

Yarawa Road Denman - Amendment to Muswellbrook LEP 2009

Proposal Title : **Yarawa Road Denman - Amendment to 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 Planning Proposal Received : **01-Oct-2014** LGA covered : **Muswellbrook**

Region : **Hunter** RPA : **Muswellbrook Shire Council**

State Electorate : **UPPER HUNTER** Section of the Act : **55 - Planning Proposal**

LEP Type : **Spot Rezoning**

Location Details

Street : **Yarawa Road**

Suburb : **Denman** City : Postcode : **2328**

Land Parcel : **Lot 1 DP 323945**

DoP Planning Officer Contact Details

Contact Name : **Dylan Meade**

Contact Number : **0249042718**

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RPA Contact Details

Contact Name : **Pathum Gunasekara**

Contact Number : **0265493860**

Contact Email : **Pathum.Gunasekara@muswellbrook.nsw.gov.au**

DoP Project Manager Contact Details

Contact Name :

Contact Number :

Contact Email :

Land Release Data

Growth Centre : Release Area Name :

Regional / Sub Consistent with Strategy :

Regional Strategy :

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MDP Number :

Date of Release :

Area of Release
(Ha) :

Type of Release (eg
Residential /
Employment land) :

No. of Lots : 0

No. of Dwellings : 0
(where relevant) :

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 :

Council has not indicated if it wants to use plan making delegations. It is recommended that Council not be granted plan making delegations due to inconsistencies with the Department's Upper Hunter Strategic Regional Land Use Plan.

External Supporting Notes :

Adequacy Assessment

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

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

Comment : **The statement of the objectives explains that the planning proposal intends to enable the land to be developed for large lot residential living purposes.**

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 provided explains that the planning proposal will make amendments to the land zoning, lot size and height of buildings map of the Muswellbrook LEP 2009.**

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 :

* May need the Director General's agreement

1.2 Rural Zones

1.3 Mining, Petroleum Production and Extractive Industries

1.5 Rural Lands

2.3 Heritage Conservation

3.1 Residential Zones

3.4 Integrating Land Use and Transport

4.2 Mine Subsidence and Unstable Land

Is the Director General's agreement required? **No**

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

d) Which SEPPs have the RPA identified? **SEPP No 55—Remediation of Land**

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

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain : **The proposal has not justified inconsistencies with the Upper Hunter Strategic Regional Land Use Plan or Section 117 Directions 1.2, 1.5, 2.3, 3.1 and 4.2. Consultation with relevant state agencies and the community will enable an informed decision if the inconsistencies are of minor significance or not.**

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council has nominated 14 days for the proposed length of community consultation as it considers the proposal to be of low impact. To be described as low impact, a proposal must be:**

- **consistent with the pattern of surrounding land use zones and/or land uses**
- **consistent with the strategic planning framework**
- **presents no issues with regard to infrastructure servicing**
- **not a principal LEP**
- **does not reclassify public land.**

As addressed under the 'consistency with the strategic planning framework' section, the proposal is not considered consistent with the strategic planning framework. It is therefore recommended that the proposal be exhibited for a period of 28 days.

The proposal has not nominated any specific consultation with State agencies, and indicates that this will be identified as part of the Gateway. It is recommended that Council be required to consult with Department of Primary Industries – Agriculture to determine the impact on agricultural production, as well as agencies required under Section 117 Directions including the Mine Subsidence Board and Department of Primary Industries – Resources.

Additional Director General's requirements

Are there any additional Director General's requirements? **Yes**

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 : **October 2009**

Comments in
relation to Principal
LEP :

The comprehensive Muswellbrook LEP was gazetted in 2009.

Assessment Criteria

Need for planning
proposal :

The planning proposal is required in order to facilitate the development of the site for rural residential purposes. The site is identified as a rural residential release area in the Muswellbrook Residential and Rural Residential Strategy (MRRRS).

Consistency with strategic planning framework :

UPPER HUNTER STRATEGIC REGIONAL LAND USE PLAN (SRLUP)

The subject site is mapped in the Upper Hunter SRLUP within both equine and viticulture Critical Industry Clusters. The subject site also adjoins land mapped as Biophysical Strategic Agricultural Land. The Upper Hunter SRLUP requires through Action 3.3 for Councils to 'include appropriate zonings and provisions in local environmental plans to protect agricultural land including, as a minimum, mapped strategic agricultural land.' Rezoning the mapped agricultural land to rural residential is inconsistent with this action of the Upper Hunter SRLUP.

The planning proposal is also inconsistent with the Settlement Planning Principles of the SRLUP which requires new residential and rural residential areas to 'minimise the potential for land use conflict with land needed for valuable economic activities, such as valuable agricultural lands and natural resource lands.' The planning proposal creates potential conflicts with valuable agricultural lands identified in the SRLUP.

The subject site is located on the edge of the equine and viticulture Critical Industry Clusters, and it is acknowledged that the SRLUP is mapped at a regional scale. It is recommended that Council consult with the Department of Primary Industries (Agriculture) regarding the above inconsistencies with the Upper Hunter SRLUP to determine if the loss of mapped agricultural land is regionally significant.

