

**Planning Proposal – Administrative Amendment – 72 to 74 Maitland
Road, Muswellbrook
PP_2021_MUSWE_000_00**

Local Government Area: Muswellbrook Shire Council (MSC)		
Name of Draft LEP: Muswellbrook Local Environment Plan 2009 - PP_2021_MUSWE_000_00		
Subject Land: Lot 100 DP 1261496 Muswellbrook.		
Land Owner: Pacific Brook Christian School		
Applicant: DFP Planning Pty Limited		
Folder Number: PP018		
Date: 08 Sept 2021		
Author: Sharon Pope Muswellbrook Shire Council		
Tables:	Table No.	Details
	1	Assessment of the Planning Proposal against relevant SEPPs
	2	Consistency with applicable Ministerial Directions
Maps:	No.	
	1	Locality
	2	Site Identification
	3	Flooding
	4	Zoning
	5	Maximum Building Height
	6	Floor Space Ratio

Attachments:	No.	Details
	1	Relevance of SEPPs to the PP
	2	Relevance of Ministerial Directions
	3	Evaluation criteria for the delegation of plan making functions.

Part 1 – OBJECTIVES OR INTENDED OUTCOMES

The objective of the Planning Proposal is to amend Muswellbrook Local Environmental Plan 2009 (MLEP 2009) to change the land zoning map, lot sizes map, height of building map and floor space ratio map as they apply to Lot 100 DP 1261496. The owner proposes to use the site for a private school, however the current zoning of RU3 Forestry permits a limited range of uses.

The Planning Proposal seeks to amend Muswellbrook Local Environmental Plan (MLEP) 2009 to modify the:

- Land zoning Map from the current RU3 Forestry zone, to R1 Low Density Residential zone,
- Height of building map to include a maximum height of building of 8.5m and
- Floor space ratio map to include a floor space ratio of 0.5:1.

Part 2 – EXPLANATION OF PROVISIONS

The proposed objective will be achieved by amending the MLEP 2009 by: -

Amendment Applies to	Explanation of provision
Land Zoning maps – Sheet LZN_008A	To rezone land from RU3 Forestry to R1 General Residential as per Map 4 (b).
Height of Buildings maps – Sheet HOB_008A	To alter the height of buildings as per Map 5 (b).
Floor Space Ratio maps – Sheet FSR_008A	To alter the floor space ratios as per Map 6 (b).

Part 3 – JUSTIFICATION

Section A – Need for the Planning Proposal

3.1 Is the planning proposal a result of any strategic study or report?

The planning proposal is not the result of a strategic study or report.

The land is currently zoned *RU3 Forestry* under the MLEP 2009. The property comprises several empty buildings used in association with the former land use, a plant nursery. The site is currently vacant.

The current zone is an anomaly, no development can currently occur on the site due to that zone. In order to facilitate a future development application for an 'educational establishment' or residential development, MLEP 2009 would need to be amended.

3.2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Amended the zoning and associated map layers is the best means of allowing the site to be redeveloped to its capability and in keeping with adjoining zones and uses.

The proposal is consistent with the objectives of the R1 zone as discussed in the table below:

Table 1 The proposal's consistency with MLEP 2009 objectives for the R1 zone	
Objective	Comment
To provide for the housing needs of the community.	N/A
To provide a variety of housing types and densities.	N/A
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	Educational establishments provide services to the community within the regional area of Muswellbrook.
To allow people to carry out a reasonable range of activities from their homes, where such activities do not adversely affect the living environment of neighbours.	N/A
To promote the principles of ecological sustainable development including energy and water efficient subdivision and housing design.	The proposal is consistent with ESD principles as it proposed to maintain the natural environment to the north west of the site, whilst utilising part of the site mainly already cleared of vegetation to benefit the community and economy.
To minimise the impact of non-residential uses and ensure these are in character and compatible with surrounding development.	The proposed educational establishment proposes a maximum of 650 students with the school to build in stages as enrolments increase. The maximum building height is two storeys to maintain a residential characteristic.
To ensure that development is carried out in a way that is compatible with the flood risk of the area.	The proposed educational establishment will be designed at the 1 in 100 flood level plus 500mm freeboard.

Other options considered and not pursued include:

- **Amending Schedule 1, Additional Permitted Uses** to permit a school. This was not pursued as the underlying objectives of the RU3 zone would still apply, and this type of amendment would not deal with the fact the current zone is no longer appropriate.
- **Amend Zone to B2 Local Centre or B5 Business Development.** There are significant areas of land zoned B2 and B5 in the vicinity that are currently under-developed, there is not justification to zone more land for business purposes. These zones would also encourage further ribbon development adjoining Maitland Street.

Section B – Relationship to Strategic Planning Framework

4.1 Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The Upper Hunter Strategic Regional Land Use Plan (UHSRLUP) September 2012.

The plan "outlines a range of key challenges facing the Upper Hunter region and lists clear actions to address these challenges". The PP is consistent with the actions in this document.

The Hunter Regional Plan 2036 (HREP).

The HREP has "Local Government Narratives" for each of the LGA's in the Hunter. The following is an extract of the information for Muswellbrook (p.70):

Muswellbrook Local Government Area is in the centre of the Upper Hunter Valley and is the predominant location for the State's power generation. It is also a key location for coal mining activities and an important agricultural area. Muswellbrook is well placed to enhance its role as an administrative centre and a centre of educational excellence in the Upper Hunter. Muswellbrook will have to balance an overabundance of resources and successful secondary agricultural industries.

Hunter Regional Plan 2036	
Action	
Consistency	
Direction 14 A biodiversity-rich natural environment	
14.1 Identify terrestrial and aquatic biodiversity values and protect areas of high environmental value to sustain the lifestyle, economic success and environmental health of the region.	An arborist report has been prepared by Abel Ecology which assessed all trees on site and recommends trees for removal based on their health and structural integrity.
14.4 Protect biodiversity by maintaining and, where possible, enhancing the existing protection of high environmental value areas; implementing appropriate measures to conserve validated high environmental value areas; developing local strategies to avoid and minimise the impacts of development on areas of high environmental value and biodiversity corridors; and identifying offsets or other mitigation measures for unavoidable impacts.	<p>There are two locally listed threatened plant species located on the site, being:</p> <ul style="list-style-type: none"> Acacia Pendula (one large tree, two smaller trees and one dozen juvenile trees surrounding these trees). Eucalyptus camaldulensis (one large tree in the north west and on smaller on near the existing driveway). <p>Any future development on the site should retain this vegetation.</p>
Direction 17: Create healthy built environments through good design	
17.3 Enhance the quality of neighbourhoods by integrating recreational walking and cycling networks into the design of new communities to encourage physical activity.	As the proposed development occurs, a footpath will be constructed along Maitland Street, enhancing pedestrian routes within the area.
Direction 20 Revitalise existing communities	
20.1 Accelerate urban revitalisation by directing social infrastructure where there is growth.	The proposed development will contribute to urban revitalisation on Muswellbrook by provided a new school facility.

