



**muswellbrook
shire council**

Muswellbrook Shire Council

**DEVELOPMENT ASSESSMENT
COMMITTEE MEETING**

**BUSINESS PAPER
4 NOVEMBER 2019**



Development Assessment Committee

Aim

The aim of the Development Assessment Committee is to:

- To determine development applications;
- To monitor the progress of development applications not yet determined;
- To recommend to Council the need to develop or amend policies in relation to planning related matters – including strategic planning.

Associated Principal Activities:

Development Assessment & Regulation

Specific Tasks & Parameters

1. The determination of development applications under the *Environmental Planning and Assessment Act* 1979 not otherwise delegated to the General Manager except where: the development application is for, or in any way related to:
 - (a) (i) food and drink premises used for, or proposed to be used for, the sale of alcohol;
 - (ii) electricity generating works;
 - (iii) mines and extractive industries;
 - (iv) a waste disposal facility; or
 - (v) subdivisions into more than ten lots; or
- (b) where the capital investment value of the development specified in the development application exceeds \$2,000,000; or
2. The Development Assessment Committee the determination of any development applications under the *Environmental Planning and Assessment Act* 1979 otherwise delegated to the General Manager, which the Development Assessment Committee by resolution elects to determine.
3. The Development Assessment Committee be constituted as follows:
 - (i) the Councillor Spokesperson for Planning (as Chair);
 - (ii) the Councillor Spokesperson for Infrastructure;
 - (iii) the Councillor Spokesperson for Utilities; andin the absence of any of the councillors set out in (i) to (iii) any other councillor nominated by the Committee Chair or Acting Chair (as the case may be).

Recommendations

- Make recommendations Council;

Staff Support:

Director – Environment & Community Services
Assistant Director – Environment & Community Services
Senior Development Co-Ordinator
Project Engineer – Water & Waste
Manager – Roads, Drainage & Technical Services
Environment & Sustainability Co-Ordinator

DEVELOPMENT ASSESSMENT COMMITTEE MEETING, 4 NOVEMBER 2019

MUSWELLBROOK SHIRE COUNCIL

P.O Box 122

MUSWELLBROOK

1 November, 2019

Cr Martin Rush (Chair)
Cr Brett Woodruff
Cr Rod Scholes
Carolyn O'Brien
Sharon Pope
Hamish McTaggart
Gamini Hemachandra
Kellie Scholes

You are hereby requested to attend the Development Assessment Committee Meeting to be held in the COUNCILLORS ROOM, Administration Centre, Muswellbrook on **4 November, 2019** commencing at 4.00pm.

Joshua Brown
MANAGER - INTEGRATED PLANNING & GOVERNANCE

Order of Business

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**MUSWELLBROOK SHIRE COUNCIL
DEVELOPMENT ASSESSMENT COMMITTEE MEETING**

AGENDA
MONDAY 4 NOVEMBER 2019

1 APOLOGIES AND LEAVE OF ABSENCE

Moved: _____ Seconded: _____

2 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

RECOMMENDATION

That the Minutes of the Development Assessment Committee held on **21 October 2019**, a copy of which has been distributed to all members, be taken as read and confirmed as a true record.

Moved: _____ Seconded: _____

MINUTES OF THE DEVELOPMENT ASSESSMENT COMMITTEE MEETING OF THE MUSWELLBROOK SHIRE COUNCIL HELD IN THE COUNCILLORS ROOM, ADMINISTRATION CENTRE, MUSWELLBROOK ON MONDAY 21 OCTOBER, 2019 COMMENCING AT 4.01PM.

PRESENT: Cr M. Rush (Chair), Cr B. Woodruff and Cr R. Scholes.

IN ATTENDANCE: Ms F. Plesman (General Manager), Mr D. Finnigan (Director – Community Infrastructure), Mr A. Irving (Director – Environment & Community Services), Ms S. Pope (Executive Manager – Environment & Community Services), Mr H. McTaggart (Co-Ordinator Development), Mr P. Chambers (Chief Engineer) and Miss M. Meadows (PA to the Mayor).

1 APOLOGIES AND LEAVE OF ABSENCE

Nil

2 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

RECOMMENDED on the motion of Crs Scholes and Woodruff that:

The Minutes of the Development Assessment Committee held on 8 October 2019, a copy of which has been distributed to all members, be taken as read and confirmed as a true record.

3 DISCLOSURE OF ANY PECUNIARY AND NON-PECUNIARY INTEREST

Mr A. Irving declared a pecuniary conflict of interest in item 6.2.

Reason: Mr Irving is involved in legal proceedings with the company submitting the application.

4 PUBLIC PARTICIPATION

Nil

5 BUSINESS ARISING

Nil

6 BUSINESS

6.1 DA39/2019 TWO LOT BOUNDARY ADJUSTMENT (SUBDIVISION) - LOTS 51 & 52 DP811580 207 & 211 KAYUGA ROAD MUSWELLBROOK

RECOMMENDED on the motion of Crs Rush and Scholes that:

The Application No. 39/2019 be considered at the next Development Assessment Committee meeting Development scheduled for Monday 4 November 2019.

At 04:17 pm Mr A. Irving left the Councillors Room.

6.2 DA 342/2002 SECTION 4.55(2) MODIFICATION APPLICATION - WILDS GRAVEL QUARRY - 8440 NEW ENGLAND HIGHWAY, MUSWELLBROOK

Cr Rush asked that it be noted that council should be proud of the new format and wording of the recommended consent and that he personally thanks staff.

RECOMMENDED on the motion of Crs Rush and Scholes that:

The Development Assessment Committee approve the Section 4.55(2) modification of DA 342/2002, subject to the recommended conditions of consent set out in Attachment B and the inclusion of the following on the consent:

“ No truck movements are to occur during school bus pick up/ set down times on the New England Highway near Pamger Drive or adjacent areas.”

6.3 OUTSTANDING DEVELOPMENT APPLICATIONS

Cr Woodruff asked the meeting of the current status of 110 Merriwa Road, Merriwa. Mr Finnigan advised the meeting that a self-report has been conducted (asbestos).

RECOMMENDED on the motion of Crs Rush and Scholes that:

The General Manager write to the applicant and advise that the committee is minded to refer the matter to the Regional Planning Panel for determination. The letter is to be issued prior to the next scheduled Development Assessment Committee, Monday 4 November 2019.

Cr Rush advised the meeting that Mr John Flood asked of the development application process of 74 Aberdeen Street, Muswellbrook. Ms Pope advised the meeting that there is no outstanding application for 74 Aberdeen St, Muswellbrook, however, an application for property information has recently been responded to. Details to be provided to Coucillors.

RECOMMENDED on the motion of Crs Rush and Scholes that:

The Committee note the undetermined Development Applications listed in Attachment A and the status of their assessment.

7 DATE OF NEXT MEETING

4 November 2019

8 CLOSURE

The meeting was declared closed at 4:48 pm.

.....
General Manager

.....
Chairperson

3 DISCLOSURE OF ANY PECUNIARY AND NON-PECUNIARY INTEREST

Section 451 of the Local Government Act requires that if a councillor or member of a council or committee has a pecuniary interest in any matter before the council or committee, he/she must disclose the nature of the interest to the meeting as soon as practicable and must not be present at, or in sight of, the meeting, when the matter is being discussed, considered or voted on.

A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of financial gain or loss (see sections 442 and 443 of the Local Government Act).

A non-pecuniary interest can arise as a result of a private or personal interest which does not involve a financial gain or loss to the councillor or staff member (eg friendship, membership of an association, or involvement or interest in an activity). A councillor must disclose the nature of the interest to the meeting as soon as practicable.

Council's Model Code of Conduct now recognises two forms of non-pecuniary conflict of interests:

- Significant
- Less than significant

A Councillor must make an assessment of the circumstances and determine if the conflict is significant.

If a Councillor determines that a non-pecuniary conflict of interests is less than significant and does not require further action, they must provide an explanation of why it is considered that the conflict does not require further action in the circumstances.

If the Councillor has disclosed the existence of a significant non-pecuniary conflict of interests at a meeting they must not be present at, or in sight of, the meeting, when the matter is being discussed, considered or voted on.

4 PUBLIC PARTICIPATION

5 BUSINESS ARISING

6 BUSINESS

6.1 DA39/2019 TWO LOT BOUNDARY ADJUSTMENT (SUBDIVISION) - LOTS 51 & 52 DP811580 207 & 211 KAYUGA ROAD MUSWELLBROOK

Responsible Officer:	Sharon Pope - Assistant Director - Environment & Community Services
Author:	Alisa Evans - Projects Planner
Community Plan Issue:	<i>A Council that is well managed, efficient and properly resourced and that is responsive to its communities and stakeholders</i>
Community Plan Goal:	<i>Maintain a strong focus on financial discipline to enable Council to properly respond to the needs of the communities it serves.</i>
Community Plan Strategy:	<i>Provide efficient and effective Development Application, Complying Development Certificate, Construction Certificate and Occupational Certificate assessment services.</i>
Attachments:	A. DA 2019-39 Development Assessment report - 345328.docx B. DA 2019-039 Statement of Environmental Effects.pdf

Documents referred to in assessment not attached:

- Local Environmental Plan 2009
- Development Control Plan 2009

APPLICATION DETAILS

Applicant:	Perception Planning
Owner:	Mr C & Mrs JM Moore
Proposal:	Two (2) Lot Boundary Adjustment (Subdivision)
Location:	Lot 51 & 52 DP 811580 207 & 211 Kayuga Road Muswellbrook
Permissibility:	The proposed development is not permissible as Subdivision within the RU1 Primary Production zone must comply with Minimum Lot Size under Clause 4.1 MLEP 2009
Recommendation:	Refusal

PURPOSE

This report has been prepared to inform the Development Assessment Committee in determining Development Application (DA) 39/2019. This Development Application has been assessed by Council officers. A copy the Section 4.15 Assessment Report is attached.

The matter is being reported to the Development Assessment Committee for determination as the development does not comply with a development standard referenced by part 4 of the Muswellbrook Local Environmental Plan (LEP) 2009.

The determination of development applications which anticipate any non-compliance with any development standard in Part 4 of the Muswellbrook LEP 2009 is outside of the function delegated to Council Officers by Council.

As a result of the developments non-compliance with the Muswellbrook LEP 2009 the development application has been recommended for refusal by Council Officers.

RECOMMENDATION

That the Development Assessment Committee REFUSE Development Application No. 39/2019, proposing two (2) lot boundary adjustment of Lots 51 & 52 DP 811580, 207 & 2011 Kayuga Road Muswellbrook, for the following reasons:

1. The proposal does not to comply with the subdivision minimum lot size development standard prescribed by Clause 4.1 of Muswellbrook Local Environmental Plan 2009.
2. Pursuant to Section 4.15(1)(a) of the Environmental Planning and Assessment Act 1979, the proposal would be inconsistent with the requirements of Clause 2.3 of the Muswellbrook LEP 2009, the land use zone objectives of the RU1 Primary Production, as the application does not adequately address the social impacts and potential conflict of having a dwelling house with minimal buffers to an adjoining rural industry land use on an adjoining lot.
3. Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the application has not adequately demonstrated that the proposed development would not result in significant adverse environmental impacts in relation to the location and operation of an on-site sewage management system on a 939.6m² sized lot.
4. Pursuant to Section 4.15(1)(e) the proposed development is considered to be contrary to the public interest as a development that is inconsistent with local planning controls, is likely to have adverse environmental impacts and creates the potential for land use conflicts.

Moved: _____ **Seconded:** _____

<input type="checkbox"/> Cr J. Ledlin	<input type="checkbox"/> Cr S. Bailey	<input type="checkbox"/> Cr G. McNeill
<input type="checkbox"/> Cr J. Foy	<input type="checkbox"/> Cr M. Green	<input type="checkbox"/> Cr R. Scholes
<input type="checkbox"/> Cr S. Reynolds	<input type="checkbox"/> Cr B.N. Woodruff	<input type="checkbox"/> Cr S. Ward
<input type="checkbox"/> Cr J.F. Eades	<input type="checkbox"/> Cr M. Bowditch	<input type="checkbox"/> Cr M.L. Rush

DESCRIPTION OF THE PROPOSED DEVELOPMENT

The proposed development relates to 207 & 211 Kayuga Road Muswellbrook. The property is formally identified as Lot 51 & 52 DP 811580.

The subject land is zoned RU1 Primary Production. Each allotment contains a dwelling house and outbuildings. Lot 51 has an area of 3678 metre sq. and Lot 52 DP 6896 metre. sq.

The applicant has described the proposed development as a boundary adjustment.

The term 'boundary adjustment' is not a term defined by the *Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2000*, the standard instrument (local environmental plan order) or *Muswellbrook LEP 2009*.

The only references to boundary adjustments in environmental planning instruments are contained in clauses of those instruments which identify types of 'subdivision' which may be carried out for the purpose of 'boundary adjustments'. *Muswellbrook LEP 2009* does not have any clauses that outline circumstances under which development can be carried out as a 'boundary adjustment'.

As a 'boundary adjustment' is not a defined term, and *Muswellbrook LEP 2009* does not include clauses that enable the carrying out of a subdivision as boundary adjustment, Council Officers are unable to form the view that the development can be considered and supported as a 'boundary adjustment'.

It is the position of the Council Officers that the proposed development is a subdivision and must comply with the relevant development standards for the carrying out of a subdivision under the *Muswellbrook LEP 2009*. The attached Section 4.15 Report includes further deliberations related to the classification of the proposed development as a 'subdivision'.

Under the *Muswellbrook LEP 2009* the subject land is zoned RU1 Primary Production and has a minimum lot size of 80ha. The lots proposed under this development application would not comply with the required minimum lot size.

The table below identifies the existing and proposed areas of the lots subject to this application.

Lot (proposed lot)	Existing Area	Proposed Area	Minimum Lot size	Complies with Minimum Lot Size
51 (501)	0.3678 ha	0.9634 ha	80 ha	No
52 (502)	0.6896 ha	0.09396 ha	80 ha	No

The images below identify the existing and proposed lot boundaries for subject site



Existing boundary arrangement



Proposed boundary arrangement

ASSESSMENT SUMMARY

Council Officers have assessed the development application under the relevant heads of consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*. A copy of the Section 4.15 Assessment is provided in Attachment A. The conclusion of staff is that the proposed development application would not comply with relevant requirements of the *Muswellbrook LEP 2009* and therefore Council is unable to approve the proposed development.

Key findings of the section 4.15 assessment include:

- *Muswellbrook LEP 2009* does not include any clause that allows for the carrying out of a 'subdivision' as a 'boundary adjustment'.
- The proposed development falls within the definition of a 'subdivision' established by the *Environmental Planning and Assessment Act 1979*. Accordingly, Council is required to consider the proposed development against the relevant provisions of the *Muswellbrook LEP 2009* for the carrying out of a 'subdivision'.
- Clause 4.1 of the *Muswellbrook LEP 2009* restricts the subdivision of land where the size of any lot resulting from the subdivision would be less than the minimum lot size. The minimum lot size for the land subject to this development application is 80ha. The total area of each of the proposed lots would be significantly less than the 80ha minimum lot size. Consequently, Council is unable to approve the development as proposed and it is recommended for refusal.
- Proposed Lot 501 would contain an existing dwelling house and a workshop operated on the land and proposed Lot 502 would include an existing dwelling house. The total area of Lot 502 would be 939.6m². The lots cannot be serviced by Council's reticulated sewer system, so wastewater is managed by on-site sewage management systems. Council Officers are concerned that the size of this lot would be inadequate for an on-site sewage management system to operate in an environmentally safe manner. Typically a minimum lot size of at least 2,000m² is required for the effective operation of an on-site sewage management system. Given the risk of environmental harm arising from the operation of an on-site sewage management system on the 939.6m² sized lot proposed Council Officers are concerned that the proposed development would result in adverse environmental impacts and thereby cannot be supported under the provisions of Section 4.15 (1)(b) of the *Environmental Planning and Assessment Act 1979*.
- Prior to the lodgement of this development application Council received a Subdivision Certificate for the carrying out of an exempt development at the site. This Subdivision Certificate sought the subdivision of the land pursuant to Clause 38 of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. Clause 38 of the SEPP allows for the carrying out of subdivisions for the purpose of a 'minor realignment of boundaries' as exempt development in certain circumstances where the lots created do not meet the minimum lot size requirements of an environmental planning instrument. This Subdivision Certificate was refused by Council's Acting Director of Environment and Community Services of the time on the 26 April 2018 following advice received from Council's Lawyer.

COMMUNITY CONSULTATION

The proposed development was notified and advertised between the 15 May 2019 and 30 May 2019. A notice was also placed in the local newspaper, the Hunter Valley News, at the commencement of the notification period. No submissions were received from the public in relation to the proposed development.

OPTIONS

The Development Assessment Committee may:

- A) Refuse development consent to the proposed development subject to the recommended reasons for refusal,

- B) Grant development consent to the proposed development unconditionally or subject to conditions of consent, or
- C) Defer the determination of the development application to Council.

LEGAL IMPLICATIONS

Where the applicant is dissatisfied with the determination of the development application they have an opportunity under the provisions of *the Environmental Planning and Assessment Act 1979* to appeal that determination at the Land and Environment Court.

CONCLUSION

DA 39/2019 has been reported to the Development Assessment Committee for determination as the recommendation is for the refusal, as the development is non-compliant with the minimum lot size map as required by Clause 4.1 and Clause 4.6 Exception to Development standards cannot be used for rural lands.

Council Officers have completed a Section 4.15 Assessment in relation to the proposed development.

This section 4.15 Assessment has identified that the proposed development would not comply with the requirements of the *Muswellbrook LEP 2009* and is likely to have an adverse environmental impact. As a result of these findings it is considered that the proposed development would be contrary to the development assessment requirements of the *Environmental Planning and Assessment Act 1979* and Council Officers have recommended the refusal of the application.

DEVELOPMENT ASSESSMENT REPORT

ADDRESS:	LOT: 51 DP: 811580, LOT: 52 DP: 811580 211 Kayuga Road MUSWELLBROOK, 207 Kayuga Road MUSWELLBROOK
APPLICATION No:	39/2019
PROPOSAL:	Boundary Adjustment
OWNER:	Mr C & Mrs J M Moore
APPLICANT:	Perception Planning Po Box 107 CLARENCE TOWN NSW 2321
AUTHOR:	Ms A J Evans
DATE LODGED:	01-05-2019
AMENDED:	NA
ADD. INFO REC'D:	NA
DATE OF REPORT:	28 August 2019

SUMMARY

ISSUES: The development is 'subdivision' and must comply with minimum lot size as defined under Clause 4.1 of MLEP 2009 and Minimum Lot Size Map.

SUBMISSIONS: NA

RECOMMENDATION: Refusal

1.0 BACKGROUND

The site is zoned RU1 Primary Production. The two (2) lots contain a dwelling each and a number of outbuildings. A business is operated on the land. Previously the landowners sought a realignment of boundaries under *SEPP (Exempt and Complying Codes) 2008*. However was rejected as exempt development as the realignment was not minor. The rejection of the exempt boundary adjustment application was informed by advice from Council's Lawyer at the time the application was lodged.

The following is an excerpt from the *SEPP (Exempt and Complying Development Codes) 2008* related to subdivision. The relevant section for rejecting the boundary adjustment previously lodged in relation to the land has been highlighted.

Subdivision 38 Subdivision

2.75 Specified development

The subdivision of land, for the purpose only of any one or more of the following, is development specified for this code:

(a) widening a public road,

(b) a realignment of boundaries:

(i) that is not carried out in relation to land on which a heritage item or draft heritage item is situated, and

(ii) that will not create additional lots or increase the number of lots with a dwelling entitlement or increase the opportunity for additional dwellings, and

(iii) that will not result in any lot that is smaller than the minimum size specified in an environmental planning instrument in relation to the land concerned (other than a lot that was already smaller than that minimum size), and

(iv) that will not adversely affect the provision of existing services on a lot, and

(v) that will not result in any increased fire risk to existing buildings, and

(vi) if located in Zone RU1, RU2, RU3, RU4, RU6, E1, E2, E3 or E4—that will not result in more than a minor change in the area of any lot, and

(vii) if located in any other zone—that will not result in a change in the area of any lot by more than 10%,

(c) (Repealed)

(d) rectifying an encroachment on a lot,

(e) creating a public reserve,

(f) excising from a lot land that is, or is intended to be, used for public purposes, including drainage purposes, rural fire brigade or other emergency service purposes or public toilets.

2.76 Development standards

Note.(At the commencement of this clause no standards were specified.)

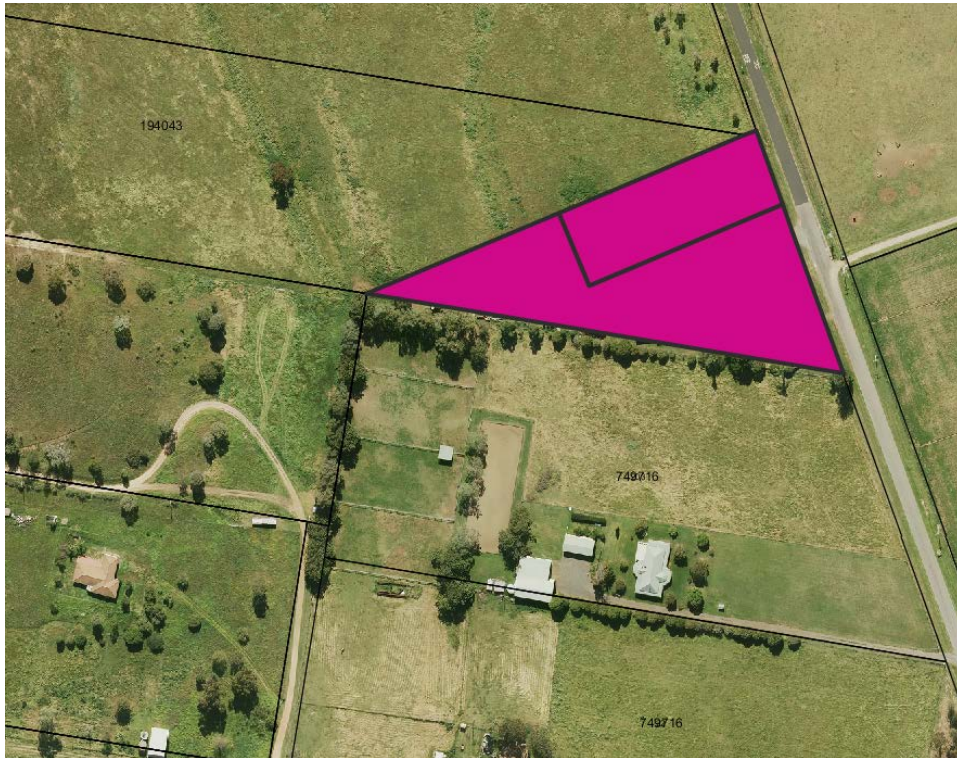
2.0 SITE AND LOCALITY DESCRIPTION

This development application relates to Lot 51 DP 811580 and Lot 52 DP 811580. The address of the land is 207 and 211 Kayuga Road, Muswellbrook.

Both allotments subject to this application are zoned RU1 Primary Production under the *Muswellbrook Local Environmental Plan (LEP) 2009*.

The land is identified as flood liable by the Muswellbrook Flood Risk Management Study and Plan 2018. This Flood Risk Management Study and Plan identifies the land as being affected by the 1% (1 in 100 year flood event).

The land subject to this application is identified in the image below.



3.0 DESCRIPTION OF PROPOSAL

In the statement of environmental effects accompanying the development application the applicant has described the proposed development as a boundary adjustment.

The information accompanying the development application indicates that under the proposal the existing lot arrangement would be adjusted through the altering of boundaries as set-out in the table below.

