

8 Yarawa Road Denman - Amendment 8 Muswellbrook LEP 2009

Proposal Title : **8 Yarawa Road Denman - Amendment 8 Muswellbrook LEP 2009**

Proposal Summary : **The proposal seeks to rezone approximately 42 ha of land at Denman from RU1 Primary Production to R5 Large Lot Residential.**

PP Number : **PP_2014_MUSWE_002_00** Dop File No : **14/12190**

Proposal Details

Date Proposal Lodged with DOP : **01-Oct-2014** Date Proposal Uploaded to Public Website : **22-Oct-2014**

Proposal Assessment

Is Public Hearing Required by PAC? **No**

Agencies Requested to Consult : **NSW Aboriginal Land Council
NSW Department of Primary Industries
- Agriculture
NSW Department of Primary Industries
- Minerals and Petroleum
Mine Subsidence Board**

Gateway Determination

Decision Date : **21-Oct-2014** Gateway Determination : **Passed with Conditions**

Due Date of LEP : **28-Apr-2016**

Implementation

Implementation Start Date : **28-Oct-2014** Exhibition Duration : **32**

Agency consultation consistent with recommendation : **Yes**

If No, comment : **The Gateway determination required consultation with the following public authorities:-**

Department of Primary Industries - NSW Agriculture (DPI)
DPI supports the rezoning proposal based on Council's Muswellbrook Residential and Rural Residential Strategy (MRRRS). DPI advises that "Although the site has agricultural merit as identified in the Upper Hunter Strategic Rural Land Use Plan and the adjacent viticultural land use as well as other studies, its location to the village land does provide a strong strategic advantage to the proposed change of use." It reinforces that every effort should be made to protect the adjacent agricultural lands from potential land use conflicts.

DPI raised concerns about the agricultural assessment which claims that the subject land is unsuitability for viticulture, however it did not require additional assessments because it supported the strategic direction of this Planning Proposal.

NSW Trade and Investment (T&I)

The NSW T&I initially raised concerns about the rezoning proposal and its impact on the future extraction of the underground coal resource. T&I withdrew its objection after further discussions with Council and the developer about the strategic merits of the rezoning and after taking into consideration the significant constraints to the possible extraction of coal beneath the subject site. These include its proximity to Denman township, Hunter River and the presence of Equine and Viticulture Critical Industry Cluster.

Mine Subsidence Board

The MSB has no objections to the proposed rezoning and advised that its approval would be required for any future subdivision or development.

Office and Environment and Heritage (OEH)

The Aboriginal Heritage Assessment was prepared in accordance with OEH instructions and guidelines. OEH advised that they are satisfied with the Preliminary Aboriginal Heritage Assessment and level of consultation, provided further consultation in accordance with Aboriginal Cultural Heritage consultation requirements for proponents 2010 is undertaken at the development application stage.

Wanaruah Aboriginal Land Council

The Wanaruah land council advises that they accept the proposed rezoning subject to further cultural heritage assessment being undertaken at the development application stage.

The Preliminary Aboriginal Heritage Due Diligence Assessment identified 44 artefacts and recommended to undertake a detailed archaeological assessment in accordance with the OEH requirements in consultation with the Wanaruah LALC prior to the commencement of any future development of the land, following the rezoning stage.

Agency Objections :

No

If Yes, comment :

Documentation consistent with Gateway :

Yes

If No, comment :

1 Gateway Determination

Council has complied with the requirements of the Gateway determination.

Urban Release Area

Council resolved to map this site as an urban release area so they could require the preparation of a Development Control Plan before any development application is approved.

State Infrastructure

The Department previously consulted the service providers about whether the Denman and Muswellbrook urban release areas should contribute towards the provision of State Infrastructure. The service providers advised that they had no requirements. On 2 August 2012, the Department (Andrew Jackson, Executive Director of Strategy and Infrastructure) issued a satisfactory arrangements certificate confirming that no contribution was required towards State infrastructure. A copy of this letter is provided under the documents tab.

This satisfactory arrangements certificate does not apply to any new urban release areas. The Department does not require the subject land to contribute towards the provision of State Infrastructure, so the PC Opinion excludes clause 6.1 from applying to the subject land.

2 UPPER HUNTER STRATEGIC REGIONAL LAND USE PLAN (SRLUP)

The subject site along with half of Denman is mapped in the Upper Hunter SRLUP within both equine and viticulture Critical Industry Clusters. The northern boundary of the subject land adjoins the Denman village which is zoned RU5 Village, the southern boundary adjoins the Two River Vineyard and the eastern boundary adjoins land mapped as Biophysical Strategic Agricultural Land. The subject land and Two Rivers vineyard are owned by the same people.

