

Muswellbrook Shire Council

ORDINARY COUNCIL MEETING

BUSINESS PAPER

1 MARCH 2022



ORDINARY COUNCIL MEETING, 1 MARCH 2022

MUSWELLBROOK SHIRE COUNCIL

P.O Box 122
MUSWELLBROOK
23 February, 2022

Councillors,

You are hereby requested to attend the Ordinary Council Meeting to be held in the AUDITORIUM, Muswellbrook RSL Club, Bridge Street, Muswellbrook on **1 March, 2022** commencing at 6.00pm.

Fiona Plesman
GENERAL MANAGER

Order of Business

ITEM	SUBJECT	PAGE NO
1	ACKNOWLEDGEMENT OF COUNTRY	14
2	CIVIC PRAYER	14
3	APOLOGIES AND LEAVE OF ABSENCE	14
4	CONFIRMATION OF MINUTES OF PREVIOUS MEETING	14
5	DISCLOSURE OF ANY PECUNIARY AND NON-PECUNIARY INTEREST	14
6	PUBLIC PARTICIPATION	15
7	MAYORAL MINUTES	15
8	GENERAL BUSINESS	15
9	BUSINESS ARISING Nil	15
10	ENVIRONMENTAL SERVICES	16
10.1	DA 2005-451 - ROAD NAMING APPLICATION	16
10.2	DA 2021-87 - COMMERCIAL CHANGE OF USE AND ALTERATIONS AND ADDITIONS - 12 OGILVIE STREET, DENMAN	20
10.3	PLANNING PROPOSAL TO REZONE THE FORMER FORESTRY SITE - 72-74 MAITLAND STREET, MUSWELLBROOK	59
10.4	AMENDMENT TO MUSWELLBROOK DCP 2009 - SECTION 13 - FLOODPLAIN MANAGEMENT	109
10.5	SUBMISSION ON DRAFT HUNTER REGIONAL PLAN 2041	136
10.6	SUBMISSION ON AGRITOURISM AMENDMENT ORDER	145
10.7	UPDATE REPORT TO COUNCIL - PLANNING, ENVIRONMENT AND REGULATORY SERVICES	159
11	COMMUNITY INFRASTRUCTURE	170
11.1	WATER AND SEWERAGE DEVELOPMENT SERVICING PLANS	170
11.2	CONCEPT DESIGN FOR DENMAN TO SANDY HOLLOW WATER PIPELINE	179
11.3	MOUNT PLEASANT OPERATIONS S.138 ROADS ACT 1993 PERMIT FOR ROAD MAINTENANCE	221
11.4	MANGOOLA COAL CONTINUED OPERATIONS ROAD MAINTENANCE MANAGEMENT PLAN	227
11.5	LARGE PLANT REPLACEMENT PROGRAMME	230
11.6	MAJOR PROJECTS STATUS REPORT	238
11.7	REVIEW OF BEST PRACTICE MANAGEMENT OF WATER SUPPLY AND SEWERAGE SERVICES FOR 2019-2020	242

11.8	FUTURE FUND POLICY	251
11.9	SPONSORSHIP REQUEST - ROTARY CLUB OF MUSWELLBROOK	264
12	CORPORATE AND COMMUNITY SERVICES	266
12.1	ELECTION TO COUNCIL COMMITTEES AND DELEGATE POSITIONS	266
12.2	JOINT REGIONAL PLANNING PANEL EXPRESSION OF INTEREST	275
12.3	RELATED PARTY DISCLOSURES POLICY	279
12.4	STORE AND MATERIAL STOCKTAKE - 3 NOVEMBER 2021	316
12.5	AUTHORISATION UNDER SECTION 226 OF THE LOCAL GOVERNMENT ACT	318
12.6	REPORT ON COUNCIL GRANT FUNDING AND COMMUNITY ENGAGEMENT - MARCH 2022	319
12.7	REPORT ON INVESTMENTS HELD AS AT 31 JANUARY 2022	323
12.8	JANUARY 2022 MONTHLY FINANCIAL REPORTS	335
12.9	COMMUNITY SERVICES	344
13	REPORTS FROM COMMITTEES	347
13.1	AUDIT, RISK AND IMPROVEMENT COMMITTEE MEETING HELD ON WEDNESDAY 15 DECEMBER, 2021	347

