

Muswellbrook Local Environmental Plan 2009 (Administrative Amendment)

Proposal Title : Muswellbrook Local Environmental Plan 2009 (Administrative Amendment)

Proposal Summary : The planning proposal aims to amend Muswellbrook Local Environmental Plan 2009 as follows:-

1(a) rezone Lot 116 DP 1075666, Lot 10 DP 1181346, and Lot 1380 DP 1164893 from Zone R1 General Residential to Zone RE1 Public Recreation; and amend the corresponding Land Zoning Maps; and

1(b) amend the Floor Space Ratio Map to remove any ratio reference from these lands; and
1(c) amend the Height of Building Maps by increasing the building height of these lots to a maximum of 12 metres.

(2)(a) rezone Lots 84-91, DP 1181251, and Lots 1 and 2 SP 88952 from Zone R5 Large Lot Residential to Zone R1 General Residential; and amend the corresponding Land Zoning Maps; and

2(b) amend the Floor Space Ratio Map to reflect a maximum floor space ratio as 0.5:1 for these lots; and

2(c) amend the Lot Size Map to reflect a minimum lot size of 600 sqm for these lots.

(3) correct minor administrative anomalies identified in Schedule 5 - Environmental Heritage, and amend the corresponding Heritage Maps.

(4) amend Part 7 - Additional Local Provisions to enable "events permitted without development consent".

(5) correct a mapping error relating to the Lot Size Map over Lot 42, DP 748269 to reflect a 800,000 sqm (80Ha) minimum lot size.

PP Number : PP_2015_MUSWE_001_00

Dop File No :

15/08281

Proposal Details

Date Planning Proposal Received : 10-Jun-2015

LGA covered : Muswellbrook

Region : Hunter

RPA : Muswellbrook Shire Council

State Electorate : UPPER HUNTER

Section of the Act : 55 - Planning Proposal

LEP Type : Housekeeping

Location Details

Street : Various

Suburb :

City : Muswellbrook

Postcode : 2333

Land Parcel : Various

DoP Planning Officer Contact Details

Contact Name : Susan Blake
Contact Number : 0249042720
Contact Email : susan.blake@planning.nsw.gov.au

RPA Contact Details

Contact Name : Pathum Gunasekara
Contact Number : 0265493700
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 Regional Strategy :	N/A	Consistent with Strategy :	N/A
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
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 resolved at its Ordinary meeting on 11 May 2015 to:

1. support the preparation and lodgement of the proposal with the Department.
2. request authorisation to exercise its delegation of plan making functions under section 59 of the Environmental Planning and Assessment Act 1979.

Council submitted the planning proposal to the Department and it was received on 21 May 2015, requesting a Gateway Determination to enable amendments to Muswellbrook LEP 2009.

Additional information was requested by the Department regarding Section 117 Directions. The planning proposal was updated as necessary, and submitted on 5 June 2015.

Subsequent to this amendment Council also discussed, and requested via email on 10 June 2015 that a mapping error caused by LEP Amendment No.7, be corrected relating to Lot 42, DP 748269. A condition of the Gateway Determination will be included to ensure this matter is explained to the public in the updated planning proposal in preparation for exhibition.

Council has also requested the Department assist with the preparation of the mapping associated with the proposed amendments to comply with the Department's Standard Instrument LEP mapping technical requirements.

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 adequately outlines the intended outcomes of the proposal to:**

(1) rezone Lot 116 DP 1075666, Lot 10 DP 1181346, and Lot 1380 DP 1164893 from Zone R1 General Residential to Zone RE1 Public Recreation, to reflect the dedication of these reserves to Council. The Land Zoning Maps will be amend to reflect the new zone; the Floor Space Ratio Map will remove any ratio reference from these lands; and the Height of Building Maps will be amended to increase the building height of these lots to a maximum of 12 metres.

