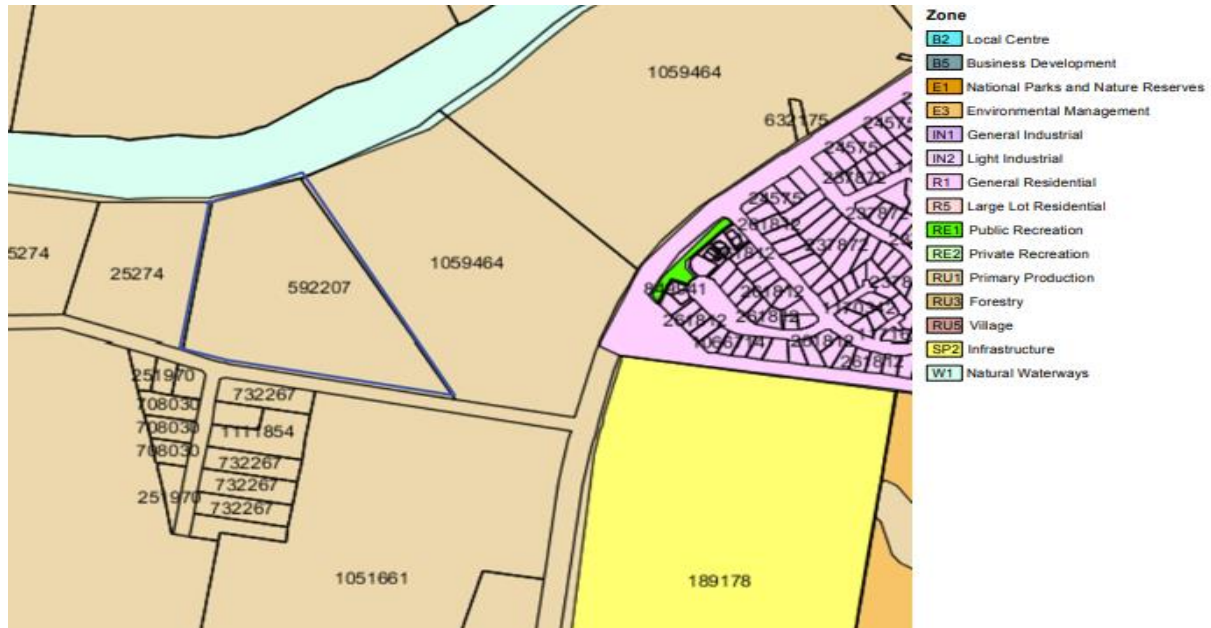


Figure 2: Land Use Zone of the site (RU1 Primary Production) (source: planning proposal)



Figure 3: Minimum Lot Size of the site (80 hectares) (source: planning proposal)

1.4 Surrounding area

The site is adjacent to a precinct of small lot farmland situated around the Muswellbrook Racecourse consisting of approximately 14 properties. All properties have lot sizes below 10 hectares, contain dwelling houses and appear to be used for equine activities.

Muswellbrook wastewater treatment plant and the residential edge of Muswellbrook are located approximately 400 meters to the east. Coal mines are located further west and south.



Figure 4: Locality (source: SIX maps)

2. PROPOSAL

2.1 Objectives or intended outcomes

The objectives of the planning proposal are to amend the *Muswellbrook Local Environmental Plan 2009* to permit a dwelling house on the site.

2.2 Explanation of provisions

The explanation of provisions states a new provision is to be included in Schedule 1 Additional Permitted Uses in the local environmental plan. The provision would allow a dwelling house on the site with development consent.

2.3 Mapping

No local environmental plan maps are proposed to change. Mapping included in the planning proposal shows the main planning controls and flood affectation. These maps would assist with community consultation. No changes are required to these maps.

3. NEED FOR THE PLANNING PROPOSAL

Muswellbrook Shire Council advise the planning proposal does not result from a strategy or study. It results from the landowner's desire to operate a racecourse training facility from the site. A racecourse training facility would involve the care and management of horses 24 hours per day. This would be enabled with a dwelling house for a caretaker.

The planning proposal states the use of the site for a racecourse training facility supported by a dwelling house is consistent with the equine activities occurring on other nearby lands surrounding the racecourse. The planning proposal would also support the growth of the equine industry in the Shire, which is an important part of industry diversification in the Upper Hunter.

Council has investigated alternative means of supporting the desired outcome. The site does not benefit from a dwelling entitlement and changing the minimum lot size or land use zone were not favoured. The inclusion of an additional permitted use was considered by Council to be the simplest method for affecting the desired change on a single lot.