MINUTES OF THE AUDIT, RISK AND IMPROVEMENT COMMITTEE MEETING OF THE MUSWELLBROOK SHIRE COUNCIL HELD IN VIA TEAMS / THE LOXTON ROOM, ADMINISTRATION CENTRE, 60-82 BRIDGE STREET, MUSWELLBROOK ON WEDNESDAY 15 DECEMBER, 2021 COMMENCING AT 9.01AM.

PRESENT: Mr M. Morley (Chair), Mr P. Quealey, Cr R. Scholes, Ms F. Plesman (General Manager) and Mr D. Walsh (Manager – Corporate Services & Chief Financial Officer).

IN ATTENDANCE: Nil.

1 APOLOGIES AND LEAVE OF ABSENCE

Nil

2 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

RECOMMENDED on the motion of Mr Quealey and Mr Morley that:

The Minutes of the Audit, Risk and Improvement Committee Meeting held on 6 October 2021, and the Extraordinary Audit, Risk and Improvement Committee Meeting held on 20 October 2021, 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

Nil

4 BUSINESS ARISING

Nil

5 RISK MANAGEMENT

5.1 MAJOR PROJECTS STATUS REPORT

A report was submitted to the Committee providing an update on the of status of major projects updated to 26 October 2021.

The Committee was advised that the information is reported to Council on a monthly basis.

RECOMMENDED on the motion of Mr Quealey and Mr Morley that:

The information contained in this report be noted.

5.2 RISK MANAGEMENT FRAMEWORK & POLICY UPDATE

A report was submitted to the Committee presenting Council's proposed updated *Enterprise Risk Management Framework* and *Enterprise Risk Management Policy* to the Audit, Risk and Improvement Committee (ARIC), and seeking feedback.

RECOMMENDED on the motion of Mr Quealey and Mr Morley that:

The ARIC reviews and provides feedback in response to Council's proposed:

1. *Enterprise Risk Management Framework* (Attachment A);
2. *Enterprise Risk Management Policy* (Attachment B).

MINUTES OF THE AUDIT, RISK AND IMPROVEMENT COMMITTEE MEETING OF THE MUSWELLBROOK SHIRE COUNCIL HELD IN VIA TEAMS / THE LOXTON ROOM, ADMINISTRATION CENTRE, 60-82 BRIDGE STREET, MUSWELLBROOK ON WEDNESDAY 15 DECEMBER, 2021 COMMENCING AT 9.01AM.

6 INTERNAL AUDIT

Nil

7 EXTERNAL AUDIT

Nil

8 LEGISLATIVE COMPLIANCE

Nil

9 GOVERNANCE AND INTERNAL CONTROL

Nil

10 PERFORMANCE MANAGEMENT AND IMPROVEMENT

10.1 2021-2022 OPERATIONAL PLAN 30 SEPTEMBER QUARTERLY REVIEW

A report was submitted to the Committee advising that the 2021/22 Operational Plan had been reviewed over the months of 1 July 2021 to 30 September 2021 and was presented to Council at the 26 October 2021 Ordinary Meeting.

RECOMMENDED on the motion of Mr Quealey and Mr Morley that:

The 2021/22 Operational Plan Review dated 30 September 2021 be noted.

10.2 SEPTEMBER BUDGET REVIEW 2021

A report was submitted to the Committee presenting the September, 2021 Budget Review.

RECOMMENDED on the motion of Mr Quealey and Mr Morley that:

ARIC to note the list of proposed changes for incorporation into the 2020/21 Budget.

10.3 SERVICE DELIVERY REVIEW PROGRAM QUARTERLY UPDATE

A report was submitted to the Committee providing an update on the Service Delivery Review Program.