(2) rezone Lots 84-91, DP 1181251, and Lots 1 and 2 SP 88952 from Zone R5 Large Lot Residential to Zone R1 General Residential to remove the split zoning from the lots to reflect the correct boundary alignment. The Land Zoning Maps will be amended to reflect the new zone; the Floor Space Ratio Map will be amended to reflect a maximum floor space ratio as 0.5:1 for these lots; and the Lot Size Map be amended to reflect a minimum lot size of 600 sqm for these lots. The planning proposal will amend the split zoned lots (Zones R5/R1) to correct the boundary alignment so that all allotments will be wholly within the intended Zone R1 General Residential.

(3) correct minor administrative anomalies and errors identified in Schedule 5 - Environmental Heritage, and amend the corresponding Heritage Maps. The planning proposal aims to correct errors with address/ descriptions in relation to the Muswellbrook Railway Station (item i105), Muswellbrook Railway Single Box (item i106), Denman Merton (item i17) and correct the Denman Pickering (item i19) heritage significance from local to State significance.

(4) amend Part 7 - Additional Local Provisions to enable "events permitted without development consent". The proposed clause has been provided.

(5) in an email on 10 June 2015, Council requested that a mapping error relating to the Lot Size Map over Lot 42, DP 748269 be corrected to reflect a 800,000 sqm (80Ha) minimum lot size.

NB. In relation to item 5, the original publication of the standard instrument of Muswellbrook LEP in 2009, Lot Size Map (LSZ_022) had Lot 42, DP 748269 with a minimum lot size of 800,000 sqm. Council has identified that the an error in the mapping occurred during the making of Muswellbrook LEP 2009 (Amendment No.7) where the Council/Department reformatted all the Muswellbrook LEP 2009 maps to comply with the Department's Standard Instrument mapping technical requirements during 2011/2012. At this time, an error in the mapping was made and it removed a minimum lot size from Lot 42, DP 748269. Council has not amended zoning or development's standards relating to Lot 42, DP 748269 since 2009. This planning proposal will correct this minor mapping error.

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 planning proposal will amend Muswellbrook LEP 2009 through changes to Part 7 - Additional Local Provisions, Schedule 5 - Environmental Heritage, and mapping changes of the land zoning, lot size, floor space ratio, height of building, and heritage maps.**

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 : **2.3 Heritage Conservation**
3.1 Residential Zones
* May need the Director General's agreement **4.1 Acid Sulfate Soils**
6.2 Reserving Land for Public Purposes

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 1—Development Standards**

e) List any other matters that need to be considered : **Ministerial Section 117 Directions**

***2.3 Heritage Conservation**

Under cl.4, the s.117 Direction must contain provisions that facilitate the conservation of items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, or any heritage significance to Aboriginal culture and people. Item 3 of the planning proposal aims to correct errors with address/ descriptions in relation to the Muswellbrook Railway Station (item i105), Muswellbrook Railway Single Box (item i106), Denman Merton (item i17) and correct the Denman Pickering (item i19) heritage significance from local to State significance. The planning proposal is considered consistent with this s.117 Direction.

***3.1 Residential Zones**

Under cl.3, this s.117 Direction applies when a proposal affects land within an existing or residential zone. As per cl.4 and 5 of the s.117 Direction, the planning proposal must encourage the provision of housing, and must ensure that residential development is not permitted until land is adequately serviced, or reduce the permissible residential density of land.

Item 1 of the planning proposal seeks to rezone Zone R1 General Residential land to Zone RE1 Public Recreation. The subject land has been dedicated to Council for the purposes of public reserves and drainage reserves. Consequently, given the public use of this land, in accordance with cl.6 of the s.117 Direction, the Secretary of the Department of Planning and Environment may agree that any inconsistency with the terms of the Direction are considered of minor significance.

Item 2 of the planning proposal will amend the split zoned lots (Zones R5/R1) to correct the boundary alignment so that all allotments will be wholly within the intended Zone R1 General Residential. Item 2 of the planning proposal is considered consistent with this s.117 Direction as Council's LEP and DCP provide appropriate mechanisms to meet the objectives and provisions of this Direction.