The Critical Industry Clusters are mapped at a regional scale and are not intended to be used for property level interpretations. It requires Councils, through Action 3.3 to 'include appropriate zonings and provisions in local environmental plans to protect agricultural land including, as a minimum, mapped strategic agricultural land.' Historically the subject land has not been used for viticulture or equine uses.

The Settlement Planning Principles require that new rural residential areas minimise the potential for land use conflict with land needed for valuable economic activities, such as valuable agricultural lands and be located adjacent to, or in close proximity to, existing urban areas. The planning proposal is consistent with the settlement principle that new rural residential areas should be located adjacent to, or in close proximity to, existing urban areas and capable of being serviced by existing infrastructure.

In regards to the other potential inconsistencies with the Upper Hunter SRLUP, the Gateway determination required Council to consult with the Department of Primary Industries (Agriculture). DPI supported the rezoning proposal based on Council's Muswellbrook Residential and Rural Residential Strategy (MRRRS), which identified this site as its preferred Denman rural residential candidate area. DPI also advised that "Although the site has agricultural merit as identified in the Upper Hunter Strategic Rural Land Use Plan and the adjacent viticultural land use as well as other studies, its location to the village land does provide a strong strategic advantage to the proposed change of use. It should be noted that this extension of the village is in a very confined area, and every effort to protect the adjacent agricultural land should be undertaken."

Council supports the planning proposal on the basis that it does not affect prime agricultural land and can be developed without conflict to the neighbouring Two Rivers vineyard and without impacting on the future of the adjoining CIC Viticulture land. The planning proposal advises that the future design of the rural residential subdivision will incorporate appropriate setbacks and buffers to ensure there will be no land use conflict between the housing and viticultural uses.

The planning proposal advises that the owners of Two Rivers intend to expand its existing tourist accommodation facilities from the proceeds from rezoning. If this occurred, it would also create additional employment opportunities, which is consistent with the economic development and employment objectives of Upper Hunter SRLUP.

The SRLUP also identifies the site as having 'coal resource exploration potential' and 'high coal seam gas potential'. The Gateway determination required Council to consult with NSW Trade and Investment (T&I). T&I withdrew its initial objection after further discussions with Council and the developer about the strategic merits of the rezoning and after taking into consideration the significant constraints to the possible extraction of coal beneath the subject site. These include its proximity to Denman township, Hunter River and the presence of Equine and Viticulture Critical Industry Cluster.

3 Draft Hunter Regional Plan

The planning proposal is considered consistent with the strategic directions

contained in the draft Hunter Regional Plan.

Residential Outcomes

The draft plan advises that the region has a sufficient supply of land available in established and new release areas to meet anticipated demand. However, it recognises the need to identify appropriate locations in rural areas for growing established communities, while protecting the significance agricultural lands and natural resources.

The planning proposal demonstrates that the subject site is suitable for rural residential development and it should be possible to manage any potential land use conflicts, as discussed in this report.

4 Muswellbrook Residential and Rural Residential Strategy 2014

The Muswellbrook Residential and Rural Residential Strategy 2014 (MRRRS) takes into consideration the existing supply of residential and rural residential lands in the local government area and determines the potential demand based on predictions of low, medium and high population growth scenarios. It identifies various urban investigation areas to provide an adequate supply of residential and rural residential lands to meet projected future demand.

The Department reviewed the suitability of the proposed urban release areas and resolved to partially endorse the MRRRS on 8 May 2015. The Department endorsed Muswellbrook candidate area B and Muswellbrook candidate area D because it provided a practical extension to existing residential and rural residential areas.

The subject land is identified in the MRRRS as Denman candidate area A 'Category 1' land which is defined as "land that is a logical extension of and located in close proximity to existing developed areas, building upon existing services and amenities and requires the augmentation of infrastructure". The MRRRS requires that Category 1 land may be investigated in the short term and must be rezoned prior to any investigation of Category 2 land.

The MRRRS recognises that Denman has sufficient residential and rural residential land up to meet demand up to 2031 under the low, medium and high growth scenarios. However, there is uncertainty regarding the release of residential and rural residential land in Denman and Council supports the creation of additional development fronts to increase the supply of land and create contestability in the market.