Lot (proposed lot)	Existing Area	Proposed Area	Minimum Lot size
51 (501)	3,678m ²	9,634m ²	80ha
52 (502)	6,896m ²	939.6m ²	80ha

The applicant has expressed that the purpose of the boundary adjustment is to give effect to the will of the late Mr D Moore. At present two (2) dwellings and a mechanical business are located on the land. Under the proposal a single dwelling will be located on proposed Lot 502 and the remaining dwelling and business located on proposed Lot 501.

The images below shows the existing lot arrangement and the proposed lot arrangement as shown in appendix 2 and 3 of the submitted statement of environmental effects.



Image.1 (aerial view of the existing lot arrangement)

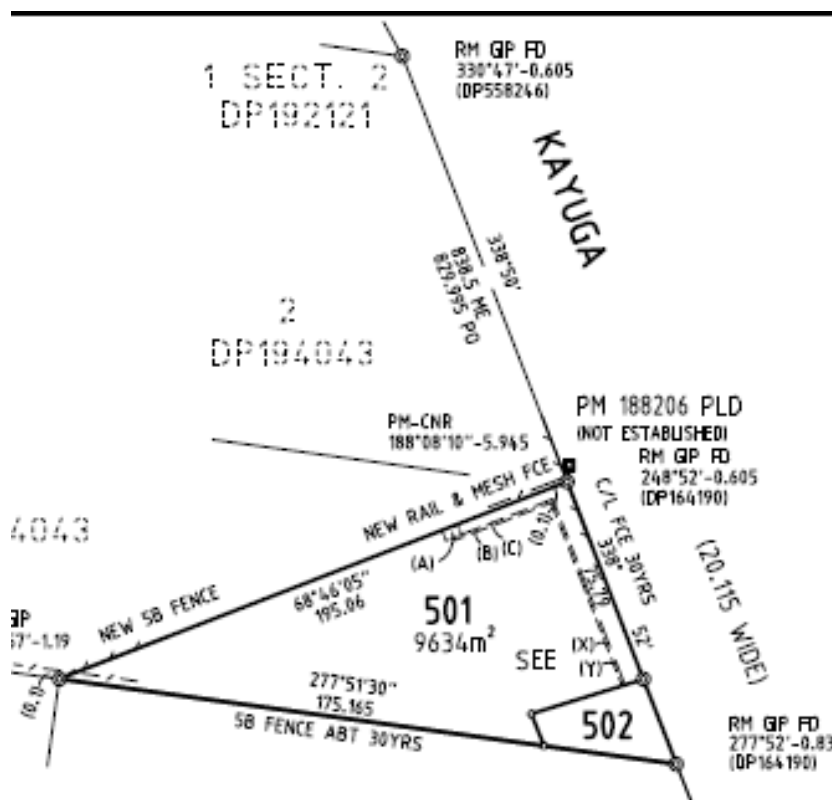


Image. 2 (survey plan of the proposed lot arrangement).

The statement of environmental effects submitted with the development application suggest that the applicant has sought to characterise the development as a boundary adjustment to avoid a requirement for Council to consider the minimum lot size provisions of the *Muswellbrook LEP 2009* relevant to development involving subdivisions.

Council Officers have reviewed the information presented by the applicant relating to the characterisation of the development as a 'boundary adjustment' and are not satisfied that the development can be progressed as a 'boundary adjustment' as set-out in the Statement of Environmental Effects. Based on a review of the *Environmental Planning and Assessment Act 1979* and *Muswellbrook LEP 2009* Council Officers are unable to support the applicant's characterisation of the development as a 'boundary adjustment'.

Council Officers have identified that the proposed development meets the definition of 'subdivision' under the *Environmental Planning and Assessment Act 1979* and thereby the development must be considered against the provisions of the *Muswellbrook LEP 2009* related to subdivision. Information related to the characterisation of the development has been expanded on under later headings of this Section 4.15 Assessment.

4.0 SPECIALIST COMMENTS

5.1 Internal Referrals

The application was referred to Council's Environmental Health Officer.

Comments received were not supportive of the application due to Onsite Sewage Management Systems being located on Lot 501 and proposed Lot 502 likely being unable to facilitate an Onsite Sewage Management system to service the existing dwelling.

5.0 ASSESSMENT

This report provides an assessment of the material presented in the Application against the relevant State and local planning legislation and policy.

Section 4.15 Matters for Consideration

Section 4.15(1)(a)(i) The provisions of any Environmental Planning Instrument (EPI)

The following EPIs, DCPs, Codes and Policies are relevant to this Application:

1. Muswellbrook Local Environmental Plan 2009 (MLEP 2009)

Land Use Zone and Permitted Land Use

The development site is zoned RU1 Primary Production pursuant to MLEP 2009.

In the statement of environmental effects the applicant has described the proposed development is a 'boundary adjustment'. This description of the proposed development has been reviewed by Council Officers. The term 'boundary adjustment' is not identified as a type of development by Section 1.5 of the *Environmental Planning and Assessment Act 1979* or as a type of land use by the definitions included in the *Muswellbrook LEP 2009* or Standard Instrument (local environmental plan order).

References to the term boundary adjustments are largely limited to clauses contained in LEPs, which establish boundary adjustments as a type of subdivision. *Muswellbrook LEP 2009* does not have a specific boundary adjustment Clause.

Council Officers have identified that the development proposed is consistent with the definition of a 'subdivision' set out in the Act.

The definition of the term subdivision is set-out as follows by Section 6.2 of the *Environmental Planning and Assessment Act 1979*:

6.2 Meaning of "subdivision" of land (cf previous s 4B)

- (1) For the purposes of this Act, subdivision of land means the division of land into 2 or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition. The division may (but need not) be effected:
- (a) by conveyance, transfer or partition, or
 - (b) by any agreement, dealing, plan or instrument rendering different parts of the land available for separate occupation, use or disposition.
- (2) Without limiting subsection (1), subdivision of land includes the procuring of the registration in the office of the Registrar-General of:
- (a) a plan of subdivision within the meaning of section 195 of the Conveyancing Act 1919, or
 - (b) a strata plan or a strata plan of subdivision within the meaning of the Strata Schemes Development Act 2015.

Note. The definition of plan of subdivision in section 195 of the Conveyancing Act 1919 extends to plans of subdivision for lease purposes (within the meaning of section 23H of that Act) and to various kinds of plan under the Community Land Development Act 1989.

- (3) However, subdivision of land does not include:
- (a) a lease (of any duration) of a building or part of a building, or
 - (b) the opening of a public road, or the dedication of land as a public road, by the Crown, a statutory body representing the Crown or a council, or
 - (c) the acquisition of land, by agreement or compulsory process, under a provision of an Act (including a Commonwealth Act) that authorises the acquisition of land by compulsory process, or
 - (d) a division of land effected by means of a transaction referred to in section 23G of the Conveyancing Act 1919, or
 - (e) the procuring of the registration in the office of the Registrar-General of:
 - (i) a plan of consolidation, a plan of identification or a miscellaneous plan within the meaning of section 195 of the Conveyancing Act 1919, or
 - (ii) a strata plan of consolidation or a building alteration plan within the meaning of the Strata Schemes Development Act 2015.

The *Environmental Planning and Assessment Act 1979* links the definition of the term subdivision to a plan of subdivision within the meaning of Section 195 of the *Conveyancing Act 1919*. The definition of the term plan of subdivision established under Section 195 of the *Conveyancing Act 1919* is included below.

plan of subdivision means a plan that shows:

- (a) the division of an existing lot into 2 or more new lots, or
- (b) the consolidation of 2 or more existing lots and their simultaneous redivision, along new boundaries, into 2 or more new lots, or
- (c) the dedication of an existing lot as a public road under section 9 of the [Roads Act 1993](#) or as a public reserve under section 49 of the [Local Government Act 1993](#), or
- (d) the setting aside of an existing lot as a drainage reserve under section 49 of the [Local Government Act 1993](#),

whether or not the plan also shows one or more of the matters referred to in paragraph (a), (b) or (c) of the definition of **miscellaneous plan**, and includes a plan of subdivision for lease purposes (within the meaning of Division 3B or 3C of Part 2) and any other plan that shows the division of land, but does not include a plan of consolidation or a plan of identification.

Council Officers are of the opinion that the proposed development falls within the definition of subdivision established under the *Environmental Planning and Assessment Act 1979*. The proposed development seeks development consent for the creation of a subdivision or a plan of subdivision that consolidates and re-divides 2 existing lots into 2 lots along new boundaries.

Muswellbrook LEP 2009 does not include any clause which permits development for the purpose of a 'boundary adjustment' or defines this term as a type of development.

Although permissible with consent under the provisions of Clause 2.6 of *Muswellbrook LEP 2009*, subdivision must be compliant with minimum lot size development standards established by Clause 4.1.

Objectives of the RU1 Primary Production Zone

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To protect the agricultural potential of rural land not identified for alternative land use, and to minimise the cost to the community of providing, extending and maintaining public amenities and services.
- To maintain the rural landscape character of the land in the long term.
- To ensure that development for the purpose of extractive industries, underground mines (other than surface works associated with underground mines) or open cut mines (other than open cut mines from the surface of the flood plain), will not:
 - (a) destroy or impair the agricultural production potential of the land or, in the case of underground mining, unreasonably restrict or otherwise affect any other development on the surface, or
 - (b) detrimentally affect in any way the quantity, flow and quality of water in either subterranean or surface water systems, or
 - (c) visually intrude into its surroundings, except by way of suitable screening.
- To protect or conserve (or both):
 - (a) soil stability by controlling development in accordance with land capability, and
 - (b) trees and other vegetation, and
 - (c) water resources, water quality and wetland areas, and their catchments and buffer areas, and
 - (d) valuable deposits of minerals and extractive materials by restricting development that would compromise the efficient extraction of those deposits.

It is considered that the development proposal is contrary to the objectives of the Zone.

Based on the information contained in the Statement of Environmental Effects it appears that the principal purpose that has informed the preparation of this development application and the carrying out of the proposed subdivision has been the execution of a will and to bequeath property to Mr and Mrs Moore.

The proposed development and subdivision which would create an RU1 Primary Production zoned Lot with a dwelling and an area of 939.6m² in proposed Lot 502 would not support the achievement of the land use zone objectives expressed above.

Relevant Clauses applicable under the Muswellbrook Local Environmental Plan 2009

<i>Part 1 Preliminary</i>	
1.1 Name of Plan	Muswellbrook Local Environmental Plan 2009
1.1AA Commencement	The MLEP 2009 was gazette 17 April 2009.
1.3 Land to which Plan applies	The MLEP 2009 applies to the whole of Muswellbrook Local Government Area.
1.6 Consent authority	The consent authority for this development is Muswellbrook Shire Council.
<i>Part 2 Permitted or prohibited development</i>	
2.3 Zone objectives and land use table	The land subject to this development application is zoned RU1 Primary Production. The provisions of the land use zone objectives in relation to the proposed development have been considered under the Land Use zone objectives heading above.

2.6 Subdivision—consent requirements	<p>The provisions of this clause are as follows:</p> <ol style="list-style-type: none"> (1) Land to which this Plan applies may be subdivided, but only with development consent. (2) Development consent must not be granted for the subdivision of land on which a secondary dwelling is situated if the subdivision would result in the principal dwelling and the secondary dwelling being situated on separate lots, unless the resulting lots are not less than the minimum size shown on the Lot Size Map in relation to that land. <p>The ability for the development to be carried out under the provisions of the LEP remains subject to the development complying with additional provisions imposed by the instrument.</p>
Part 3 Exempt and complying development	
Part 4 Principal development standards	
4.1 Minimum subdivision lot size	<p>MLEP 2009 specifies a minimum lot size of 80ha in relation to the land. The proposed lots do not comply with the minimum lot size with the largest of the lots being only 9634m. sq.</p> <p>The proponent is arguing that the proposal is a boundary adjustment and minimum lot size is not applicable to the application. However boundary adjustments are defined as Subdivision under Clause 6.2 Meaning of 'subdivision' of land under Environmental Planning and Assessment Act 1979.</p> <p>Therefore the application cannot be approved as it is not satisfy the required development standards with the provisions of Clause 4.1 of MLEP 2009.</p>
4.2 Rural subdivision	NA, the proposal is not for the purpose of agriculture.
4.6 Exceptions to development standards	<p>Provision cannot be used for the proposal as the lots being created lot size variation would be greater than the 10%.</p> <p>The proponent has sought clarification from Department of Environment, Planning and Industry and have been advised that the lots must conform with the standards of Clause 4.1 and this Clause cannot be applied to the application as the variation is to great.</p>
Part 5 Miscellaneous provisions	
Part 6 Urban release areas	
Part 7 Additional local provisions	

2. State Environmental Planning Policy

The following State Environmental Planning Policies apply to the Muswellbrook Local Government Area and were considered and there provisions were not considered to have any significant bearing on the ability of the proposed development to be carried out.

- SEPP No. 21 Caravan Parks
- SEPP No. 30 Intensive Agriculture
- SEPP No. 33 Hazardous and Offensive Development
- SEPP No. 36 Manufactured Home Estates
- SEPP No. 44 Koala Habitat Protection
- SEPP No. 55 Remediation of Land
- SEPP No. 62 Sustainable Aquaculture
- SEPP No. 64 Advertising and Signage

- SEPP No. 65 Design Quality of Residential Flat Development
- SEPP (Housing for Seniors or People with Disability) 2004
- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP (infrastructure) 2007
- SEPP (Mining, Petroleum Production and Extractive Industries) 2007
- SEPP (miscellaneous Consent Provisions) 2007
- SEPP (Rural Lands) 2008
- SEPP (Exempt and Complying Development Codes) 2008
- SEPP (Affordable Renting Housing) 2009
- SEPP (State and Regional Development) 2011

Section 4.15(1)(a)(ii) the provisions of any draft EPI.

No draft EPI is relevant to the subject Application.

Section 4.15(1)(a)(iii) the provisions of any development control plan

Section 3 – Site Analysis

It is considered that the documentation provided with the Development Application satisfies the provisions of Section 3 of the Muswellbrook DCP.

Section 4 – Notification

In accordance with the provisions of Section 4 of the Muswellbrook DCP 2009, the Application was notified for a period of not less than fourteen days from 15 May 2019 to 30 May 2019. A notice was also placed in the local newspaper, the Hunter Valley News, at the commencement of the notification period. No submissions were received during the notification period.

Section 5 - Subdivision

The proposal is non-compliant with the provisions of the DCP. The proposed Lot layout does not facilitate adequate onsite sewage management systems for Proposed Lot 502. Also, Proposed Lot 502 will have no buffers for adjoining land uses (a rural industry that involves manufacturing and repair of farm equipment).

Section 8 – Rural and Environmental Zone development

The proposal does not provide buffers for rural land uses. Future landuses will be limited on Proposed Lot 502 and will be wedged between to larger allotments that can operate business/agricultural landuses. Only having an area of 939.6m sq. its use will be for the existing residence.

Section 22 – Land use Buffers

Unable to comply with DCP requirements

Section 94 Contributions Plan 2001

Not Applicable

Section 94A Contributions Plan 2009

Not Applicable

The following sections of the Muswellbrook Development Control Plan 2009 were considered and found not to be applicable to the proposed development:

Section 1 - Introduction	Section 2 – Submitting an application
Section 5 – Subdivision	Section 6 – Residential Development
Section 7 – Village Zones	Section 8 – Rural Development
Section 9 – Local Centre Development	Section 10 – Industrial Development
Section 11 – Extractive Industries	Section 12 – Tourist Facilities and Accommodation

Section 13 – Flood Prone Land	Section 14 – Outdoor signage
Section 15 – Heritage Conservation	Section 16 – Carparking and Access
Section 17 – Sex Services Premises	Section 18 – Child Care Centres
Section 19 – Use of Public Footpaths	Section 20 – Erosion and Sediment Control
Section 21 – Contaminated Land	Section 22 – Land Use Buffers
Section 23 – Onsite Wastewater management systems	Section 24 – Waste Management
Section 25 – Stormwater Management	Section 26 – Site Specific controls
Section 27 – West Denman Urban Release Area	

Section 4.15(1)(a)(iia) the provisions of any planning agreement

There are no planning agreements relevant to the subject Application.

Section 4.15(1)(a)(iv) the provisions of the regulations

Division 8A of the *Environmental Planning and Assessment Regulation 2000* applies to the development.

Section 4.15(1)(a)(v) the provisions of any coastal zone management plan

This item is not relevant to the subject Application. The Application does not relate to a coastal area.

Section 4.15(1)(b) the likely impacts of that development

The following additional matters were considered and, where applicable, have been addressed elsewhere in this report:

Context & Setting	Waste
Built Form	Energy
Potential Impact on Adjacent Properties	Noise and Vibration
Access, Traffic and Transport	Natural hazards
Public Domain	Technological hazards
Utilities	Safety, Security, and Crime Prevention
Heritage	Social Impact on Locality
Other land resources	Economic Impact on the Locality
Water	Site Design and Internal Design
Soils	Construction
Air & microclimate	Cumulative Impacts
Flora & fauna	

Section 4.15(1)(c) the suitability of the site for the development

As a subdivision, the proposal would be undesirable in regard to the objectives of RU1 Primary Production zone land, as it would set a precedence that enables fragmentation of rural land and causes landuse conflicts.

Section 4.15(1)(d) any submissions made

No submissions were received in relation to the proposal.

NSW Legislation

There is a number of applicable legislation that needs to be considered and referred to in the assessment of this application. The applicable legislation has been listed at the start of the report. The assessment has considered these pieces of legislation throughout the report in their relevant sections, however, the following legislation has not been discussed in detail elsewhere in the report.

Council Adopted and Draft Policies

The following policies have been adopted by Council and are required to be considered in the assessment of the application.

D7/1 Development Cost Estimating
D25/1 Rivers and Drainage Channel
S28/1 Street Trading Policy
D6/1 Demolition Policy
C20/1 Contaminated Land Policy
S15/1 Building Over Existing Sewer Policy
R26/1 Retaining Wall Policy

5 CONCLUSION

The Section 4.15 Assessment Report identifies that the proposed development involves a subdivision which does not comply with the relevant minimum lot size provisions of the Muswellbrook LEP 2009 and that is likely to have adverse environmental impacts related to the creation of a lot with an area of 939.6m² which would include a dwelling and on-site sewage management system.

It is recommended the application be refused for the following reasons:

1. The proposal does not to comply with the subdivision minimum lot size development standard prescribed by Clause 4.1 of Muswellbrook Local Environmental Plan 2009.
2. Pursuant to Section 4.15(1)(a) of the *Environmental Planning and Assessment Act 1979*, the proposal would be inconsistent with the requirements of Clause 2.3 of *Muswellbrook LEP 2009*, the land use zone objectives of the RU1 Primary Production, as the application does not adequately address the social impacts and potential conflict of having a dwelling house with minimal buffers to an adjoining rural industry land use on an adjoining lot.
3. Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the application has not adequately demonstrated that the proposed development would not result in significant adverse environmental impacts in relation to the location and operation of an on-site sewage management system on a 939.6m² sized lot.
4. Pursuant to Section 4.15(1)(e) the proposed development is considered to be contrary to the public interest as a development that is inconsistent with local planning controls, is likely to have adverse environmental impacts and creates the potential for land use conflicts.

Disclosure of Political Donations and Gifts:

No disclosures of a political donations or gifts have been made in relation to this application.

Signed by:



Alisa Evans
Project Planner

Date:

16/10/2019



STATEMENT OF ENVIRONMENTAL EFFECTS (SoEE) FOR A
BOUNDARY ADJUSTMENT (SUBDIVISION) AT 207 and 211
Kayunga Road Muswellbrook NSW 2333 (Lots 51 and 52
DP811580)

Prepared by Perception Planning Pty Ltd for Mr. and Ms. Moore



12 February 2019

Contact:

Mr. Josh Real
Senior Town Planner, Perception Planning Pty Ltd.

PO Box 107
Clarence Town, NSW, 2321
Phone: 0418130098
Email: josh@perceptionplanning.com.au



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EXECUTIVE SUMMARY

Perception Planning Pty Ltd has been engaged by Olivia and Carl Moore (the clients) to prepare a Statement of Environmental Effects (SoEE) for a boundary adjustment at 207 and 2011 Kayuga Road Muswellbrook (the site) **(FIGURE 1)**.

The site is located within the Muswellbrook Local Government Area (LGA) and is zoned RU1 Primary Production under the Muswellbrook Local Environmental Plan 2009 (the LEP). The proposed lot dimensions and shape are detailed by the attached concept subdivision Plans.

The site is located on Kayuga Road Muswellbrook, within the Muswellbrook Local Government Area and is accessible from Kayuga Parade. An assessment of the development determined that the development is best defined as a boundary adjustment and not a subdivision and therefore the minimum lot size provisions under clause 4.1 of the LEP do not apply to the proposed development.

The boundary adjustment comes as a result of a deceased estate probity of the Will of Mr and Ms Moore's father. The will required that the existing shed currently located on Lot 52 be legally gifted to Lot 51 by way of a boundary realignment. The clients believed, on advice from Council, that this could be achieved through a boundary adjustment under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 as exempt development. As such the clients lodged a subdivision certificate under this policy and it was subsequently rejected as Council were of the opinion that it did not satisfy the provisions within Subdivision 38.

As such the clients wish to now lodge a development application for a boundary adjustment that seeks to rectify and align the legal boundary to the physical boundary as it exists on site.

The proposed development will provide a well-coordinated and sustainable development while retaining and protecting the character of the surrounding area. This DA is consistent with the planning framework and has the potential to deliver triple-bottom line outcomes as envisaged by Muswellbrook Council. The SoEE will expand on those matters that have been summarised above to assist in completing a detailed assessment of the proposal development.



TERMS & ABBREVIATIONS

AHIMS	Aboriginal Heritage Information Management System
EP&A Act	Environmental Planning & Assessment Act 1979
BPL	Bushfire Prone Land
DA	Development Application
FPL	Flood Planning Level
FFL	Finished Floor Level
RoW	Right of Way
SoEE	Statement of Environmental Effects
EPI	Environmental Planning Instrument
TS&C	Threatened Species and Conservation Act 1995
LAP	Local Area Plan
ASS	Acid Sulphate Soils
SISD	Safe Intersection Sight Distance

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1.0 INTRODUCTION

1.1 PURPOSE

The purpose of this Statement of Environmental Effects (SoEE) is to assist Council in their determination and to assist the community in understanding this development.

This SoEE has been prepared in accordance with best practice principles, in particular, applicable aspects of the Development Assessment Framework and the Department of Planning and Infrastructure's (now the Department of Planning and Environment) guide to the *Environmental Planning and Assessment Act (EP&A Act) 1979* (s4.15).

The objectives of this SoEE are as follows:

- To provide a description of the site, existing development and the surrounding locality;
- To provide a description of the proposal and the key issues;
- To provide a discussion of the relevant Environmental Planning Instruments (EPI)s; and
- To provide an assessment of the potential environmental impacts, having regard to the matters for consideration pursuant to the EP&A Act (s4.15) and other State, Regional and Local environmental planning policies and guidelines.

1.2 BACKGROUND

Ms Olivia Moore approached Perception Planning to understand and discuss the options for a boundary adjustment at 207 and 211 Kayuga Road Muswellbrook legally known as Lots 51 and 52 DP 811580 (the site).

The boundary adjustment came about as a result of the death of Ms Moore's father and the probity of his estate in accordance with his Will. The Will specified that the existing shed and land located surrounding it on Lot 52 shall be gifted to Lot 51 so that Ms Moore's brother, Carl Moore, could continue his business that he runs on site. Thinking this was a simple endeavour, the Moore's approached Council's Planning Department and were provided advice from Ms Donna Watson in relation to the boundary adjustment being exempt development under State Environmental Planning Policy (Exempt and Comply Development Codes) 2008 (the SEPP). Taking Council's advice, a subdivision certificate was lodged with Council for the boundary adjustment.

The application for a subdivision was rejected by Council as the advice provided by Donna Watson, in the opinion of Council, was incorrect and the development did not comply with the provisions of Subdivision as Exempt Development under the SEPP.