The continued growth of the equine industry is important in supporting the diversification of the Upper Hunter economy as it transitions from coal mining. The site is well suited for equine activities, already containing necessary infrastructure and sitting within a precinct of small lot equine related properties around the racecourse. Enabling a dwelling house on the site would facilitate the racehorse training facility and would be consistent with the existing use and character of the area.

While the planning proposal could also facilitate a rural lifestyle dwelling, the Department considers the likelihood of this creating a precedent to be low. All lots in the racecourse precinct contain dwelling houses and so have no further development potential for lifestyle living. It is unlikely that land use conflict, land fragmentation or a reduction in agricultural value would result. Sites outside the precinct adjoining the racecourse are unlikely to be in a similar situation. Council advises there are limited opportunities in the broader area.

Given there is a recognised precinct of small lot equine related residential uses adjoining the racecourse, future proposal for additional residential uses in the precinct should be considered through a strategic approach. At this stage, there is minimal benefit for undertaking this work solely to the single site.

Council advises it intends to consider this as part of its planned shire-wide local environmental plan review. This could also occur through any relevant local strategic planning work undertaken by Council to make clear the outcomes and preferred uses in the precinct.

4. STRATEGIC ASSESSMENT

4.1 State

There are no state-wide strategies or plans which are relevant to the planning proposal.

4.2 Regional / District

Hunter Regional Plan 2036

The planning proposal is consistent with the following directions and actions of the *Hunter Regional Plan 2036*:

Direction 5 Transform the productivity of the Upper Hunter

The direction includes Action 5.2: Leverage the regional advantages of the Upper Hunter to create a diverse, thriving and prosperous economy built upon industry growth and investment. Facilitating the use of the site for a racehorse training facility by enabling a dwelling house aligns with this outcome.

Direction 13: Plan for greater land use compatibility

The direction includes Action 13.1: Identify and protect important agricultural land, including intensive agricultural clusters, in local plans to avoid land use conflicts. While the planning proposal would potentially facilitate rural residential development, its intention is to support the use of the site for a racehorse training facility. Enabling a dwelling house for this purpose, in a precinct where similar uses occur and no further dwelling potential exists, limits the potential for land use conflict. Notwithstanding, as all other land in the precinct has dwelling houses, it is unlikely that a dwelling on this site would increase the potential for land use conflict.

Local area narrative regional priority: Protect the Equine Critical Industry Cluster and allow for expansion of the industry

The planning proposal is consistent with this regional priority for the Muswellbrook local government area because it potentially supports the expansion of the equine industry.

Upper Hunter Strategic Regional Land Use Plan (SRLUP)

The SRLUP identifies various challenges facing the Upper Hunter. Relevant to this planning proposal is the need for the Upper Hunter economy to diversify and be resilient, and to manage land use conflict including that which can result from rural lifestyle housing. As discussed regarding the *Hunter Regional Plan 2036*, the planning proposal supports these outcomes.

4.3 Local

Muswellbrook Community Strategic Plan 2017 – 2027

The planning proposal is consistent with Goal 2: Diversify the economy, facilitate the development of intensive agriculture and other growth industries, make the shire a more attractive place to invest and do business.

Local Strategic Planning Statement (LSPS)

Council's draft LSPS was exhibited in July of this year and is yet to be finalised. The planning proposal aligns with the vision of the draft LSPS, which is for Muswellbrook LGA to be a leading location for equine industries.

Planning Priority 1: Our Shire embraces technology and innovation includes a planning principle which is to guide Council's decision-making. The principle states Council will support growth and investment in equine, viticulture and dairy industries. The planning proposal is consistent with this principle.

4.4 State environmental planning policies (SEPPs)

The planning proposal does not include any provisions which conflict with State Environmental Planning Policies.

4.5 Section 9.1 Ministerial directions

The planning proposal is consistent with the relevant section 9.1 Ministerial directions, except the following where the planning proposal is either inconsistent or further work is required before consistency can be determined:

1.2 Rural Zones

This direction applies because the planning proposal would affect land in a rural zone (clause 3). The planning proposal is consistent because it would permit an increase in the permissible density of the land (subclause 4b) by enabling a dwelling

house when the local environmental plan would otherwise not permit it because the lot size is too small.

The planning proposal's inconsistency with this direction is of minor significance. As a small site and the landowner's intended use, the agricultural production value of the land would not be compromised. Further, as the site is within a precinct that has been developed for similar purposes, the planning proposal is unlikely to undermine the agricultural value of nearby rural lands either.

