



# muswellbrook shire council

Enquiries  
Please ask for  
Direct Mr I D Scammell  
Our reference 02 6549 3860  
Your reference DA 4/2010  
Application

**Attention: Trent Wink**  
Department of Planning  
PO Box 1226  
NEWCASTLE NSW 2300

29 June 2010



Dear Trent

**Draft Muswellbrook Local Environmental Plan (LEP) 2009 Amendment 4  
Lot 42 DP 748269, 362 Muscle Creek Road Muswellbrook**

On 15 June 2010, Muswellbrook Shire Council considered a report regarding the abovementioned draft LEP. The draft LEP proposes to rezone the subject land to allow for Stages 6, 7, and 8 of the Woodlands Ridge Estate development. The proponent seeks to rezone the subject land from zone RU1 Primary Production to zone R5 Large Lot Residential under Muswellbrook LEP 2009. The planning proposal also seeks to amend the Muswellbrook LEP 2009 Lot Size Map and Height of Buildings Map for the subject land.

On 15 June 2010, Council resolved:

*That the planning proposal to rezone Lot 42 DP 748269 Muscle Creek Road Muswellbrook from Zone RU1 Primary Production to R5 Large Lot Residential (Appendix A) be forwarded to the Minister for Planning Pursuant to Section 56 of the Environmental Planning and Assessment Act 1979.*

A copy of the report to Council, the planning proposal, and Council's resolution is attached.

Council is of the opinion that the planning proposal has merit and will result in net community benefit. At present, there is approximately 300 hectares of land zoned R5 Large Lot Residential within the vicinity of the township of Muswellbrook. Of this land, a large proportion, approximately 50%, is developed or is currently under development. The proposal will provide additional land for large lot residential development, and is likely to result in modest economic benefits for the Muswellbrook Town Centre due to increased patronage.

The proponent has indicated that the planning proposal will assist in keeping land and housing prices for rural residential properties at affordable prices in a growing township. The proponent has also indicated that agricultural use of the land, under its existing RU1 Primary Production Zoning, is limited to a hobby farm venture at best, with occupants requiring external employment to make a living.

Council requests that the planning proposal now proceed through the gateway process.

If you require any further information, please do not hesitate to contact me between the hours of 9:00am to 10:30am on 6549 3862.

Yours faithfully



IAIN SCAMMELL  
**DEVELOPMENT PLANNER**

|                                                                                                           |
|-----------------------------------------------------------------------------------------------------------|
| <b>PLANNING PROPOSAL TO REZONE LOT 42 DP 748269, 362<br/>MUSCLE CREEK ROAD MUSWELLBROOK (AMENDMENT 4)</b> |
|-----------------------------------------------------------------------------------------------------------|

The Development Planner reports:

**i) SYNOPSIS:**

On 9 April 2010, Council received an application to rezone Lot 42 DP 748269 Muscle Creek Road Muswellbrook to allow for Stages 6, 7 and 8 of the Woodlands Ridge Estate development. The proponent seeks to rezone the subject land from zone RU1 Primary Production to zone R5 Large Lot Residential under Muswellbrook Local Environmental Plan 2009 (MLEP 2009). The Planning Proposal also seeks to amend the MLEP 2009 Lot Size Map and Height of Buildings Map for the subject land.

**ii) DATE OF REPORT:** 28 May 2010

**iii) REPORT:**

**Background**

Land to the west of the subject site, comprising existing stages 1 to 4 of Woodlands Ridge Estate, was rezoned under Amendment 37 to Muswellbrook Local Environmental Plan 1985 (MLEP 1985). Amendment 37 was gazetted on 27 April 1994. The amendment resulted in land for stages 1 to 5 being rezoned from zone 7(L2) Environmental Protection General to zone 1(c) Rural Small Holdings under MLEP 1985. The land use zoning was later transferred from zone 1(c) Rural Small Holdings under MLEP 1985 to zone R5 Large Lot Residential under MLEP 2009.

On 4 September 1995, Council granted consent to Stage 1 of the Woodlands Ridge Estate subdivision, comprising twenty three (23) rural residential lots. Stage 1 of the subdivision is located approximately 800 metres from the western boundary of the subject land. The linen plan for Stage 1 was released in September 2002.