***4.2 Mine Subsidence and Unstable Land.**

In accordance with cl.4(a) of the s.117 Direction when preparing a planning proposal that would permit development on land within a Mine Subsidence District, Council must consult with the Mine Subsidence Board. In discussions with Council whilst preparing this Gateway Determination, Council has identified the land to be rezoned in Item 1, and

Item 2 are located within a Mine Subsidence District.

Consistent with cl.4 requirements of this Direction, Council will need to consult with the Mine Subsidence Board, following receipt of the Gateway Determination. Once a reply is received from the Board, consistency with this s.117 Direction can be determined.

*** 6.2 Reserving Land for Public Purposes**

Item 2 proposes to rezone land from Zone R1 General Residential to Zone RE1 Public Recreation. In accordance with cl.4 of the s.117 Direction, a proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Secretary of the Department of Planning and Environment. The subject land has been dedicated to Council as public reserves and drainage reserves. There is no objection to the proposed rezoning for public recreational purposes. By approving the Gateway Determination, the Secretary of Planning and Environment has agreed to the use of the land, alteration of the land zoning and this Direction.

State Environmental Planning Policies (SEPPs)

Council has indicated that nothing in this planning proposal affects the aims and provisions of the various SEPPs.

*** State Environmental Planning Policy (Temporary Structures) 2007 / State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007**

Council has requested within the planning proposal Item 4, the inclusion of a local provision allowing 'events permitted without development consent' and requested that "State Environmental Planning Policy (Temporary Structures) 2007 does not apply to development to which this clause applies."

State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007 has now replaced legislative instruments formerly known as State Environmental Planning Policy (Temporary Structures) 2007 and State Environmental Planning Policy (Temporary Structures and Places of Public Entertainment) 2007). GG No 132 of 28.9.2007, p 7387. Date of commencement, 26.10.2007, cl 2.

The drafting of the planning proposal will decide whether reference to State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007 should be referenced now that State Environmental Planning Policy (Temporary Structures) 2007 has been superseded.

Note: Council explains that Item 4 will enable a simplified approval process for community events by removing the need for development consent for temporary events on public reserves or roads. This will streamline the approval process for temporary events and provide time and resource savings to the community and organiser's of events. As explained below, the inclusion of the local provision on "events permitted without development consent" and Council's requested wording has been previously agreed to within other LEPs.

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

If No, explain :

Council has requested within the planning proposal Item 4, the inclusion of a local provision allowing 'events permitted without development consent' and requested that "State Environmental Planning Policy (Temporary Structures) 2007 does not apply to development to which this clause applies."

The drafting of the planning proposal will decide whether reference to State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007 should be referenced now that State Environmental Planning Policy (Temporary Structures) 2007 has been superseded.

However, it is noted that the inclusion of the local provision on "events permitted without development consent" and Council's requested wording has been previously

agreed to and included within:

- * Newcastle LEP 2012
- * Port Stephens LEP 2013
- * Singleton LEP 2013
- * Upper Hunter LEP 2013

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : Council has also requested the Department assistance with the preparation of the mapping associated with the proposed amendments to comply with the Department's Standard Instrument LEP mapping technical requirements.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : Council has nominated that the planning proposal be placed on public exhibition for 14 days as it considers the proposal to be low impact. This exhibition period is supported.

Additional Director General's requirements

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

If Yes, reasons : **Project timeline**

Council's timeline nominates the planning proposal's completion date by the end of Nov 2015, approximately (6) months after the Gateway Determination. A nine (9) month timeframe is recommended so as to provide an adequate buffer for potential drafting or mapping delays.

Delegation Authorisation

Council has accepted plan-making delegation for planning proposals. Council has requested the use of delegations in respect of the Minister for Planning and Environment's plan making function under s.59 of the EP&A Act for this planning proposal.

