

**Amendment to Muswellbrook Local Environmental Plan 2009 - Ironbark Ridge**

Proposal Title : **Amendment to Muswellbrook Local Environmental Plan 2009 - Ironbark Ridge**

Proposal Summary : **The Planning Proposal will determine whether the subject land should be rezoned from E3 Environmental Management to part R1 General Residential and part R5 Large Lot Residential under the Muswellbrook Local Environmental Plan 2009.**

**The subject land has an area of 80ha and has a potential yield of approximately 600 allotments. This will consist of 550 residential and 40 rural residential allotments with a minimum area of 4000sm.**

PP Number : **PP\_2014\_MUSWE\_003\_00**      Dop File No : **14/12204**

**Proposal Details**

Date Planning Proposal Received :	<b>01-Oct-2014</b>	LGA covered :	<b>Muswellbrook</b>
Region :	<b>Hunter</b>	RPA :	<b>Muswellbrook Shire Council</b>
State Electorate :	<b>UPPER HUNTER</b>	Section of the Act :	<b>55 - Planning Proposal</b>
LEP Type :	<b>Precinct</b>		

**Location Details**

Street : **Lots 101 and 103 DP 1170190**  
 Suburb : **Ironbark Road**      City : **Muswellbrook**      Postcode : **2333**  
 Land Parcel :

**DoP Planning Officer Contact Details**

Contact Name : **Trent Wink**  
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**RPA Contact Details**

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**DoP Project Manager Contact Details**

Contact Name :  
 Contact Number :  
 Contact Email :

## Amendment to Muswellbrook Local Environmental Plan 2009 - Ironbark Ridge

### Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	N/A	Consistent with Strategy :	No
MDP Number :		Date of Release :	
Area of Release (Ha) :	80.00	Type of Release (eg Residential / Employment land) :	Residential
No. of Lots :	0	No. of Dwellings (where relevant) :	600
Gross Floor Area :	0	No of Jobs Created :	0

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

If No, comment :

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

If Yes, comment :

### Supporting notes

Internal Supporting Notes : **The planning proposal provides an opportunity to expand the existing residential footprint of South Muswellbrook. Council advises that the subject land should be able to be serviced by existing infrastructure and planned augmentation.**

External Supporting Notes :

### Adequacy Assessment

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

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

Comment : **The statement of objectives identifies a range of potential benefits from this planning proposal, such as:-**

- allow development into a range of residential lot sizes, consistent with adjoining land use;
- provide land which will allow for a variety of residential development to be undertaken and thereby contribute towards addressing housing affordability;
- enable the logical extension of, and connection between existing residential and large lot residential zones;
- provide for the efficient use of existing and proposed servicing infrastructure; and
- provide continuing choice and selection of land use types and locations within the local government area.

**The statement of objectives is supported.**

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

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

Comment : **The explanation of provisions explains that the site will be rezoned from E3 Environmental Management to part R1 General Residential and part R5 Large Lot Residential under the Muswellbrook Local Environmental Plan 2009.**

**This will involve amending the land zoning, minimum lot size, height of building and floor space ratio maps. A minimum lot size of 600sm, maximum building height of 8.5 metres and floor space ratio of 0.5:1 will be applied to land being rezoned R1 General Residential. A minimum lot size of 4000sm and maximum building height of 8.5 metres will be applied to land being rezoned to R5 Large Lot Residential.**

**The explanation of provisions is supported.**

**Justification - s55 (2)(c)**

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

b) S.117 directions identified by RPA :

**1.3 Mining, Petroleum Production and Extractive Industries**

\* May need the Director General's agreement

**1.5 Rural Lands**

**2.1 Environment Protection Zones**

**2.3 Heritage Conservation**

**3.1 Residential Zones**

**3.4 Integrating Land Use and Transport**

**4.2 Mine Subsidence and Unstable Land**

**4.4 Planning for Bushfire Protection**

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

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

d) Which SEPPs have the RPA identified?