RECOMMENDED on the motion of Mr Quealey and Mr Morley that:

The information contained in this report be noted.

11 GENERAL BUSINESS

11.1 ARIC FORWARD MEETING PLAN 2021

A report was submitted to the Committee providing the forward meeting plan.

RECOMMENDED on the motion of Mr Quealey and Cr Scholes that:

The Committee note the information.

MINUTES OF THE AUDIT, RISK AND IMPROVEMENT COMMITTEE MEETING OF THE MUSWELLBROOK SHIRE COUNCIL HELD IN VIA TEAMS / THE LOXTON ROOM, ADMINISTRATION CENTRE, 60-82 BRIDGE STREET, MUSWELLBROOK ON WEDNESDAY 15 DECEMBER, 2021 COMMENCING AT 9.01AM.

PRESENT: Mr M. Morley (Chair), Mr P. Quealey, Cr R. Scholes, Ms F. Plesman (General Manager) and Mr D. Walsh (Manager – Corporate Services & Chief Financial Officer).

IN ATTENDANCE: Nil.

1 APOLOGIES AND LEAVE OF ABSENCE

Nil

2 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

RECOMMENDED on the motion of Mr Quealey and Mr Morley that:

The Minutes of the Audit, Risk and Improvement Committee Meeting held on 6 October 2021, and the Extraordinary Audit, Risk and Improvement Committee Meeting held on 20 October 2021, 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

Nil

4 BUSINESS ARISING

Nil

5 RISK MANAGEMENT

5.1 MAJOR PROJECTS STATUS REPORT

A report was submitted to the Committee providing an update on the of status of major projects updated to 26 October 2021.

The Committee was advised that the information is reported to Council on a monthly basis.

RECOMMENDED on the motion of Mr Quealey and Mr Morley that:

The information contained in this report be noted.

5.2 RISK MANAGEMENT FRAMEWORK & POLICY UPDATE

A report was submitted to the Committee presenting Council's proposed updated *Enterprise Risk Management Framework* and *Enterprise Risk Management Policy* to the Audit, Risk and Improvement Committee (ARIC), and seeking feedback.

RECOMMENDED on the motion of Mr Quealey and Mr Morley that:

The ARIC reviews and provides feedback in response to Council's proposed:

1. *Enterprise Risk Management Framework* (Attachment A);
2. *Enterprise Risk Management Policy* (Attachment B).

MINUTES OF THE AUDIT, RISK AND IMPROVEMENT COMMITTEE MEETING OF THE MUSWELLBROOK SHIRE COUNCIL HELD IN VIA TEAMS / THE LOXTON ROOM, ADMINISTRATION CENTRE, 60-82 BRIDGE STREET, MUSWELLBROOK ON WEDNESDAY 15 DECEMBER, 2021 COMMENCING AT 9.01AM.

6 INTERNAL AUDIT

Nil

7 EXTERNAL AUDIT

Nil

8 LEGISLATIVE COMPLIANCE

Nil

9 GOVERNANCE AND INTERNAL CONTROL

Nil

10 PERFORMANCE MANAGEMENT AND IMPROVEMENT

10.1 2021-2022 OPERATIONAL PLAN 30 SEPTEMBER QUARTERLY REVIEW

A report was submitted to the Committee advising that the 2021/22 Operational Plan had been reviewed over the months of 1 July 2021 to 30 September 2021 and was presented to Council at the 26 October 2021 Ordinary Meeting.

RECOMMENDED on the motion of Mr Quealey and Mr Morley that:

The 2021/22 Operational Plan Review dated 30 September 2021 be noted.

10.2 SEPTEMBER BUDGET REVIEW 2021

A report was submitted to the Committee presenting the September, 2021 Budget Review.

RECOMMENDED on the motion of Mr Quealey and Mr Morley that:

ARIC to note the list of proposed changes for incorporation into the 2020/21 Budget.