The subject site is also identified as having 'coal resource exploration potential' and 'high coal seam gas potential' in the SRLUP. The NSW Department of Trade and Investment (NSW Resources and Energy) has previously advised the Department that there are no current mining-related titles over this candidate area, although it is considered to have coal resource potential and therefore future underground mining potential. It is also recommended that Council consult NSW Department of Trade and Investment (NSW Resources and Energy) regarding this inconsistency with the SRLUP.

MUSWELLBROOK RESIDENTIAL AND RURAL RESIDENTIAL STRATEGY (2014)

The subject site is identified in the MRRRS to meet expected population growth. The MRRRS projects by 2031 there will be demand in Denman for an additional 10 rural residential dwelling under the low growth scenario, and up to 29 additional rural residential dwellings under the high growth scenario. Denman has zoned capacity for 45 rural residential lots, and as such, the Strategy states that there are no shortages of general or rural residential development up to 2031 under any of the growth scenarios for Denman. However, as there is uncertainty regarding the release of the rural residential land in Denman and there is no guarantee the estimated full lot yield of existing sites in Denman will be realised, the MRRRS supports the creation of additional development fronts to increase the supply of land and create contestability in the market.

The constraints analysis undertaken of potential release site investigated environmental and infrastructure constraints to each of the candidate areas. This supply assessment identified the subject site (Denman Area A) as the least constrained potential release area, and as such identified the subject site as the preferred rural residential release area for Denman.

The above constraints analysis did not consider the agricultural value of the land as identified in the Upper Hunter SRLUP, and the objectives of relevant Sections 117 Direction 1.2 and 1.5. It is understood that State Government agencies including the Department of Primary Industries (Agriculture) were not consulted on the Strategy.

The Muswellbrook Residential and Rural Residential Strategy (MRRRS) has been submitted to the Department for endorsement. The Department has drafted recommendations for endorsement, and it is recommended that the Department does not endorse this candidate area until Council has consulted the Department of Primary Industries (Agriculture), justified the rezoning against the Upper Hunter Strategic Regional Land Use Plan and address the inconsistencies with the Minister's section 117 Directions 1.2 Rural zones and 1.5 Rural lands. This recommendation is supported, and will be an outcome of the assessment undertaken for this planning proposal.

STATE ENVIRONMENTAL PLANNING POLICIES

SEPP 55 - Remediation of Land

The proposal identifies this SEPP as applicable but states that the land is unlikely to contain any contaminants because it has only been used for light agricultural activities. The 'Managing Land Contamination - Planning Guidelines' advises contamination is more likely to occur if the land is currently zoned and used for agricultural purposes. It is not apparent from the planning proposal if Council has adequately considered whether the land is contaminated as required by the SEPP and Guidelines. It is recommended that Council be advised to undertake appropriate investigations in accordance with the SEPP.

SECTION 117 LOCAL PLANNING DIRECTIONS

***1.2 Rural Zones**

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

The submitted planning proposal justifies the inconsistency with this Direction due to the identification of the subject site in the Muswellbrook Residential and Rural Residential Strategy (MRRRS). The inconsistency cannot be justified by the MRRRS as it does not give consideration to the objective of this Direction and does not consider the loss of zoned agricultural land for this site or the cumulative impacts. The identification of this land within the Equine and Viticulture Critical Industry Clusters is also considered significant.

The proposal has identified that a soil and land capability assessment was undertaken and the site was identified as containing Class IV agricultural soils. This study was undertaken in 2000 and was prepared in support of a development application for the existing winery, and not the proposed rezoning to allow for rural residential purposes. The study stated that the growing of grapes on Class IV soils is suitable, however only recommends that Classes I –III should be protected from development and maintained for agricultural production. The inconsistency cannot be justified by this Study as it was not prepared in support of the planning proposal.

The objective of this direction is to protect the agricultural production value of rural land. Although the soil capability of the land is not the highest agricultural value, it is suitable for the growing of grapes. The land is currently not being used for agricultural production purposes and is understood to act as buffer between the winery and the township of Denman. It is considered that consultation by Council with the Department of Primary Industries - Agriculture is required to determine if the proposals inconsistency with this Direction can be justified.

1.3 Mining, Petroleum Production and Extractive Industries

This direction applies as the planning proposal would have the effect of restricting 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.

It is agreed with the planning proposal that the likelihood of extraction industries on the site is limited given the proximity to Denman, however if the planning proposal proceeds, Council must seek advice from the Director-General of the NSW Department of Trade and Investment (NSW Resources and Energy) as required by this Direction.

1.5 Rural Lands

This Direction is applicable as the planning proposal proposes to change the existing minimum lot size on land within a rural zone. The planning proposal is inconsistent with the Rural Subdivision Principles, and thus the objectives of this Direction. It is considered that the proposal does not demonstrate that it minimises rural land fragmentation, or land use conflicts between residential and rural land uses.

The submitted planning proposal justifies the inconsistency with this Direction due to the

identification of the subject site in the Muswellbrook Residential and Rural Residential Strategy (2014). The Strategy also does not give consideration to the objective of this Direction and does not consider the loss of zoned agricultural land for this site or the cumulative impacts. As with the inconsistency with Direction 1.2, it is considered that consultation by Council with the Department of Primary Industries - Agriculture is required to determine if the inconsistency is justified.