Advice was received from Council providing two options for the proposed subdivision (**ATTACHMENT 6**). The two options are discussed later in this report.



Perception Planning attended the site and met with the clients in relation to what they would like to achieve on the site. Upon visiting the site it was determined that the application would be permissible and it was decided by the Moore's to lodge a development application.

1.3 SITE DETAILS AND ANALYSIS

The following information describes the site, location and context.

The site is located at 207 and 211 Kayuga Road Muswellbrook legally known as Lots 51 and 52 DP 811580. Lot 51 has a total site area of 3678sqm and Lot 52 has a site area of 6896sqm. The site is zoned RU1 Primary Production. Access to the site is via Kayuga Road and two driveways are currently located on Lot 52 servicing both sites. The sites are a result of both parcels of land belonging to the one family and have been subject to many consolidations and zone changes over the course of their history. Located on Lot 51 i

s an existing house with swimming pool with the boundary of Lot 51 and 52 running in close proximity to the dwelling. Located on Lot 52 is an existing dwelling, large rural shed and smaller sheds. It is noted that the existing dwelling on Lot 52 is self contained and has no interaction with the rest of Lot 52 including the large shed and the dwelling is surrounded by an existing fence (Figure 1).

FIGURE 2 – Photo of existing Fence





The site has been expected numerous times and site photo are provided (**ATTACHMENT 1**).

1.4 PROPERTY LOCATION

The site is known as 207 and 211 Kayuga Road Muswellbrook legally known as Lots 51 and 52 DP 811580. Muswellbrook Council is the consent authority.

1.5 PROPERTY ZONING

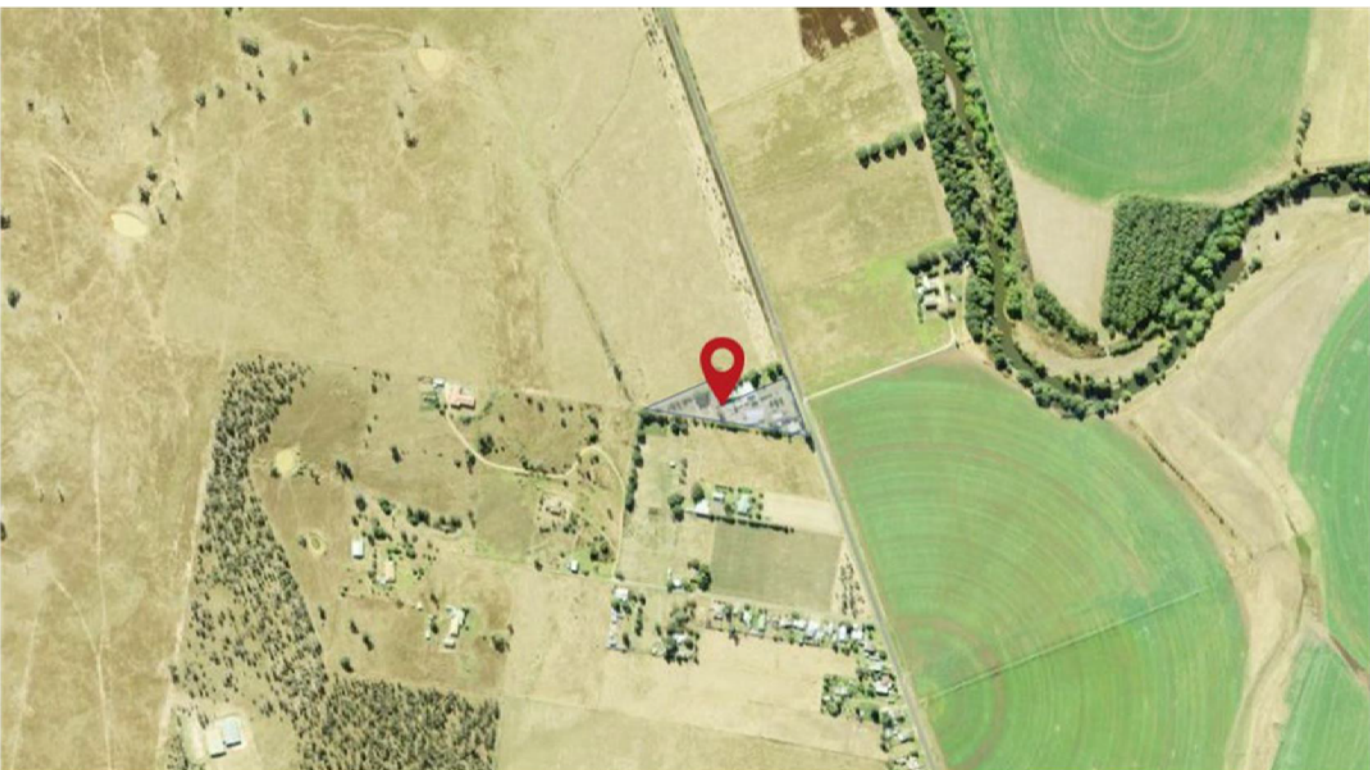
The site is zoned RU1 Primary Production

1.6 OWNER

Owners consent has been provided on the Application Form for the DA.



FIGURE 2 – Locality Map





2.0 THE DEVELOPMENT

2.1 OBJECTIVES AND OVERVIEW OF THE DEVELOPMENT

The objective of the proposed development is to obtain development consent for a boundary adjustment of 207 and 211 Kayuga Road Muswellbrook (the site). This development is enabled through the Muswellbrook LEP.

2.2 Development options

A review of the alternative uses for the site identified the following:

1. Do nothing and leave the site as is

By doing nothing and leaving the site as it is there are no additional benefits to the site or the Muswellbrook area.

As mentioned previously, the boundary adjustment has evolved due to a deceased estate that is currently in Trust while the directions of the Will are carried out. As such the beneficiaries of the Will are in limbo until a subdivision/boundary adjustment occurs between the two existing lots.

The beneficiaries of the Will could wait for changes to be made for the Muswellbrook LEP which are identified in the letter from Muswellbrook Council's Assistant Director Environment and Community Services on 21 December 2018 (**ATTACHMENT 6**). These changes are intended to create a subclause in clause 4.1 which will be worded to the extent of:

(3) Despite clause 4.1 (3), development consent may be granted to the subdivision of land to which this clause applies by way of a boundary adjustment between adjoining lots where one or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land if the consent authority is satisfied that:

(a) the subdivision will not create additional lots, and

(b) the number of dwellings or opportunities for dwellings on each lot after the subdivision will be the same as before the subdivision, and

(c) the potential for land use conflict will not be increased as a result of the subdivision, and

(d) if the land is in Zone RU1 Primary Production, Zone RU3 Forestry or Zone RU4 Primary Production Small Lots—the subdivision will not have a significant adverse effect on the agricultural viability of the land, and

(e) if the land is in Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living—the subdivision will result in the continued protection and long-term maintenance of the land.

(4) In determining whether to grant development consent for the subdivision of land under this clause, the consent authority must consider the following:

(a) the existing uses and approved uses of other land in the vicinity of the subdivision,

(b) whether the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,



- (c) *whether the subdivision is likely to be incompatible with a use of land in any adjoining zone,*
- (d) *whether the subdivision is appropriate having regard to the natural and physical constraints affecting the land,*
- (e) *whether the subdivision is likely to have an adverse impact on the environmental values of the land.*
- (5) *This clause does not apply:*
 - (a) *in relation to the subdivision of individual lots in a strata plan or community title scheme, or*
 - (b) *if the subdivision would create a lot that could itself be subdivided in accordance with clause 4.1.*

As mentioned above, the beneficiaries of the Will are currently in limbo and cannot proceed with the probity of the Will until the adjustment of the boundary occurs and as such they do not have the luxury of waiting for the Gazettal of a new LEP that will provide a more direct option for approval of this minor boundary adjustment.

By doing nothing and leaving the site as it is would have no added benefit to the site, the owners or the whole Muswellbrook area as a whole.

2. Lodge an application for a subdivision with a clause 4.6 Exception request

In the letter from Muswellbrook Council, it was suggested that an application could be lodged for subdivision with an exception to the development standard under clause 4.6 of Muswellbrook LEP. The exception is required as the newly created post-subdivision lots would be under the minimum lot size specified under clause 4.1 of the LEP.

The letter states that if an application were lodged it would be referred through to the Department of Planning for determination as Council does not have delegation to approve variations to Development Standards beyond 10%. It is noted however that the Planning Circular provides information for Council's that assumed concurrence from the Minister (Department of Planning) can occur when the application is determined by a Full Council meeting.

Despite this, there is a limitation subclause within Clause 4.6 in the Muswellbrook LEP that specifies the following:

*Development consent must not be granted under this clause for a subdivision of land in **Zone RU1 Primary Production**, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or**
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.**



This subclause prohibits clause 4.6 Variations for subdivisions where the subdivision will result in 2 or more lots of less than the minimum area specified under clause 4.1. The result of this is that a clause 4.6 variation would not be supported.

3. Lodge an application for a Boundary Adjustment

By lodging an application for a minor boundary adjustment of the site the development would see benefits for not only the owner and the site but the surrounding areas as well.

A boundary adjustment of the site would allow the beneficiaries of the estate to act in accordance with their fathers last Will and proportion off the property in accordance with his wishes. Unfortunately due to the nature of the Will, the beneficiaries of the estate are in limbo until such a time that they are either able to change the boundaries or sell the two sites as a whole.

Through the lodgment of the boundary adjustment it will enable the smaller lot to be sold as part of the mine acquisition so that Ms. Moore will be able to purchase a new dwelling outside of the mine acquisition area. It will also allow Mr. Moore the ability to maintain access and use of his shed for his business while he goes through the steps of finding a more suitable location for his business and home due to the mine acquisition.

Thus, lodging an application for the proposed boundary adjustment would result in a sequence of events where the properties are eventually acquired by the nearby mining operation to act as a buffer area. The boundary adjustment would also allow the last wishes of a father to provide for his children to be carried out. Therefore, lodging the application for the boundary adjustment is the best course of action for the site, the owners and the local area.

2.3 PLANS AND SUPPORTING DOCUMENTATION

This SoEE is supported by the following plans and documentation:

- ATTACHMENT 1 – Site Photos
- ATTACHMENT 2 – Proposed Plans
- ATTACHMENT 3 – Deposited Plans
- ATTACHMENT 4 - AHIMS Search
- ATTACHMENT 5 – Dial Before You Dig
- ATTACHMENT 6 – Letter from Council

3.0 PLANNING CONTROLS

The following Acts and planning instruments are considered relevant to the proposal.

3.1 ACTS

3.1.1 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

The relevant sections of the EPA & A Act 1979, being primarily s4.15– Likely Impacts of the Development is addressed later in this report.



3.1.2 SECTION 94 – DEVELOPMENT CONTRIBUTIONS PLAN

As the development is for a boundary adjustment it is not anticipated that development contributions would need to be paid.

3.2 STATE ENVIRONMENTAL PLANNING POLICIES (SEPP)

3.2.1 SEPP NO.55 – REMEDIATION OF LAND

This SEPP applies to the whole state. Under Clause 7, a consent authority must not grant consent to the carrying out of any development unless they have considered whether the land is contaminated.

The site is currently used for residential activities. Council has not identified this as a potential source of contamination. Therefore, the land is considered suitable for the proposed development. Should Council's investigations find otherwise, immediate action will be taken as per the advice from Council.

3.3 MUSWELLBROOK LOCAL ENVIRONMENTAL PLAN 2009

3.3.1 LAND-USE ZONE

The subject site is located within the RU1 – Primary Industry Zone under the provisions of the *Muswellbrook Local Environmental Plan 2009*.

The aims and Objectives are as follows:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To protect the agricultural potential of rural land not identified for alternative land use, and to minimise the cost to the community of providing, extending and maintaining public amenities and services.
- To maintain the rural landscape character of the land in the long term.
- To ensure that development for the purpose of extractive industries, underground mines (other than surface works associated with underground mines) or open cut mines (other than open cut mines from the surface of the flood plain), will not:
 - (a) destroy or impair the agricultural production potential of the land or, in the case of underground mining, unreasonably restrict or otherwise affect any other development on the surface, or
 - (b) detrimentally affect in any way the quantity, flow and quality of water in either subterranean or surface water systems, or
 - (c) visually intrude into its surroundings, except by way of suitable screening.



- To protect or conserve (or both):
 - (a) soil stability by controlling development in accordance with land capability, and
 - (b) trees and other vegetation, and
 - (c) water resources, water quality and wetland areas, and their catchments and buffer areas, and
 - (d) valuable deposits of minerals and extractive materials by restricting development that would compromise the efficient extraction of those deposits.

An assessment of the development against the objectives of the zone is provided later in this report.

3.3.2 PERMISSIBILITY

Under the Land Use Table- Zone RU1 of the Muswellbrook LEP, boundary adjustment is not considered a land use however it is considered to facilitate permissible uses on site and therefore is permissible within the zoning.

This site's Minimum Lot Size is 80ha and both sites are substantially under the minimum lot size with Lot 51 being 3678sqm and Lot 52 being 6896sqm. The lots are both under 1% of the minimum lot size and are therefore already non compliant with the standard. The application does not seek consent for the subdivision of the site but purely requests a boundary adjustment to rectify encroachment and access issues as well as aligning the boundary with the existing fence that has been in place for over 30 years.

A subdivision is defined under the Environmental Planning and Assessment Act as:

Meaning of "subdivision" of land

(1) For the purposes of this Act, subdivision of land means the division of land into 2 or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition. The division may (but need not) be effected:

(a) by conveyance, transfer or partition, or

(b) by any agreement, dealing, plan or instrument rendering different parts of the land available for separate occupation, use or disposition.

As the development does not seek consent for the subdivision of one lot into 2 or more parts it is therefore considered that the development is not a subdivision.

There are precedents relating to whether a development would be considered a boundary adjustment. In *Ousley Pty Ltd v Warringah Shire Council* [1999] NSWLEC 143, Talbot J found that a boundary adjustment:

Must be construed as being a re-arrangement of a boundary so that no significant changes are made to the configuration of any existing allotments.

In addition, His Honour found that the:



Resulting parcels of land bear some resemblance to the lots which existed before the subdivision.

In *McCabe & Others v Blue Mountains City Council* [2006] NSWLEC 1976, Jagot J addressed the definition of a boundary adjustment and provided the following statement:

"I do not accept that the "ordinary and grammatical meaning" of the phrase "... for a boundary adjustment" embraces any and all alterations of a boundary that make land suitable for an applicant's requirements. I consider that the primary meaning conveyed by the clause, construed in its immediate and more general context, accords with the notion of an alteration of a boundary by correction or regularisation, whether that correction or regularisation is to reflect actual conditions (for example, to render the use of land feasible or more practical)."

Through the application of these court cases to the current situation to determine whether the application be considered a boundary adjustment the following test is proposed:

- a) Does the boundary adjustment result in a significant change to the configuration of existing allotments that bear some resemblance to the lots which existed?
- b) Is the alteration of the boundary proposed to correct or regularise the boundaries to reflect actual conditions on the land.

Assessing the current application against this test would fine the following:

Question a) Does the boundary adjustment result in a significant change to the configuration of existing allotments that bear some resemblance to the lots which existed?

Answer: In answering this question it is required to determine what the definition of significant is in the context of land. The Oxford Dictionary defines significant as the following:

"Sufficiently great or important to be worthy of attention; noteworthy."

In assessing whether the new lots will be "worthy of attention" the following is provided. The existing lots both currently front Kayuga Way and are excessively undersized lots (less than 1% of the minimum lot size) with each lot being on irregular shape. The proposed lots both front Kayuga Way and are both excessively undersized lots (less than 1% of the minimum lot size) with both new lots being irregular in shape. It is therefore considered that in the context of the surrounding and intended lot size and dimensions for the area that the original and proposed lots result in no significant change in configuration and they resemble the lots which existed.

Question b) Is the alteration of the boundary proposed to correct or regularise the boundaries to reflect actual conditions on the land.

Answer: The proposed boundary adjustment seeks to regularise an existing situation on site. Both lots have been owned by the same family for decades and as such there have been many changes to the site. It is understood that throughout the years the parcels have been consolidated and split for various reasons. Throughout this process, and without necessarily realising the consequence the existing house located on Lot 51 currently has a boundary line running straight through the property with the access to the house being through a driveway entirely located within Lot 52.



The small dwelling located on Lot 52 however is currently self-contained from the rest of the site with an existing fence surrounding the property. The dwelling has its own driveway and it is noted that the fence line is the boundary line shown on the proposed plans.

It is noted that the boundary alteration is to regularise the lot dimensions to provide for the following:

- 1) Provide a consistent boundary that reflects the adopted defacto boundary that has been in operation on site, by way of the existing fence, for over 30 years.
- 2) Rectify an encroachment on the boundary line between Lot 51 and 52 in relation to the existing dwelling.
- 3) Locate the existing driveway that serves the dwelling on Lot 51 to be located within the same lot as the dwelling.
- 4) Locate the existing large shed to be located within the same lot as Lot 51 as this shed is entirely used by the occupant of Lot 51.

It is therefore considered that the proposed boundary alteration is to regularise the boundaries that reflect the actual conditions on the land.

As the boundary alteration applies with the two part test devised from the two prevalent case laws on boundary adjustment, it is therefore considered that the proposed alteration to the boundary would be considered a boundary adjustment and not a subdivision.

It is therefore considered that clause 4.1 does not comply to the following development application and therefore the approval should be based entirely on whether the development complies with the objectives of the zone.





3.3.4 ASSESSMENT AGAINST THE OBJECTIVES OF THE ZONE

As stated above, to determine whether the proposed boundary adjustment is permissible an assessment of the development against the objectives of the zone follows:

Objective 1) *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*

Assessment: The proposed boundary adjustment will not result in a change to agriculturally viable land within the locality. It is therefore considered that the adjustment will maintain the natural resource base. Additionally due to the intended land acquisition by the nearby mine, the land will eventually be acquired to become a buffer land for the mine.

Objective 2) *To encourage diversity in primary industry enterprises and systems appropriate for the area.*

Assessment: The site is currently used for manufacturing and the proposed boundary alteration will result in a continuation of this local business. It is considered that this business is a diverse business that provides a valuable service to the local primary industry enterprises.

Objective 3) *To minimise the fragmentation and alienation of resource lands.*

Assessment: The proposed boundary adjustment will not fragment or alienate resource lands.

Objective 4) *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

Assessment: The proposed boundary adjustment will not cause conflict between land uses as it is just regularising what is currently occurring on site.

Objective 5) *To protect the agricultural potential of rural land not identified for alternative land use, and to minimise the cost to the community of providing, extending and maintaining public amenities and services.*

Assessment: Due to the small lot size of the two lots it is not considered that either site would be viable for agricultural use. The boundary adjustment will not result in any additional lots or any new dwelling entitlements and therefore will not result in any additional cost to the community.

Objective 6) *To maintain the rural landscape character of the land in the long term.*

Assessment: As mentioned above, the area surrounding the subject sites is currently being acquired by the adjoining mining company for use as buffer land. It is anticipated that post acquisition the buildings on the site will be demolished and the land will be consolidated into a larger land lot and used for agricultural purposes. It is therefore considered that the proposed alteration to the boundary will facilitate the return of the land to the rural landscape.

Objective 7) *To ensure that development for the purpose of extractive industries, underground mines (other than surface works associated with underground mines) or*



open cut mines (other than open cut mines from the surface of the flood plain), will not:

- (a) destroy or impair the agricultural production potential of the land or, in the case of underground mining, unreasonably restrict or otherwise affect any other development on the surface, or
- (b) detrimentally affect in any way the quantity, flow and quality of water in either subterranean or surface water systems, or
- (c) visually intrude into its surroundings, except by way of suitable screening.

Assessment: The proposed boundary adjustment is not for the purpose of extractive industries. While it is noted that the eventual aim of the boundary adjustment is to proceed with land acquisition it is considered that that acquisition is subject to a future assessment.

Objective 8) To protect or conserve (or both):

- (a) soil stability by controlling development in accordance with land capability, and
- (b) trees and other vegetation, and
- (c) water resources, water quality and wetland areas, and their catchments and buffer areas, and
- (d) valuable deposits of minerals and extractive materials by restricting development that would compromise the efficient extraction of those deposits.

Assessment: The proposed boundary adjustment is only to modify the boundary to reflect what is currently on site.

In the assessment of the proposed development against the objectives of the zone it is considered that the boundary adjustment is in accordance with the objectives of the RU1 Zone and therefore is acceptable and should be approved by Council.

3.3.5 HEIGHT OF BUILDING

There are no works proposed as part of this development application. All buildings on site currently comply with the height limit.

3.3.6 EARTHWORKS

The proposed development is for a boundary adjustment of two lots to rectify encroachment and access issues. No works are occurring as part of this application.

3.3.7 FLOOD PLANNING

The proposed development is not located on flood prone land.



3.3.8 ESSENTIAL SERVICES

Electricity, telephone and physical, legal and emergency service access exists to the existing development. The proposed boundary adjustment will require a new electricity connection to the proposed Lot 502. This has already been organised and a pole has been erected to facilitate this connection once the application is approved.

3.3.9 DRINKING WATER CATCHMENT

This site is not located within a drinking water catchment.

3.3.10 ACID SULFATE SOIL

The site is not mapped as containing acid sulfate soils.

3.4 MUSWELLBROOK DEVELOPMENT CONTROL PLAN 2010 (DCP)

The proposed development is for a minor boundary adjustment that seeks to rectify and reflect what is currently on site. The proposed development complies with the provisions of the DCP.

4.0 SITE CHARACTERISTICS AND KEY DEVELOPMENT ISSUES

4.1 LIKELY IMPACTS OF THE DEVELOPMENT

Section 4.15 – (1) Matters for consideration – general of the *Environmental Planning and Assessment Act 1979* states:

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:
 - i. any environmental planning instrument, and
 - ii. any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
 - iii. any development control plan, and
 - iv. any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and
 - v. the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
 - vi. any coastal zone management plan (within the meaning of the *Coastal Protection Act 1979*), that apply to the land to which the development application relates,
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.



4.2 CONTEXT AND SETTING

The proposed development has demonstrated consistency of the surrounding locality through the environmental planning regulations and site features informing the overall development design. It has also shown to be consistent with the rural surroundings through its consistency with the existing residential development of the area. It is noted that the surrounding locality contains many undersized lots with a number of these lots being acquired by the nearby mine and demolished.

4.3 VISUAL IMPACT

The proposed development results in no physical changes to the site and therefore there will be no visual impact as a result of the development.

4.4 ACCESS, TRANSPORT AND TRAFFIC

The proposed development results in no physical changes to the site. Access will be regularized as part of this development application as the existing dwelling on Lot 51 currently gains access through an informal right of way across Lot 52.

4.5 PUBLIC DOMAIN

The proposed development will not have an impact on any public domain.

4.6 SERVICES

Electricity, telephone and physical, legal and emergency service access exists to the existing development and a new electricity connection will be provided post approval.

4.7 HERITAGE

The site is not a heritage listed item, nor is it in proximity to a heritage listed item.

4.8 ECOLOGY

There are no physical works as part of this development application. The application is only for a paper boundary adjustment and therefore there will be no ecological impacts.

4.9 LANDSCAPING

There are no physical works as part of this development application. The application is only for a paper boundary adjustment and therefore there will be no physical building works and therefore no changing to landscaping.

4.10 BUSHFIRE

The proposed development is not mapped as being bushfire prone land.

4.11 ARCHAEOLOGY

The site has no known Aboriginal artefacts or European historical significance. The proposed development proposes no construction works.



4.12 WATER, WASTE AND ENERGY EFFICIENCY

There are no physical works as part of this development application and therefore there will be no impact on water, waste or energy.

4.13 NOISE AND VIBRATION

There are no physical works as part of this development application and therefore there will be no impact noise or vibration on adjoining properties.

4.14 SAFETY, SECURITY AND CRIME PREVENTION

No safety, security for crime prevention measures are required.