10.3 SERVICE DELIVERY REVIEW PROGRAM QUARTERLY UPDATE

A report was submitted to the Committee providing an update on the Service Delivery Review Program.

RECOMMENDED on the motion of Mr Quealey and Mr Morley that:

The information contained in this report be noted.

11 GENERAL BUSINESS

11.1 ARIC FORWARD MEETING PLAN 2021

A report was submitted to the Committee providing the forward meeting plan.

RECOMMENDED on the motion of Mr Quealey and Cr Scholes that:

The Committee note the information.

MINUTES OF THE AUDIT, RISK AND IMPROVEMENT COMMITTEE MEETING OF THE MUSWELLBROOK SHIRE COUNCIL HELD IN VIA TEAMS / THE LOXTON ROOM, ADMINISTRATION CENTRE, 60-82 BRIDGE STREET, MUSWELLBROOK ON WEDNESDAY 15 DECEMBER, 2021 COMMENCING AT 9.01AM.

11.2 ARIC MEETING ACTIONS STATUS UPDATE

A report was submitted to the Committee providing an update on the status of meeting actions.

RECOMMENDED on the motion of Mr Quealey and Mr Morley that:

The Committee note the information.

12 DATE OF NEXT MEETING

2 March 2022

13 CLOSURE

The meeting was declared closed at 10.08am.

.....
Ms F. Plesman
General Manager

.....
Mr M. Morley
Chairperson

		355
14	NOTICES OF MOTION / RESCISSION	358
	14.1 BENGALLA MODIFICATION PROJECT	358
15	QUESTIONS WITH NOTICE	364
	Nil	
16	COUNCILLORS REPORTS	364
17	QUESTIONS FOR NEXT MEETING	364
18	ADJOURNMENT INTO CLOSED COUNCIL	364
19	CLOSED COUNCIL	364
19.1	TENDER 2021-2022-0507 - LORNE STREET DRAINAGE UPGRADE <i>Item 19.1 is classified CONFIDENTIAL under the provisions of Section10A(2)(d)(ii) of the local government act 1993, as it deals with information that would, if disclosed, confer a commercial advantage on a competitor of the council, and Council considers that discussion of the matter in an open meeting would be, on balance, contrary to the public interest.</i>	
19.2	TENDER 2021-2022-0510 - LEGAL SERVICES PANEL <i>Item 19.2 is classified CONFIDENTIAL under the provisions of Section10A(2)(d)(i) of the local government act 1993, as it deals with commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it, and Council considers that discussion of the matter in an open meeting would be, on balance, contrary to the public interest.</i>	
19.3	TENDER 2021-2022-0511 - PROVISION OF PROPERTY AND BUILDING TRADES AND SERVICES PANEL <i>Item 19.3 is classified CONFIDENTIAL under the provisions of Section10A(2)(c) of the local government act 1993, as it deals with information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business, and Council considers that discussion of the matter in an open meeting would be, on balance, contrary to the public interest.</i>	
19.4	TENDER 2021-2022-0499 - DESIGN AND CONSTRUCTION OF FLUORIDE DOSING SYSTEM UPGRADE - TENDER ASSESSMENT <i>Item 19.4 is classified CONFIDENTIAL under the provisions of Section10A(2)(c) of the local government act 1993, as it deals with information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business, and Council considers that discussion of the matter in an open meeting would be, on balance, contrary to the public interest.</i>	
19.5	UPPER HUNTER ECONOMIC DEVELOPMENT CORPORATION <i>Item 19.5 is classified CONFIDENTIAL under the provisions of Section10A(2)(a) and 10A(2)(c) of the local government act 1993, as it deals with personnel matters concerning particular individuals (other than councillors), and information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business, and Council considers that discussion of the matter in an open meeting would be, on balance, contrary to the public interest.</i>	
19.6	CHANGES TO THE STAFF ESTABLISHMENT <i>Item 19.6 is classified CONFIDENTIAL under the provisions of Section10A(2)(a) of the local government act 1993, as it deals with personnel matters concerning particular individuals (other than councillors), and Council considers that discussion of the matter in an open meeting would be, on balance, contrary to the public interest.</i>	
20	RESUMPTION OF OPEN COUNCIL	366

