SECTION 8 – RURAL & ENVIRONMENTAL ZONE DEVELOPMENT

8.1 INTRODUCTION

This section applies to development in RU1, E3 & W1 zones

8.1.1 Dwelling Houses on existing parcels of land

The Muswellbrook Shire LEP defines housing opportunities in rural areas. Houses are permitted according to lot sizes or according to the subdivision history. Where the original development consent expressly anticipated dwelling entitlements prior to the gazettal of the Muswellbrook Shire LEP under the former Muswellbrook LEP 1985, those dwelling entitlements are retained.

Alternatively, an "existing parcel of land" is comprised of land that does not already contain a dwelling (being any areas of adjoining or adjacent land held in the same ownership on, and continuously from, 11 April 1974, and includes any such area from which land has been excised for public purpose after that date) as at 11 April 1974.

Therefore, an existing parcel of land may be a single parcel of land or the aggregation of adjoining or adjacent land parcels as they were on 11 April 1974. Where land is still in the same configuration that it was on 11 April 1974, then consent can be issued for a house on the land irrespective of the holding size.

To determine if a property comprises an existing parcel of land may involve considerable historic research. Road widening or acquisition of land for a public purpose does not affect an existing parcel of land. An existing holding may have included land separated by a road or defined creek. There have been a number of instances in Muswellbrook where a part of rural land separated by a road has been sold off to adjoining landowners. In such instances, the residue will not comprise an existing parcel of land.

Where land does not comprise an existing parcel of land, minimum lot sizes under the Muswellbrook Shire LEP apply.

Where a dwelling house may not be permissible on a parcel because the land once formed part of a larger holding and has been "excised" from a larger rural holding without development consent, the land may only be used for a purpose permitted under the LEP 2008 other than a dwelling house.

<u>Objective</u>

a) To ensure that claims for dwelling entitlements are based upon relevant subdivision and property history

<u>Controls</u>

(i) Development applications for new dwellings demonstrate that the subject land comprises the whole of an existing holding including historic ownership pattern from title documents.

(ii) Development applications for new dwellings demonstrate development consent for original subdivision under the Muswellbrook LEP 1985 granted dwelling entitlement under that instrument.

8.2 BUILT FORM

8.2.1 Scenic Protection and Building Location

Objectives

a) To ensure that the location of buildings do not detract from the natural or rural setting or scenic qualities of a site
b) To ensure that buildings do not dominate the surrounding natural landscape features

Controls

(i) The roof line of the building must not protrude above natural ridge or tree lines when viewed from public areas and public roads.
(ii) Substantial remnant vegetation is protected from disturbance.
(iii) Outbuildings are located in proximity of and to the rear of the main dwelling house when viewed from the nearest road. Outbuildings should be located at the rear of the main house when viewed from the road and form a "homestead group" of buildings. Shearing sheds and hay sheds are appropriate away from the homestead group.
(iv) The dwelling house is sited on land identified as being suitable for construction and free from contamination, flooding and bushfire risk.
(v) Privacy and views of neighbouring houses are reasonably retained.

8.2.2 Setbacks

Objectives

a) To ensure that development in rural areas is located to minimise visual and acoustic impacts on public places
b) To ensure that development in rural areas is located in consideration of existing and possible future land uses on adjoining land.

Controls

(i) Buildings are setback a minimum of 50m from any public road
(ii) Buildings are not located within 10m of any property boundary.
(iii) A suitable buffer area is established in the vicinity of agricultural operations that may occur on adjoining land.
(iv) Separation fencing is provided between development land and any adjoining rail corridor.
(v) Development adjacent to rail corridors will require an acoustic report to be submitted to Council to address and indicate measures to mitigate potential impacts from noise and vibration. Relevant publications available from "Railcorp" for consideration are:-
    - *Rail Related Noise and Vibration; Issue to Consider in Local Environmental Planning*
    - *Interim Guidelines for Councils - consideration of rail noise and vibration in the planning process*
    - *Guidelines for applicants - consideration of rail noise and vibration in the planning process*

8.2.3 Colours and materials

Objectives

a) To ensure that colours and materials used in new buildings blend in with and do not dominate the surrounding landscape
b) To ensure new buildings do not result in adverse visual impacts to road users or nearby properties

Controls

(i) Use natural colours, muted and earth tones for major areas of the building, such as walls and roof, and restrict stronger colours to smaller features such as window frames, doors and decorative woodwork
(ii) Use factory pre-coloured materials with low reflective properties.
(iii) Avoid extensive use of highly reflective glass, highly reflective metal cladding (such as *Zincalume* and white *Colorbond*) and plastics on the exterior of buildings, unless it can be demonstrated that this appropriate to the particular circumstances that exist on the site.