4.15 TOPOGRAPHY AND STORMWATER MANAGEMENT

Stormwater will be managed as it is currently managed on site with all stormwater within the newly modified lots being managed internally.

4.16 FLOODING

The proposed development is not located on flood prone land.

4.17 MINE SUBSIDENCE

The site is not identified to be impacted by mine subsidence.

4.18 CUMULATIVE IMPACTS

There are no tangible cumulative impacts arising from the proposal, given the small-scale nature and appropriateness of the development in conjunction with the site.

4.19 CONSULTATION

As part of the DA consideration process it is envisaged Council may place the proposal on public exhibition and send neighbours notification letters to adjoining or adjacent properties.

4.20 SOCIAL AND ECONOMIC IMPACT ON THE LOCALITY

The proposed development is not considered to produce any adverse social or economic impact on the locality. It is considered that as the development is to regularize an existing defacto boundary on site there will be no impacts on the locality.

4.22 SUITABILITY OF THE SITE AND PUBLIC INTEREST

The proposed development is considered to be a suitable use of the site. This development is permissible under the LEP and has addressed any relevant concerns through this report. The assessment of the proposed development identifies that the development is a minor boundary adjustment and therefore is permissible despite being undersize lots.

5.0 CONCLUSION

This statement of environmental effects has shown that the development is within the public interest, both socially, economically and environmentally. The approval of the boundary adjustment will result in a fathers dying wishes to provide for his children to come to fruition and the children will be able to not continue to live in limbo due to the legality of this wish.



The proposed development is consistent with the aims and objectives of both the Muswellbrook Local Environmental Plan, 2009 and the relevant chapters of the Muswellbrook Development Control Plan, 2009.

The proposed development is acceptable for the following reasons:

- The development is not considered to be subdivision for the purpose of clause 4.1 and therefore is considered a boundary adjustment.
- The proposed development intends to align the paper boundary with what is currently existing on site and has been in existence for several years.
- The proposed boundary adjustment will not impact any adjoining lots or the locality.
- By approving this development proposal for the temporary events, it will allow for a greater use of the site

We look forward to Councils determination of this matter. If we can provide any further information or clarity, please don't hesitate to contact us.

ATTACHMENT 1 – Site Photos

Photo showing the existing fence where the proposed boundary will be located between the two properties.



Photo showing the existing fence where the proposed boundary will be located between the two properties.



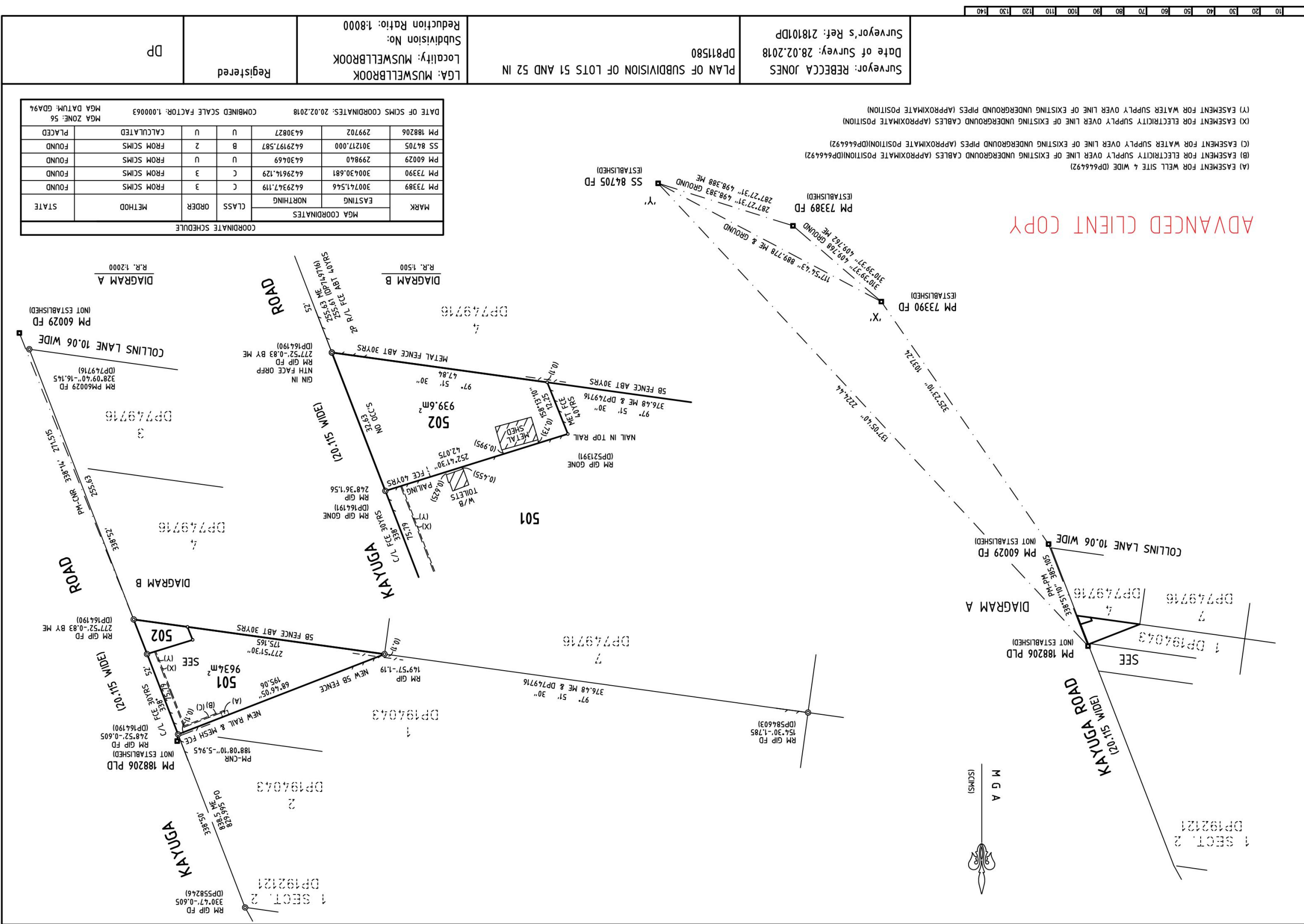
Photo showing the existing driveway that services the dwelling currently located on Lot 51. Noting the driveway is located solely within lot 52.



ATTACHMENT 2 – Proposed Plans

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

Sheet 1 of 1 Sheets





ATTACHMENT 3 – Deposited Plans

PLAN FORM 1

Plan Drawing only to appear in this space

OFFICE USE ONLY

SIGNATURES, SEALS AND STATEMENTS of intention to dedicate public roads or to create public reserves, drainage reserves, easements, restrictions on the use of land or positive covenants.

SIGNED AT SYDNEY THE 32nd
DAY OF JANUARY
1991 FOR
COMMONWEALTH SAVINGS BANK OF
AUSTRALIA by its attorney the
ACTING MANAGER
NSW Administration Branch
Lending & Department
COMMONWEALTH BANK OF
AUSTRALIA who is the attorney
mentioned and referred to in
Power of Attorney registered in the
Land Titles Office Book 5816 No. 356

Patricia Moore
Patricia Moore.

Crown Lands Office Approval

PLAN APPROVED.....
Authorised Officer.....
Land District.....
Paper No.....
Field Book..... pages.....

Council Clerk's Certificate

I hereby certify that —
(a) the requirements of the Local Government Act, 1919 (other than the requirements for the registration of plans), and
(b) the requirements of Part 3-Division 2 of the Water Board Act-1987 and the Water Supply Authorities Act-1987
have been complied with by the applicant in relation to the proposed
(Insert "new road", "subdivision" or "consolidated lot") set out herein

Subdivision No. 957/90
Date 25th October 1990
(Signature)
Acting Council Clerk
Council File No. DA.36/90

*This part of the certificate to be deleted where the application is only for a consolidated lot or the opening of a new road or where the land is to be subdivided is wholly outside the areas of operations of the Metropolitan Water Sewerage and Drainage Board and the Hunter District Water Board.
† Delete if inapplicable

PLAN OF SUBDIVISION OF THE LAND COMPRISED IN C.T. VOLUME 16064 FOLIO 140 & DP 164191 LOT 1 DP 164191 LOT 5 DP 521391 & PT LOT 1 DP 164190.

Lengths are in metres. Reduction Ratio 1:1250

Mus./Shire City: MUSWELLBROOK
Locality: MUSWELLBROOK
Parish: ELLIS
County: BRISBANE

Plans used in preparation of survey/compilation.
D P 521391; 164191; 164190

I, COLIN RAY MURRAY
of MUMFORDS BAY & CO MUSWELLBROOK
a surveyor registered under the Surveyors Act, 1928, as amended,
hereby certify that the survey represented in this plan HAS BEEN COMPILED
in accordance with the Surveyors Act, 1928, as amended, and the Survey
Practice Regulations-1933 and any special requirements of the
Department of Lands, and was completed on
21ST MARCH 1990
Signature
Surveyor registered under Surveyors Act 1928, as amended.
*Delete date of delivery.
† Insert date of survey.

10 20 30 40 50 60 70 80 90 100 110 120 130 140 150 160 170 180 190 Table of mm

696 / 37

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

This negative is a photograph made as a permanent record of a document in the custody of the Registrar General this day, 15th August, 1991

10 20 30 40 50 60 70 Table of mm 110 120 130 140



ATTACHMENT 4 - AHIMS Search



AHIMS Web Services (AWS) Search Result

Purchase Order/Reference : Kayuga

Client Service ID : 406528

Josh Real

Date: 7 March 2019

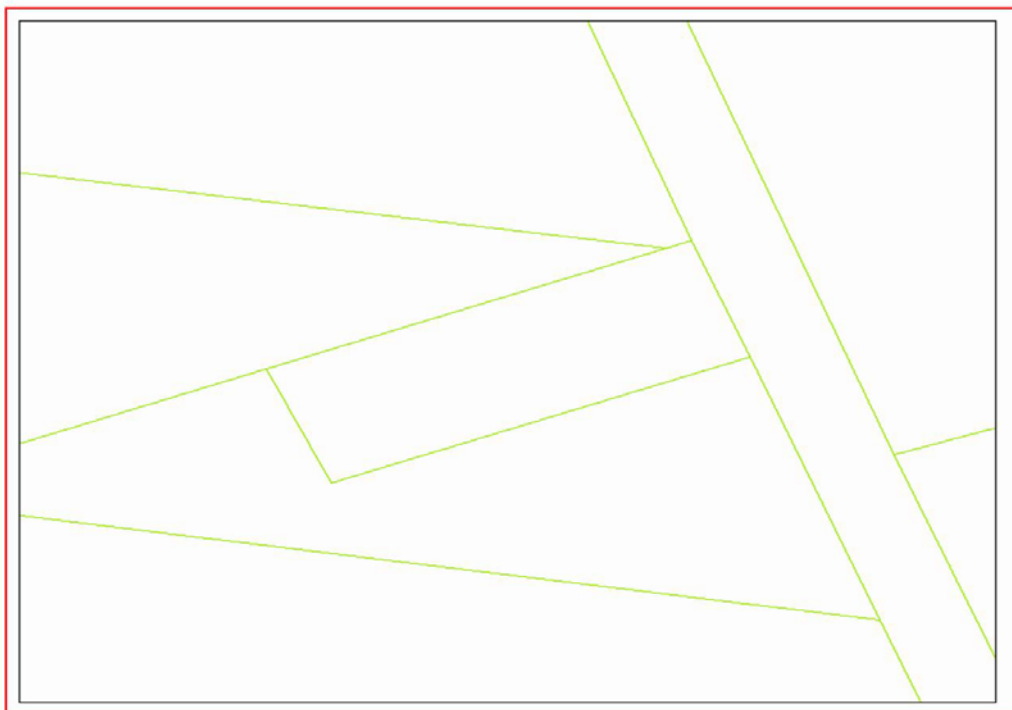
260 Maitland Road
Mayfield New South Wales 2304
Attention: Josh Real

Email: josh@perceptionplanning.com.au

Dear Sir or Madam:

AHIMS Web Service search for the following area at Lot : 51, DP:DP811580 with a Buffer of 50 meters, conducted by Josh Real on 7 March 2019.

The context area of your search is shown in the map below. Please note that the map does not accurately display the exact boundaries of the search as defined in the paragraph above. The map is to be used for general reference purposes only.



A search of the Office of the Environment and Heritage AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

0	Aboriginal sites are recorded in or near the above location.
0	Aboriginal places have been declared in or near the above location. *

If your search shows Aboriginal sites or places what should you do?

- You must do an extensive search if AHIMS has shown that there are Aboriginal sites or places recorded in the search area.
- If you are checking AHIMS as a part of your due diligence, refer to the next steps of the Due Diligence Code of practice.
- You can get further information about Aboriginal places by looking at the gazettal notice that declared it. Aboriginal places gazetted after 2001 are available on the [NSW Government Gazette](http://www.nsw.gov.au/gazette) (<http://www.nsw.gov.au/gazette>) website. Gazettal notices published prior to 2001 can be obtained from Office of Environment and Heritage's Aboriginal Heritage Information Unit upon request

Important information about your AHIMS search

- The information derived from the AHIMS search is only to be used for the purpose for which it was requested. It is not to be made available to the public.
- AHIMS records information about Aboriginal sites that have been provided to Office of Environment and Heritage and Aboriginal places that have been declared by the Minister;
- Information recorded on AHIMS may vary in its accuracy and may not be up to date. Location details are recorded as grid references and it is important to note that there may be errors or omissions in these recordings,
- Some parts of New South Wales have not been investigated in detail and there may be fewer records of Aboriginal sites in those areas. These areas may contain Aboriginal sites which are not recorded on AHIMS.
- Aboriginal objects are protected under the National Parks and Wildlife Act 1974 even if they are not recorded as a site on AHIMS.
- This search can form part of your due diligence and remains valid for 12 months.



AHIMS Web Services (AWS) Search Result

Purchase Order/Reference : Kayuga

Client Service ID : 406527

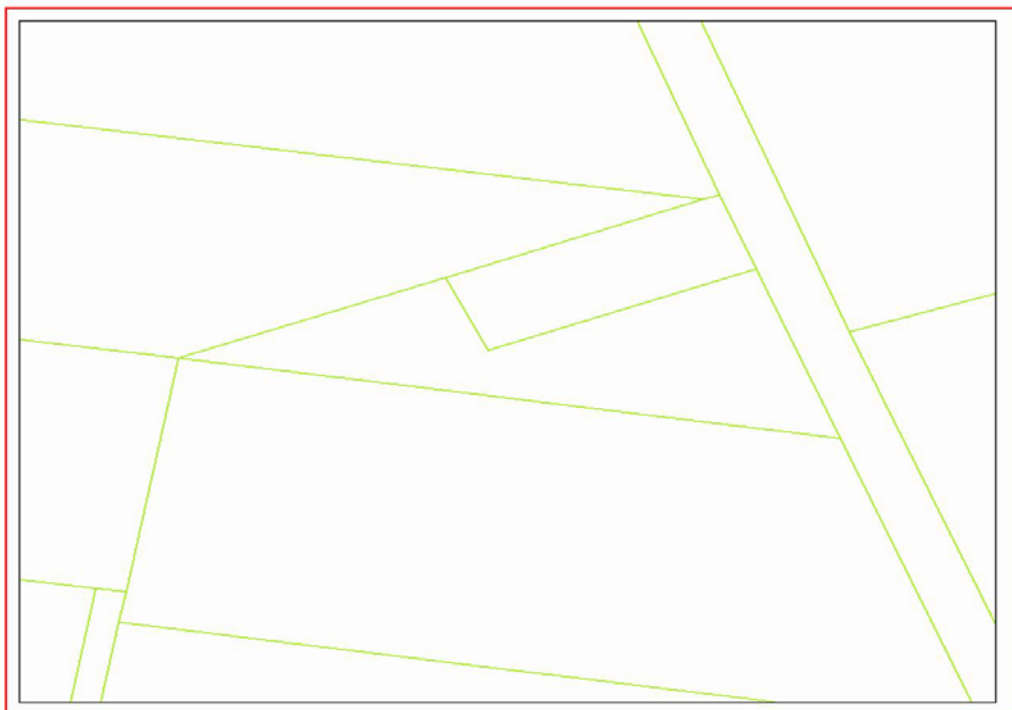
Josh Real
260 Maitland Road
Mayfield New South Wales 2304
Attention: Josh Real
Email: josh@perceptionplanning.com.au

Date: 7 March 2019

Dear Sir or Madam:

AHIMS Web Service search for the following area at Lot : 52, DP:DP811580 with a Buffer of 50 meters, conducted by Josh Real on 7 March 2019.

The context area of your search is shown in the map below. Please note that the map does not accurately display the exact boundaries of the search as defined in the paragraph above. The map is to be used for general reference purposes only.



A search of the Office of the Environment and Heritage AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

0	Aboriginal sites are recorded in or near the above location.
0	Aboriginal places have been declared in or near the above location. *

If your search shows Aboriginal sites or places what should you do?

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- If you are checking AHIMS as a part of your due diligence, refer to the next steps of the Due Diligence Code of practice.
- You can get further information about Aboriginal places by looking at the gazettal notice that declared it. Aboriginal places gazetted after 2001 are available on the [NSW Government Gazette](http://www.nsw.gov.au/gazette) (<http://www.nsw.gov.au/gazette>) website. Gazettal notices published prior to 2001 can be obtained from Office of Environment and Heritage's Aboriginal Heritage Information Unit upon request

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- Information recorded on AHIMS may vary in its accuracy and may not be up to date. Location details are recorded as grid references and it is important to note that there may be errors or omissions in these recordings,
- Some parts of New South Wales have not been investigated in detail and there may be fewer records of Aboriginal sites in those areas. These areas may contain Aboriginal sites which are not recorded on AHIMS.
- Aboriginal objects are protected under the National Parks and Wildlife Act 1974 even if they are not recorded as a site on AHIMS.
- This search can form part of your due diligence and remains valid for 12 months.



ATTACHMENT 5 – Dial Before You Dig



Job No 15936596

Phone: 1100
www.1100.com.au

Caller Details

Contact: Mr Joshua Real
Company: Perception Planning
Address: 260 Maitland Road
 Mayfield NSW 2304

Caller Id: 1919079 **Phone:** 0428883911
Mobile: Not Supplied **Fax:** Not Supplied
Email: josh@perceptionplanning.com.au

Dig Site and Enquiry Details

WARNING: The map below only displays the location of the proposed dig site and does not display any asset owners' pipe or cables. The area highlighted has been used only to identify the participating asset owners, who will send information to you directly.



User Reference: Not Supplied
Working on Behalf of: Private
Enquiry Date: 15/03/2019 **Start Date:** 7/03/2019 **End Date:** 8/03/2019
Address: 207 Kayuga Road
 Muswellbrook NSW 2333
Job Purpose: Design
Location of Workplace: Private Property
Onsite Activity: Planning & Design
Location in Road: Not Supplied

- Check the location of the dig site is correct. If not submit a new enquiry.
- If the scope of works change, or plan validity dates expire, resubmit your enquiry.
- Do NOT dig without plans. Safe excavation is your responsibility. If you do not understand the plans or how to proceed safely, please contact the relevant asset owners.

Notes/Description of Works:
 Not Supplied

Your Responsibilities and Duty of Care

- If plans are not received within 2 working days, contact the asset owners directly & quote their Sequence No.
- ALWAYS perform an onsite inspection for the presence of assets. Should you require an onsite location, contact the asset owners directly. Please remember, plans do not detail the exact location of assets.
- Pothole to establish the exact location of all underground assets using a hand shovel, before using heavy machinery.
- Ensure you adhere to any State legislative requirements regarding Duty of Care and safe digging requirements.
- If you damage an underground asset you MUST advise the asset owner immediately.
- By using this service, you agree to Privacy Policy and the terms and disclaimers set out at www.1100.com.au
- For more information on safe excavation practices, visit www.1100.com.au

Asset Owner Details

The assets owners listed below have been requested to contact you with information about their asset locations within 2 working days. Additional time should be allowed for information issued by post. It is **your responsibility** to identify the presence of any underground assets in and around your proposed dig site. Please be aware, that not all asset owners are registered with the Dial Before You Dig service, so it is **your responsibility** to identify and contact any asset owners not listed here directly.

** Asset owners highlighted by asterisks ** require that you visit their offices to collect plans.

Asset owners highlighted with a hash require that you call them to discuss your enquiry or to obtain plans.

Seq. No.	Authority Name	Phone	Status
81269122	Ausgrid	0249510899	NOTIFIED
81269123	Telstra NSW, Central	1800653935	NOTIFIED

END OF UTILITIES LIST

Lodge Your Free Enquiry Online – 24 Hours a Day, Seven Days a Week



ATTACHMENT 6 – Letter from Council

rejection
Letter



**muswellbrook
shire council**

Enquiries

Please ask for

Direct

Our ref

Your ref

Carolyn O'Brien
02 6549 3700

23 May 2018

**MM Hyndes Bailey & Co
PO Box 26
Muswellbrook NSW 2333**

Dear Sir/Madam,

**Development Application No. 444/2018
Exempt Development - Boundary Adjustment
LOT: 51 DP: 811580, LOT: 52 DP: 811580 - 211 & 207 Kayuga Road Kayuga**

Council refers to the above application and in particular to your letter of 1 March 2018.

Council notes that the subject land is located in Zone RU1. Clause 2.75(b) of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)* applies to the subdivision of land for the purpose of effecting a realignment of boundaries only if the criteria in each of the applicable subparagraphs are made out.

Because the land is zoned RU1, the subdivision of land must not result in more than a minor change in the area of any of the relevant land parcels.

It is Council's position that the proposed subdivision will result in more than a minor change in the area of the lots to be subdivided. The changes to the areas of the lots are significant and therefore fall outside the bounds of clause 2.75 of the Codes SEPP.

Because this clause of the Codes SEPP does not apply, the proposed subdivision must comply with clause 4.1 of the *Muswellbrook Local Environmental Plan 2009 (LEP)*. It is clear that the proposed subdivision does not comply with this provision of the LEP.

It is Council's view that clause 4.6 of the LEP, which provides for exceptions to development standards, would not apply to the proposed subdivision. This is because the proposed subdivision would result in one lot that is less than ninety per cent (90%) of the minimum area specified by the development standard under clause 4.1 of the LEP.

Due to the above, it is beyond Council's legal powers to issue a subdivision certificate in respect of the proposal.

Muswellbrook Shire Council ABN 86 864 180 944

Address all communications to The General Manager · PO Box 122 · Muswellbrook NSW 2333
Phone 02 6549 3700 · Email council@muswellbrook.nsw.gov.au · Web www.muswellbrook.nsw.gov.au

Council suggests that you contact the Department of Planning and Environment to discuss any options or obtain independent planning advice.

Yours faithfully



Carolyn O'Brien
Acting Director Planning, Community & Corporate Services

(AW)



Planning & Environment

Contact: Trent Wink
Phone: (02) 4904 2716
Fax: (02) 4904 2701
Email: Trent.Wink@planning.nsw.gov.au

Ms Olivia Moore
Captains Creek
Willow Tree NSW 2339

Dear Ms Moore,

Proposed subdivision between Lot 51 and Lot 52 Kayuga Road, Muswellbrook

I refer to your correspondence requesting planning advice about the permissibility of boundary realignments between existing undersized allotments and why this type of subdivision is not permitted.

It is understood that your inquiry relates to land zoned RU1 Primary Production under Muswellbrook Local Environmental Plan 2009 and that you have been advised that the proposed boundary alignment between two existing undersized allotments of 3,678m² and 6,896m², is currently not permitted.

I am aware of the issue and the Department is currently exhibiting an amendment to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 to address the matter. It is important that the Department and local councils continue to restrict rural subdivisions because this often leads to the unnecessary fragmentation of rural lands and potential land use conflicts. However a proposed boundary realignment between two existing undersized allotments is unlikely to further impact on surrounding rural agricultural lands.