In 2003, the proponent lodged an application with Council in respect to Stages 2, 3, 4 and 5 of the development. The proposed plan of subdivision for these stages comprised a further 69 rural residential lots. Stages 2 and 3 of the subdivision are located adjacent to the western boundary of the subject land, while the location of stages 4 and 5 are to the north and north-west of Stage 1 respectively.

As part of the assessment process for Stages 2 to 5 of the subdivision, the proponent was required to submit a Flora and Fauna Study to Council. The Study revealed the existence of one threatened fauna species on site, the Grey-Crowned Babbler, listed as 'Vulnerable' under the *Threatened Species Conservation Act* 1995. A later study, undertaken by Ecovision Consulting in 2004, revealed the existence of the threatened Mauve-lipped Double-tail Donkey Orchid (*D tricolour*) on site. As a result of the studies, the proponent's original subdivision plan for Stages 2 to 5 was amended to include a 6.08ha 'Habitat Protection Zone'. The inclusion of the Habitat

Protection Zone resulted in the consolidation of four proposed rural residential lots, reducing the overall number of lots in Stages 2, 3, 4, and 5 to 66.

On 21 November 2003, Council granted consent to Stages 2 to 5 of the Woodlands Ridge Estate subdivision. Council's consent was granted subject to further archaeological investigations being undertaken prior to the release of the Construction Certificate for Stage 5 of the development. The necessary investigations related to potential Aboriginal artefacts that may exist within Stage 5.

On 22 March 2004, the proponent lodged a Section 96 Application with Council to modify the earlier subdivision consent granted in November 2003. The modification to the original consent involved the lot layout being amended with a reduction in the total number of lots from 66 to 58. The reduced lot yield was due to the addition of a conservation area to protect potential Aboriginal artefacts within Stage 5 of the subdivision. The remaining lots within Stage 5 were incorporated in Stage 3, and references to Stage 5 were removed from the Subdivision Plan. The Section 96 Application was approved on 10 June 2004.

The linen Plan for Stages 2 and 3 were released in February 2005 and December 2006 respectively. It is understood that the linen plan for Stage 4 is yet to be released. Several residential dwellings have since been approved and constructed within Stages 1 to 3 of the subdivision.

On 9 April 2010, Council received an application to rezone Lot 42 DP 748269 to allow for Stages 6, 7, and 8 of the Woodlands Ridge Estate development. It is understood that Stages 6 to 8 will comprise an additional 29 rural residential lots, and will include a proposed Habitat Protection Zone in the western portion of the subject land.

A rezoning of the subject land is necessary if it is to be subdivided for the purpose of creating large residential lots. Large residential lots are not permissible under the land's existing RU1 Primary Production zoning, or the MLEP 2009 minimum lot size map for the subject land. The proponent is therefore seeking a Gateway Determination under Section 56 of the *Environmental Planning and Assessment Act 1979* in respect of the proposed rezoning.

### **Description of Site and Locality**

The subject land is identified as Lot 42 DP 748269 Muscle Creek Road Muswellbrook. The land is located on the eastern side of the New England Highway, approximately 7 kilometres from Muswellbrook Town Centre. The land slopes toward a gully located on the central western portion of the site. Scattered vegetation exists within the site.

Lot 42 is bounded by Grasstree ROW to the east and cleared grazing land to the north, east, and south. Stages 1 to 4 of Woodlands Ridge Estate subdivision are located to the immediate west of the subject land. Several dwellings have been approved and constructed within Stages 1 to 4 of the subdivision.

### **Discussion**

The proponent has lodged several preliminary studies in support of the rezoning proposal. The studies, listed below, detail the likely environmental impacts of the proposed rezoning and measures to mitigate those impacts. Following advice from the Department of Planning's Gateway Panel, the preliminary studies will form the basis of any Local Environmental Study undertaken in relation to the subject land. e

Due to recent changes in the EP&A Act 1979, councils are now required to forward planning proposals for draft LEP Amendments to the NSW Department of Planning (DoP) for consideration under the new *Gateway* provisions of the legislation. A Planning Proposal for this Amendment is attached, refer to Appendix A. If the DoP agree that the proposal should be investigated further, they will advise Council:

- of the studies required;
- the government agencies to be consulted;
- the community consultation process to be followed; and
- timeframes for the completion of the various stages of the procedure for making of the proposed instrument.