Hunter Regional Plan 2036	
Action	Consistency
20.2 Undertake planning and place-making for main streets and centres.	The proposed zone change will assist in transforming the main Street through the additional of development on what is currently an unused site with dilapidated buildings.
20.3 Enhance the amenity and attractiveness of existing places.	The proposal enhances the amenity of the site by providing zoning to allow for future redevelopment of the site for an educational establishment. The site is currently unused and underutilised with dilapidated buildings. Development on the site would improve the streetscape.
Direction 23: Grow Centres and renewable corridors	
23.1 Concentrate growth in strategic centres, local centres and urban renewal corridors to support economic and population growth and a mix of uses.	Muswellbrook is identified as a strategic centre in the Upper Hunter. Future redevelopment of the site will assist in supporting economic growth within a strategic centre.
Direction 26: Deliver infrastructure to support growth and communities	
26.1 Align land use and infrastructure planning to maximise the use and capacity of existing infrastructure and the efficiency of new infrastructure.	Infrastructure is available to the site. Upgrading of infrastructure may be required and be discussed with authorities through the future SSD process.
26.2 Enable the delivery of health facilities, education, emergency services, energy production and supply, water and wastewater, waste disposal areas, cemeteries and crematoria, in partnership with infrastructure providers.	The proposal seeks a an R1 Low Density Residential zoning to permit educational establishments with consent.
26.4 Coordinate the delivery of infrastructure to support the timely and efficient release of land for development, including working with councils and service providers on inter-regional infrastructure and service delivery issues between growing areas.	To be addressed through the future SSD process.
26.5 Ensure growth is serviced by enabling and supporting infrastructure.	Services are currently available to the site. Expansion of services will be investigated at future DA stages.

4.2 Is the planning proposal consistent with a council's local strategy or other local strategic plan?

Muswellbrook Community Strategic Plan 2017 – 2027

The proposal is considered consistent with the following goals within the Muswellbrook Community Strategic Plan 2017 – 2027:

Goal 2: Diversify the economy, facilitate the development of intensive agriculture and other growth industries, make the shire a more attractive place to invest and do business.

Goal 5: Continue to improve the liveability and amenity of the Shire's communities

Muswellbrook Local Strategic Planning Statement 2020-2040

The proposal is considered consistent with the following planning priorities and planning principles within the Muswellbrook Local Strategic Planning Statement 2020 – 2040

Planning Priority 8: Our Town Centres and Villages are places of economic growth, business diversification and employment opportunities.

- There will be substantial investment in educational facilities and programs which integrate with the Shire's economic and employment transition;

4.3 Is the planning proposal consistent with applicable State Environmental Planning Policies?

A checklist of all SEPPs is provided in **Attachment 1** which identifies which SEPPs are relevant to this Planning Proposal. The relevant SEPPs are outlined in Table 1 below:

Table 3: Assessment of the Planning Proposal against relevant SEPPs

SEPP	Relevance	Implications
SEPP (Educational Establishments and Childcare Facilities) 2017	Clause 35 of the Education SEPP permits development with consent for the purpose of a school in a prescribed zone.	The current zoning of the site RU3 Forestry prohibits an educational establishment. Rezoning of the site to R1 General Residential will permit development consent for a school pursuant to Clause 35 of the Education SEPP. Future development will also be subject to Schedule 4 Schools- design quality principles of the Education SEPP.
SEPP 55 — Remediation of Land	This SEPP applies to land across NSW and states that land must not be developed if it is unsuitable for a proposed use because of contamination.	Clause (6) of SEPP 55 was repealed on 17 April 2020 and it previously related to contamination and remediation to be considered in zoning or rezoning proposals. Whilst the provision has been removed from the SEPP, contamination has still been considered as part of this planning proposal. The potential areas of environmental concern identified by Douglas Partners can be readily

		<p>managed through the land development process.</p> <p>A Detailed Site Investigation and Remediation Action Plan have been prepared and identify the contaminated areas of the site requiring remediation and the method of remediation.</p>
SEPP (Infrastructure) 2007	<p>The aim of this Policy is to facilitate the effective delivery of infrastructure across the State by improving regulatory certainty and efficiency through a consistent planning regime for infrastructure and the provision of services.</p>	<p>Clause 104 of SEPP (Infrastructure) 2007 relates to traffic generating development and Schedule 3 of the SEPP identifies the types of traffic generating development to be referred to Roads and Maritime Services (RMS). The proposal is subject to Column 1 (purpose of development) and Column 3 (size or capacity – site with access to classified road). Schedule 3 includes the subdivision of 50 or more allotments, car parks with 50 or more car parking spaces and ‘any other purpose’ which creates 50 or more motor vehicle per hour.</p> <p>Clause 104 only relates to the determination of DAs. Nevertheless, the consideration of traffic impacts however it is expected that the planning proposal will be referred to the RMS.</p> <p>Division 5 of SEPP (Infrastructure) 2007 relates to Electricity transmission or distribution networks and contains provisions relating to exempt development, development without consent and notification requirements for certain works. The provisions primarily relate to works that might be carried out relating to this infrastructure and is not a matter relevant to the planning proposal.</p> <p>Overhead transmission lines are located along Maitland Street.</p>
State Environmental Planning Policy (State and Regional Development) 2011	<p>The aims of this Policy are as follows—</p> <ul style="list-style-type: none"> (a) to identify development that is State significant development, (b) to identify development that is State significant infrastructure and critical State significant infrastructure, (c) to identify development that is regionally significant development. 	<p>Clause 15(1) of Schedule 1 of <i>State Environmental Planning Policy (State and Regional Development) 2011</i> (SEPP SRD) identifies the future proposed school as SSD as it a new school.</p>

SEPP (Vegetation in Non-Rural Areas) 2017	The SEPP aims — (a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.	It is not proposed to include any provisions which would be inconsistent with the SEPP.
--	---	---

4.5 Is the planning proposal consistent with applicable Ministerial Directions?

An assessment of the Planning Proposal and its consistency against the applicable Ministerial Directions is provided in the table below:

Compliance with Section 9.1 Directions	
Direction	Response
1. Employment and Resources	Not Applicable
2. Environment and Heritage	
2.6 Remediation of Contaminated Land (1) The objective of this direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities. (4) A planning proposal authority must not include in a particular zone (within the meaning of the local environmental plan) any land specified in paragraph (2) if the inclusion of the land in that zone would permit a change of use of the land, unless: (a) the planning proposal authority has considered whether the land is contaminated, and (b) if the land is contaminated, the planning proposal authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and (c) if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning proposal authority is satisfied that the land will be so remediated before the land is used for that purpose. In order to satisfy itself as to paragraph (4)(c) the planning proposal authority may need to include certain provisions in the local environmental plan. (5) Before including any land specified in paragraph (2) in a particular zone, the planning proposal authority is to obtain and have regard to a report specifying the findings of a preliminary	Contamination has been considered as part of this planning proposal. The potential areas of environmental concern identified by Douglas Partners can be readily managed through the development process. A Detailed Site Investigation and Remediation Action Plan have been prepared and identify the contaminated areas of the site requiring remediation and the method of remediation.

