



8 October 2019

Mr Richard Stanley Hall
PO Box 8033
TUMBI UMBI NSW 2261

Dear Mr Hall

**Request for Property Information Dwelling Entitlement – 3 Racecourse Road
(Lot: 41 DP: 592207), Muswellbrook, 2333**

I refer to your request for property information regarding the permissibility of a dwelling house on Lot 41 DP 592207, dated 23 September 2019.

The land subject to your enquiry is zoned RU1 Primary Production. Clause 7.5 of the Muswellbrook Local Environmental Plan (LEP) 2009 restricts the opportunity for a dwelling house to be erected on any land zoned RU1 Primary Production, except where that land meets certain criteria specified in that Clause.

The provisions of Clause 7.5 that restrict the erection of a dwelling on land zoned RU1 Primary Production are as follows:

- (2) *Development consent must not be granted for the erection of a dwelling house on a lot in a zone to which this clause applies, and on which no dwelling house has been erected, unless the lot is:*
- (a) a lot created in accordance with clause 4.1, or*
 - (b) a lot created before this Plan commenced and on which the erection of a dwelling house was permissible immediately before that commencement, or*
 - (c) a lot created before this Plan commenced that is at least the minimum lot size specified for that lot by the Lot Size Map, or*
 - (d) a lot for which subdivision approval was granted before this Plan commenced and on which the erection of a dwelling house would have been permissible immediately before that commencement, or*
 - (e) an existing holding.*

Council Officers have completed research into this matter, and our response is broken up into headings which individually consider each of the Clause 7.5 sub-clauses under which the erection of a dwelling may be permitted under the Muswellbrook LEP 2009:

A. 7.5(2)(a) a lot created in accordance with clause 4.1

- The lot was subdivided in 1977.
- The Muswellbrook LEP 2009 came into force on the 17 April 2009.

- As the lot was created prior to the coming into force of the Muswellbrook LEP 2009 the lot is not a lot created in accordance with Clause 4.1 of the Muswellbrook LEP 2009 and it **does not have a dwelling entitlement under this sub-clause.**

B. 7.5(2)(b) a lot created before this Plan commenced and on which the erection of a dwelling house was permissible immediately before that commencement

- The Deposited Plan was created on the 7 November 1977.
- Muswellbrook LEP 1985 was the principle environmental planning instrument immediately before Muswellbrook LEP 2009 Area.
- Council Officers have reviewed the Muswellbrook LEP 1985 controls that related to the land under this environmental planning instrument and identified the following:
 - Under the Muswellbrook LEP 1985 the land was zoned 7(L1) Environmental Protection General (Alluvial Areas).
 - Clause 15 of the Muswellbrook LEP 1985 included provisions regarding the erection of dwelling houses. Council staff **do not consider that the erection of a dwelling on the subject land would have been permissible** under Clause 15 of the Muswellbrook LEP 1985:
 - Sub-clause 15(1)(a) allowed for dwelling houses to be erected where the land has an area of not less than 40 hectares. The lot subject to this enquiry is less than 40 hectares.
 - Sub-clause 15(1)(b) allowed for dwellings to be erected on land that comprises a 'vacant existing parcel of land'. Clause 5 of the Muswellbrook LEP 1985 provides a definition for an 'existing parcel of land' which resembles the definition of an 'existing holding' 2009 LEP. The definition of an 'existing parcel of land' includes any areas of adjoining or adjacent land held in the same ownership on and from the 11 April 1974. On the 11 April 1974 the subject land subject was held in the same ownership as Lot 420 DP 1059464.
 - Sub-clause 15(1)(c) allowed for dwellings to be erected on allotments within a subdivision which was approved by Council after 9 August 1985. The subject lot was created as a result of a subdivision carried out in 1977.
 - Sub-clause 15(3) allows for a dwelling house to be erected on an allotment of land created by the subdivision of land in accordance with clause 14(2). As the land was subdivided in 1977, prior to the commencement of the Muswellbrook LEP 1985, Council Officers are of the view that the lot would not have an opportunity for a dwelling to be erected under this sub-clause.

7.5(2)(c) a lot created before this Plan commenced that is at least the minimum lot size specified for that lot by the Lot Size Map

- The minimum lot size applicable to the land under the Muswellbrook LEP 2009 is 80 hectares.
- The subject lot has an area of 6.07 hectares. As this is less than the minimum lot size specified, there is no **dwelling entitlement under this sub-clause.**

C. 7.5(2)(d) a lot for which subdivision approval was granted before this Plan commenced and on which the erection of a dwelling house would have been permissible immediately before that commencement

- The Deposited Plan for the lot suggests that its creation and subdivision was approved by Council as it is signed by Council's Clerk.
- The permissibility of a dwelling house immediately before the commencement of the Muswellbrook LEP 2009 is considered in greater detail under the heading related to sub-clause 7.5(2)(b). **Accordingly, there is no dwelling entitlement under this sub-clause.**

D. 7.5(2)(e) an existing holding.

- The Muswellbrook LEP 2009 defines an existing holding as:

existing holding means all adjoining land, even if separated by a road or railway, held in the same ownership:

(a) on 11 April 1974, and

(b) at the time of lodging a development application for the erection of a dwelling house under this clause,

and includes any other land adjoining that land acquired by the owner since 11 April 1974.

- On the relevant date (11 April 1974) the subject lot was held in the same ownership as the land that now comprises Lot 420 DP 1059464.
- Only a single dwelling house can be located on land that comprises an existing holding, and there is a dwelling on Lot 420 DP 1059464.
- **The erection of a dwelling house would no currently be under the provisions of this sub-section.**

Therefore, based on the best available information, Council Officers consider that the erection of a dwelling at 3 Racecourse Road (Lot 41 DP 592207) is not permitted.

This letter has been informed by Council records related to the land and the review of the relevant Muswellbrook LEP 2009 provisions by Council Officers. Where you have further information in relation to this matter you are welcome to provide this information to Council for consideration. It is recommended that any such information is accompanied by representations from an appropriately qualified person acting on your behalf outlining any reasons why you consider a dwelling is permitted. An appropriately qualified person may include an expert in environmental and planning law and/or a qualified and experienced planning professional.

If you require any further clarification about this letter or have further questions about dwelling entitlements feel free to contact Council's Project Planner Atef Kazi on ph 6549 3726.

Yours faithfully,

Sharon Pope

Assistant Director of Environment and Community Services