8.2.4 Car parking and Access

Objectives

a) To ensure that adequate car parking and access is provided to service new development

Controls

(i) Generally access roads to serve specific developments provide direct access to a public road under the care and control of Council, comprising all weather access for a two wheel drive vehicle.
(ii) Car parking provided on site complies with any relevant requirements within section 16 of this DCP, and where car parking requirements apply, access roads are designed and constructed in accordance with relevant AS2890.1 & AUS-PEC requirements relative to the projected traffic flows.
(iii) Entry gateways are set back sufficiently from the front boundary to allow vehicles to pull up off the public road carriageway.
(iv) Access directly from a sealed road is to incorporate a sealed section between the road seal and the boundary alignment to minimise gravel being deposited on the road surface.
(v) Rural property accesses shall be designed to comply with Council's specifications for Rural Property Access.
(vi) Rural property access is to be designed so that stormwater flows do not discharge down the access carrying sediment and debris onto Council's roads. To accommodate this requirement the road shall be designed to include measures such as mitre drains, pipe culverts, causeways, diversion banks, or other similar water management devices.

8.2.5 Temporary Dwellings

Objectives

a) To ensure that buildings used for temporary dwellings do not detract from the general amenity of the locality
b) To ensure consistency in the application of provisions relating to periods of temporary occupation

Controls

(i) Buildings may be used for the purpose of temporary dwellings for a maximum period of three (3) years from the date upon which any Occupation Certificate is issued for the building
(ii) Upon the expiration of the time period referred to in (i) above, the building shall not be used for residential purposes, and fixtures that render the building capable of separate habitation shall be removed
(iii) Temporary dwellings shall comprise buildings that can be easily adapted to a compatible non-habitable use upon expiration of the period for temporary habitation.

8.3 ENVIRONMENTAL MATTERS

The management of significant remnant vegetation is an issue that requires careful consideration. The Muswellbrook Shire LEP contains provisions relating to proposals that have the potential to impact upon significant remnant vegetation occurring on some sites.

The “degradation of native riparian vegetation” is also listed as a key threatening process under the provisions of the Fisheries Management Act. Riparian areas require careful management to ensure biodiversity values are maintained and the quality of water resources is not eroded over time.

These controls identify matters to be considered in preparing or assessing any proposal that has the potential to impact on these environmentally sensitive areas. It is the not the intention of these controls to restrict ongoing agricultural activities, but to ensure that new developments properly address the likely impacts of that development being allowed to proceed if an approval is required beforehand.

8.3.1 Topography

Objectives

a) To preserve the natural landform of the Shire
b) To ensure that any developments are constructed to be unobtrusive and consistent with relevant landform conditions
c) To ensure that any filling of area or rehabilitation is undertaken to produce a final landform that is consistent with surrounding topography.

Controls

(i) The completion of a site evaluation during the assessment of development applications to ensure consistency with surrounding areas and existing topography
(ii) The erection of structures to utilise materials and colours which are relevant to the surrounding rural landscape and which protect the visual amenity of the area

(iii) The consideration of landform relevant issues (such as existing water drainage relevant to the site), during the assessment of proposed developments.

8.3.2 Vegetation

Objectives

a) To protect and enhance the remnant vegetation distributed across the Muswellbrook Shire
b) To comply with the provisions of Native Vegetation Act 2003 which aims to prevent broad scale clearing across NSW
c) To protect and preserve natural fauna habitat through the protection of native remnant vegetation
d) Consideration of matters during the assessment of development applications as listed by the Fisheries Management Act 1994, Threatened Species Conservation Act 1995 and Environmental Protection and Biodiversity Act 1999.
e) To minimise the amount of clearing required to develop properties to that only as necessary for development.
f) Reduce the spread of weed species.