Compliance with Section 9.1 Directions

Direction	Response
investigation of the land carried out in accordance with the contaminated land planning guidelines.	
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones (1) The objectives of this direction are: (a) to encourage a variety and choice of housing types to provide for existing and future housing needs, (b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, (c) to minimise the impact of residential development on the environment and resource lands. (4) A planning proposal must include provisions that encourage the provision of housing that will: (a) broaden the choice of building types and locations available in the housing market, and (b) make more efficient use of existing infrastructure and services, and (c) reduce the consumption of land for housing and associated urban development on the urban fringe, and (d) be of good design. (5) A planning proposal must, in relation to land to which this direction applies: (a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and (b) not contain provisions which will reduce the permissible residential density of land.	<p>Should an educational establishment not be capable of proceeding on the site, the proposed rezoning would facilitate the subdivision and development of the land for a residential purpose.</p> <p>This potential for residential development is generally in keeping with the Direction for residential zones through enabling a variety of housing types, making efficient use of existing infrastructure and services, consolidating residential development away from the urban fringe and achieving a residential density that is consistent with the surrounding established character of the locality.</p>
4 Hazard and Risk	

Compliance with Section 9.1 Directions

Direction	Response
<p>1.3 Flood Prone Land</p> <p>(1) The objectives of this direction are:</p> <ul style="list-style-type: none"> (a) to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and (b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land <p>(4) A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas).</p> <p>(5) A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.</p> <p>(6) A planning proposal must not contain provisions that apply to the flood planning areas which:</p> <ul style="list-style-type: none"> (a) permit development in floodway areas, (b) permit development that will result in significant flood impacts to other properties, (c) permit a significant increase in the development of that land, (d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or (e) permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development. <p>(7) A planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).</p> <p>(8) For the purposes of a planning proposal, a relevant planning authority must not determine a flood planning level that is inconsistent with the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas) unless a relevant planning authority provides adequate justification for the proposed departure from that Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).</p>	<p>Royal Hoskining DVH (RHDHV) prepared a Flood Information and Levels Memo for the site. The letter identifies flood risk on the site from Muscle Creek and potential mitigation measures.</p> <p>A small portion of the site is considered to provide flood storage area. RHDHV indicated the minimum floor level for development on the site is 148.11m AHD.</p>
<p>5. Regional Planning</p>	

Compliance with Section 9.1 Directions

Direction	Response
<p>5.10 Implementation of Regional Plans</p> <p>(1) The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.</p> <p>(4) Planning proposals must be consistent with a Regional Plan released by the Minister for Planning. Consistency</p> <p>(5) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Secretary of the Department of Planning and Environment (or an officer of the Department nominated by the Secretary), that the extent of inconsistency with the Regional Plan: (a) is of minor significance, and (b) the planning proposal achieves the overall intent of the Regional Plan and does not undermine the achievement of its vision, land use strategy, goals, directions or actions.</p>	Consistent
6. Local Plan Making	
<p>6.1 Approval and Referral Requirements</p> <p>(1) The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.</p> <p>(4) A planning proposal must:</p> <ul style="list-style-type: none"> (a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and (b) not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of: <ul style="list-style-type: none"> (i) the appropriate Minister or public authority, and (ii) the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), prior to undertaking community consultation in satisfaction of section 57 of the Act, and (c) not identify development as designated development unless the relevant planning authority: <ul style="list-style-type: none"> (i) can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and (ii) has obtained the approval of the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of section 57 of the Act. 	No new provisions requiring concurrence, consultation or referral are proposed in the planning proposal.
<p>6.3 Site Specific Provisions</p> <p>(1) The objective of this direction is to discourage unnecessarily restrictive site-specific planning controls.</p>	This Planning Proposal does not include any proposed site or development specific provisions.

Compliance with Section 9.1 Directions	
Direction	Response
<p>(4) A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:</p> <p>(a) allow that land use to be carried out in the zone the land is situated on, or</p> <p>(b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or</p> <p>(c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.</p> <p>(5) A planning proposal must not contain or refer to drawings that show details of the development proposal.</p>	
7. Metropolitan Planning	Not Applicable

Section C – Environmental, Social and Economic Impact

5.1 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

A Prescribed Ecology Action Report (PEAR) was prepared by Abel Ecology. Two (2) locally listed threatened plant species are located on the site, being:

- *Acacia Pendula* (one large tree, two smaller trees and one dozen juvenile trees surrounding these trees).
- *Eucalyptus camaldulensis* (one large tree in the north west and one smaller one near the existing driveway)

No endangered Ecological Communities or habitat trees were observed on the site.

Two (2) trees which are listed weeds of National Significance are also located on the site, being:

- *Tamarix aphylla* (Athel Pine)
- *Phoenix canariensis* (canary Island Date Palm)

Other high threat exotic weeds are also located on the site as listed in Section 5.3 of the PEAR.

Twenty-seven species of fauna were detected including 24 birds, two mammals (fox and rabbit) and one frog (Common Eastern Frog).

The two locally listed threatened plant species are not located within the development footprint and will require protection during works.

5.2 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed

Acoustic

A letter of acoustic advice has been prepared by Acoustic Logic. Acoustic impacts to the site relate to Muswellbrook Golf Course and traffic from Maitland Street. Acoustic impacts from future development on the site relate more to the residential properties east of the site.

A detailed acoustic assessment will form part of future SSDA currently being prepared for the site for an educational establishment.

Contamination/ Remediation Action Plan

Douglas Partners undertook a Detailed Site Investigation for contamination. The report identified that two (2) Hazchem buildings on site contained remnants of previous chemical storage (i.e., containers of pesticides), however there was evidence of chemicals leaking from the buildings. Fibrous cement fragments were located in the south eastern area of the site.

Filling was also identified on the site. 16 Test were pits to the depth of 0.4 0- 1.5m were undertaken and sent to the laboratory for testing.

The Detailed Site Investigation identified the following:

- *The results of the DSI have identified the following:*
- *Presence of shallow filling within majority of test pits / bores.*
- *Presence of ash within the upper fill materials in Pits 103, 107 and 111.*
- *Presence of asphalt lenses in Pit 106 exceeding land use criteria.*
- *Fill materials generally meet the criteria for classification as 'General Solid Waste' based on total concentrations.*
- *Elevated PAH, associated with asphalt lenses within the upper fill materials with the gravel path (Pit 106).*
- *General absence of impacts from the nearby petrol station to groundwater quality along the south-east site boundary.*

A Remediation Action Plan was prepared by Douglas Partners to address the localised PAH soil contamination identified in asphalt fill materials in the Detailed Site Investigation (DSI).

The objective of the RAP is to provide procedures to remediate the site in an acceptable manner, with minimal environmental impact, to a condition suitable for the proposed school development.

Flood

Royal Hosking DHV (RHDHV) prepared a Flood Information and Levels Memo for the site. The letter identifies flood risk on the site from Muscle Creek and potential mitigation measures. RHDHV prepared the Muscle Creek Flood Study in 2017 as part of the Hunter River (Muswellbrook to Denman) Flood Risk Management Study (FRMS). Map 5 illustrates flood hazard and flood categories applying to the site.

The site is not a high hazard flood location and buildings could be readily designed with flood floor levels above the 1% AEP flood level.

Traffic

PTC has prepared a letter of advice relating to traffic and parking conditions for the proposed school development. The letter is intended to inform the application for SEARs for a school, however it provides a useful overview of the traffic and parking matters.

Traffic is a design issue for future development proposals to address.

Aboriginal Cultural Heritage

An Aboriginal Cultural Heritage Assessment Report (ACHAR) was prepared by APEX Archaeology. In preparing the ACHAR, 13 Aboriginal people and organisations registered an interest in consultation on this project. Four (4) responses were received from the Registered Aboriginal Parties all of which supported the proposal.