The exhibited amendment would permit minor boundary adjustments to existing undersized lots where they would not result in additional lots or affect dwelling entitlements. If the amendment is finalised by the Minister for Planning, your proposed boundary realignment will be permitted. If you wish to make a submission on the proposed amendment, it is on public exhibition until 16 November 2015. The proposed amendment may be viewed on the following link http://planspolicies.planning.nsw.gov.au/index.pl?action=view_job&job_id=7327

If the proposed amendment does not proceed, Muswellbrook Shire Council may consider a planning proposal to introduce a new local clause which allows the boundary realignments. The Department will work with Council to facilitate this if required.

Should you have any further enquiries about this matter, please contact Mr Trent Wink, Senior Planner at the Department of Planning and Environment's Newcastle Office. Mr Wink can be contacted on (02) 4904 2700

Yours sincerely

A handwritten signature in black ink, appearing to read 'Katrine O'Flaherty', written over a horizontal line.

Katrine O'Flaherty
Team Leader
Hunter and Central Coast Region
Planning Services

13/11/2015

Hunter & Central Coast Region Level 2, 26 Honeysuckle Drive, Newcastle PO Box 1226 NEWCASTLE 2300
Telephone: (02) 4904 2700 Facsimile: (02) 4904 2701 Website: www.planning.nsw.gov.au



**muswellbrook
shire council**

FILE NOTE

Date:	21 December 2018	Time:	12:56 PM
Subject:	<u>Subdivision Certificate 444/2018 - Notes arising from meeting with Olivia & Peter Moore on 17 Dec 2018</u>		

Details:

This note relates to Lots 51 & 52 DP 811580, Kayuga Road, Kayuga.

Olivia is part owner of the owner of lots with her brother, both being the beneficiaries of their late father's Will.

Lot 51 has an area of 3696sqm and Lot 52 has an area of 6896sqm. Both lots are zoned RU1 Primary Production. Given the size of the lots, neither is used for primary production. Both lots are significantly smaller than the minimum lot size required under Muswellbrook LEP 2009, of 80ha, but were previously approved by Council, registered in January 1991, and both have an existing dwelling house.

Description of Proposal

Olivia and her brother need to complete a boundary adjustment to satisfy the terms of the Will. This would see the sheds that Olivia's brother uses for his business, located on the same lot as his house.

On the recommendation of Donna Watson, formerly an employee of Muswellbrook Shire Council, MM Hyndes Bailey & Co prepared a plan of subdivision and lodged this with a letter to Council on 1 March 2018 seeking confirmation that Council would approve the proposal as a boundary adjustment under SEPP (Exempt and Complying Development Codes) 2008, along with an application for a Subdivision Certificate. Under this proposal, Lot 51 would become Lot 501 with an area of 9634sqm, and Lot 52 would become Lot 502 with an area of 939.6sqm.

SEPP (Exempt and Complying Development Codes) 2008 Analysis

The requirements in the SEPP are as follows:

Subdivision 38 Subdivision

2.75 Specified development

The subdivision of land, for the purpose only of any one or more of the following, is development specified for this code:

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- (a) widening a public road,
- (b) a realignment of boundaries:
 - (i) that is not carried out in relation to land on which a heritage item or draft heritage item is situated, and
 - (ii) that will not create additional lots or increase the number of lots with a dwelling entitlement or increase the opportunity for additional dwellings, and
 - (iii) that will not result in any lot that is smaller than the minimum size specified in an environmental planning instrument in relation to the land concerned (other than a lot that was already smaller than that minimum size), and
 - (iv) that will not adversely affect the provision of existing services on a lot, and
 - (v) that will not result in any increased fire risk to existing buildings, and
 - (vi) if located in Zone RU1, RU2, RU3, RU4, RU6, E1, E2, E3 or E4—that will not result in more than a minor change in the area of any lot, and
 - (vii) if located in any other zone—that will not result in a change in the area of any lot by more than 10%,
- (c) (Repealed)
- (d) rectifying an encroachment on a lot,
- (e) creating a public reserve,
- (f) excising from a lot land that is, or is intended to be, used for public purposes, including drainage purposes, rural fire brigade or other emergency service purposes or public toilets.

Clause 2.75 (vi) creates a problem for the proposal, due to the requirement that the realignment must only result in a minor change in the area of any lot. In this instance, it is proposed that the area of Lot 51 be varied by 61% and the area of Lot 52 be varied by 86%. These large percentages are a result of the small lot sizes of the original lots, but such large variations are more than 'minor'.

Potential ways forward

As discussed at the meeting there are two paths forward.

1. Wait for Muswellbrook LEP 2009 to be revised.

Council is aware that the current subdivision clauses in the LEP are very restrictive. Council has commenced the preparation of a new Shire wide LEP, and the intention is to insert a clause, similar to below:

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4.1D Exceptions to minimum subdivision lot size for boundary adjustments

(1) The objective of this clause is to facilitate changes to boundaries between lots where one or more resultant lots do not meet the minimum lot size, but the objectives of the relevant zone can be achieved.

(2) This clause applies to land in the following zones:

- (a) Zone RU1 Primary Production,*
- (b) Zone RU3 Forestry,*
- (c) Zone RU4 Primary Production Small Lots,*
- (d) Zone RU5 Village,*
- (e) Zone R5 Large Lot Residential,*
- (f) Zone E2 Environmental Conservation,*
- (g) Zone E3 Environmental Management,*
- (h) Zone E4 Environmental Living.*

(3) Despite clause 4.1 (3), development consent may be granted to the subdivision of land to which this clause applies by way of a boundary adjustment between adjoining lots where one or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land if the consent authority is satisfied that:

- (a) the subdivision will not create additional lots, and*
- (b) the number of dwellings or opportunities for dwellings on each lot after the subdivision will be the same as before the subdivision, and*
- (c) the potential for land use conflict will not be increased as a result of the subdivision, and*
- (d) if the land is in Zone RU1 Primary Production, Zone RU3 Forestry or Zone RU4 Primary Production Small Lots—the subdivision will not have a significant adverse effect on the agricultural viability of the land, and*
- (e) if the land is in Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living—the subdivision will result in the continued protection and long-term maintenance of the land.*

(4) In determining whether to grant development consent for the subdivision of land under this clause, the consent authority must consider the following:

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- (a) the existing uses and approved uses of other land in the vicinity of the subdivision,*
- (b) whether the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,*
- (c) whether the subdivision is likely to be incompatible with a use of land in any adjoining zone,*
- (d) whether the subdivision is appropriate having regard to the natural and physical constraints affecting the land,*
- (e) whether the subdivision is likely to have an adverse impact on the environmental values of the land.*
- (5) This clause does not apply:*
 - (a) in relation to the subdivision of individual lots in a strata plan or community title scheme, or*
 - (b) if the subdivision would create a lot that could itself be subdivided in accordance with clause 4.1.*

The current timeframe is for Council to seek a Gateway Determination for the Shire Wide LEP in June 2019, with the intention of going on exhibition by the end of 2019. The LEP process has a lot of involvement and input from government agencies, and final sign is by the Minister for Planning. The earliest we anticipate that the new LEP would be in force is December 2020.

2. Lodge a Subdivision Development Application relying on clause 4.6.

This clause allows for exceptions to development standards. In this case the development standard is that the two lots should have a minimum area of 80ha each. Clearly the existing lots are well below this minimum. Council only has delegation to authorise variations within 10% of the standard, so the subdivision will need to be referred to the Department of Planning and Environment for concurrence.

To pursue this option the Moore's will need to arrange for a Development Application to be lodged with Council (the previous proposal wasn't a Development Application, simply a request for a Subdivision Certificate). The Application must be signed by all owners, and must be accompanied by a written request justifying the variation to the development standard (the minimum lot size of 80ha), demonstrating that:

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- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

I believe it would be possible, in this case, to mount a strong argument that compliance with the standard is unnecessary and unreasonable. But the final decision rests with the Department of Planning and I have strong reservations that they would grant concurrence. The LEP says that:

*...Development consent must not be granted under this clause for a subdivision of land in **Zone RU1 Primary Production**, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

This LEP clause was written by the Department of Planning and Environment as part of the LEP Template, not by Council, and as a result isn't a clause that Council can vary. To overcome this, Council staff are proposing to insert an additional clause into the new LEP to override this one from the Template (see option 1 above).

There will be costs to lodge a Development Application. These will be the charges payable to a surveyor and/or planning consultant to prepare and lodge the application, plus a Development Application fee of \$330.00. If approved there may be other fees payable to Council, these would be outlined in the approval.

21 Dec 2018

Signed: Sharon Pope
**Assistant Director Environment
And Community Services**

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captainscreek@hotmail.com

From: Ben Holmes <Ben.Holmes@planning.nsw.gov.au>
Sent: Thursday, 20 September 2018 2:22 PM
To: CaptainsCreek@hotmail.com
Cc: James Shelton; Trent Wink
Subject: Enquiry regarding a proposed boundary adjustment for 207 and 211 Kayuga Rd, Kayuga

Hi Olivia,

James was working on your enquiry regarding a proposed boundary adjustment between lot 51 and lot 52 DP 811580 being 211 and 207 Kayuga Rd, Kayuga however he is on leave at the moment so I am helping out. I understand that you have dealt with Trent on this issue previously also.

The Department has reviewed the information provided however as clause 2.75 of the SEPP does not have a definition for 'minor change' the interpretation of what is minor sits with Muswellbrook Shire Council.

In terms of options from here - where a community member has a disagreement with the position taken by Council, and they wish to pursue it further, we suggest that they look to raise the matter formally with the General Manager and/ or with their representatives on the elected Council (eg a councillor or the Mayor).

Ultimately though, it is Council who interprets the SEPP and when Council makes these decisions it also needs to consider the broader implications that its decision may have across its local government area.

Another option, albeit with some expense, would be to seek independent legal advice. A lawyer specialising in environmental planning may be able to assist.

I hope this information is of assistance and apologise for the delay in responding.

Regards,

Ben

Ben Holmes
A/ Team Leader
Hunter Region
Department of Planning & Environment
PO Box 1226 | Newcastle NSW 2300
T 02 4904 2709
E Ben.Holmes@planning.nsw.gov.au



6.2 OUTSTANDING DEVELOPMENT APPLICATIONS

Attachments:	A. Outstanding Development Applications 30 October 2019
Responsible Officer:	Sharon Pope - Assistant Director - Environment & Community Services
Author:	Michelle Reichert - Administration Officer
Community Plan Issue:	<i>A Council that is well managed, efficient and properly resourced and that is responsive to its communities and stakeholders</i>
Community Plan Goal:	<i>Maintain a strong focus on financial discipline to enable Council to properly respond to the needs of the communities it serves.</i>
Community Plan Strategy:	<i>Facilitate the inspection of all development sites subject to Development Application / Construction Certificate in accordance with statutory requirements.</i>

PURPOSE**OFFICER'S RECOMMENDATION**

The Committee note the undetermined Development Applications listed in Attachment A and the status of their assessment.

Moved: _____ Seconded: _____

STATUTORY IMPLICATIONS

Under the provisions of the Environmental Planning and Assessment Regulation 2000 Council has a statutory obligation to assess:

General development applications within 40 days (excluding stop the clock days) of their receipt; and

The following types of development applications within 60 days (excluding stop the clock days) of their receipt:

- (i) Designated development,
- (ii) Integrated development,
- (iii) Development for which the concurrence of a concurrence authority is required, and
- (iv) A development application accompanied by a biodiversity development assessment.

Development Assessment Committee - Outstanding DAs as at 30/10/2019

<u>Account</u>		<u>Property</u>	<u>Applicant</u>	<u>Value</u>	<u>Received</u>	<u>Days</u>	<u>Current Status</u>
005.2019.00000097.001	Ancillary Development - Shed	35 Dixon CCT MUSWELLBROOK LOT: 1118 DP: 1129000	Mr B M Miller	\$25,642	29/10/2019	1	DA Acknowledgement
005.2019.00000096.001	PATIO	59 Stockyard PDE MUSWELLBROOK LOT: 511 DP: 1193162	Tilse Building Hunter Valley Pty Ltd	\$54,947	25/10/2019	5	Notify Adjoining Owners
005.2019.00000095.001	Ancillary Development - Carport	178-180 Queen ST MUSWELLBROOK LOT: 10 DP: 1053235	Mr D G Rolph	\$12,819	25/10/2019	5	Notify Adjoining Owners
005.2019.00000094.001	Dwelling Additions/Alterations	133 Hill ST MUSWELLBROOK LOT: 9 DP: 3069	Mr P J Hobden	\$75,000	25/10/2019	5	Notify Adjoining Owners
005.2019.00000093.001	Change of use to Retail Outlet, Alterations to front of building and Signage	19 Bridge ST MUSWELLBROOK LOT: 60 DP: 847718	Casson Planning and Development Services	\$20,000	24/10/2019	6	Notify Adjoining Owners
005.2019.00000092.001	Strata Subdivision of one (1) Lot into two (2) Lots	98 Osborn AVE MUSWELLBROOK LOT: 123 DP: 1105564 REF: DUPLEX	Mr R A Peasley	\$4,000	24/10/2019	6	Notify Adjoining Owners
005.2015.00000025.003	S4.55 (2) Modification - modification of the design and layout of an approved child care centre	38 Woollybutt WY MUSWELLBROOK LOT: 2 DP: 1090457	Beaini Projects Pty Ltd	\$0	17/10/2019	13	Notify Adjoining Owners
005.2019.00000091.001	Demolition of Existing Identification Sign and Erection of New Identification Sign	310 Richmond Grove RD SANDY HOLLOW LOT: 124 DP: 833250	Castlepeake Consulting Pty Ltd	\$12,000	8/10/2019	22	DA Acknowledgement
005.2019.00000090.001	Subdivision of One (1) Lot into Twenty (20) Lots	9 Yarrawa RD DENMAN LOT: 1 DP: 323945	Waebron Pty Ltd	\$2,828,700	30/09/2019	30	Additional Info Required

Development Assessment Committee - Outstanding DAs as at 30/10/2019

<u>Account</u>		<u>Property</u>	<u>Applicant</u>	<u>Value</u>	<u>Received</u>	<u>Days</u>	<u>Current Status</u>
005.2019.00000089.001	Storage Shed	Turner ST DENMAN PRT: 231 DP: 729996 REF: FIELD	Denman Golf Club	\$37,220	26/09/2019	34	Advertisement - Proposal
005.2019.00000088.001	Alterations and Additions to Campbells Corner (local heritage item)	LOT: 101 DP: 606303 REF: SHOP CEN	Collins & Turner	\$2,488,519	25/09/2019	35	Notify Adjoining Owners
005.2019.00000087.001	Replacement Dwelling	Bureen RD DENMAN LOT: 413 DP: 1251003	Casson Planning and Development Services	\$200,000	20/09/2019	40	Notify Adjoining Owners
005.2019.00000086.001	Industrial Shed	LOT: 11 ALT: DP: 1119843 REF:	Mr H Singh	\$164,200	19/09/2019	41	Notify Adjoining Owners
005.2019.00000085.001	Change of Use from Warehouse to Place of Worship	LOT: 217 DP: 752484	Hope City Church	\$12,000	19/09/2019	41	Notify Adjoining Owners
005.2019.00000084.001	Installation of Telecommunications Facility	1054 Sandy Creek RD MUSWELLBROOK LOT: 1 DP: 862000	Visionstream Pty Ltd	\$80,000	19/09/2019	41	Notify Adjoining Owners
005.2019.00000083.001	Ancillary Development - Shed	82 Bell ST DENMAN LOT: 22 DP: 876528	Mr G J Barry	\$18,430	17/09/2019	43	Notify Adjoining Owners
005.2019.00000082.001	Hay Shed	284 Bureen RD DENMAN LOT: 53 DP: 753771	Mr A J Davies	\$173,000	16/09/2019	44	Notify Adjoining Owners
005.2019.00000081.001	Dwelling Alterations and Additions	15 Clendinning ST MUSWELLBROOK LOT: 4 DP: 952978	Mr A Hobbs	\$80,000	13/09/2019	47	Refer to Mine Subsidence Bo
005.2019.00000080.001	Strata Subdivision One (1) Lot into Two (2) Lots	4 Dixon CCT MUSWELLBROOK LOT: 1110 DP: 1129000	Mm Hyndes Bailey & Co	\$6,000	12/09/2019	48	Notify Adjoining Owners

Development Assessment Committee - Outstanding DAs as at 30/10/2019

<u>Account</u>		<u>Property</u>	<u>Applicant</u>	<u>Value</u>	<u>Received</u>	<u>Days</u>	<u>Current Status</u>
005.2019.00000079.001	Rural Workers Dwelling - Caretakers Residence	3367 Golden HWY JERRYS PLAINS LOT: 1 DP: 540570	GJ Gardner Homes Hunter Valley	\$467,285	12/09/2019	48	Additional Info Required
005.2019.00000077.001	Three (3) Rural Workers Dwellings and Machinery Shed	420 Dalswinton RD DALSWINTON LOT: 129 ALT: DP: 752441	Adenzie Developments Pty Ltd	\$380,000	6/09/2019	54	Additional Info Required
005.2019.00000074.001	Deck with Roof	6 Koombahla ST MUSWELLBROOK LOT: 2 SEC: 2 DP: 32583	Mr E C Collett	\$19,965	2/09/2019	58	CC Application Received
005.2018.00000078.002	S4.55 (2) Modification - alterations to the design of the restaurant and parking area	147/151 Bridge ST MUSWELLBROOK LOT: 1 DP: 159620 147 Bridge ST MUSWELLBROOK LOT: 1 DP: 161784 147 Bridge ST MUSWELLBROOK LOT: 1 DP: 784361 153 Bridge ST MUSWELLBROOK LOT: 1 DP: 794803	Inland Building and Construction	\$0	2/09/2019	58	Notify Adjoining Owners
005.2019.00000073.001	Relocation of Existing Dwelling, New Dwelling, Ancillary	Bylong Valley Wy BAERAMI LOT: 31 DP: 755437	Mrs P Beak	\$800,000	29/08/2019	62	Notify Adjoining Owners
005.2019.00000072.001	Subdivision of One (1) Lot into Two (2) Lots	43 Paxton ST DENMAN LOT: 104 DP: 1170018	Mr S D Givney	\$10,000	21/08/2019	70	Additional Info Required
005.2019.00000069.001	Ancillary Development - Carport	26 Queen ST MUSWELLBROOK LOT: 12 DP: 514181	Mr D B Smith	\$18,900	16/08/2019	75	Refer to Mine Subsidence Bo

Development Assessment Committee - Outstanding DAs as at 30/10/2019

<u>Account</u>		<u>Property</u>	<u>Applicant</u>	<u>Value</u>	<u>Received</u>	<u>Days</u>	<u>Current Status</u>
005.2019.00000068.001	Convert Part of Existing Garage into an Additional Bedroom	9 Manning ST MUSWELLBROOK LOT: 27 DP: 38140 9 Manning ST MUSWELLBROOK LOT: 28 DP: 38140	Mr S J Scott	\$19,886	14/08/2019	77	Notify Adjoining Owners
005.2019.00000067.001	Extension to existing Recreational Hall	420 Wybong P O RD MUSWELLBROOK LOT: 100 DP: 1111213 REF: HALL	Wybong Public Hall	\$129,096	12/08/2019	79	Notify Adjoining Owners
005.2019.00000066.001	Ancillary Development - Carport	7 Calgaroo AVE MUSWELLBROOK LOT: 2032 DP: 263131	Complete Planning Solutions	\$6,400	8/08/2019	83	Notify Adjoining Owners
005.2019.00000059.001	Boundary Adjustment	4 Sheppard AVE MUSWELLBROOK LOT: 10 ALT: DP: 1111854 REF: 6 Sheppard AVE MUSWELLBROOK LOT: 11 ALT: DP: 1111854 REF:	Mm Hyndes Bailey & Co	\$10,000	25/07/2019	97	DA Acknowledgement
005.2019.00000057.001	Demolition of Existing Shed and Replace with New Shed	36 Hunter TCE MUSWELLBROOK LOT: 11 DP: 836622	Mr D Simpson	\$42,985	15/07/2019	107	Notify Adjoining Owners
005.2019.00000054.001	Subdivision One (1) Lot into Three (3) Lots	52 Palace ST DENMAN LOT: 345 DP: 576669	Casson Planning and Development Services	\$10,000	28/06/2019	124	Additional Info Required
005.2019.00000053.001	Subdivision of Two (2) Lots into Seventy Five (75) Lots	9027 New England HWY MUSWELLBROOK LOT: 12 DP: 1162012 Day ST MUSWELLBROOK LOT: 8 DP: 1181346	WZ Capital Holdings Pty Ltd	\$4,875,600	27/06/2019	125	Notify Adjoining Owners

Development Assessment Committee - Outstanding DAs as at 30/10/2019

<u>Account</u>		<u>Property</u>	<u>Applicant</u>	<u>Value</u>	<u>Received</u>	<u>Days</u>	<u>Current Status</u>
005.2019.00000050.001	Industrial Development - Asphalt Plant	LOT: 14 ALT: DP: 1119843 REF:	Newpave Asphalt	\$415,800	21/06/2019	131	Notify Adjoining Owners
005.2019.00000047.001	Centre-based child care facility and the subdivision of one (1) Lot into two (2)	111 Skellatar Stock RTE MUSWELLBROOK LOT: 1 DP: 1070178	Trustee of the Roman Catholic Church for Diocese o	\$2,895,187	18/06/2019	134	Additional Info Required
005.2019.00000044.001	New Recreational Building Comprising Two Squash Courts and Amenities and a Golf Pro Shop	Bell ST MUSWELLBROOK LOT: 265 DP: 1030447 REF: GOLF	Muswellbrook Golf Club Ltd	\$633,815	11/06/2019	141	Notify Adjoining Owners
005.2019.00000041.001	Subdivision - Nine (9) Lots into Six (6) Lots	Castlerock RD MUSWELLBROOK LOT: 1 DP: 136249 Castlerock RD MUSWELLBROOK LOT: 2 DP: 136249 Castlerock RD MUSWELLBROOK LOT: 5 DP: 750926 Castlerock RD MUSWELLBROOK LOT: 61 DP: 750926 Castlerock RD MUSWELLBROOK LOT: 62 DP: 750926 Castlerock RD MUSWELLBROOK LOT: 63 DP: 750926 Ellis PH COUNTY BRISBANE LOT: 4 DP: 21335 Castlerock RD MUSWELLBROOK LOT: 2 DP: 1102585 Castlerock RD MUSWELLBROOK LOT: 1 DP: 1102585	Mm Hyndes Bailey & Co	\$10,000	9/05/2019	174	Notify Adjoining Owners

Development Assessment Committee - Outstanding DAs as at 30/10/2019

<u>Account</u>		<u>Property</u>	<u>Applicant</u>	<u>Value</u>	<u>Received</u>	<u>Days</u>	<u>Current Status</u>
005.2019.00000039.001	Boundary Adjustment	211 Kayuga RD MUSWELLBROOK LOT: 51 DP: 811580 207 Kayuga RD MUSWELLBROOK LOT: 52 DP: 811580	Perception Planning	\$0	1/05/2019	182	Notify Adjoining Owners
005.2019.00000037.001	Construction of Pipes and Pump Infrastructure to Return Seepage Water from Lake Liddell Dam Wall to Lake Liddell	New England HWY MUSWELLBROOK LOT: 102 DP: 1053098 New England HWY MUSWELLBROOK LOT: 14 DP: 1193430	AGL Macquarie Pty Ltd	\$250,000	16/04/2019	197	Advertisement - Proposal
005.2019.00000036.001	Installation of a 120m Tall Wind Monitoring Mast	Sandy Creek RD MCCULLYS GAP LOT: 197 DP: 752444 Sandy Creek RD MCCULLYS GAP LOT: 199 DP: 752444	Epuron Projects Pty Ltd	\$150,000	16/04/2019	197	Additional Info Required
005.2019.00000030.001	Demolition of Existing Dwelling and Sheds, Construction of Additional Motel Units, Extension of Restaurant and Consolidation of Titles	26 Maitland ST MUSWELLBROOK LOT: 2 DP: 6758 LOT: 100 DP: 1193814	Repinski Pty Ltd	\$1,700,000	2/04/2019	211	Additional Info Required
005.2019.00000016.001	Information and Education Facility (Museum)	Turner ST DENMAN PRT: 231 DP: 729996 REF: FIELD	Denman & District Heritage Village Inc.	\$265,000	15/02/2019	257	Additional Info Required
005.2019.00000013.001		8911 New England HWY MUSWELLBROOK LOT: 1300 DP: 1164893	Raj & Jai Construction Pty Ltd	\$5,142,236	14/02/2019	258	Notify Adjoining Owners