21 CLOSURE 366

DATE OF NEXT MEETING: TUESDAY 5 APRIL 2022 366



**MUSWELLBROOK SHIRE COUNCIL
ORDINARY COUNCIL MEETING**

**AGENDA
TUESDAY 1 MARCH 2022**

- 1 ACKNOWLEDGEMENT OF COUNTRY**
- 2 CIVIC PRAYER**
- 3 APOLOGIES AND LEAVE OF ABSENCE**

Moved: _____ Seconded: _____

- 4 CONFIRMATION OF MINUTES OF PREVIOUS MEETING
RECOMMENDATION**

That the Minutes of the Ordinary Meeting held on **1 February 2022**, and the Extra Ordinary Meeting held on **22 February 2022**, a copy of which has been distributed to all members, be taken as read and confirmed as a true record.

Moved: _____ Seconded: _____

- 5 DISCLOSURE OF ANY PECUNIARY AND NON-PECUNIARY INTEREST**

Statement of Ethical Obligations

Councillors are reminded of their oath or affirmation of office, made under section 233A of the NSW Local Government Act 1993, to undertake the duties of the office of councillor in the best interests of the people of Muswellbrook Shire and Muswellbrook Shire Council and to faithfully and impartially carry out the functions, powers, authorities and discretions vested in them, under the Local Government Act 1993 or any other Act, to the best of their ability and judgment. Pursuant to the provisions of the Muswellbrook Shire Council Code of Meeting Practice and the Muswellbrook Shire Council Code of Conduct, Councillors are reminded of their obligations to disclose and appropriately manage conflicts of 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.

6 PUBLIC PARTICIPATION

7 MAYORAL MINUTES

8 GENERAL BUSINESS

9 BUSINESS ARISING

Nil

10 ENVIRONMENTAL SERVICES

10.1 DA 2005-451 - ROAD NAMING APPLICATION

Responsible Officer:	Sharon Pope - Executive Manager - Environment and Planning
Author:	Tanya Jolly - Project 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 2005-451 Road Naming Application Map

Documents referred to in assessment not attached:

- Local Environmental Plan 2009
- Development Control Plan 2009

APPLICATION DETAILS

Applicant:	McCloy Muswellbrook Pty Ltd
Owner:	Rylan Gibson
Proposal:	Road Naming Application
Location:	Stockyard Parade, Muswellbrook
Recommendation:	Approval

PURPOSE

This report has been prepared to assist Council in determining a street naming application for a new road constructed in the Ironbark Ridge Estate area of Muswellbrook as part of the development consent issued by Council under DA 2005/451.

OFFICER'S RECOMMENDATION

1. Council approves the proposed street name for exhibition and notification to the Geographical Names Board:
 - Herdsman Close
2. Delegate the determination of the street naming application to the General Manager where no submissions are received objecting to the proposed street name.
3. Where one or more public submissions are received that raise objections to the proposed name, or where a different street name is proposed by the Geographical Names Board, the street naming proposal is to be re-reported to Council.

Moved: _____ Seconded: _____

☐

Cr A. Barry

☐

Cr M. Bowditch

☐

Cr D. Douglas

☐

Cr J. Drayton

☐

Cr L. Dunn

☐

Cr J. Lecky



Cr R. Mahajan



Cr D. Marshall



Cr G. McNeill



Cr S. Reynolds



Cr R. Scholes



Cr B. Woodruff

BACKGROUND

Council has received a request to approve the naming of new roads approved for construction in the South Muswellbrook area as part of

Council issued an approval for the Residential Subdivision of one (1) Lot into One Hundred and Fifty-Seven lots (157) lots to occur in multiple stages at the subject site, known as Ironbark Ridge Estate, in 2006 (DA 2005/451).

A further stage is under construction and will result in a new cul-de-sac. A site plan showing the location of the road to be named is provided below.