The site was determined to be heavily disturbed and it was considered by APEX that the site did not possess potential for archaeological deposits to be present. No archaeological material was identified during the site inspection.

Further assessment of Aboriginal cultural or archaeological impacts is not required for this site.

5.3 How has the planning proposal adequately addressed any social and economic effects?

It is unlikely that there would be any adverse impacts in terms of either social or economic associated with the planning proposal. A school would cater for local education needs and allow retention of much of the mature vegetation on the site. If a school did not proceed the site could be used for residential development catering for a need for additional housing in the Shire.

Section D – State and Commonwealth Interests

6.1 Is there adequate public infrastructure for the planning proposal

The site currently has access to existing essential services (water, sewer, electricity and telecommunications). These services will support the proposed educational establishment (which is subject to a separate Development Application).

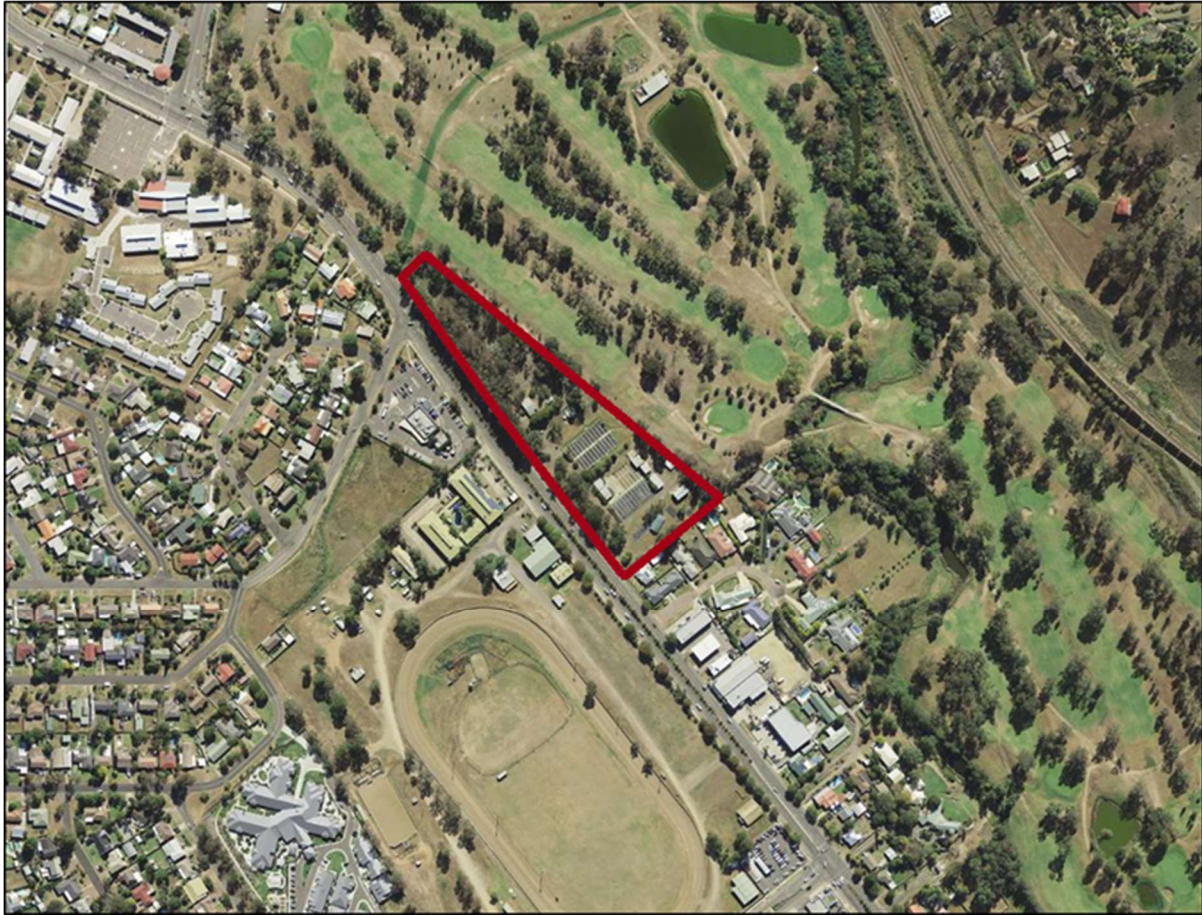
The site is located on a classified road, with an upgrade to the Thompson Street/ New England Highway intersection designed and proposed for construction. The New England Highway corridor includes pedestrian footpaths, signalled crossings and other safety measures. There is adequate public infrastructure to accommodate the planning proposal.

6.2 What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

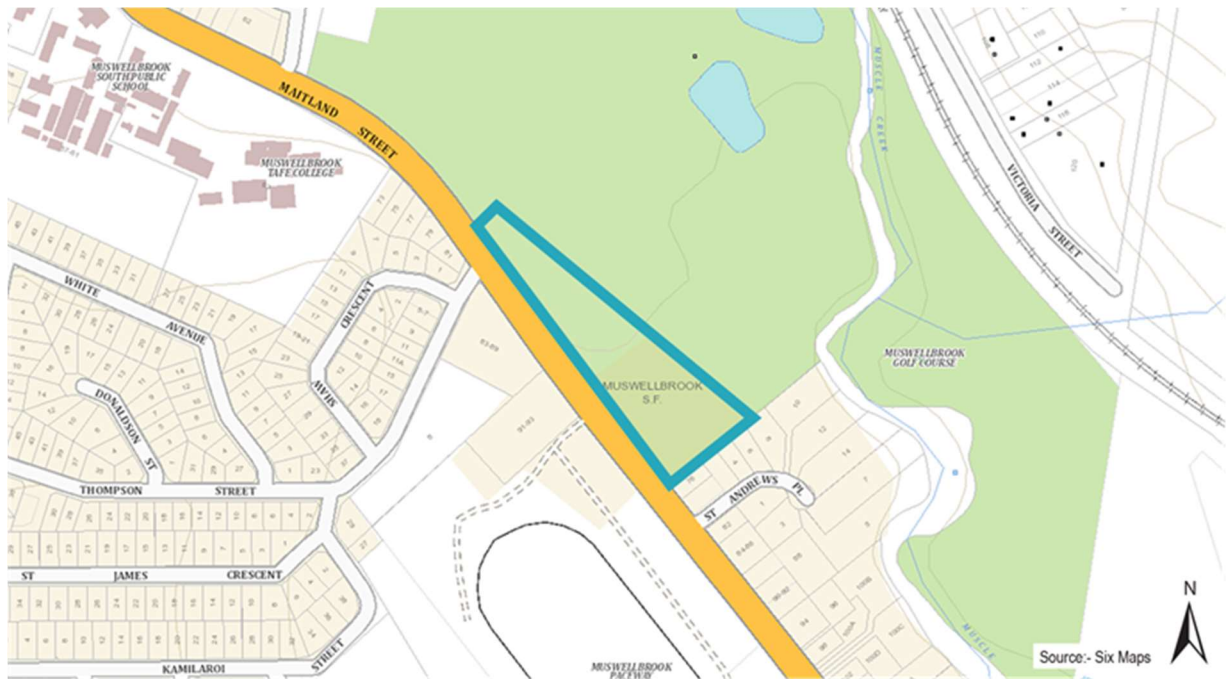
This Planning Proposal will require public notification. Relevant government authorities will be notified during the exhibition period.