Development Assessment Committee - Outstanding DAs as at 30/10/2019

<u>Account</u>		<u>Property</u>	<u>Applicant</u>	<u>Value</u>	<u>Received</u>	<u>Days</u>	<u>Current Status</u>
005.2019.00000011.001	Alterations and Additions to Muswellbrook Aquatic and Leisure Centre	Haydon ST MUSWELLBROOK LOT: 1 DP: 364120 Sydney ST MUSWELLBROOK LOT: 11 DP: 1058170 3 Wilkinson AVE MUSWELLBROOK LOT: 7010 DP: 93327 RES: 570025 1 Wilkinson AVE MUSWELLBROOK LOT: 1 DP: 903839 RES: 570025	Facility Design Group Pty Ltd	\$4,990,670	8/02/2019	264	Advertisement - Proposal
005.2019.00000002.001	The construction of multi dwelling housing comprising a total of Sixte	19 John Howe CCT MUSWELLBROOK LOT: 514 DP: 1089307	Raj & Jai Construction Pty Ltd	\$4,414,300	14/01/2019	289	Notify Adjoining Owners
005.2018.00000117.001	Commercial Alterations and Additions (Expansion of Bottle Shop)	36 Sydney ST MUSWELLBROOK LOT: 1 DP: 80963	Mr N Sakno	\$500,000	21/12/2018	313	Additional Info Required
005.2015.00000087.002	S4.55(1A) Modification - Subdivision of One (1) Lot into Nine (9) Lots Modification to carry out the Development in Two (2) Stages	Merriwa RD SANDY HOLLOW LOT: 31 DP: 1156452	Mr A P Thrift	\$0	17/12/2018	317	Notify Adjoining Owners

Development Assessment Committee - Outstanding DAs as at 30/10/2019

<u>Account</u>		<u>Property</u>	<u>Applicant</u>	<u>Value</u>	<u>Received</u>	<u>Days</u>	<u>Current Status</u>
005.2018.00000054.001	Demolition of a Commercial Building and the Construction of a Two (2)	142 Bridge ST MUSWELLBROOK LOT: 1 DP: 11221 140 Bridge ST MUSWELLBROOK LOT: 2 DP: 11221 126 Bridge ST MUSWELLBROOK LOT: 7 DP: 71755 REF: LIBRARY 126 Bridge ST MUSWELLBROOK PT: 8 ALT: A SEC: 6 DP: 758740 REF: LIBRARY Bridge ST MUSWELLBROOK Lot: 400 DP:816923 Bridge ST MUSWELLBROOK Lot: 562 DP:747012 30 Brook ST MUSWELLBROOK LOT: 1 DP: 219503 30 Brook ST MUSWELLBROOK LOT: 6 DP: 219503 30 Brook ST MUSWELLBROOK LOT: 1 DP: 76058 83 Hill ST MUSWELLBROOK LOT: 5 DP: 11221 REF: TERTIARY ED* 85 Hill ST MUSWELLBROOK LOT: 4 DP: 11221 87 Hill ST MUSWELLBROOK LOT: 3 DP: 11221 Bridge ST MUSWELLBROOK PT: 8 ALT: B SEC: 6 DP: 758740 REF: WEIDMAN 83 Hill ST MUSWELLBROOK LOT: 5 DP: 11221 REF: CARPARK	Muswellbrook Shire Council	\$3,556,300	15/06/2018	502	Additional Info Required

Development Assessment Committee - Outstanding DAs as at 30/10/2019

<u>Account</u>		<u>Property</u>	<u>Applicant</u>	<u>Value</u>	<u>Received</u>	<u>Days</u>	<u>Current Status</u>
005.2002.00000342.005	S96(2) Modification - Consolidate Two Consent Documents into One with Modified Conditions Where Applicable	8440 New England HWY MUSWELLBROOK LOT: 30 ALT: DP: 815308	RPS Group	\$0	28/02/2018	609	Signed Linen Released
005.2017.00000058.002	S96 (1A) Modification - Modify Condition 8	Jerdan ST DENMAN LOT: 1 DP: 151236	Ms M J Melville	\$0	19/02/2018	618	Advertisement - Proposal
005.2017.00000060.001	Change of Use - Building Materials Recycling Depot	7 Glen Munro RD MUSWELLBROOK LOT: 5 DP: 1018378	Mr L McWhirter	\$0	23/06/2017	859	Additional Info Required
005.2000.00000212.006	S96(1a) Modification - Extension of timeframe of Operations & Extraction Area, Site Plan, Removal of Conditions	Denman PH COUNTY BRISBANE LOT: 1 DP: 221400 2449 Denman RD MUSWELLBROOK LOT: 12 DP: 1027580	Cardno (NSW/ACT) Pty Ltd	\$0	29/05/2017	884	Advertisement - Proposal
005.2016.00000032.001	Placement of Fill	110 Merriwa RD DENMAN LOT: 402 DP: 1175263 Merriwa RD DENMAN LOT: 403 DP: 1175263	Casson Planning and Development Services	\$5,000	12/04/2016	1296	Additional Info Required
DAs Outstanding:	53						

6.3 DA 87/2015 SECTION 4.55(1A) MODIFICATION - LOT 31 GOLDEN HIGHWAY, SANDY HOLLOW

Attachments:	<ul style="list-style-type: none"> A. DA 87/2015 Section 4.55(1A) Modification Assessment B. DA 87/2015 Section 4.55(1A) Recommended Conditions of Consent C. DA 87/2015 Proposed Plans and Staging Plans D. DA 87/2015 - Council's Notice of Determination dated 19 May 2016 E. DA 87/2015 - Approved Plan Referenced by 19 May 2016 Notice of Determination F. Correspondence from Adam Thrift
Responsible Officer:	Sharon Pope - Assistant Director - Environment & Community Services
Author:	Hamish McTaggart - Co-Ordinator - Development
Community Plan Issue:	<i>A Council that is well managed, efficient and properly resourced and that is responsive to its communities and stakeholders</i>
Community Plan Goal:	<i>Maintain a strong focus on financial discipline to enable Council to properly respond to the needs of the communities it serves.</i>
Community Plan Strategy:	<i>Provide efficient and effective Development Application, Complying Development Certificate, Construction Certificate and Occupational Certificate assessment services.</i>

PURPOSE

This report has been prepared to inform the Development Assessment Committee in determining a Section 4.55(1A) Modification application for the amendment of the development consent issued by Council in relation to Development Application (DA) 87/2015.

DA 87/2015 involves the subdivision of Lot 31 DP 1156452 into nine (9) lots and this proposed modification seeks to amend the development application by including a staging plan to allow the development to be carried out in 2 Stages. The Section 4.55(1A) modification has been assessed by Council Officers and a copy of the Assessment Report is attached.

Delegations issued to the General Manager include a limitation on the General Manager determining matters under the Environmental Planning and Assessment Act 1979 as follows:

- (ii) *[determine matters]* which are for, or in any way related to:
 - (e) *subdivisions into more than five lots.*

The delegations issued to the Development Assessment Committee allow the Committee to determine development applications that involve the subdivision of land into a maximum of ten (10) lots.

Therefore, this report has been prepared to inform the Committee its assessment and determination of the development application.

This development application has previously been reported to the Development Assessment Committee for determination at its 8 April 2019, 6 May 2019, 20 May 2019 and 3 June 2019 where it was deferred for consideration of access and road construction related matters to be resolved.

RECOMMENDATION

The Development Assessment Committee approve the Section 4.55(1A) modification of DA

87/2015, involving the carrying out of the nine (9) lot subdivision of Lot 31 DP 1156452 in 2 Stages, subject to the recommended conditions contained in Appendix B.

Moved: _____ Seconded: _____

DESCRIPTION OF THE PROPOSAL

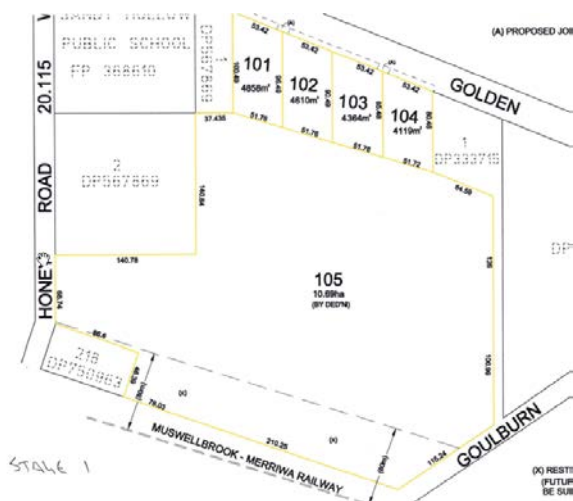
The proposed Section 4.55 modification application seeks Council's approval for the modification to the development consent issued by Council Officers for the nine (9) lot subdivision of Lot 31 DP 1156452. The development application was approved by Council Officers under delegated authority on 19 May 2016.

The land subject is zoned RU5 Village under the Muswellbrook Local Environmental Plan 2009 and is part of the Sandy Hollow village. The subject site is identified in context with the wider locality in the image below.

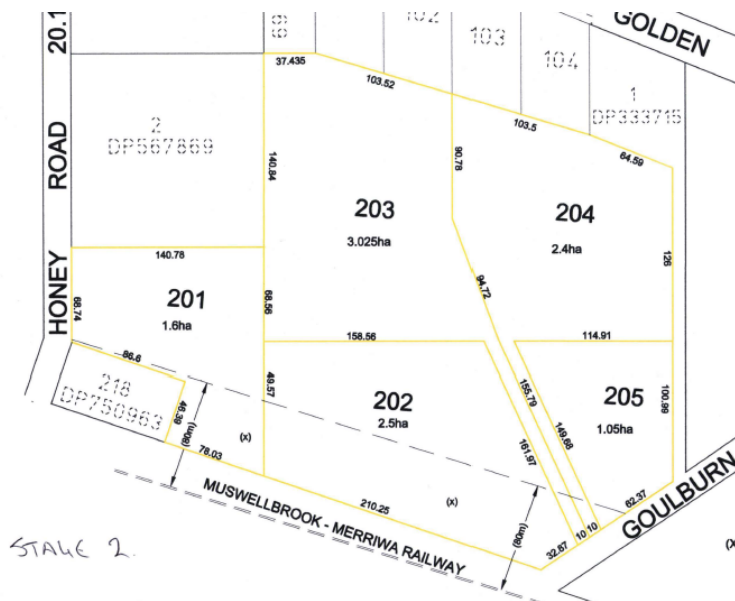


The purpose of the proposed modification is to enable the approved subdivision to be carried out in 2 Stages. The staging of the development is the only change to the approved development proposed by the applicant.

Stage 1: The subdivision of four (4) lots with frontage to the Golden Highway and the creation of a residual development lot to be further subdivided as part of Stage 2. The Stage 1 subdivision is identified in the image below:



Stage 2: The subdivision of the residual lot (Lot 105) into five (5) lots as set out in the image below.



ASSESSMENT SUMMARY

Council Officers have considered the proposed development against the relevant matters prescribed by Section 4.55(1A) and Section 4.15 of the *Environmental Planning and Assessment Act 1979*. A copy of the Development Assessment Report is provided in Attachment A for the Development Assessment Committee's consideration.

Council Officers recommend that development consent be granted to the proposed development subject to the conditions of consent provided in Attachment B.

Key considerations and findings of the assessment report include:

- The proposed modification seeks to establish a staging plan for the carrying out of the approved development. Accordingly Council Officers are satisfied that the proposed modified development would be substantially the same development as the development previously approved and would be of minimal environmental impact. Accordingly, Council may consider the proposed development as a Section 4.15(1A) modification.
- The proposed modification does not alter the approved lot arrangement in any way other than requesting the carrying out of the development in stages. Accordingly, there are limited matters that require consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* to inform the determination of this development application. The key areas of consideration relate to the servicing requirements for each stage of the development.

The recommended conditions of consent have been adjusted to account comments from Council's Roads and Drainage Division, Water and Waste Division and NSW Roads and Maritime Services.

Following the Development Assessment Committee's previous deferrals of the Development Application, the applicant has been in contact with Council. The owner of the land has provided a letter to Council indicating that he has also been in contact with the person benefited by the development consent issued by Council for the subdivision of the property opposite the site on Honey Lane and the improvements to Honey Lane required by that consent.

COMMUNITY CONSULTATION

Surrounding properties were notified of the development proposal between 9 January 2019 and 24 January 2019. A notice was also placed in the local newspaper, the Hunter Valley News, at the commencement of the notification period.

No submissions were received from the public in relation to the proposed development.

OPTIONS

The Development Assessment Committee may:

- (A) Grant approval to the Section 4.55(1A) modification application subject to the recommended conditions of consent,
- (B) Grant approval to the Section 4.55(1A) modification application subject to amended conditions of consent,
- (C) Refuse the Section 4.55(1A) modification application and nominate reasons for refusal, or

LEGAL IMPLICATIONS

Where the applicant is dissatisfied with the determination of the Section 4.55 modification application they have an opportunity under the provisions of the *Environmental Planning and Assessment Act 1979* to appeal that determination at the Land and Environment Court.

CONCLUSION

This Section 4.55(1A) modification of DA 87/2015 has been reported to the Development Assessment Committee as it involves a subdivision of one lot into more than five (5) lots. Therefore, the determination of this development application is outside the function delegated to the General Manager. The determination of the development application is within the function delegated to the Development Assessment Committee.

Council Officers recommend that the Development Assessment Committee grant development consent to DA 116/2018 subject to conditions of consent outlined in Attachment B.

ASSESSMENT REPORT

ADDRESS/WARD: Lot: 31 DP: 1156452, Merriwa Road Sandy Hollow

APPLICATION NO: 87/2015

PROPOSAL: Pursuant to section 4.55(1A) of the EP & A Act 1979, to modify a consent for s4.55(1a) modification - subdivision of one (1) lot into nine (9) lots - modification to carry out the development in two (2) stages

OWNER: Mr A P Thrift

OWNER ADDRESS: 13 Goulburn Drive
SANDY HOLLOW NSW 2333

APPLICANT: Mr A P Thrift

ADDRESS: 13 Goulburn Drive
SANDY HOLLOW NSW 2333

AUTHOR: Report of Mr H A McTaggart

DATE OF REPORT: 2 April 2019

DATE LODGED: 17/12/2018

SUMMARY

ISSUES: Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979.

SUBMISSIONS: Nil

RECOMMENDATION: Approval Subject to Conditions

DESCRIPTION OF PROPOSAL

On the 19 May 2016 Council Officers granted development consent to DA 87/2015 for nine (9) lot subdivision of Lot 31 DP 1156452.

The subject land is located in the Sandy Hollow Township, is zoned RU5 Village and has direct frontages to the Golden Highway, Goulburn Drive and Honey Lane.

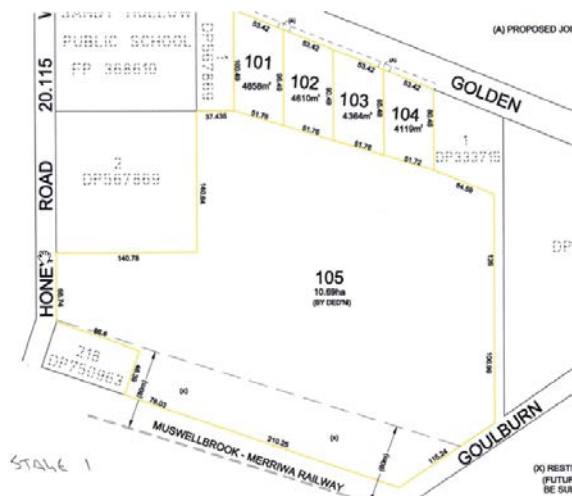
The site is identified in context with its surrounds in the image below.



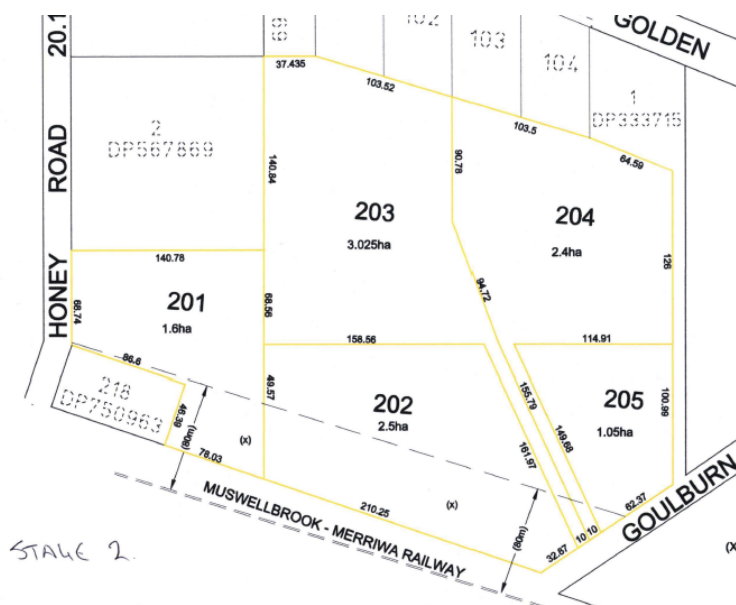
This application seeks to modify Council's previous approval of the development application to carry out the development in two stages.

Other than the inclusion of the proposed staging plans, there are no other changes to the approved development. The number of lots proposed, lot locations and lot sizes would remain consistent with those previously approved by Council.

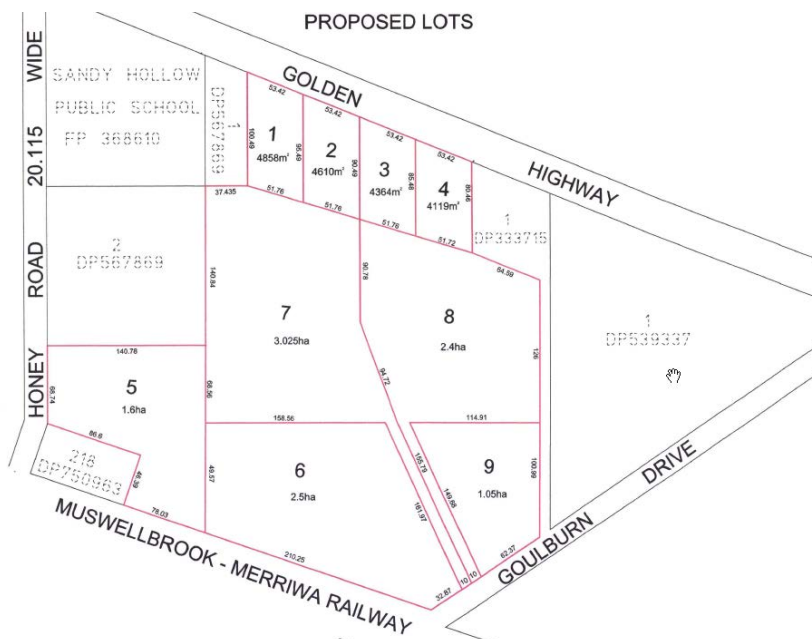
Under the proposed staging plan the subdivision would be carried out in two stages. Stage 1 would create four (4) lots with road frontage to the Golden Highway and a residual development lot. Proposed Stage 1 is shown in the image below.



Stage 2 would consist of the subdivision of the Stage 1 residual lot (Lot 105) into five (5) lots. Proposed Stage 2 is shown in the image below.



As previously mentioned the location and area of the proposed lots would remain consistent with the previous approval.



SUBMISSIONS

The proposed modification was notified and advertised in accordance with the provisions of the Muswellbrook DCP between the 9 January 2019 and 24 January 2019. During this period, neighbouring property owners were notified of the development and a Notice published in the Hunter Valley News on the 9 January 2019.

No submissions were received by Council in relation to the proposed modification.

SECTION 4.55 CONSIDERATIONS

Section 4.55 of the Environmental Planning and Assessment Act 1979 establishes a framework under which applicants can apply for the modification of a development consent previously granted by a consent authority. There are three (3) types of modifications to development consents that can be applied for under Section 4.55:

- Section 4.55(1) – modifications involving a minor error, wrong description or miscalculation.
- Section 4.55(1A) – modifications involving minimal environmental impact.
- Section 4.55(2) other modifications.

The application lodged with Council is a Section 4.55(1A) modification application. When considering whether to grant consent to a Section 4.55(1A) modification application a consent authority must take the following matters into consideration:

- Whether it is satisfied that the development to which the consent as modified relates is of minimal environmental impact;
- Whether it is satisfied that the development to which the consent as modified relates is substantially the same development;
- Whether it has notified the application in accordance with the regulations and has considered any submissions made concerning the proposed modification; and
- in determining the application for modification, has taken into consideration such matters referred to under Section 4.15(1) as are relevant.

Is the proposed development of minimal environmental impact?

The proposed modification does not alter the number, location or size of lots in the approved subdivision. The only change to the development is the carrying out of the development in stages. Council Officers are satisfied that the modification proposed is of minimal environmental impact.

Is the proposed development as modified substantially the same development approved by the Council?

The proposed development is considered to be substantially the same development. There are no proposed changes to the number, size or location of the proposed lots. This modification seeks approval for the carrying out of the development in stages only. Accordingly, Council Officers are satisfied that the proposed development is substantially the same as the development previously approved by Council.

Has the proposal been notified in accordance with the Regulations and Council's DCP requirements?

The proposed development was notified in accordance with the Muswellbrook DCP requirements. No submissions were received by Council in relation to the proposed development.

Any relevant considerations under Section 4.15(1) of the Environmental Planning and Assessment Act 1979.

The proposed modification has been reviewed against the relevant matters for consideration specified by Section 4.15(1) of the Environmental Planning and Assessment Act 1979.

The only notable change to the relevant environmental planning and assessment matters specified by Section 4.15(1) relate to the changes to lot servicing and construction works through the staging of the development. To inform relevant issues around the servicing of lots associated with the staging of the development, the proposal has been referred to Council's Water and Waste Division, Roads and Drainage Division and the NSW RMS. Matters raised by these referrals have been considered under the sub-headings below.

NSW RMS

NSW Roads and Maritime Services provided correspondence dated 10 January 2019 raising no objection to the proposed development and its staging. The requirements imposed as a

result of NSW RMS requirements on the original consent have been retained as recommended conditions of consent, but adjusted to reference the current lot arrangement.

Water and Waste

The proposed development was referred to Council's Water and Waste Division who provided comments dated 9 January 2019 raising no issue in relation to the staging of the development. Recommended conditions relating to the Notice of Arrangement and water servicing of the development have been adjusted to reflect the staging plan.

Roads and Drainage

The proposed development was referred to Council's Roads and Drainage Team who provided comments in relation to the proposal on the 2 April 2019. These comments consider the impact of staging the development on timing of works to upgrade Honey Lane, which was a requirement of the original Notice of Determination for DA 87/2015. To manage the rollout and construction of this infrastructure and vehicle crossovers for the proposed lots, conditions have been updated and imposed consistent with the following:

- The full upgrade of the Honey Lane intersection and the first 30m of road pavement construction will be required as part of Stage 2 works, as there is no increase in traffic or vehicle movements on this road as part of the stage 1 development. This work is to be completed prior to the issue of a Stage 2 subdivision Certificate.
- A kerb return is to be installed and a pram ramp provided to connect to the existing footpath pavement. This would improve pedestrian accessibility to the development and compliance with the aims and objectives of Section 5.1.3 (k) and (m) of the DCP.
- To manage and ensure access to the residual development lot from Goulburn Drive, an additional requirement has been drafted for the recommended conditions, requiring that vehicle access for the residual lot be constructed from Goulburn Drive prior to the issue of a Stage 1 Subdivision Certificate.