The Department didn't endorse the subject land/Denman candidate area A because additional studies and consultation with the Department of Primary Industries (Agriculture) was required to determine whether the rural residential development would impact on strategic agricultural lands or the viticulture critical industry cluster identified by the Upper Hunter Strategic Regional Land Use Plan.

The Department is satisfied that it should be possible for the rural residential allotments with a minimum lot size of 4000sm to incorporate building envelopes that maintain appropriate setbacks and buffers to minimise any potential land use conflict between housing and surrounding agricultural/viticultural activities.

5 STATE ENVIRONMENTAL PLANNING POLICIES

The draft Local Environmental Plan is consistent with relevant State Environmental Planning Policies

SEPP 55 - Remediation of Land

The Environmental Site Assessment 2015 found a high level of zinc, boron and copper in the soils in excess of the ecological criteria but well within human health criteria. Council is satisfied that the site is uncontaminated and is suitable for the proposed change in land use.

State Environmental Planning Policy (Rural Lands) 2008

The planning proposal is considered consistent with the rural planning principles. Further consideration of the rural planning principles is provided in the assessment of the Minister's S117 Direction 1.5 Rural Lands below.

6 SECTION 117 LOCAL PLANNING DIRECTIONS

The Gateway determination required Council to consult the Department of Primary Industries to determine whether the inconsistencies with the SRLUP and the Minister's S117 Directions 1.2 Rural Zones and 1.5 Rural Lands were justifiable.

1.2 Rural Zones

The planning proposal is inconsistent with this Direction as it proposes to rezone land from rural to a large lot residential zone.

The planning proposal justifies this inconsistency based on the Muswellbrook Residential and Rural Residential Strategy (MRRRS), the subject land has limited agricultural value and it will be possible to maintain suitable buffers from the adjoining Two Rivers vineyard operations.

It is recommended that the Secretary's delegate approve this inconsistency on the basis that is justified by the supporting studies which give consideration to the objectives of this direction and consistent with the advice of the Department of Primary Industries (Agriculture) who support the rezoning proposal based on this strategy.

1.3 Mining, Petroleum Production and Extractive Industries

This direction applies as the planning proposal restricts the potential development of extractive materials which are of regional significance by permitting a land use that is likely to be incompatible with such development.

As required by this direction, Council has consulted and resolved the issues raised by NSW Trade and Investment. Therefore, the planning proposal is considered consistent with this Direction.

1.5 Rural Lands

The draft Local Environmental Plan is considered generally consistent with the Rural Planning Principles, which aims to protect agricultural productive lands, whilst providing opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities.

The planning proposal demonstrates that the proposed rural residential development is not an incompatible land use with the adjoining vineyards and the land can be developed without adversely impacting on the agricultural productivity of this established viticultural business.

The planning proposal is considered consistent with this Direction, specifically objective b) which seeks to facilitate the orderly and economic development of rural land for rural and related purposes.

2.3 Heritage Conservation

The draft Local Environmental Plan is considered consistent with this direction.

An Aboriginal Heritage Assessment was prepared in accordance with OEH instructions and guidelines. OEH advised that they are satisfied with the Preliminary Aboriginal Heritage Assessment and level of consultation, provided further consultation in accordance with Aboriginal Cultural Heritage consultation requirements for proponents 2010 is undertaken at the development application stage.

The Wanaruah land council advises that they accept the proposed rezoning subject to further cultural heritage assessment being undertaken at the development application stage.

3.1 Residential Zones

The draft Local Environmental Plan is consistent with this direction by providing housing diversity, efficient use of existing infrastructure and services and minimising the potential land use conflicts with surrounding agricultural land uses.

4.2 Mine Subsidence and Unstable Land

This Direction is applicable as the site is located within the Muswellbrook Mine Subsidence District. The Mine Subsidence Board raised no objections to the proposed rezoning and advises that its approval is required for any future subdivision or development.

7 Lobbyist Code of Conduct

To date, all dealings with this Planning Proposal have adhered to the Lobbyist Code of Conduct. To the best of the knowledge of the regional team there have been no meetings with registered lobbyists.

8 Make the Plan

A Parliamentary Counsel Opinion was issued on 15 February 2016. Council was consulted in accordance with s59(1) and accepted the drafting of the planning proposal.

LEP Assessment

Date Received from RPA : 08-Dec-2015

LEP Determination

DatePublishNotification

Date sent to Parliamentary Council to Draft LEP : 15-Jan-2016

Determination Date :

Determination Decision :

Notification Date :