Part 4 – MAPPING

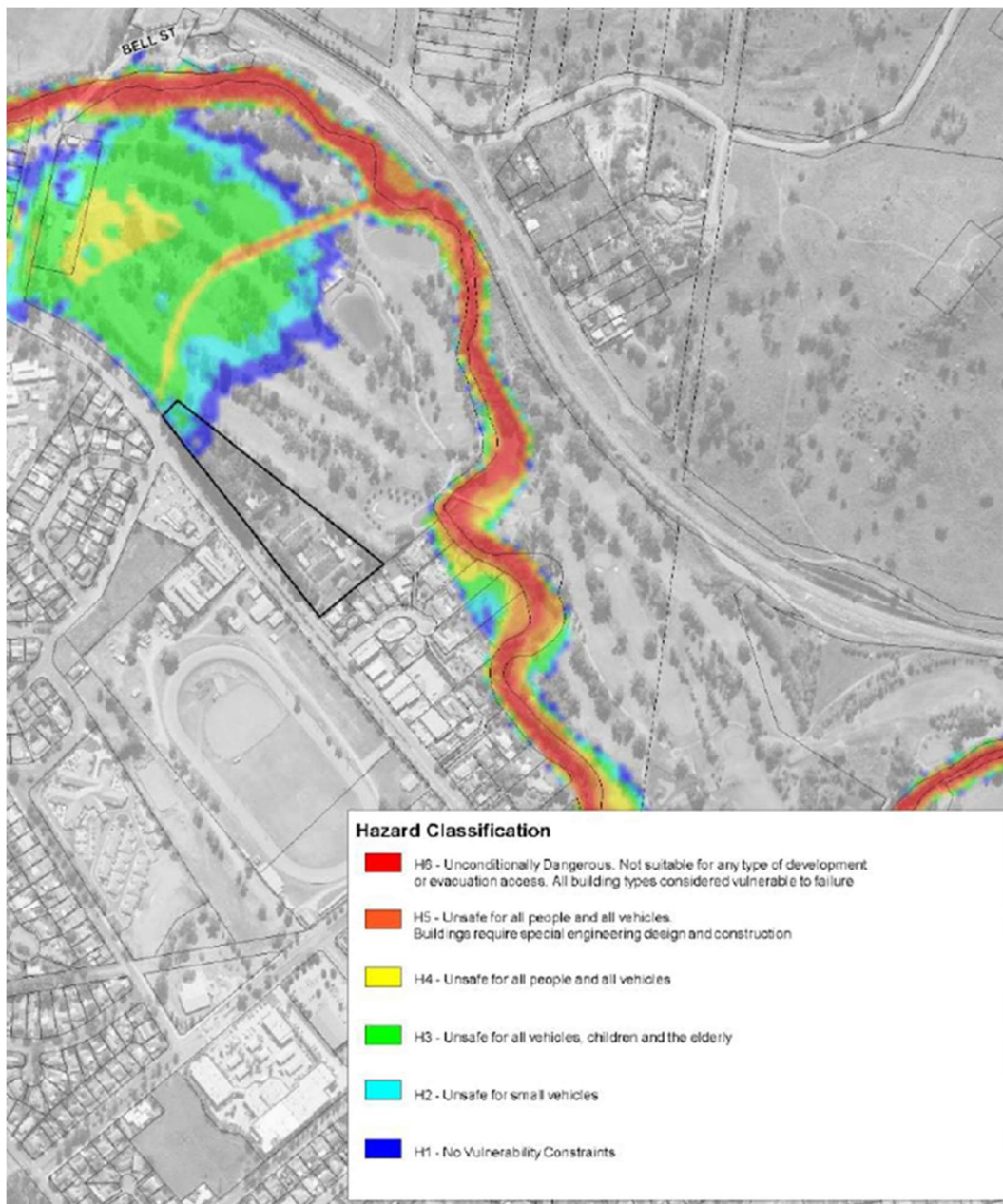
Map 1 – Locality



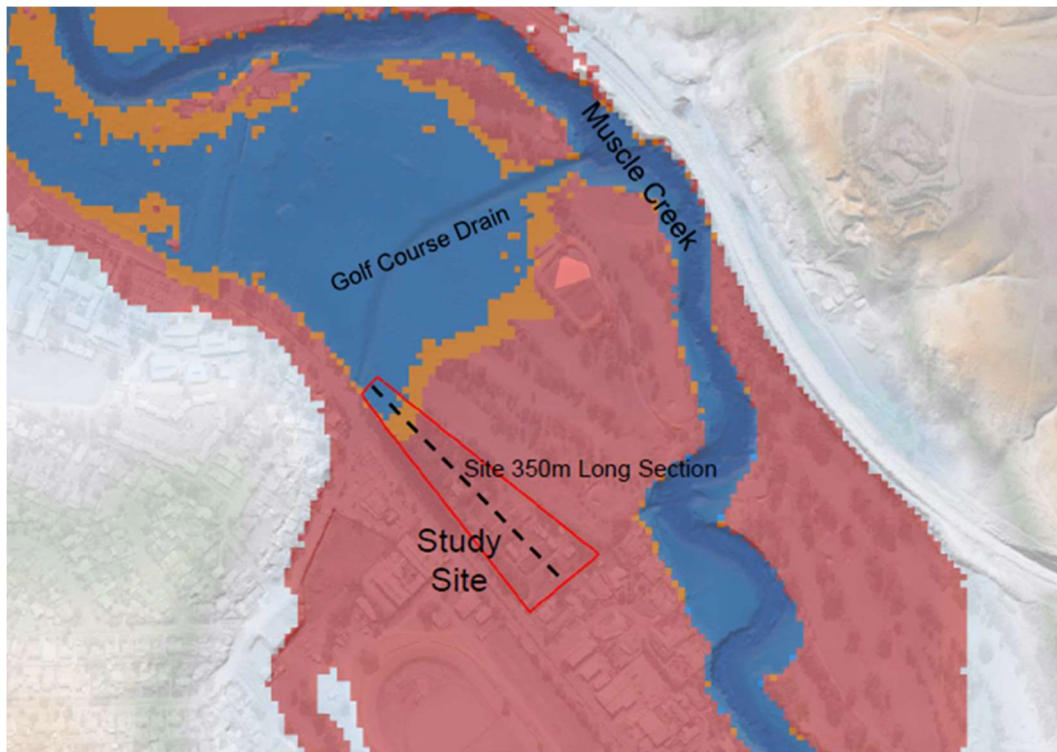
Map 2 - Site Identification Map



Map 3 – Flood mapping



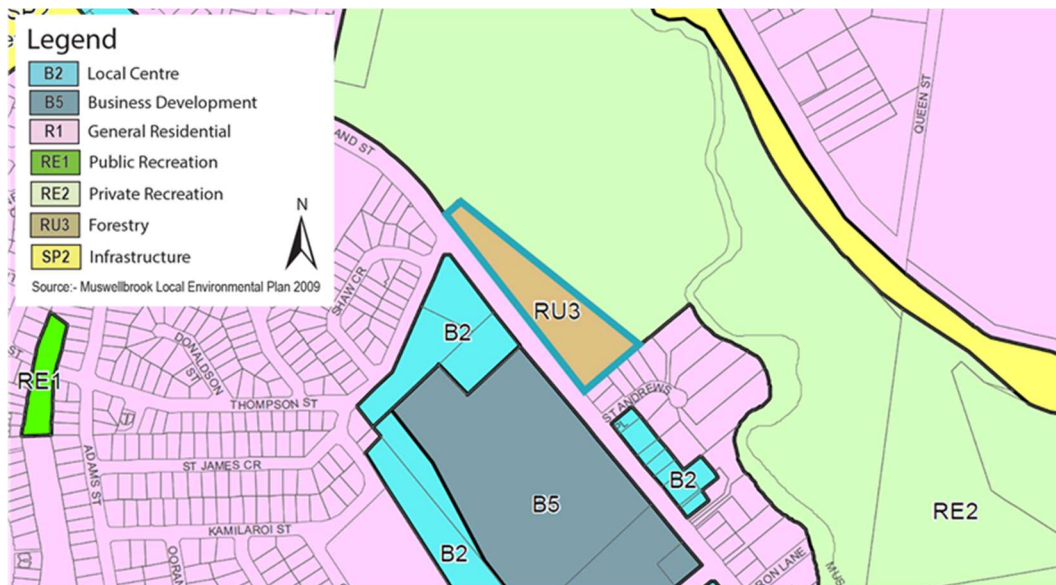
(a) Flood Hazard Classification



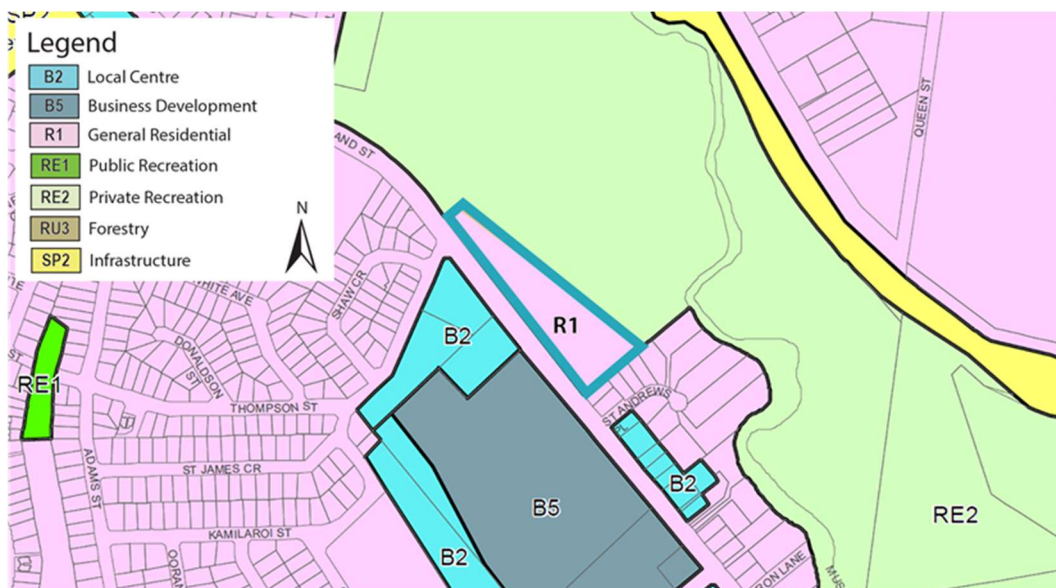
(b) Flood categories. Blue identifies 1 in 20-year flood, orange indicates 