It is considered that the proposed modification does not present any issue that would prevent Council from granting approval to the modification, provided the conditions of consent are updated to reflect their requirements.

CONCLUSION

The proposed Section 4.55(1A) Modification for the carrying out of the approved nine (9) lot subdivision of Lot 31 DP 1156452 in 2 Stages has been assessed against the relevant matters prescribed by Section 4.55 of the Environmental Planning and Assessment (EP&A) Act 1979. Council Officers are satisfied that the proposed modification is of minimal environmental impact and substantially the same as the development previously approved by Council.

Council Officers have also considered the proposed modification against the provisions of Section 4.15(1) of the EP&A Act 1979 and are satisfied that the proposed modification would be in accordance with the relevant assessment provisions and that development consent can be granted subject to a number of modified conditions of consent.

RECOMMENDATION

That the Development Assessment Committee approve the modification of DA 87/2015 subject to recommended modified conditions of consent.

DA 87/2015 S4.55(1A) Modification Proposed Conditions of Consent

Schedule 1 contains summary of modified conditions and Schedule 2 sets out proposed conditions in full.

SCHEDULE 1
SUMMARY OF MODIFIED CONDITIONS OF CONSENT

This Schedule includes a summary of the changes to the conditions of consent from those imposed on the original determination of this development application. This Schedule should not be relied on to identify the full details of the consent and is provided as a reference document only to assist a person reviewing or acting with this consent to identify changes from the consent previously issued by Council. The current conditions of consent are listed in full in Schedule 2.

The dot points below provide a brief summary of changes to the conditions of consent imposed by Council in its previous determination of this development application:

- Condition 1, amended to reference the updated approved plans
- Condition 8, modified to restrict the carrying out of works that require a Construction Certificate until a Construction Certificate has been issued.
- Condition 10, modified slightly to require section 68 approval where relevant.
- Condition 11, modified to include reference to the new plans/lot arrangement.
- Condition 12, updated to reference the staging of the development and construction requirements for Stage 1 and 2.
- Former condition 16 deleted and replaced by new conditions 20 and 24 to require a Compliance Certificate to be obtained prior to the issue of a Subdivision Certificate of each stage of the development.
- Former condition 17 deleted and replaced by new conditions 21 and 25 to Section 94 contributions to be paid prior to the issue of a Subdivision Certificate of each stage of the development.
- New condition 22 added to include a requirement for relevant works and kerb and gutter improvement to be carried out to Honey Lane prior to the issue of a Subdivision Certificate for Stage 1.
- New condition 23 added to include a requirement for the Stage 1 vehicle accesses to be constructed prior to the issue of a Subdivision Certificate for Stage 1 of the development.
- New condition 26 added to include a requirement for all relevant Honey Lane improvement works to be completed prior to the issue of a Subdivision Certificate for Stage 2.
- New condition 27 added to include a requirement for the Stage 2 vehicle accesses to be constructed prior to the issue of a Subdivision Certificate for Stage 1 of the development.
- Minor amendments and numbering changes to adjust condition numbering to account for the deleted and newly imposed conditions of consent.

SCHEDULE 2
DEVELOPMENT CONSENT CONDITIONS

This Schedule sets out the conditions of consent for the development.

The conditions of consent are as follows:

IDENTIFICATION OF APPROVED PLANS

1. Development in Accordance with Plans

The development being carried out in accordance with the development application and the drawings referenced below, and endorsed with Council's approval stamp, except where amended by the following conditions.

Drawings no.	Drawn by	Date	Received
Approved Lots	MM Hyndes Bailey & Co	21 November 2018	18 December 2018
Stage 1 Plan	MM Hyndes Bailey & Co	21 November 2018	18 December 2018
Stage 2 Plan	MM Hyndes Bailey & Co	21 November 2018	18 December 2018

2. Plans on Site

A copy of all stamped approved plans, specifications and documents (including the Construction Certificate if required for the work incorporating certification of conditions of approval) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

**ANCILLARY MATTERS TO BE ADDRESSED TO THE SATISFACTION OF COUNCIL PRIOR TO THE
ISSUE OF THE CONSTRUCTION CERTIFICATE**

3. Construction Management Program

A Construction Management Program must be prepared and submitted to, and approved in writing by the Council prior to the issue of any Construction Certificate. The program shall include such matters as:

- a) a Safe Work Method Statement;
- b) the proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
- c) the proposed phases of construction works on the site, and the expected duration of each construction phase;
- d) the proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;

- e) the proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process;
- f) the proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- g) the proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- h) the proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;
- i) the proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising structural engineer, or equivalent;

All work and excavation, demolition or construction activities shall be undertaken in accordance with the approved Construction Management Program and any conditions attached to the approved plan. A copy of the approved Construction Management Plan, and any conditions imposed on that plan, shall be kept on the site at all times and made available to any officer of Council upon request.

ANCILLARY MATTERS TO BE COMPLETED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

4. Muswellbrook Shire Water and Waste Division

A 'Notice of Requirements' under the Water Management Act 2000 must be obtained, prior to any Construction Certificate application, detailing water and sewer extensions to be built and charges to be paid by the applicant. Any charges identified in the 'Notice of Requirements' as requiring payment at construction certificate stage are to be paid prior to release of a Construction Certificate.

Details demonstrating compliance with any requirements for works by Muswellbrook Shire Council Water & Waste Department are to be provided with the Construction Certificate application.

The final compliance certificate must be submitted to the Principal Certifying Authority prior to release of the Subdivision or Occupation Certificate.

5. Australian Rail and Track Corporation – Stormwater

Prior to any Construction Certificate being issued, the applicant must submit details of stormwater disposal to Council for approval. The flow of stormwater toward the rail corridor must not be increased by the proposed development. All approved details for the disposal of stormwater and drainage are to be implemented in the development.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO COMMENCEMENT
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6. Public Liability Insurance

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Muswellbrook Shire Council, as an interested party and a copy of the Policy must be submitted to Council and the Principal Certifying Authority prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

(Note: Applications for hoarding permits, vehicular crossings etc will require evidence of insurance upon lodgement of the application.)

7. Sediment and Erosion Control

All required erosion and sedimentation techniques are to be properly installed prior to the commencement of any site works and maintained in a functional and effective condition throughout the construction activities until the site is stabilised.

8. Construction Certificate Requirement

No works shall commence on site for works that require a construction certificate until such time as a Construction Certificate has been issued for either part or all of the works. If a certificate is issued for part of the works it must cover the works being undertaken onsite.

9. Damage to Public Infrastructure

The applicant shall bear the cost of all restoration works to Council property damaged during the course of this development. The applicant shall submit in writing and/or photographic record, of any existing damage to Council property before commencement of work.

Note: This documentation will be used to resolve any dispute over damage to infrastructure. If no documentation is received prior to commencement of work it will be assumed that the infrastructure was undamaged and the applicant will be required to restore all damaged infrastructure at their expense.

10. Section 68 Local Government Act Approval

Prior to the commencement of any works relating to the carrying out of water supply or stormwater drainage works it shall be necessary for the applicant to obtain a Section 68 Local Government Act approval for all water supply and stormwater sewer drainage works.

11. Section 138 Permit - Vehicle Entry

Prior to commencing construction of all relevant driveway/vehicle crossing/layback, within the road reserve, a permit for the work must be obtained from Council, under Section 138 of the Roads Act 1993 for proposed lots 1, 2, 3, 4, 7 and 8 (as shown on the Approved Lots Plan).

Note: Proposed lots 5, 6 and 9 will require a Section 138 Permit when applications are lodged for dwellings.

Note2: The Lot identified as Lot 105 on the proposed Stage 1 Plan will also require the construction of a vehicle access prior to the issue of a Subdivision Certificate for Stage 1 of the development. The vehicle access for this Lot is to be constructed from Goulburn Drive and not Honey Lane.

12. Section 138 – Road construction Honey Lane

At the relevant stage of the development the applicant is to lodge a Section 138 Permit under the Roads Act 1993 for the half width construction of Honey Lane and a kerb return in accordance with Standards in Section 5.4.2 of the DCP and the requirements below. A design Plan for the intersection and Kerb returns is to be submitted to Council for approval with the relevant Section 138 Application.

- a) Prior to the completion of Stage 1 of the development Council requires the design and construction of a kerb return on the eastern side of Honey Lane. The kerb return is to be constructed between the existing kerb on the Golden Highway and a location parallel to the property boundary of Lot 1 DP 368610 (Sandy Hollow School). A pram ramp is to be included in the design of the kerb return at a location parallel to the pedestrian footpath adjacent the school and the pedestrian footpath extended to connect with the pram ramp and kerb return.
- b) Prior to the completions of Stage 2 of the development Council requires a 7m wide sealed pavement with transition tapers to suit turning template from the Golden Highway. This pavement is to be extended for a length of 30m transitioning to the existing gravel pavement. The kerb return is to join the kerb in front of the School and terminate at the Tangent Point in Honey Lane.

CONDITIONS THAT MUST BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

13. Construction Hours

- (a) Subject to this clause, building construction is to be carried out during the following hours:
 - i. between Monday to Friday (inclusive)—7.00am to 6.00pm
 - ii. on a Saturday—8.00am to 1.00pm
- (b) Building construction must not be carried out on a Sunday or a public holidays.
- (c) Demolition works and excavation works must only be carried out between Monday to Friday (inclusive) between 8.00am and 5.00pm.
- (d) The builder and excavator must display, on-site, their 24 hour contact telephone numbers, which are to be clearly visible and legible from any public place adjoining the site.

CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

14. Impact on Amenity of Surrounding Area – Non Residential Areas

The implementation and intensity of this development shall not adversely affect the amenity of the neighbourhood by reason of excessive levels of illumination (internal or external), solar glare arising from the building materials utilised in any construction processes or fit-out, the emission of noises, noxious fumes, odours and waste.

15. Australian Rail and Track Corporation – Fencing

A 1.8m high mesh security fence is to be erected along the common boundary of the subject land and the rail corridor.

CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY SUBDIVISION CERTIFICATE
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16. Services within Lots – Subdivision

Prior to the issue of a Subdivision Certificate for each stage of the development a notification of arrangements to connect services and utilities for each lot included in that stage is to be provided to the Certifying Authority:

- (a) telecommunication services
- (b) electrical reticulation
- (c) National Broadband Network

All adjustments to existing utility services made necessary by the development are to be undertaken by the developer at no cost to Council.

17. Easements, Rights-of-way and Restrictions-as-to-user

The applicant shall register a restriction on the land requiring storage tanks to minimise the impact of roof water and to establish a maximum area of sealed pavement or pathways and/or establish the need interallotment drainage works and easements.

18. Building and Unit Numbering (Subdivisions)

Prior to issuing any Subdivision Certificate for the subdivision, the person acting upon this consent must apply to Muswellbrook Shire Council and receive written confirmation of the allocated street names and addresses (house number) and unit numbers for the building and any approved allotments within the completed project. These are the street names and numbers that will be recorded in Council records and must be displayed at the property in accordance with the provisions of AS/NZS 4819:2003 – Geographic information – Rural and urban addressing.

To assist Council when applying for street name and number allocations, a draft proposal for street naming and numbering within development should be submitted for concurrence to Council at an early stage of construction, as these numbers will be used to maintain Council's property and mapping database, and the proposed street names must be formally agreed and adopted by Council.

19. Works as Executed plans

All civil works for each stage shall be completed to Council's satisfaction. On completion, "Works-as-Executed" (WAE) drawings are to be provided by the developer, to Council and accepted, prior to the release of the respective subdivision certificate. The drawings shall be in the form of a marked-up copy of each approved Construction Certified Engineering Plan, and also in marked-up digital CAD format compatible with Council's asset database system. Digital data requirements shall be confirmed with Council's Asset Manager prior to provision of the WAE drawings.

All WAE drawings shall be individually certified as compliant with the design requirements of this consent by an appropriately qualified engineer or registered surveyor.

Line sheets/junction sheets are to be provided by the developer for all access chamber lengths covered by the WAE sewer main drawings.

CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY SUBDIVISION CERTIFICATE FOR STAGE 1

20. Notice of Requirements – Water and Sewer Connection

A Compliance Certificate under the Water Management Act 2000 must be obtained from Muswellbrook Shire Water & Waste Division for the completion of water servicing works and the payment of relevant contributions in accordance with any Notice of Requirements issued in relation to the relevant stage of the development.

Prior to the issue of the subdivision Certificate for Stage 1 the person acting with this consent must obtain a Compliance Certificate for the completion of water supply work related to the creation of Lots 101, 102, 103, 104 and 105 as identified on the approved Stage 1 Plan.

21. S7.11 Contributions

Prior to the issue of a Subdivision Certificate for Stage 1 a contribution pursuant to the provisions of Section 7.11 of the Environmental Planning and Assessment Act 1979, as specified under the Muswellbrook Shire Council Section 94 Contribution Plan for the services detailed in column A and, for the amount detailed in column B shall be made to Council.

Description	Calculation (per lot)	Payment required
Rural Roads	\$2,972.00 x 4	\$11,888.00
Bushfire protection	\$2,890.00 x 4	\$11,560.00
Open Space and community facilities	\$1,236.00 x 4	\$4,944.00
	TOTAL PAYABLE	\$28,392.00

The above amount shall be adjusted for inflation by reference to the Consumer Price (All Ordinaries) Index applicable at the time of the payment of the contribution.

A copy of the Muswellbrook Shire Council Section 94 Contribution Plan can be viewed at the office of Council 157 Maitland Street, Muswellbrook.

22. Kerb Construction Honey Lane

Prior to the issue of a Subdivision Certificate for Stage 1 of the development, The Honey Lane kerb return required in accordance with condition 12 a) of this Notice of Determination, are to be completed in accordance with design plans provided to and approved by Council in conjunction with the Section 138 permit application.

The works must be completed in accordance with the requirements of this consent, the approved detailed design plans, the requirements of relevant Section 138 permits and to the satisfaction of the Roads Authority.

23. Vehicle Access Construction

Prior to the issue of a Subdivision Certificate for Stage 1 of the development, the driveway access driveway access/vehicle crossovers are to be constructed for Lots 101, 102, 103, 104 and 105 as shown on the approved Stage 1 Plan in accordance with any Section 138 permit and the requirements of condition 11 of this Notice of Determination.

The driveway access/vehicle crossover for Lot 105 is to be constructed from Goulburn Drive and not Honey Lane unless otherwise approved by Council in writing.

CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY SUBDIVISION CERTIFICATE FOR STAGE 2

24. Notice of Requirements – Water and Sewer Connection

A Compliance Certificate under the Water Management Act 2000 must be obtained from Muswellbrook Shire Water & Waste Division for the completion of water servicing works and the payment of relevant contributions in accordance with any Notice of Requirements issued in relation to the relevant stage of the development.

Prior to the issue of the subdivision Certificate for Stage 2 the person acting with this consent must obtain a Compliance Certificate for the completion of water supply work related to the creation of Lots 201, 202, 203, 204 and 205 as identified on the approved Stage 2 Plan.

25. S7.11 Contributions

Prior to the issue of a Subdivision Certificate for Stage 2 a contribution pursuant to the provisions of Section 7.11 of the Environmental Planning and Assessment Act 1979, as specified under the Muswellbrook Shire Council Section 94 Contribution Plan for the services detailed in column A and, for the amount detailed in column B shall be made to Council.

Description	Calculation (per lot)	Payment required
Rural Roads	\$2,972.00 x 4	\$11,888.00
Bushfire protection	\$2,890.00 x 4	\$11,560.00
Open Space and community facilities	\$1,236.00 x 4	\$4,944.00
	TOTAL PAYABLE	\$28,392.00

The above amount shall be adjusted for inflation by reference to the Consumer Price (All Ordinaries) Index applicable at the time of the payment of the contribution.

A copy of the Muswellbrook Shire Council Section 94 Contribution Plan can be viewed at the office of Council 157 Maitland Street, Muswellbrook.

26. Road Construction Honey Lane

Prior to the issue of a Subdivision Certificate for Stage 2 of the development, the road works required in accordance with condition 12 b) of this Notice of Determination, are to be completed in accordance with detailed design plans provided to and approved by Council in conjunction with the Section 138 permit application.

The works must be completed in accordance with the requirements of this consent, the approved detailed design plans, the requirements of relevant Section 138 permits and to the satisfaction of the Roads Authority.

27. Vehicle Access Construction

Prior to the issue of a Subdivision Certificate for Stage 2 of the development, the driveway access driveway access/vehicle crossovers are to be constructed for Lots 203 and 204 as shown on the approved Stage 2 Plan in accordance with any Section 138 permit and the requirements of condition 11 of this Notice of Determination.

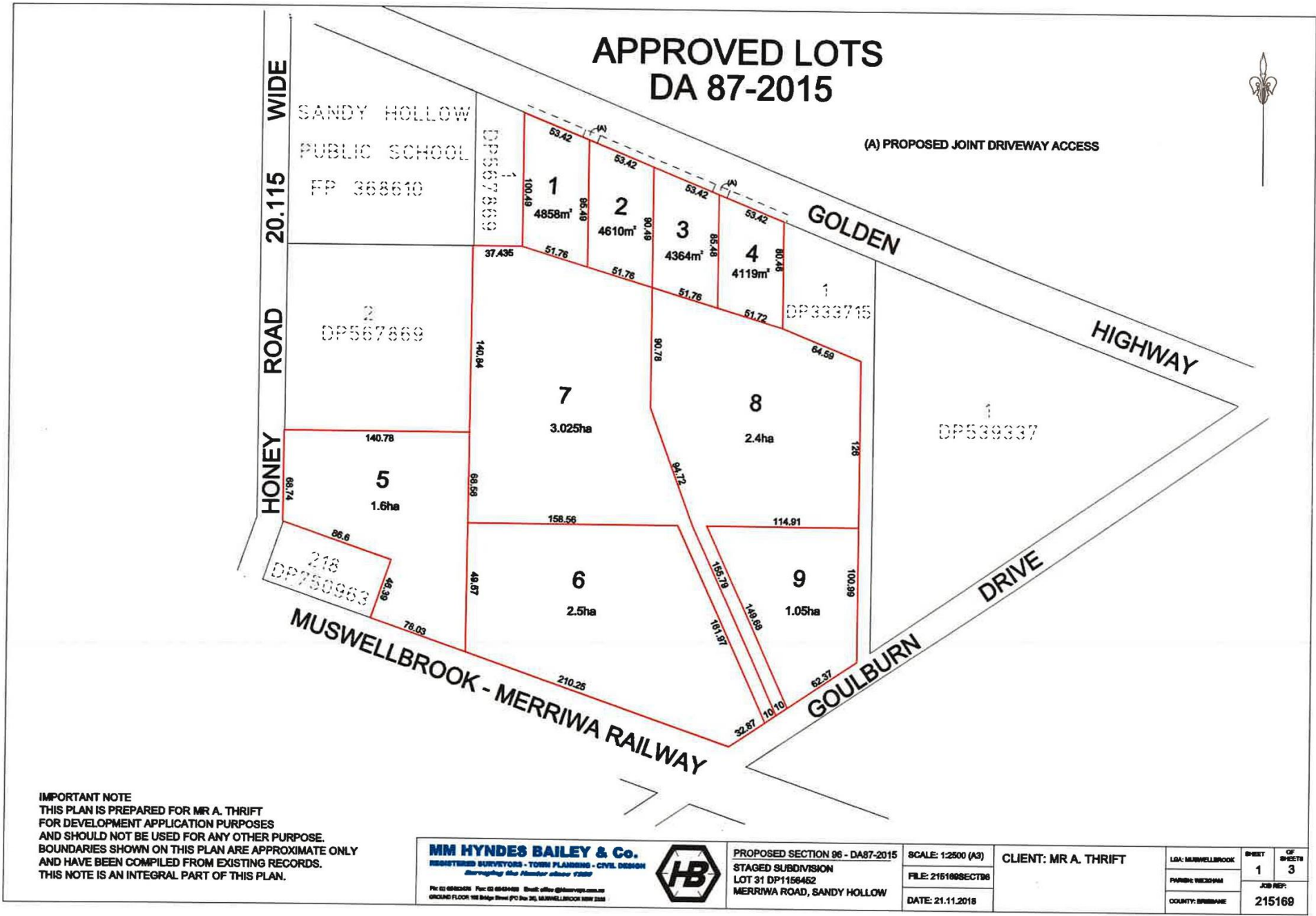
GENERAL TERMS OF APPROVAL PURSUANT TO SECTION 4.47 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)
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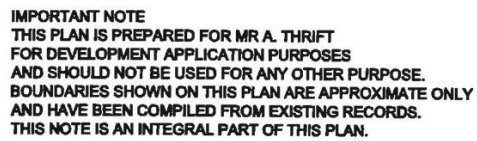
ROADS AND MARITIME SERVICES

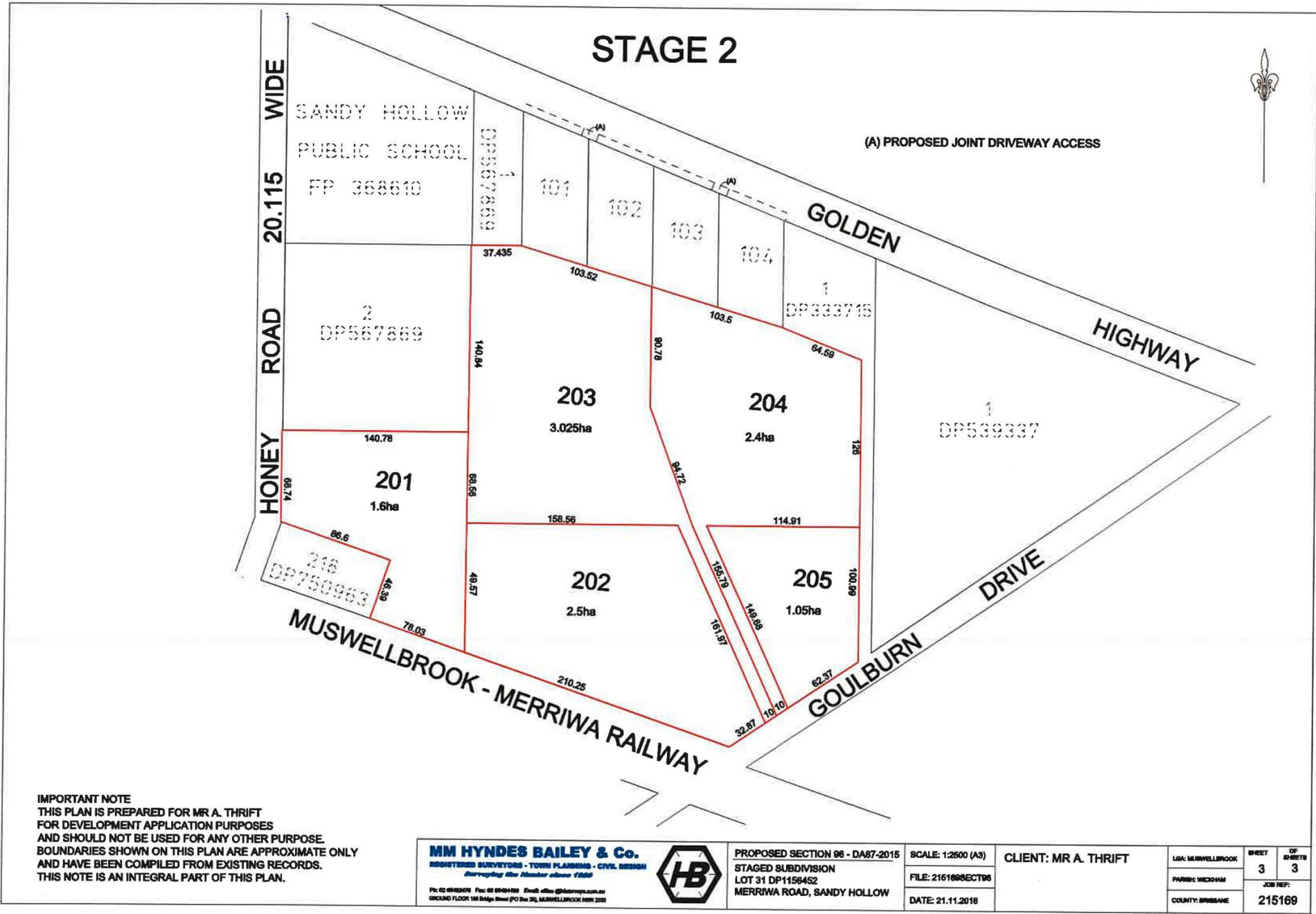
28. All vehicles must be able to enter and exit the site in a forward direction.
29. No additional vehicle access points will be permitted for Lots 1, 2, 3 and 4 onto the Golden Highway. (as shown on the Approved Lots Plan).
- Comment: Should the proposed lots be further subdivided at a future time, Roads and Maritime does not support the introduction of additional vehicular accesses.
30. The proposed vehicle access from Lots 1 and 2 and Lots 3 and 4 (as shown on the Approved Lots Plan) onto the Golden Highway shall be sealed from the property boundary to the edge of road surface and be generally in accordance with *rural property access* requirements outlined in Austroads 2009 and to the satisfaction of Council.
31. All works associated with the subject development shall be undertaken at full cost to the development and no cost to Roads and Maritime Services or Council and to Council requirements.