## **Issues**

### Planning Proposal

Whilst the proponent has lodged a Planning Proposal in relation to the subject site, Council staff are of the opinion that the Proposal will not be accepted by the DoP in its current form. The proponent's Planning Proposal does not sufficiently address certain matters, such as relevant SEPPs and Ministerial Directions. As a result, it is recommended that Council submit the revised Planning Proposal shown in Appendix A. The revised Planning Proposal was drafted by Council staff under Section 55 of the *Environmental Planning and Assessment Act* (EP&A Act) 1979 and in consideration of the Department of Planning's Guidelines for Preparing Planning Proposals. on

### Proposed Plan of Subdivision

A proposed Plan of Subdivision has been submitted with the proponent's Planning Proposal. The Plan of Subdivision comprises Stages 6 to 8 of the Woodlands Ridge Estate development, refer to Appendix B. It is understood that Stages 6 to 8 will comprise 29 rural residential lots and will include a proposed Habitat Protection Zone in and about the gully area on the western portion of the subject land. The proposed Plan of Subdivision has informed the Planning Proposal, but is not the subject of this Council report.

### Onsite Effluent Disposal Assessment

While the subject site has access to electricity and Council's reticulated water service, it does not have access to a reticulated wastewater service. As a result, future residential developments within the site will be required to install onsite wastewater management systems. In this regard, the proponent has submitted an Onsite Effluent Disposal Assessment, prepared by Coffey Geotechnics.

The Coffey Geotechnics On Site Effluent Disposal Assessment was adequate to indicate that the proposed Rezoning of Lot 42 DP 748269 to zone R5 Large Lot Residential is suitable in relation to on-site sewage management.

However, the report was not thorough enough to assess the suitability of the proposed subdivision layout for on-site effluent management.

A suitable on-site sewage management assessment for a subdivision should provide a soil capability map displaying homogenous soil types and relating to required buffer distances to features, such as waterways, boundaries and dwellings. The disposal areas should be sized relative to the treatments system proposed and soil type and take into account limiting factors.

#### Traffic Impact Study

A Traffic Impact Study, prepared by Northern Transport Planning and Engineering PL, has been submitted with the proponent's Planning Proposal. The Study does not highlight any significant traffic impacts resulting from future residential development within the site.

#### Ecological Impact Statement

A comprehensive Ecological Impact Study (EIS) has been prepared by Ecovision Consulting in relation to the subject site. The Report identified the following environmental issues:

- One threatened plant species listed on the Environmental Protection and Biodiversity Conservation Act (EPBC Act) 1999 was observed within the site during the survey period (i.e. Painted Diuris (*D. tricolour*)).
- Three threatened fauna species listed in the Threatened Species Conservation Act (TSC Act) 1995 have been recorded onsite these being the Eastern Bent-wing Bat, Eastern Free-tail Bat and Grey-Crowned Babbler.
- One Endangered Population listed on the TSC Act 1995 occurs within the site, i.e. the Painted Diuris (*D. tricolor*), for the Muswellbrook Local Government Area).

Future development associated with the subject site is likely to have some impact on the natural environment. An Assessment of Significance has been prepared under section 5A of the EP&A Act 1979 and included with the EIS. The Assessment of Significance considers whether there will be a significant impact on threatened biodiversity and their habitats. The Assessment of Significance also identifies measures to minimise possible impacts of future development, such as the retention of a Habitat Protection Zone.

#### Aboriginal Heritage Assessment

An Aboriginal Heritage Assessment, prepared by ENSR, has been submitted with the proponent's Planning Proposal. The archaeological survey and assessment divided the survey area into areas of low, moderate or high archaeological sensitivity. No areas were identified as being of moderate or high sensitivity, with the whole of the study area falling within the category of low archaeological sensitivity.

#### Bushfire Assessment

The subject site is identified as bushfire prone; as a result, a Bushfire Assessment has been prepared by M.M. Hyndes Bailey and Co. and been submitted with the proponent's Planning Proposal. Measures to mitigate the

risk of bushfire are identified in the Assessment and will be incorporated into the subdivision plan for the site.