Controls

(i) Identification and control of developments which are expected to impact on the areas of remnant vegetation as determined and mapped by *The Vegetation of the Central Hunter Valley NSW* project represented in Council's native vegetation mapping layer.
(ii) The clearing of native remnant vegetation or protected regrowth on properties (excluding permitted activities) which are zoned as rural or rural residential must receive appropriate approval from the Catchment Management Authority (CMA) in regards to the Native Vegetation Act 2003.
(iii) The approval of any clearing in regards to native remnant vegetation or protected regrowth within the definitions of the Native Vegetation Act 2003 will only be granted by the CMA if the clearing will improve or maintain environmental outcomes.
(iv) Any clearing of native remnant vegetation or protected regrowth which is deemed to be 'permitted clearing' under the definitions of the Native Vegetation Act and which does not require CMA approval, is to be undertaken as per the requirements of the Act and to ensure that clearing is limited only to those areas deemed necessary for the development.
(v) The provisions of Clause 5A of the *Environmental Planning and Assessment Act 1979* may require the submission of a flora and fauna assessment report with the development application. See the guidelines for submitting applications in Section 3 of this DCP.

8.3.3 Riparian buffers

Objectives

a) To ensure that riparian buffers are identified and protected from adverse future development impacts
b) To maintain riparian buffer stability, vegetative cover and in stream habitats
c) To encourage rehabilitation and restoration following disturbance through the use of recognised rehabilitation techniques and the planting of native species
d) Consideration of matters during the assessment of development applications as listed by the Fisheries Management Act 1994, Threatened Species Conservation Act 1995 and Environmental Protection & Biodiversity Act 1999.
e) To support the objectives of the Catchment Action Plan development by the Hunter and Central Rivers Catchment Management Authority
f) Protect and enhance wildlife corridors which are located in the riparian vegetation of watercourses.

Controls

(i) A riparian buffer area is generally defined as the area located within 40m of each bank of a river, stream, creek, tributary or other natural water course.
(ii) Avoid undertaking works within riparian buffer areas where other options are available. Any proposed development within the riparian buffer area is accompanied by a detailed consideration of the environmental impacts associated with the proposal and alternative options considered and reasons why those alternatives are not viable.
(iii) Consideration of habitat connectivity during the assessment of developments which may impact on watercourses and riparian vegetation.
(iv) If works associated with development are required to occur within riparian buffer areas, Council will not grant consent to the development unless it is satisfied that appropriate measures are incorporated to:-
- Maintain stream bank and riparian stability
- Manage and prevent erosion and sedimentation through appropriate controls in accordance section 20 of this DCP
- Maintain or restore native vegetative cover
- Minimise the disturbance to in stream habitats such as gravel beds, snags, aquatic macrophytes etc.
- Protect water quality
- Implement rehabilitation and restoration measures following disturbance

(v) Works proposed within the W1 zone demonstrate compliance with the provisions of “Policy and Guidelines – Aquatic Habitat Management and Fish Conservation 1999”, produced by the Department of Primary Industries where works are proposed in riparian buffer areas.
(vi) The decline of riparian vegetation is listed by the Fisheries Management Act as a key threatening process. The assessment of activities which involve an impact on riparian vegetation must take this into consideration and may be required to receive concurrence or approval from the Department of Primary Industries.

Important Notes

- Any works which occur within proximity to a watercourse may require permits, approvals or licences from other bodies such as the NSW Department of Water & Energy or the Department of Primary Industries. It is the responsibility of the proponent to establish the requirement for additional permits or approvals.

- Developments which are proposed on properties which include riparian vegetation should identify a buffer area along the watercourse to the extent of the vegetation and discourage activities within this area.

8.3.4 Management of Rivers, Creeks, Streams and Drainage

Objectives

a) To protect and enhance natural water courses and their associated vegetation throughout the Shire
b) Protection of fauna habitat associated with water courses and riparian vegetation to promote biodiversity
c) Consideration of matters during the assessment of development applications as listed by the Fisheries Management Act 1994, Threatened Species Conservation Act 1995 and Environmental Protection & Biodiversity Act 1999.
d) Ensure that development maintains and enhances the integrity of water quality, ecosystem health and biodiversity within or adjacent to key aquatic habitats
e) Protect and enhance wildlife corridors which are located in the riparian vegetation of watercourses.

Controls

(i) Consideration of existing flow regimes of natural water courses which may be impacted by activities or developments
(ii) Large scale or high density developments to be located in areas located alluvials zones.
(iii) Mitigation and/ or treatment of water quality impacts from land use activities or development
(iv) Assessment of increased flows to natural water courses and drainage channels during the preparation of development applications and supporting documentation.
(v) Consideration of habitat connectivity during the assessment of developments which may impact on watercourses and riparian vegetation.
(vi) any activities which require additional permits or approvals to be obtained by the applicant or landholder.