NSW RURAL FIRE SERVICE

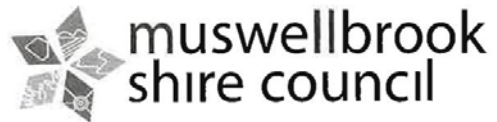
32. Water, electricity and gas are to comply with Section 4.1.3 of "Planning for Bush Fire Protection 2006".







COPY



Enquiries
 Please ask for Mrs D L Watson
 Direct 02 6549 3777
 Our references DA 87/2015
 Your reference

MUSWELLBROOK SHIRE COUNCIL

NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION Issued under the Environmental Planning and Assessment Act 1979 (Section 81)

DEVELOPMENT APPLICATION:	87/2015
APPLICANT NAME:	M M Hyndes Bailey & Co
APPLICANT ADDRESS:	PO Box 26 MUSWELLBROOK NSW 2333
LAND TO BE DEVELOPED:	LOT 31 DP 1156452 MERRIWA ROAD SANDY HOLLOW
PROPOSED DEVELOPMENT:	Subdivision of One (1) Lot into Nine (9) Lots

DETERMINATION MADE ON:	19 May 2016
DETERMINATION:	Consent granted subject to conditions described below.
CONSENT TO OPERATE FROM:	19 May 2016
CONSENT TO LAPSE ON:	19 May 2021 if work has not commenced in accordance with Section 95(4) of the Environmental Planning and Assessment Act 1979.

DETAILS OF CONDITIONS:

IDENTIFICATION OF APPROVED PLANS

1. Development in Accordance with Plans

The development being carried out in accordance with the development application and the drawings referenced below, and endorsed with Council's approval stamp, except where amended by the following conditions.

Drawings no.	Drawn by	Date	Received	Drawings no.
Subdivision Layout	MM Hyndes Bailey & Co	8 July 2015	15 October 2015	Subdivision Layout

Muswellbrook Shire Council ABN 86 864 180 944

Address all communications to The General Manager Mail PO Box 122 Muswellbrook NSW 2333 Phone 02 6549 3700
 Fax 02 6549 3701 Email council@muswellbrook.nsw.gov.au Web www.muswellbrook.nsw.gov.au

2. Plans on Site

A copy of all stamped approved plans, specifications and documents (including the Construction Certificate if required for the work incorporating certification of conditions of approval) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

ANCILLARY MATTERS TO BE ADDRESSED TO THE SATISFACTION OF COUNCIL PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE
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3. Construction Management Program

A Construction Management Program must be prepared and submitted to, and approved in writing by the Council prior to the issue of any Construction Certificate. The program shall include such matters as:

- a) a Safe Work Method Statement;
- b) the proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
- c) the proposed phases of construction works on the site, and the expected duration of each construction phase;
- d) the proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- e) the proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process;
- f) the proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- g) the proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- h) the proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;
- i) the proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to

be designed and certified by an appropriately qualified and practising structural engineer, or equivalent;

All work and excavation, demolition or construction activities shall be undertaken in accordance with the approved Construction Management Program and any conditions attached to the approved plan. A copy of the approved Construction Management Plan, and any conditions imposed on that plan, shall be kept on the site at all times and made available to any officer of Council upon request.

ANCILLARY MATTERS TO BE COMPLETED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

4. Muswellbrook Shire Water and Waste Division

A 'Notice of Requirements' under the Water Management Act 2000 must be obtained, prior to any Construction Certificate application, detailing water and sewer extensions to be built and charges to be paid by the applicant. Any charges identified in the 'Notice of Requirements' as requiring payment at construction certificate stage are to be paid prior to release of a Construction Certificate.

Details demonstrating compliance with any requirements for works by Muswellbrook Shire Council Water & Waste Department are to be provided with the Construction Certificate application.

The final compliance certificate must be submitted to the Principal Certifying Authority prior to release of the Subdivision or Occupation Certificate.

5. Australian Rail and Track Corporation – Stormwater

Prior to any Construction Certificate being issued, the applicant must submit details of stormwater disposal to Council for approval. The flow of stormwater toward the rail corridor must not be increased by the proposed development. All approved details for the disposal of stormwater and drainage are to be implemented in the development.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO COMMENCEMENT

6. Public Liability Insurance

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Muswellbrook Shire Council, as an interested party and a copy of the Policy must be submitted to Council and the Principal Certifying Authority prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

(Note: Applications for hoarding permits, vehicular crossings etc will require evidence of insurance upon lodgement of the application.)

7. Sediment and Erosion Control

All required erosion and sedimentation techniques are to be properly installed prior to the commencement of any site works and maintained in a functional and effective condition throughout the construction activities until the site is stabilised.

8. Construction Certificate Requirement

No works shall commence on site until such time as a Construction Certificate has been issued for either part or all of the works. If a certificate is issued for part of the works it must cover the works being undertaken onsite.

9. Damage to Public Infrastructure

The applicant shall bear the cost of all restoration works to Council property damaged during the course of this development. The applicant shall submit in writing and/or photographic record, of any existing damage to Council property before commencement of work.

Note: This documentation will be used to resolve any dispute over damage to infrastructure. If no documentation is received prior to commencement of work it will be assumed that the infrastructure was undamaged and the applicant will be required to restore all damaged infrastructure at their expense.

10. Section 68 Local Government Act Approval

Prior to the commencement of any works it shall be necessary for the applicant to obtain a Section 68 Local Government Act approval for all water supply and sewer drainage works.

11. Section 138 Permit - Vehicle Entry

Prior to commencing construction of the driveway/vehicle crossing/layback, within the road reserve, a permit for the work must be obtained from Council, under Section 138 of the Roads Act 1993 for proposed lots 1, 2, 3, 4, 7 and 8.

Note: Proposed lots 5, 6 and 9 will require a Section 138 Permit when applications are lodged for dwellings.

12. Section 138 – Road construction Honey Lane

The applicant is to lodge a Section 138 Permit under the Roads Act 1993 for the half width construction of Honey Lane and a kerb return in accordance with Standards in Section 5.4.2 of the DCP. A design Plan for the intersection and Kerb returns is to be submitted to Council for approval with the Section 138 Application.

Council requires a 7m wide sealed pavement with transition tapers to suit turning template from the Golden Highway. This pavement is to be extended for a length of 30m transitioning to the existing gravel pavement. The kerb return is to join the kerb in front of the School and terminate at the Tangent Point in Honey Lane.

CONDITIONS THAT MUST BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**13. Construction Hours**

- (a) Subject to this clause, building construction is to be carried out during the following hours:
 - i. between Monday to Friday (inclusive)—7.00am to 6.00pm
 - ii. on a Saturday—8.00am to 1.00pm
- (b) Building construction must not be carried out on a Sunday or a public holidays.
- (c) Demolition works and excavation works must only be carried out between Monday to Friday (inclusive) between 8.00am and 5.00pm.
- (d) The builder and excavator must display, on-site, their 24 hour contact telephone numbers, which are to be clearly visible and legible from any public place adjoining the site.

CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**14. Impact on Amenity of Surrounding Area – Non Residential Areas**

The implementation and intensity of this development shall not adversely affect the amenity of the neighbourhood by reason of excessive levels of illumination (internal or external), solar glare arising from the building materials utilised in any construction processes or fit-out, the emission of noises, noxious fumes, odours and waste.

15. Australian Rail and Track Corporation – Fencing

A 1.8m high mesh security fence is to be erected along the common boundary of the subject land and the rail corridor.

CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE**16. Notice of Requirements – Water and Sewer Connection**

A Compliance Certificate under the Water Management Act 2000 must be obtained from Muswellbrook Shire Water & Waste Division on (02) 6549 3840.

Following application, a 'Notice of Requirements' will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact with the Water & Waste Division since building of water/sewer extensions can be time consuming and may impact on other services, building, driveway or landscape design.

Details of any requirements of Muswellbrook Shire Water & Waste Division are to be provided with the Construction Certificate documentation.

The final compliance certificate must be submitted to the Certifying Authority prior to release of any linen plan for subdivision or Construction Certificate.

17. S94 Contributions

A contribution pursuant to the provisions of Section 94 of the Environmental Planning and Assessment Act 1979, as specified under the Muswellbrook Shire Council Section 94 Contribution Plan for the services detailed in column A and, for the amount detailed in column B shall be made to Council.

Description	Calculation (per lot)	Payment required
Rural Roads	\$2,792.54 x 8	\$22,340.32
Bushfire protection	\$2,715.48 x 8	\$21,723.84
Open Space and community facilities	\$1,161.39 x 8	\$9,291.12
TOTAL PAYABLE		\$53,355.28

The contribution SHALL BE paid prior to determination of the application for Subdivision Certificate.

The above amount shall be adjusted for inflation by reference to the Consumer Price (All Ordinaries) Index applicable at the time of the payment of the contribution.

A copy of the Muswellbrook Shire Council Section 94 Contribution Plan can be viewed at the office of Council 157 Maitland Street, Muswellbrook.

18. Services within Lots – Subdivision

Notification of arrangements to connect services and utilities to each LOT shall be provided to the Certifying Authority with the Subdivision certificate:-

- (a) telecommunication services
- (b) electrical reticulation
- (c) National Broadband Network

All adjustments to existing utility services made necessary by the development are to be undertaken by the developer at no cost to Council.

19. Easements, Rights-of-way and Restrictions-as-to-user

The applicant shall register a restriction on the land requiring storage tanks to minimise the impact of roof water and to establish a maximum area of sealed pavement or pathways and/or establish the need interallotment drainage works and easements.

20. Building and Unit Numbering (Subdivisions)

Prior to issuing any Subdivision Certificate for the subdivision, the person acting upon this consent must apply to Muswellbrook Shire Council and receive written confirmation of the allocated street names and addresses (house number) and unit numbers for the building and any approved allotments within the completed project. These are the street names and numbers that will be recorded in

Council records and must be displayed at the property in accordance with the provisions of AS/NZS 4819:2003 – Geographic information – Rural and urban addressing.

To assist Council when applying for street name and number allocations, a draft proposal for street naming and numbering within development should be submitted for concurrence to Council at an early stage of construction, as these numbers will be used to maintain Council's property and mapping database, and the proposed street names must be formally agreed and adopted by Council.

21. Works as Executed plans

All civil works for each stage shall be completed to Council's satisfaction. On completion, "Works-as-Executed" (WAE) drawings are to be provided by the developer, to Council and accepted, prior to the release of the respective subdivision certificate. The drawings shall be in the form of a marked-up copy of each approved Construction Certified Engineering Plan, and also in marked-up digital CAD format compatible with Council's asset database system. Digital data requirements shall be confirmed with Council's Asset Manager prior to provision of the WAE drawings.

All WAE drawings shall be individually certified as compliant with the design requirements of this consent by an appropriately qualified engineer or registered surveyor.

Line sheets/junction sheets are to be provided by the developer for all access chamber lengths covered by the WAE sewer main drawings.

GENERAL TERMS OF APPROVAL PURSUANT TO SECTION 91A OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

ROADS AND MARITIME SERVICES

22. All vehicles must be able to enter and exit the site in a forward direction.
23. No additional vehicle access points will be permitted for Lots 1, 2, 3 and 4 onto the Golden Highway.

Comment: Should the proposed lots be further subdivided
Maritime does not support the introduction of

24. The proposed vehicle access from Lots 1 and 2 to the Golden Highway shall be sealed from the proposed access point to the highway surface and be generally in accordance with requirements outlined in Austroads 2009 and the relevant standards.

25. All works associated with the subject development shall be at the developer's cost to the development and no cost to Roads and Maritime Services and to Council requirements.

NSW RURAL FIRE SERVICE

Do
We have
any info
about flooding
at Sandy Hollow

DA 87/2015

- 8 -

Muswellbrook Shire Council

26. Water, electricity and gas are to comply with Section 4.1.3 of "Planning for Bush Fire Protection 2006".

REASON FOR IMPOSITION OF CONDITIONS:

The reason for the imposition of the following conditions is to ensure, to Council's satisfaction, the objects of the *Environmental Planning and Assessment Act 1979* (as amended) are achieved:

- (a) To encourage:
- (i) The proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forest, minerals, water, cities, towns, and villages for the purpose of promoting the social and economic welfare of the community and a better environment;
 - (ii) The promotion and co-ordination of the orderly and economic use of development of land;
 - (iii) The protection, provision, and co-ordination of communication and utility services;
 - (iv) The provision of land for public purposes;
 - (v) The provision and co-ordination of community services and facilities;
 - (vi) The protection of the environment, including the protection and conservation of native animals and plants including threatened species, populations, and ecological communities and their habitats;
 - (vii) Ecologically Sustainable Development; and
 - (viii) The provision and maintenance of affordable housing.
- (b) To promote the sharing of the responsibility for environmental planning between the different levels of government in the State.
- (c) To provide increased opportunity for public involvement and participation in environmental planning and assessment.

ADVICE:**1. Location of Services**

Prior to construction work commencing you should ensure that all services have been clearly located and identified by contacting "Dial before you Dig" by telephoning 1100.

2. Electronic Plan Information

Requirements for the submission of electronic plans to Council

- (a) File format for drawings submitted is to be dxf.
- (b) Where possible the dxf is to be projected using real world co-ordinates.
- (c) Council's preferred projection is MGA94 using the GDA94 datum, zone 56 south. If a projection other than MGA94 is used then the details must be provided with the file and a justification needs to be provided as to why MGA94 wasn't used.
- (d) In the case where information is unable to be supplied in real world coordinates, then ground survey points (minimum 2) marked on the dxf, must be supplied so that the dxf can be transformed from non-earth to real world.

- (e) A text file listing the layers used and the themes placed on each layer is to be supplied.
- (f) Drawings must contain separate layers for each theme e.g. the layer containing contour lines should not contain outlines for trees or roads.

3. Submission of Linen Plan of Subdivision

The submission of a final Linen Plan, eight (8) helio copies and an electronic copy thereof, together with any instrument creating an easement and restriction as to user pursuant to Section 88B of the Conveyancing Act.

4. On-site Sewage Management

Future applications for the development of the land will require an On-Site Sewage Management System. Such a system requires approval from Council to install, construct or modify under Section 68 of the Local Government Act 1993. Applications to install a system must be accompanied by a Wastewater Management Plan including a Site and Soil Assessment prepared by a suitably qualified person.

Advice from Roads and Maritime Services

- 5. There is a potential for road traffic noise to impact on development on the site. In this regard, the developer, not Roads and Maritime is responsible for providing noise attenuation measures in accordance with the Office of Environment and Heritage NSW Road Noise Policy 2011, should the applicant seek assistance at a later date.

Advice from NSW Rural Fire Service

- 6. This approval is for the subdivision of land only. Any further development application for class 1, 2 and 3 buildings as identified by the Building Code of Australia may be subject to separate application under Section 79BA of the Environmental Planning and Assessment Act 1979 and address the requirements of "Planning for Bush Fire Protection 2006".
- This document is a development consent only, and does not authorise construction or subdivision works to commence. Prior to commencing any building, subdivision or associated construction works, the following provisions of the Environmental Planning and Assessment Act 1979 (the 'Act') are to be complied with:
 - (i) A Construction Certificate is to be obtained in accordance with Section 81A(2)(a) of the Act.
 - (ii) A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b) of the Act.
 - (iii) Council is to be notified at least two (2) days before the intention to commence building works, in accordance with Section 81A(2)(c) of the Act.
- Failure to comply with any of the above requirements is an offence under the provisions of the Act, and may result in enforcement action being taken by Council if these requirements are not complied with.

DA 87/2015

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Muswellbrook Shire Council

RIGHT OF APPEAL:

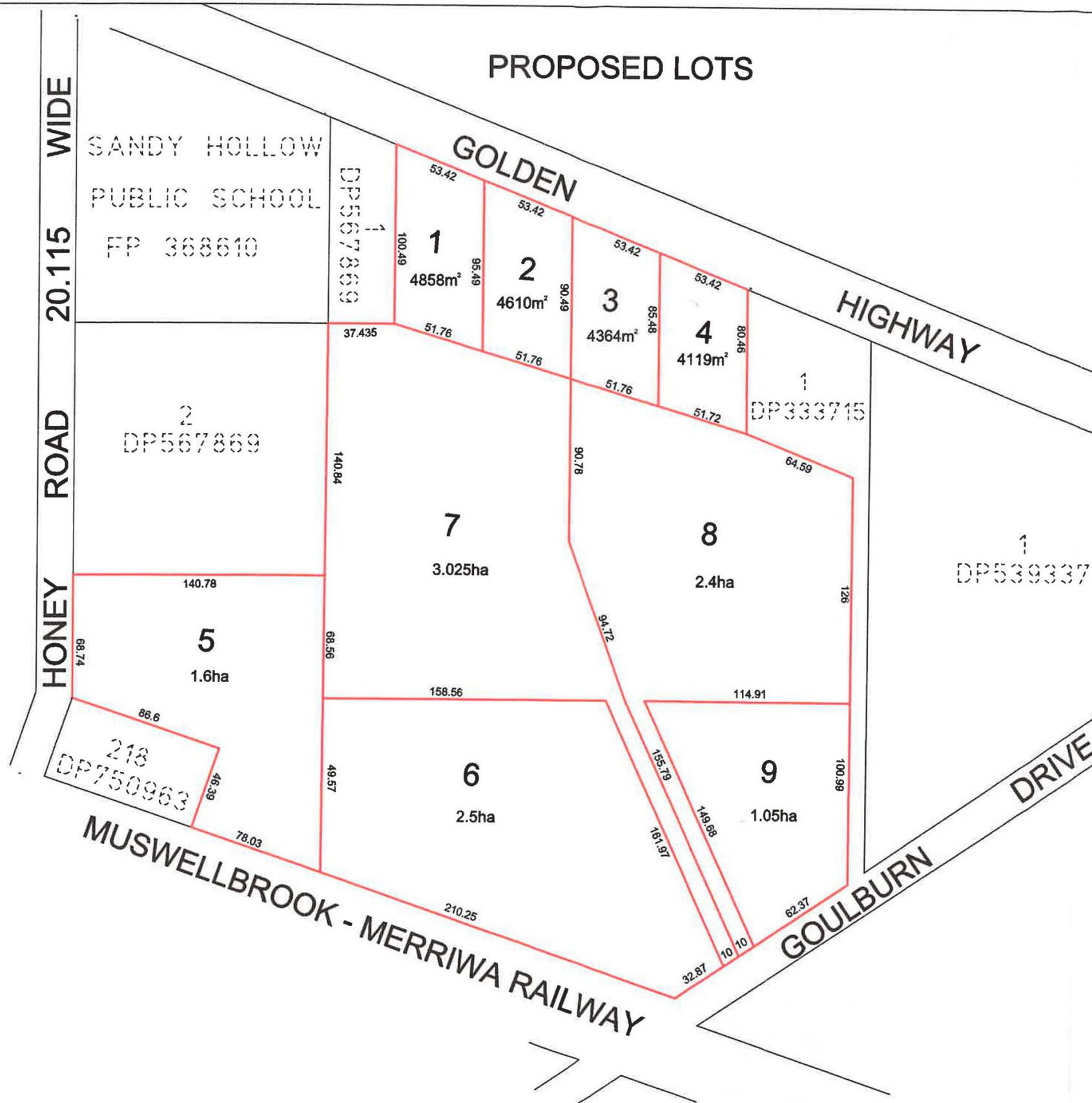
Section 82A of the Environmental Planning and Assessment Act 1979 provides that the applicant may request the Council to review the determination. The request must be made in writing (or on the review application form) within six (6) months *after receipt of this Notice of Determination*, together with payment of the appropriate fees. It is recommended that the applicant discuss any request for a review of the determination with Council Officers before lodging such a request.

If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act, 1979 gives you the right to appeal to the Land and Environment Court within six (6) months after the date on which you receive this notice.

APPROVED UNDER DELEGATED AUTHORITY

Donna Watson
Development Planner

Date 19 / 5 / 2016



MUSWELLBROOK SHIRE COUNCIL
This document forms part of the approval referred to
in the Council's notice of determination dated
19 MAY 2016
endorsed by: *[Signature]*

IMPORTANT NOTE
THIS PLAN IS PREPARED FOR MR A. THRIFT
FOR DEVELOPMENT APPLICATION PURPOSES
AND SHOULD NOT BE USED FOR ANY OTHER PURPOSE.
BOUNDARIES SHOWN ON THIS PLAN ARE APPROXIMATE ONLY
AND HAVE BEEN COMPILED FROM EXISTING RECORDS.
THIS NOTE IS AN INTEGRAL PART OF THIS PLAN.

MM HYNDES BAILEY & Co.
REGISTERED SURVEYORS - TOWN PLANNING - CIVIL DESIGN
Surveying the Hunter since 1920
Ph: 02 85432475 Fax: 02 85434400 Email: office@hbsurveys.com.au
GROUND FLOOR 108 Bridge Street (PO Box 26), MUSWELLBROOK NSW 2333



PROPOSED SUBDIVISION
LOT 31 DP1156452
MERRIMA ROAD, SANDY HOLLOW

SCALE: 1:2500 (A3)
FILE: 215169DA
DATE: 8.07.2015

CLIENT: MR A. THRIFT

LGA: MUSWELLBROOK
PARISH: WICKHAM
COUNTY: BRISBANE

SHEET	OF SHEETS
1	1
JOB REF: 215169	

TO COUNCIL,

I ADAM THRIFT HAVE SPOKE WITH
PARTIES ABOUT THE DEVELOPMENT OF CONSENT
REGARDING SUB-DIVISION OF THE LAND OPPOSITE
MY PROPERTY ON HONEY LAKE & UNDERSTAND
THEY HAVE A SIMILAR REQUIREMENT FOR THE
~~ROAD~~ WIDTH OF THE ROAD AS PROPOSED
TO BE PLACED ON MY DEVELOPMENT CONSENT
APPLICATION. AND ARE Hoping TO COME
TO AN AGREEMENT WITH COUNCIL'S HELP
REGARDING THIS. ONCE THE APPLICATION HAS
BEEN APPROVED.

SIGNED ADAM THRIFT



7 DATE OF NEXT MEETING

18 November 2019

8 CLOSURE