Following advice from the DoP's Gateway Panel, it is recommended that Council provide a more detailed brief to the proponent with respect to each of the required studies outlined above. This is to ensure that each study addresses issues raised by Council staff and external government agencies.

### **Conclusion**

The subject land is located adjacent to the existing stages of the Woodlands Ridge Estate Development. The land has access to electricity and reticulated water services. The site is not flood prone, nor is it within a declared Mine Subsidence District. The site does not have access to a reticulated wastewater service.

Preliminary studies have identified that there will be some environmental impact as a result of the Proposal; however, preliminary studies have revealed that much of the impact can be mitigated through the retention of a Habitat Protection Zone in the western portion of the subject land, and through the retention of trees across the site where possible. The Proposal will provide additional land for large lot residential development and is likely to result in modest economic benefits for the Muswellbrook Town Centre due to increased patronage.

It is recommended that the Planning Proposal be forwarded to the Minister for a Gateway Determination under Section 56 of the *Environmental Planning and Assessment Act 1979*.

- |     |                                      |                |
|-----|--------------------------------------|----------------|
| iv) | <b>FINANCIAL IMPLICATIONS:</b>       | Nil            |
| v)  | <b>POLICY IMPLICATIONS:</b>          | Nil            |
| vi) | <b>MANAGEMENT PLAN IMPLICATIONS:</b> | Not applicable |

### **ACTION RECOMMENDED:**

**That the planning proposal to rezone Lot 42 DP 748269 Muscle Creek Road Muswellbrook from RU1 Primary Production to R5 Large Lot Residential (Appendix A) be forwarded to the Minister for Planning pursuant to section 56 of the Environmental Planning & Assessment Act 1979.**

Moved:.....

Seconded: .....

|                                                   |                |
|---------------------------------------------------|----------------|
| <b>Report prepared by</b>                         | Iain Scammell  |
| <b>Accepted for inclusion into Business Paper</b> | Steve McDonald |

- Appendices**
- A – Planning Proposal**
  - B – Location of Subject Land**
  - C – Aerial Photograph of Subject Land**
  - D – Proposed Plan of Subdivision for Stages 6, 7, and 8, Woodlands Ridge Estate.**

|  |                  |  |                   |
|--|------------------|--|-------------------|
|  | Cr J.A. Lecky    |  | R J.M. Drayton    |
|  |                  |  |                   |
|  | Cr M.R. Ogg      |  | Cr M.G. Valentine |
|  |                  |  |                   |
|  | Cr G.J. Serhan   |  | Cr C. Phelps      |
|  |                  |  |                   |
|  | Cr S.J. Ward     |  | Cr R.R. Butchard  |
|  |                  |  |                   |
|  | Cr K.J. Portolan |  | Cr J.F. Risby     |
|  |                  |  |                   |
|  | Cr B.N. Woodruff |  | Cr M.L. Rush      |

**MINUTES OF THE ORDINARY MEETING OF THE MUSWELLBROOK SHIRE COUNCIL HELD IN THE COUNCIL CHAMBERS, ADMINISTRATION CENTRE, MUSWELLBROOK ON TUESDAY, 15 JUNE, 2010 COMMENCING AT 6.00 P.M.**

|   |                  |   |                   |
|---|------------------|---|-------------------|
| √ | Cr J.A. Lecky    | √ | Cr J.M. Drayton   |
| A | Cr M.R. Ogg      | √ | Cr M.G. Valantine |
| √ | Cr G.J. Serhan   | A | Cr C. Phelps      |
| √ | Cr S.J. Ward     | √ | Cr R.R. Butchard  |
| √ | Cr K.J. Portolan | √ | Cr J.F. Risby     |
| √ | Cr B.N. Woodruff | √ | Cr M.L. Rush      |

**3. UPPER HUNTER CONSERVATORIUM OF MUSIC**

**Declaration of Interest**

Cr Lecky declared a non-pecuniary interest in this item. Cr Lecky advised Council that she currently holds the position of Treasurer on the Board of the Upper Hunter Conservatorium of Music. Cr Lecky left the meeting room at this stage and therefore took no part in discussion or voting on this matter.