2.3 Heritage Conservation

This Direction is applicable as the subject site contains items registered under the Aboriginal Heritage Information System. The proposal states that further investigation will occur if required by the Gateway. It is recommended that Council should undertake an Aboriginal heritage assessment, and make appropriate changes to the proposal to protect identified items.

3.1 Residential Zones

This Direction is applicable as the planning proposal proposes to rezone land to a residential zone. Given the existing capacity for residential dwellings within the township of Denman, the proposal is considered potentially inconsistent with this Direction as it does not demonstrate efficient use of existing infrastructure and services, reduced consumption of land for housing and associated urban development on the urban fringe. This inconsistency is justified by the Muswellbrook Residential and Rural Residential Strategy, but as the Strategy is pending endorsement, it cannot be used. It is considered that consultation will assist to determine whether or not the planning proposal is inconsistent with this Direction and if any inconsistency can be justified.

4.2 Mine Subsidence and Unstable Land

This Direction is applicable as the site is located within the Muswellbrook Mine Subsidence District. In accordance with this Direction, Council must consult with the Mine Subsidence Board to determine if the Mine Subsidence Board has any objection to the proposal.

Environmental social
economic impacts :

ENVIRONMENTAL

The subject site is predominately cleared and the planning proposal will not result in clearing of native vegetation.

The proposal will result in the loss of agricultural land. This has been addressed under Section 117 Directions 1.2 and 1.5 above.

The subject site is located adjacent to a vineyard. This may result in impacts on the proposed residential uses from chemical spraying and other associated agricultural maintenance practices. The site is also located 400 metres from a sewer treatment plant which may result in negative amenity impacts on the proposed residential uses. The proposal advises that adequate setbacks to these constraints can be managed through the development assessment process for subdivision approval. It is considered that appropriate buffers can be adequately managed through the subdivision approval process, and that no buffer requirements are necessary for the planning proposal.

SOCIAL AND ECONOMIC

The planning proposal is not considered to have any adverse economic impacts. Council have argued that the planning proposal will result in economic benefits for the local area as the release of large lot housing will enable a previously approved vineyard tourism facility for the site to become more economically viable.

As discussed, the subject site has been identified as containing items registered under the Aboriginal Heritage Information System. To ensure no adverse social impacts, it is recommended that Council should undertake an Aboriginal heritage assessment, and make appropriate changes to the proposal to protect identified items.

Assessment Process

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

Timeframe to make LEP : **12 months** Delegation : **DDG**

Public Authority Consultation - 56(2) (d) : **NSW Aboriginal Land Council
NSW Department of Primary Industries - Agriculture
NSW Department of Primary Industries - Minerals and Petroleum
Mine Subsidence Board**

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. :

Heritage

If Other, provide reasons :

The planning proposal identifies that a heritage assessment is required. This is supported.

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
20141002 PP 008 Updated Planning Proposal- September 2014 with App A.pdf	Proposal	Yes
PP008 - Ltr to DOPI requesting gateway.pdf	Proposal Covering Letter	Yes

Planning Team Recommendation

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

S.117 directions: **1.2 Rural Zones
1.3 Mining, Petroleum Production and Extractive Industries
1.5 Rural Lands
2.3 Heritage Conservation
3.1 Residential Zones
3.4 Integrating Land Use and Transport
4.2 Mine Subsidence and Unstable Land**

Additional Information : **1. Consultation is required with the Department of Primary Industries (Agriculture NSW) to determine if inconsistencies with the Upper Hunter Strategic Regional Land Use Plan, and Section 117 Directions 1.2 Rural Zones and 1.5 Rural Lands are of minor significance.**

2. A heritage assessment is required to ensure conservation of items of environmental

heritage significance. The study should be referred to the Wanaruah Aboriginal Land Council and the Office of Environment and Heritage – Heritage Branch. The heritage assessment should be placed on exhibition with the planning proposal.

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

- (a) the planning proposal must be made publicly available for a minimum of 28 days; and
- (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Department of Planning & Environment 2013).

4. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant S117 Directions:

- Department of Primary Industries - Agriculture NSW
- Wanaruah Aboriginal Land Council
- Office of Environment and Heritage – Heritage Branch
- NSW Resources and Energy (Section 117 Direction 1.3 Mining, Petroleum Production and Extractive Industries)
- Mine Subsidence Board (Section 117 Direction 4.2 Mine Subsidence and Unstable Land)

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

5. 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 (for example, in response to a submission or if reclassifying land).

6. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

Supporting Reasons :

Although it is proposed to rezone rural land to residential in an area identified as equine and viticulture Critical Industry Cluster, the planning proposal is provisionally supported as it provides for additional land supply for Denman on a relatively unconstrained site. Additional consultation is required with Agriculture NSW to determine if the inconsistencies with the Upper Hunter SRLUP and Section 117 Direction 1.2 Rural Zones and 1.5 Rural Lands can be justified.

Signature:



Printed Name:

KOFLAHERTY

Date:

21/10/14