1 in 100 year flood and pink indicates Probable Maximum Flood.

Map 4 - Muswellbrook LEP 2009 - Land Zoning Map Sheet (LZN-008)

(a) Current Land Zoning – RU3 Forestry

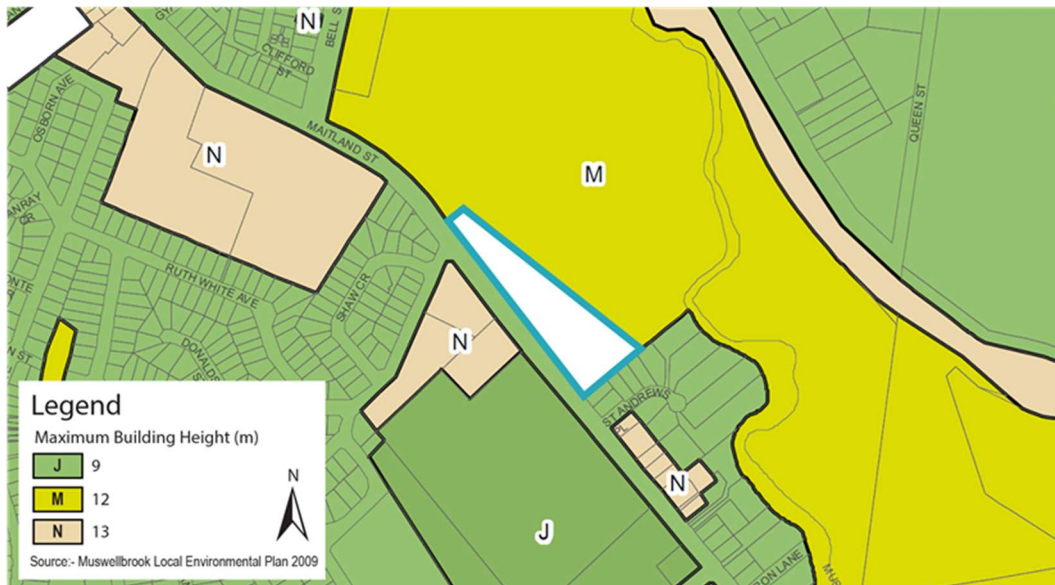


(b) Proposed Zoning – R1 General Residential

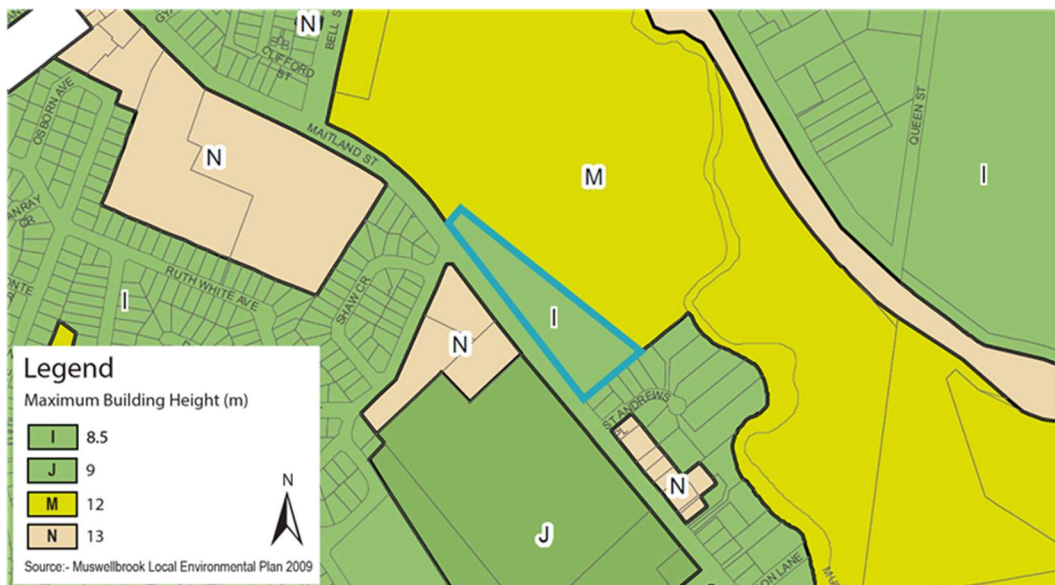


Map 5 - Muswellbrook LEP 2009 – Maximum Building Height (LZN-008)