Cr Portolan declared a non-pecuniary interest in this item. Cr Portolan advised Council that her children attend the Upper Hunter Conservatorium of Music. Cr Portolan left the meeting room at this stage and therefore took no part in discussion or voting on this matter.

Mr McDonald declared a non-pecuniary interest in this item. Mr McDonald advised Council that he currently holds the position of Secretary on the board of the Upper Hunter Conservatorium of Music.

138. RESOLVED on the motion of Crs Valantine and Butchard that:

An amount equal to 50% of the rating applicable to the Conservatorium be donated to the Conservatorium and that this principle be continued in future budgets.

Cr Lecky, Cr Portolan and Mr McDonald returned to the meeting room at this stage and resumed their usual chair at the meeting table.

**4. PLANNING PROPOSAL TO REZONE LOT 42 DP 748269, 362 MUSCLE CREEK ROAD MUSWELLBROOK (AMENDMENT 4)**

**Declaration of Interest**

Cr Lecky also declared a non-pecuniary interest in this item. Cr Lecky advised that she owns a property at Woodlands Ridge. Cr Lecky left the meeting room at this stage and therefore took no part in discussion or voting on this matter.

139. RESOLVED on the motion of Crs Butchard and Portolan that:

**MINUTES OF THE ORDINARY MEETING OF THE MUSWELLBROOK SHIRE COUNCIL HELD IN THE COUNCIL CHAMBERS, ADMINISTRATION CENTRE, MUSWELLBROOK ON TUESDAY, 15 JUNE, 2010 COMMENCING AT 6.00 P.M.**

The planning proposal to rezone Lot 42 DP 748269 Muscle Creek Road Muswellbrook from RU1 Primary Production to R5 Large Lot Residential (Appendix A) be forwarded to the Minister for Planning pursuant to section 56 of the Environmental Planning & Assessment Act 1979.

|     |                  |   |                   |
|-----|------------------|---|-------------------|
| DOI | Cr J.A. Lecky    | √ | Cr J.M. Drayton   |
| A   | Cr M.R. Ogg      | √ | Cr M.G. Valantine |
| √   | Cr G.J. Serhan   | A | Cr C. Phelps      |
| √   | Cr S.J. Ward     | √ | Cr R.R. Butchard  |
| √   | Cr K.J. Portolan | √ | Cr J.F. Risby     |
| √   | Cr B.N. Woodruff | √ | Cr M.L. Rush      |

Cr Lecky returned to the meeting room at this stage and resumed her usual chair at the meeting table.

**5. DEVELOPMENT APPLICATION 65/2010 - TWO (2) LOT RESIDENTIAL SUBDIVISION, LOT: 540 DP: 819739, 67 QUEEN STREET MUSWELLBROOK**

140. RESOLVED on the motion of Crs Woodruff and Ward

That Development Application No. 65/2010 proposing a two (2) lot residential subdivision at Lot 540 DP 819739, 67 Queen Street Muswellbrook be approved subject the conditions in Appendix A to the report.

|   |                  |   |                   |
|---|------------------|---|-------------------|
| √ | Cr J.A. Lecky    | √ | Cr J.M. Drayton   |
| A | Cr M.R. Ogg      | √ | Cr M.G. Valantine |
| √ | Cr G.J. Serhan   | A | Cr C. Phelps      |
| √ | Cr S.J. Ward     | √ | Cr R.R. Butchard  |
| √ | Cr K.J. Portolan | √ | Cr J.F. Risby     |
| √ | Cr B.N. Woodruff | √ | Cr M.L. Rush      |

**6. STRATEGIC COMPANION ANIMAL MANAGEMENT PLAN**

141. RESOLVED on the motion of Crs Portolan and Lecky that:

The Draft Strategic Companion Animal Management Plan 2011 – 2015 be placed on public exhibition for 28 days from June 21, 2010.

**7. PLANNING PROPOSAL – MUSWELLBROOK LOCAL ENVIRONMENTAL PLAN ADMINISTRATIVE AMENDMENT NO. 1 (LEP AMENDMENT 5)**

THIS IS PAGE 5 OF MINUTES OF ORDINARY MEETING OF COUNCIL HELD ON 15 JUNE, 2010

.....GENERAL MANAGER .....MAYOR