**SEPP No 55—Remediation of Land**

**SEPP (Infrastructure) 2007**

**SEPP (Rural Lands) 2008**

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

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

If No, explain :

**SEPP No55 — Remediation of Land**

**Comment: A Contamination assessment is required to determine whether the site is uncontaminated and is suitable for residential development.**

**SEPP (Rural Lands) 2008**

**The planning proposal will determine whether this land is suitable for residential development. The land adjoins existing residential development and provides an opportunity to expand South Muswellbrook. It is understood that the land has previously been used for grazing and Council should consult with the Department of Primary Industries (Agriculture) to determine consistency with Rural Planning Principles and Rural Subdivision Principles.**

**Minister's s117 Directions**

**1.3 Mining, Petroleum Production and Extractive Industries.**

**Council consulted the NSW Department of Trade and Investment back in 2012 as part of preparing its Muswellbrook Residential and Rural Residential Strategy 2014. At the time, Council was advised that it has no resource concerns with this site but it was located within a mine subsidence area. Re-consultation with the Department of Primary Industries - Minerals and Petroleum should be required as part of the Gateway determination to determine consistency with this Direction because the previous advice may now be outdated.**

**1.5 Rural Lands**

## Amendment to Muswellbrook Local Environmental Plan 2009 - Ironbark Ridge

**Comment:** The draft LEP is inconsistent with this direction because it affects land within a rural locality. The Department is considering endorsing the subject land as part of Council's Muswellbrook Residential and Rural Residential Strategy 2014. In the circumstances, The Department will make a decision about this inconsistency after Council completes its assessment of the planning proposal. Consultation with the Department of Primary Industries - Agriculture should be required as part of the Gateway determination to determine consistency with this Direction.

### 2.1 Environment Protection Zones

**Comment:** The subject site is currently zoned E3 Environmental Management zone and the southern part of the subject land is mapped within the Terrestrial Biodiversity layer. When the Standard Instrument LEP was prepared, the E3 Environmental Management zone was applied to land having important scenic or environmental significance. Council advises that a Seven Part Test on Threatened Flora and Fauna has been undertaken by Wildthing Environmental Consultants. The report concluded that "with the application of the recommendations within this report it is unlikely that the proposed rezoning will bare a significant adverse impact upon any viable local populations or individuals of the threatened species, populations or individuals of the threatened species, populations or communities considered in this report". Consultation with the Office of Environment and Heritage should be required as part of the Gateway determination to determine consistency with this Direction, the significance of the land zoned E3 Environmental Management and whether an environmental biodiversity offset package is required.

### 2.3 Heritage Conservation

**Comment:** The planning proposal advises that the subject land is not located within a heritage conservation area or contain any heritage items. Consultation should be undertaken with the Office of Environment and Heritage and the Local Aboriginal Land Council to determine whether the planning proposal is likely to impact on any aboriginal heritage and to determine consistency with this direction.

### 3.1 Residential Zones

**Comment:** The proposed residential zones will permit a wide range of dwelling types. The subject land will be connected to reticulated sewer, reticulated water, electricity & telecommunication. The draft LEP is consistent with this direction.

### 3.4 Integrating Land Use and Transport

**Comment:** The Muswellbrook Residential and Rural Residential Strategy 2014 indicates that the subject land can be serviced by existing infrastructure and planned augmentation. The draft LEP is consistent with this direction.

### 4.2 Mine Subsidence and Unstable Land

**Comment:** The subject land is located within a mine subsidence area. Council consulted the Mine Subsidence Board back in 2012 for part of the subject land and was advised that they would approve surface development and revised building guidelines for the site and there are no restrictions on the erection of improvements on this land subject to Mine Subsidence Board approving plans prior to commencement of construction. The Mine Subsidence Board should be re-consulted as part of the Gateway determination to determine consistency with this Direction because the previous advice may now be outdated and only related to part of the subject land.

### 4.4 Planning for Bushfire Protection

**Comment:** Consultation with the NSW Rural Fire Service should be required as part of the Gateway determination to determine consistency with this Direction. Council needs to undertake this consultation before commencing community consultation to satisfy the requirements of Direction 4.4 Planning for Bushfire Protection.

## Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

**Comment :** The subject land need to be mapped as an urban release area.

## Community consultation - s55(2)(e)

Has community consultation been proposed?

**Comment :** Agree with Council decision to exhibit the planning proposal for a minimum of 28 days.

## Amendment to Muswellbrook Local Environmental Plan 2009 - Ironbark Ridge

28 days should give the community sufficient time to review the supporting information to form an opinion about the rezoning proposal.

### Additional Director General's requirements

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

If Yes, reasons :

### Overall adequacy of the proposal

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

If No, comment :

## Proposal Assessment

### Principal LEP:

Due Date :

Comments in  
relation to Principal  
LEP :

**The comprehensive Muswellbrook LEP was gazetted in 2009.**

### Assessment Criteria

Need for planning  
proposal :

**Yes. The preparation of a Planning Proposal is the most appropriate mechanism to investigate whether the subject land should be rezoned from E3 Environmental Management to part R1 General Residential and part R5 Large Lot Residential under the Muswellbrook Local Environmental Plan 2009.**

## Amendment to Muswellbrook Local Environmental Plan 2009 - Ironbark Ridge

Consistency with strategic planning framework :

### Upper Hunter Strategic Regional Land Use Plan

The Upper Hunter Strategic Regional Land Use Plan recognises a potential existing zoned residential land supply of 1300 allotments at South Muswellbrook and advises that this should be adequate to cater for the short to medium term demand. It recommends that the Upper Hunter councils should continue to monitor the supply of housing in the Region in response to mining growth and market conditions. It requires that urban investigation areas should be consistent with the settlement planning principles and rural residential areas should also be located in close proximity to existing townships.

### Land Use Development Strategy 2012

The Land Use Development Strategy provides an overarching policy framework and outlines Council's strategic position and its response when dealing with development issues. The rural lifestyle section identifies the need to undertake a comprehensive residential land demand and supply assessment and undertake detailed investigations of identified candidate areas for residential and rural residential development.

### Muswellbrook Residential and Rural Residential Strategy 2014

The Strategy has been prepared with the context of Upper Hunter Strategic Regional Land Use Plan and addresses action 6.3 which requires Council to identify potential urban investigation areas to maintain an adequate supply of general residential and rural residential lands to meet future demands.

It identifies that Muswellbrook has an existing supply of 1071 residential allotments and 115 rural residential allotments, which should be adequate in the short to medium term. The Strategy recognises that there are limited growth opportunities around Muswellbrook because of development constraints and a lot of the surrounding lands have been purchased by mining companies to be used as an environmental offsets or mining buffers.

The Strategy distinguishes between category 1 and 2 investigation lands to assist in the coordination of land release and the expectations of land owners. Category 1 land should be investigated before any category 2 lands to ensure the logical, cost effective, coordinated and serviced land release. This planning proposal investigates the suitability of rezoning part of Muswellbrook Candidate Area D identified as category 1 lands.

Council has requested the endorsement of the Muswellbrook Residential and Rural Residential Strategy 2014. The Department is currently finalising its assessment of the identified candidate areas and a decision about endorsement should be made before the end of the year. If the whole Muswellbrook Candidate Area D is rezoned, this should provide sufficient zoned residential lands for the next 50 to 60 years based on historical growth rates of around 1%.

Environmental social economic impacts :

### Environmental Impacts

The subject site is currently zoned E3 Environmental Management zone and the southern part of the subject land is mapped within the Terrestrial Biodiversity layer. When the Standard Instrument LEP was prepared, the E3 Environmental Management zone was applied to land having important scenic or environmental significance.

The flora and fauna assessment prepared by Wildthing Environmental Consultants concluded that "with the application of the recommendations within this report it is unlikely that the proposed rezoning will bare a significant adverse impact upon any viable local populations or individuals of the threatened species, populations or individuals of the threatened species, populations or communities considered in this report." Consultation with the Office of Environment and Heritage will determine the significance of the land zoned E3 Environmental Management and whether an environmental biodiversity offset package is required.

### Social and Economic Impacts

The planning proposal should have positive social and economic benefits by the provision of additional housing and employment opportunities.