(a) Current Building Height – Nil

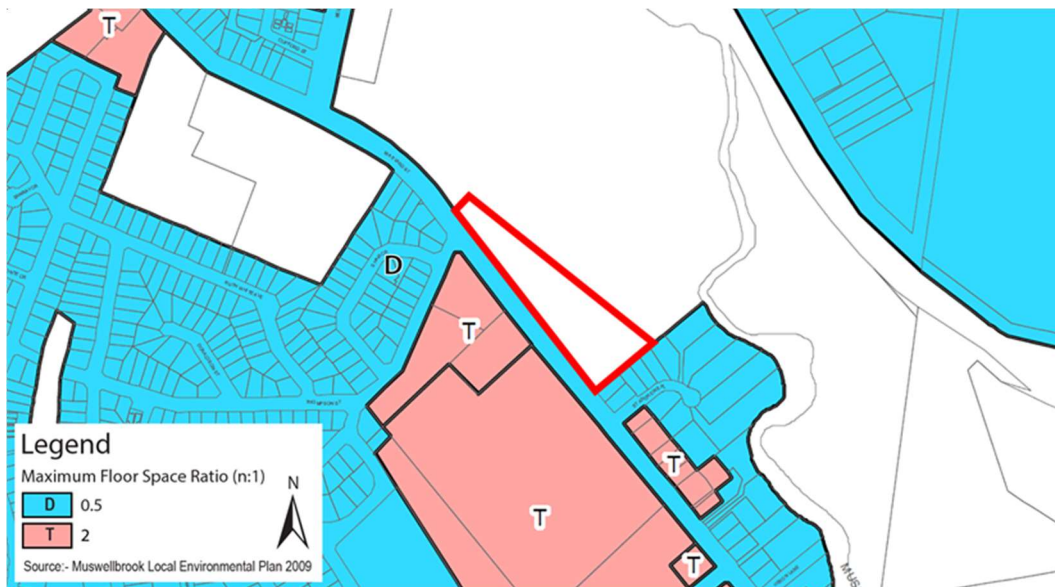


(b) Proposed building height – 8.5m

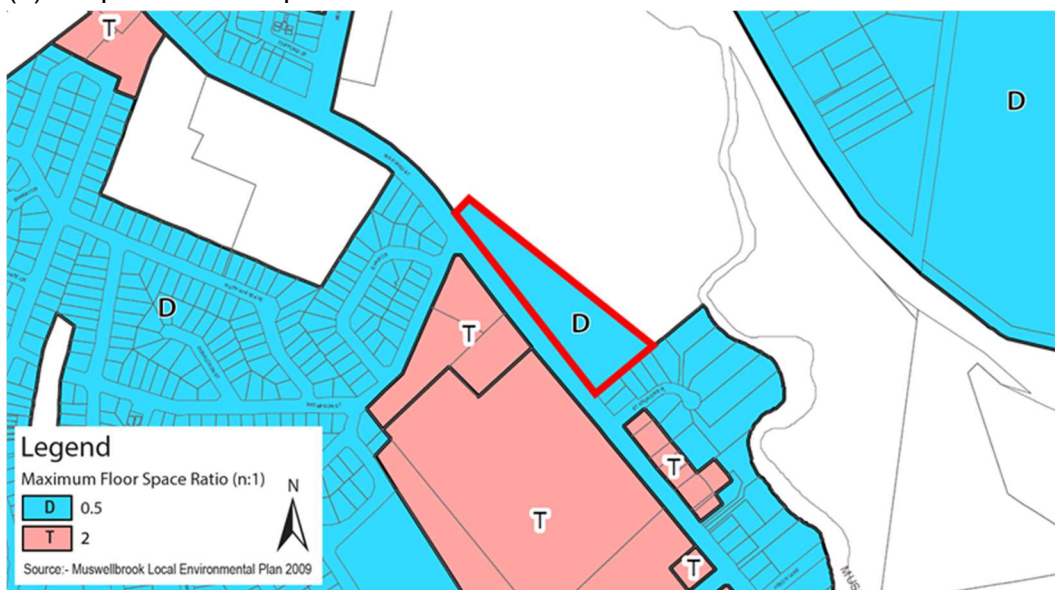


Map 6- Muswellbrook LEP 2009 – Maximum Floor Space Ratio (LZN-008)

(a) Current Floor Space Ratio – Nil



(b) Proposed Floor Space Ratio – 0.5:1



Part 5 – COMMUNITY CONSULTATION

A 28-day exhibition period is proposed. The Gateway Determination will confirm the exhibition period.

Part 6 – PROJECT TIMELINE

Action	Timeframe
Anticipated commencement date (date of Gateway determination)	25/10/2021
Anticipated timeframe for completion of required technical information	
Timeframe for government agency consultation (pre exhibition)	25/10/2021 – 29/11/2021
Public exhibition (commencement and completion dates)	01/12/2021 – 17/01/2022
Date of Public hearing (if required)	
Consideration of submissions	07/02/2022
Timeframe for government agency consultation (post exhibition if required)	
Post exhibition planning proposal consideration / preparation	22/02/2022
Submission to Department to finalise LEP	14/03/2022
Date RPA will make Plan (if delegated)	
Date RPA will forward to the Department for notification (if not delegated)	

Council intends to utilise delegations under s3.36 of the EP & A Act 1979 to finalise the Planning Proposal.

Attachment 1

State Environmental Planning Policies

The following table provides a checklist of the relevant SEPPs applying to the land or the Planning Proposal. Discussion of the SEPPs relevant to the Planning Proposal is provided in **Section B** of the Planning Proposal.

Consistency with applicable State Environmental Planning Policies	
SEPP	Relevant to Planning Proposal
SEPP (Aboriginal Land) 2019	No
SEPP (Activation Precincts) 2020	No
SEPP (Affordable Rental Housing) 2009	No
SEPP (Building Sustainability Index: BASIX) 2004	No
SEPP (Coastal Management) 2018	No
SEPP (Concurrences and Consents) 2018	No
SEPP (Educational Establishments and Child Care Facilities) 2017	Yes
SEPP (Exempt and Complying Development Codes) 2008	No
SEPP (Gosford City Centre) 2018	No
SEPP (Housing for Seniors or People with a Disability) 2004	No
SEPP (Infrastructure) 2007	Yes
SEPP (Koala Habitat Protection) 2020	No
SEPP (Koala Habitat Protection) 2021	No
SEPP (Kosciuszko National Park – Alpine Resorts) 2007	No
SEPP (Kurnell Peninsula) 1989	No
SEPP (Major Infrastructure Corridors) 2020	No
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	No
SEPP No 19 – Bushland in Urban Areas	No
SEPP No 21 – Caravan Parks	No
SEPP No 33 – Hazardous and Offensive Development	No
SEPP No 36 – Manufactured Home Estates	No
SEPP No 47 – Moore Park Showground	No
SEPP No 50 – Canal Estate Development	No
SEPP No 55 – Remediation of land	Yes
SEPP No. 64 – Advertising and Signage	No
SEPP No 65 – Design Quality of Residential Apartment Development	No
SEPP No 70 – Affordable Housing (Revised Schemes)	No
SEPP (Penrith Lakes Scheme) 1989	No