1.3 Mining, Petroleum Production and Extractive Industries

This direction applies because the planning proposal would permit a land use which may be incompatible with mineral resources (subclause 3b). The direction requires consultation with NSW Resources and Geoscience to understand resource potential and the potential for land use conflict.

Potential impacts resulting from the planning proposal above those resulting from the existing residential development adjoining the site (precinct and Muswellbrook) is considered negligible. However, consultation with NSW Resources and Geosciences should occur to satisfy the direction (clause 4).

2.6 Remediation of Contaminated Land

This direction applies because the site has been used for grazing and other agricultural activities (subclause 2b). The planning proposal states Council is unaware of the site being subject to any contamination and considers no further assessment is required.

While Council has considered whether the site is contaminated (subclause 4a), no study of the site has occurred. Noting the past agricultural activities, it is recommended the Gateway require a preliminary contamination assessment be undertaken (clause 5). Consistency with the direction can be re-evaluated following that assessment.

4.3 Flood Prone Land

This direction applies because the site is flood prone. The planning proposal is potentially inconsistent with this direction because it would permit a significant increase in development on the site by allowing a dwelling house where it would otherwise not be permitted.

Limited information is provided in the planning proposal about potential flood impacts. It notes any future dwelling would be constructed to the relevant standards and consultation with NSW State Emergency Service is proposed post-Gateway.

Further information provided by Council indicates flooding issues relevant to the site are detailed in its *Flood Risk and Management Plan for the Hunter River 2019*. Council notes the site is flood storage in a 1%AEP flood event and the site becomes isolated by flood waters in events greater than a 10% AEP because Racecourse Road becomes inundated. Council advises that evacuation of the precinct may occur in flood events.

While only one additional dwelling would be facilitated, consultation with the Department's Biodiversity and Conservation Division as well as the NSW State Emergency Service should occur. Consistency with the direction can then be determined.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

No substantial social impacts are anticipated as a result of the planning proposal.

5.2 Environmental

Subject to resolution of potential flooding and contamination issues, no adverse environmental impacts are anticipated as a result of the planning proposal.

5.3 Economic

The planning proposal may support the use of the site as a racehorse training facility, which may in turn generate employment. However, no substantial economic impacts are anticipated.

5.4 Infrastructure

Muswellbrook Shire Council advises the site can be serviced.

6. CONSULTATION

6.1 Community

A 28 day community consultation period is proposed by Muswellbrook Shire Council. The planning proposal is considered minor because it would permit a dwelling house consistent with adjoining development. A 14 day community consultation period is therefore recommended.

6.2 Agencies

Agency consultation should occur with NSW Resources and Geoscience, Biodiversity and Conservation Division and the NSW State Emergency Service.

7. TIME FRAME

Muswellbrook Shire Council has not nominated a timeframe within which community consultation or planning proposal finalisation would occur. The planning proposal states this would vary depending on the local environmental plan amendment approach supported by the Gateway.

As the additional permitted use approach be supported, it is anticipated community consultation could occur quickly following the completion of the contamination study. A three month timeframe to commence community consultation is therefore recommended, with the planning proposal to be completed within six months.

8. LOCAL PLAN-MAKING AUTHORITY

Muswellbrook Shire Council indicates it wants to be the local plan-making authority for the planning proposal. This request is supported. The planning proposal is relatively minor, notwithstanding the need for several matters to be investigated further.

9. CONCLUSION

The planning proposal should be supported with conditions because:

- enabling a dwelling house supports the development of the site for a racehorse training facility;
- supporting and growing the equine industry is recognised as a key strategy in diversifying the economy of the Upper Hunter;

- permitting a dwelling house on an undersized RU1 Primary Production zoned site is consistent with development in the racecourse precinct; and
- it is unlikely the planning proposal would create a precedent because other potential sites would not sit within a similarly developed precinct and Council advises there are limited other opportunities.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Ministerial direction 1.2 Rural Zones is minor or justified; and
2. note that the consistency with section 9.1 Ministerial directions 1.3 Mining, Petroleum Production and Extractive Industries, 2.6 Remediation of Contaminated Land and 4.3 Flood Prone Land is unresolved and will require justification.

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

1. The planning proposal should be made available for community consultation for a minimum of 14 days and commence within three months of the date of the Gateway determination.
2. Consultation is required with the following public authorities:
 - Biodiversity and Conservation Division
 - NSW Resources and Geoscience
 - NSW State Emergency Service
3. The time frame for completing the LEP is to be six months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should be the local plan-making authority.
5. Update the planning proposal prior to community consultation with the relevant findings of
 - (a) a preliminary contamination assessment; and
 - (b) Council's Floodplain Risk Management Plan



20.10.20
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26/10/2020
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