Delegation is recommended in this instance.

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 Muswellbrook Comprehensive LEP was published on 17 April 2009.

Assessment Criteria

Need for planning proposal :

Council identifies that the planning proposal intends to rectify various anomalies, ambiguities and errors in Muswellbrook LEP 2009 to strengthen the integrity and accuracy, and incorporate additional provisions into the LEP, to ensure that the LEP functions efficiently and its provisions are up-to-date.

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	The planning proposal is the most appropriate mechanism to investigate whether the proposed amendments should proceed.
Consistency with strategic planning framework :	The Upper Hunter Strategic Regional Land Use Plan, and Council's Community Strategic Plan 2013-2023 is applicable to the Muswellbrook local government area. Council has noted that the proposed amendments do not impact upon the objectives or strategies of these policies.
	The proposed amendments are consistent with the Upper Hunter Strategic Regional Land Use Plan, and Council's Community Strategic Plan 2013-2023.
Environmental social economic impacts :	Council has indicated that no adverse environmental and social effects are anticipated as a result of the administrative LEP amendment. The administrative amendments will assist the community by rectifying errors and anomalies identified.
	Council notes that Item 4 will enable a simplified approval process for community events by removing the need for development consent for temporary events on public reserves or roads. This will streamline the approval process for temporary events and provide time and resource savings to the community and organiser's of events.
	The planning proposal should have positive social, economic and environmental impacts.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	14 Days
Timeframe to make LEP :	9 months	Delegation :	RPA
Public Authority Consultation - 56(2) (d) :	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. :			
If Other, provide reasons :			
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
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Planning Team Recommendation

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

S.117 directions: **2.3 Heritage Conservation**
 3.1 Residential Zones
 4.1 Acid Sulfate Soils
 6.2 Reserving Land for Public Purposes

Additional Information : **It is recommended that the proposed planning proposal to enable an administrative amendment to Muswellbrook LEP 2009 proceed subject to the following conditions:**

1. Prior to undertaking public exhibition, Council is to amend the planning proposal to correct the Lot Size Map error relating to Lot 42, DP 748269. The Lot Size Map should identify a minimum subdivision requirement of 800,000 square metres. The planning proposal needs to explain how this mapping error was caused by LEP Amendment No.7 to the Muswellbrook Local Environmental Plan 2009.

2. 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 a minimum 14 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 5.5.2 of A guide to preparing LEPs (Department of Planning & Infrastructure 2013).

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

*** Mine Subsidence Board**

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

4. The Secretary (or delegate) agree to changes to the public reservation of land in accordance with 6.2 Reserving Land for Public Purposes, and agree to the following section 117 Direction inconsistency – 3.1 Residential Zones, as the inconsistency with the Direction is considered of minor significance.

Consultation is required with the Mine Subsidence Board to determine consistency with section 117 Direction - 4.2 Mine Subsidence and Unstable Land. Council is to amend the planning proposal, if necessary, to take into consideration any comments made prior to undertaking public exhibition.

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 submission if reclassifying land).

6. The time-frame for completing the LEP is to be 9 months following the Gateway Determination.

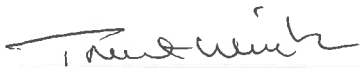
7. The Council exercise its delegations in respect of the Minister for Planning and Environment's plan making function under s.59(1) of the EP&A Act for this planning proposal.

Supporting Reasons : **Council has undertaken the necessary investigations, and the planning proposal is essentially a house-keeping amendment, and the most efficient and timely process for incorporating these changes.**

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The planning proposal will enable Council to address relatively minor errors/anomalies in mapping, correct description errors in the Heritage Schedule and heritage maps. The proposal will also rezone land already dedicated to Council for public and drainage reserves, and include a local provision already utilised by several Council's within the Hunter region to enable events to be permitted without development consent.

Signature:



Printed Name:

TRENT WINK

Date:

29/6/15