8.3.5 Services

Objectives

a) To ensure that rural development is provided with adequate services

Controls

(i) A suitable area is available for perpetual on-site disposal of wastes in accordance with section 23 of this DCP.
(ii) An adequate water supply is provided.

8.3.6 BUFFERS

Objectives

a) Adequate buffers are provided between proposed development and existing development on adjoining land or where potential land use conflicts may arise.
b) The agricultural potential or residential amenity of land will not be diminished as a result of a development proposal.

Controls

Compliance with Section 22 of this DCP.

8.4 FROST CONTROL FANS

"Frost Control Fan" is a machine that typically consists of a tower approximately 10 – 11 metres in height with a 5 – 6 metre long propeller/blade at the top. An engine is mounted at the base of the tower and is used to drive the blade via driveshafts and gearing. The head of the fan rotates through 360 degrees on a vertical axis.

The principal function of the frost control fan is to mix warmer air from higher atmospheric inversion layers with the cold air layer closer to the ground, normally reducing the frost damage to crops

Objectives

a) To provide an equitable balance between the use of frost control fans and the amenity of surrounding properties;
b) To address the interface issues regarding the installation and operation of frost control fans and the concern of adjacent neighbours;
c) To set standards appropriate for the installation and operation of frost control fans; and
d) To allow for sustainable horticulture.

Controls

(i) When a development Application is submitted to Council for the installation of a frost control fan, it must be accompanied by the following information:

a. Scaled site diagram showing the proposed location of the frost control fan/s and the location of any dwelling within the 1 km of the frost control fan.

b. Structural engineer's certificate and drawings for the footings and structural steelwork. (This information may be provided by the manufacturer).

c. Noise acoustic report modelling the extent of impact of the proposed frost control fan upon the surrounding properties. The model should be based upon manufacturer's sound level data. The noise acoustic report should also indicate that the proposed frost control fans will not exceed the noise criteria as shown in Table 1.

d. The L_{Aeq} measurements from the manufacturer must have been taken over a period of 15 minutes and over a range of distances from 10m to 1000m from the frost control fan. These readings

must be included in the information submitted with the Development Application.

e. Details of crop/s to be protected by the frost control fan/s and the most susceptible times of that crop.

f. Details of the anticipated temperature at which damage occurs to the crop/s proposed to be protected and the anticipated temperatures that the fan/s would come on to protect the crop/s from frost.

g. The number of frosts on average per year, which currently affect the crop/s according to currently available climatic data. E.g. from CSIRO, Department of Agriculture or Bureau of Meteorology.

h. These criteria apply:

Location of affected residence	**Outdoor Criteria (L_{Aeq})**	**Indoor Criteria (L_{Aeq})**
Residence located within 1 km of Frost Control Fans	55 dBA (max)	35 dBA (max)

TABLE 1.

(ii) Once a frost control fan has been approved by Council, it must operate under the following conditions:

a. The frost control fans must have a thermostatic control that is set at all times to the fans are not to operated above 0^0 celcius.

b. The driving engine for the frost control fan must be housed in a noise attenuating housing.

c. Whilst the frost control fans are in operation, the noise level measured at a distance of 1m from any bedroom window of a dwelling situated on an affected separate property must not exceed the outdoor or indoor limit.

Notes:

i) Indoor noise levels are to be measured from the inside of a bedroom of a residence (with all windows closed)

ii) When noise measurements are to be carried out, the measurement period must be for at least 15 minutes.

iii) All noise measurements are to be carried out by a qualified noise control officer (as authorised under the POEO Act)

iv) The noise limits contained in table 1 apply to the total noise from all frost fans on the premises under investigation operating simultaneously.

(iii) Should Council have reason to believe the operations are exceeding the limits set in Table 1, the operator is to undertake an acoustic report within seven (7) days notification from Council to determine compliance with the DCP. Council may take further action should the report not be received in the specified timeframe.

- In the event where noise criteria for the operation of the fans are met, but the level of disturbance is not reduced, Council will require the operator to undertake further mitigation measures to reduce the level of disturbance from the Fans.
- After all issues are taken into consideration Council will determine whether further action is required.

Notes:

When noise measurements are to be taken, the following points will apply:

- Noise measuring instruments must be equivalent to Type 2 (or better) as defined in the Australian Standard 1259 "Sound Level Meters", Parts 1 and 2.
- Apart from the provisions already contained in this DCP, noise measurements must be conducted in accordance with Australian Standard 2659, "Guide to the use of Sound-measuring Equipment", Parts 1 and 2.

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