Consistency with applicable State Environmental Planning Policies	
SEPP	Relevant to Planning Proposal
SEPP (Primary Production and Rural Development) 2019	No
SEPP (State and Regional Development) 2011	Yes
SEPP (State Significant Precincts) 2005	No
SEPP (Sydney Drinking Water Catchment 2011)	No
SESPP (Sydney Region Growth Centres) 2006	No
SEPP (Three Ports) 2013	No
SEPP (Urban Renewal) 2010	No
SEPP (Vegetation in Non-Rural Areas) 2017	Yes
SEPP (Western Sydney Aerotropolis) 2020	No
SEPP (Western Sydney Employment Area) 2009	No
SEPP (Western Sydney Parklands) 2009	No

Attachment 2

Directions under Section 9.1

The following table provides a checklist of the relevant Section 9.1 Directions. Discussion of the section 9.1 Directions relevant to the Planning Proposal is provided in **Section B** of the Planning Proposal.

Compliance with Section 9.1 Directions	
Direction	Relevant to Planning Proposal
1. Employment and Resources	
1.1 Business and Industrial Zones	Not Applicable
1.2 Rural Zones	Not Applicable
1.3 Mining, Petroleum Production and Extractive Industries	Not applicable
1.4 Oyster Aquaculture	Not Applicable
1.5 Rural Lands	Not Applicable
2. Environment and Heritage	

Compliance with Section 9.1 Directions	
Direction	Relevant to Planning Proposal
2.1 Environment Protection Zones	Not Applicable
2.2 Coastal Management	Not Applicable
2.3 Heritage Conservation	Not Applicable
2.4 Recreation Vehicle Areas	Not Applicable
2.5 Application for E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Not Applicable
2.6 Remediation of Contaminated Land	Applicable
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	Applicable
3.2 Caravan Parks and Manufactured Home Estates	Not Applicable
3.3 Home Occupations	Not Applicable
3.4 Integrating Land Use and Transport	Not Applicable
3.5 Development Near Regulated Airports and Defence Airfields	Not Applicable
3.6 Shooting Ranges	Not Applicable
3.7 Reduction in non-hosted short term rental accommodation period	Not Applicable
4. Hazard and Risk	
4.1 Acid Sulfate Soils	Not Applicable
4.2 Mine Subsidence and Unstable Land	Not Applicable
4.3 Flood Prone Land	Applicable
4.4 Planning for Bushfire Protection	Not Applicable
5. Regional Planning	
5.1 Implementation of Regional Strategies (Revoked 17 October 2017)	Not Applicable
5.2 Sydney Drinking Water Catchments	Not Applicable
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Not Applicable

Compliance with Section 9.1 Directions	
Direction	Relevant to Planning Proposal
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Not Applicable
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA) (Revoked 18 June 2010)	Not Applicable
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008)	Not Applicable
5.7 Central Coast (Revoked 10 July 2008)	Not Applicable
5.8 Second Sydney Airport: Badgerys Creek (Revoked 20 August 2018)	Not Applicable
5.9 North West Rail Link Corridor Strategy	Not Applicable
5.10 Implementation of Regional Plans	Applicable
5.11 Development of Aboriginal land Council land	Not Applicable
6. Local Plan Making	
6.1 Approval and Referral Requirements	Applicable
6.2 Reserving Land for Public Purposes	Not Applicable
6.3 Site Specific Provisions	Applicable
7. Metropolitan Planning	
7.1 Implementation of A Plan for Growing Sydney	Not Applicable
7.2 Implementation of Greater Macarthur Land Release Investigation	Not Applicable
7.3 Parramatta Road Corridor Urban Transformation Strategy	Not Applicable
7.4 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	Not Applicable
7.5 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Not Applicable
7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Not Applicable
7.7 Implementation of Glenfield to Macarthur Urban Renewal Corridor	Not Applicable
7.8 Implementation of the Western Sydney Aerotropolis Plan	Not Applicable

Compliance with Section 9.1 Directions	
Direction	Relevant to Planning Proposal
7.9 Implementation of Bayside West Precincts 2036 Plan	Not Applicable
7.10 Implementation of Planning Principles for the Cooks Cove Precinct	Not Applicable
7.11 Implementation of St Leonards and Crows Nest 2036 Plan	Not Applicable

Attachment 3

Evaluation Criteria for the Issuing of an Authorisation

3 Racecourse Road, Muswellbrook

Evaluation criteria for the issuing of an Authorisation

(Note – where the matter is identified as relevant and the requirement has not been met, council is to attach information to explain why the matter has not been addressed)	Council response		Department assessment	
	Y/N	Not Relevant	Agree	Disagree
Is the planning proposal consistent with the Standard Instrument Order, 2006?	Y			
Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y			
Are appropriate maps included to identify the location of the site and the intent of the amendment?	Y			
Does the planning proposal contain detail related to proposed consultation?	Y			
Is the planning proposal compatible with an endorsed regional or sub-regional planning strategy or a local strategy endorsed by the Secretary?	Y			
Does the planning proposal adequately address any consistency with all relevant S117 Planning Directions?	Y			
Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y			
Minor Mapping Error Amendments				
Does the planning proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?		√		
Heritage LEPs				
Does the planning proposal seek to add or remove a local heritage item and is it supported by a strategy/study endorsed by the Heritage Office?	N			
Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?	N			
Does the planning proposal potentially impact on an item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?	N			
Reclassifications				
Is there an associated spot rezoning with the reclassification?		√		
If yes to the above, is the rezoning consistent with an endorsed Plan of management (POM) or strategy?		√		

Is the planning proposal proposed to rectify an anomaly in a classification?		√		
Will the planning proposal be consistent with an adopted POM or other strategy related to the site?		√		
Has Council confirmed whether there are any trusts, estates, interests, dedications, conditions, restrictions or covenants on the public land and included a copy of the title with the planning proposal?		√		
Has council confirmed that there will be no change or extinguishment of interests and that the proposal does not require the Governor's approval?		√		
Has the council identified that it will exhibit the planning proposal in accordance with the Department's Practice Note regarding <i>classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land</i> ?		√		
Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?		√		
Spot Rezoning				
Will the planning proposal result in a loss of development potential for the site (i.e. reduced FSR or building height) that is not supported by an endorsed strategy?	N			
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?	N			
Will the planning proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?	N			
If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed?		√		
Does the planning proposal create an exception to a mapped development standard?	N			
Section 3.22 matters				
Does the proposed instrument <ul style="list-style-type: none"> a) Correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provision, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error? b) Address matter in the principal instrument that are of a consequential, transitional, machinery or other minor nature? or c) Deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land? 		√		

(Note – the Minister/GSC (or Delegate) will need to form an Opinion under section 3.22 of the Act in order for a matter in this category to proceed).

--	--	--	--

Attachment 4

Gateway Determination, XXXXXXXX