## Amendment to Muswellbrook Local Environmental Plan 2009 - Ironbark Ridge

### Assessment Process

Proposal type : **Precinct** Community Consultation Period : **28 Days**

Timeframe to make LEP : **18 months** Delegation : **DG**

Public Authority Consultation - 56(2) (d) : **NSW Aboriginal Land Council  
Office of Environment and Heritage  
NSW Department of Primary Industries - Agriculture  
NSW Department of Primary Industries - Minerals and Petroleum  
Mine Subsidence Board  
NSW Rural Fire Service  
Transport for NSW - Roads and Maritime Services**

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

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

If no, provide reasons :

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

If Yes, reasons :

Identify any additional studies, if required. :

#### **Bushfire**

If Other, provide reasons :

Identify any internal consultations, if required :

Is the provision and funding of state infrastructure relevant to this plan? **Yes**

If Yes, reasons : **The subject land needs to be mapped as an Urban Release Area**

### Documents

Document File Name	DocumentType Name	Is Public
<b>Updated Planning Proposal.pdf</b>	<b>Proposal</b>	<b>Yes</b>

### Planning Team Recommendation

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

S.117 directions: **1.3 Mining, Petroleum Production and Extractive Industries  
1.5 Rural Lands  
2.1 Environment Protection Zones  
2.3 Heritage Conservation  
3.1 Residential Zones  
3.4 Integrating Land Use and Transport  
4.2 Mine Subsidence and Unstable Land  
4.4 Planning for Bushfire Protection**

Additional Information : **It is recommended that:**

**1. The Planning Proposal be supported and Council not be given the Minister's plan making delegations.**

**Amendment to Muswellbrook Local Environmental Plan 2009 - Ironbark Ridge**

2. Prior to commencing public exhibition, Council is to provide the following additional information within the planning proposal:

- Amend the Urban Release Area Map to identify the subject lands as an urban release area;
- Contamination and Geotechnical Assessment;
- Bushfire Assessment;
- Consult and take into consideration any comments made by the Office of Environment and Heritage, NSW Rural Fire Service, Mine Subsidence Board or any other public authority consulted in accordance with the Minister's S117 Directions.

3. Community consultation is required under section 56(2)(c) and 57 of the Environmental Planning & Assessment Act 1979 ('EP&A' Act) as follows:

- (a) the Planning Proposal be made publicly available for 28 days;
- (b) the relevant authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be publicly available along with planning proposals as identified in section 4.5 of A guide to preparing LEPs (Department for Planning 2009).

4. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:

- NSW Rural Fire Service
- Office of Environment and Heritage
- NSW Aboriginal Land Council
- NSW Department of Primary Industries - Agriculture
- NSW Department of Primary Industries - Minerals and Petroleum
- Mine Subsidence Board
- Transport for NSW - Roads and Maritime Services

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.

5. Council should be advised to address the Minister's S117 Direction 1.3 Mining, Petroleum Production and Extractive Industries, 1.5 Rural Lands, 2.1 Environment Protection Zones and 2.3 Heritage Conservation and if required obtain relevant approvals.

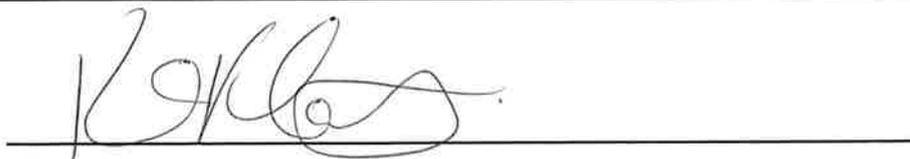
6. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing.

8. The timeframe for completing the LEP is 18 months from the date of the Gateway Determination.

Supporting Reasons :

It is not recommended to give Council the Minister's plan making delegations because the Department has not decided whether to endorse the Muswellbrook Residential and Rural Residential Strategy 2014 and Council may require assistance in finalising its assessment and resolving any agency requirements such as an environmental biodiversity offset, if required.

Signature:



Printed Name:

KORUHERTY Date: 21/10/14