The Proponent has applied to Council for use of the following street names:

- Herdsman Close

The street name has a "Rural Australia" theme, in line with the existing street names in the locality.

Under Section 162 of the Roads Act 1993 Council may name and number all public roads for which it is the Roads Authority. However, in accordance with Section 162(3), Council must follow guidelines published by the Geographical Names Board.

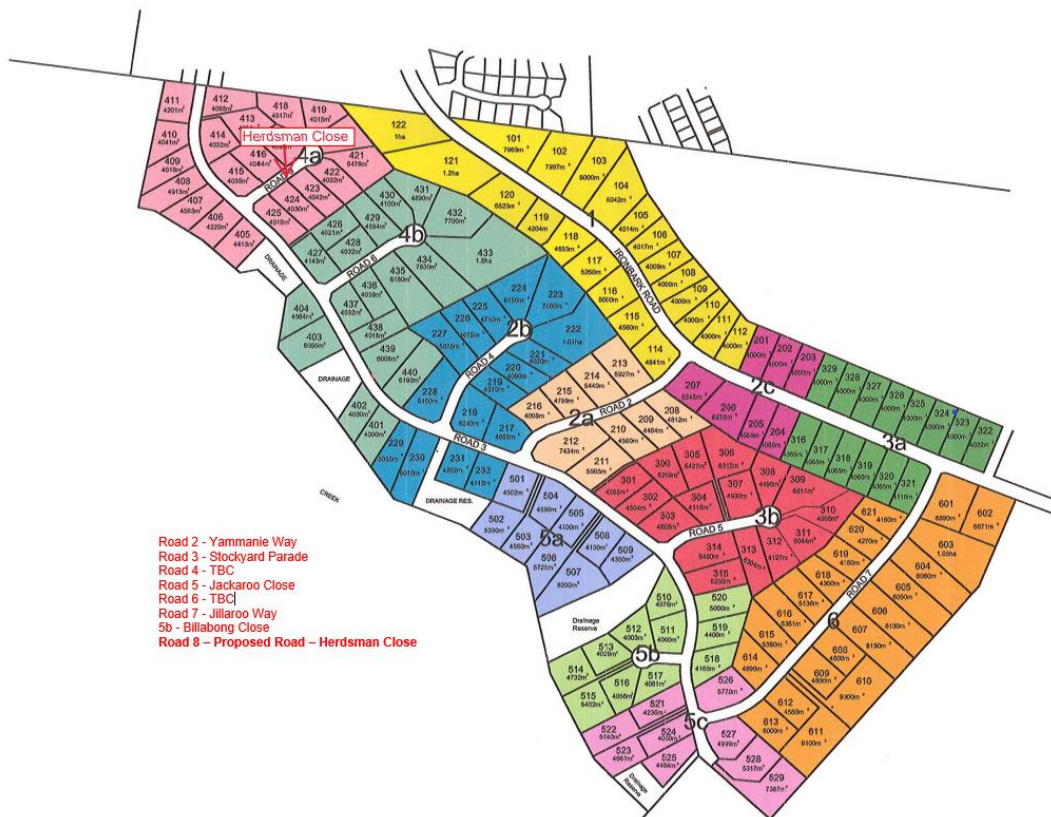
Consultation

If Council supports the proposed name, the next step in the process is formal notification for public feedback.

Options

Council may endorse or reject the proposed street names for community notification.

Should Council resolve not to endorse the proposed names it is recommended that they provide reasons for the rejection of the name and feedback for the Proponent to consider when proposing future names.



CONCLUSION

It is recommended that Council endorse the proposed name for public consultation and referral to the Geographical Names Board. The street name has a “Rural Australia” theme, in line with the existing street names in the locality.

Disclosure of Political Donations and Gifts:

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

SOCIAL IMPLICATIONS

This matter is unlikely to have any significant social implications for Council. Any objections to the proposed name will be considered should Council receive any submissions during notification.

FINANCIAL IMPLICATIONS

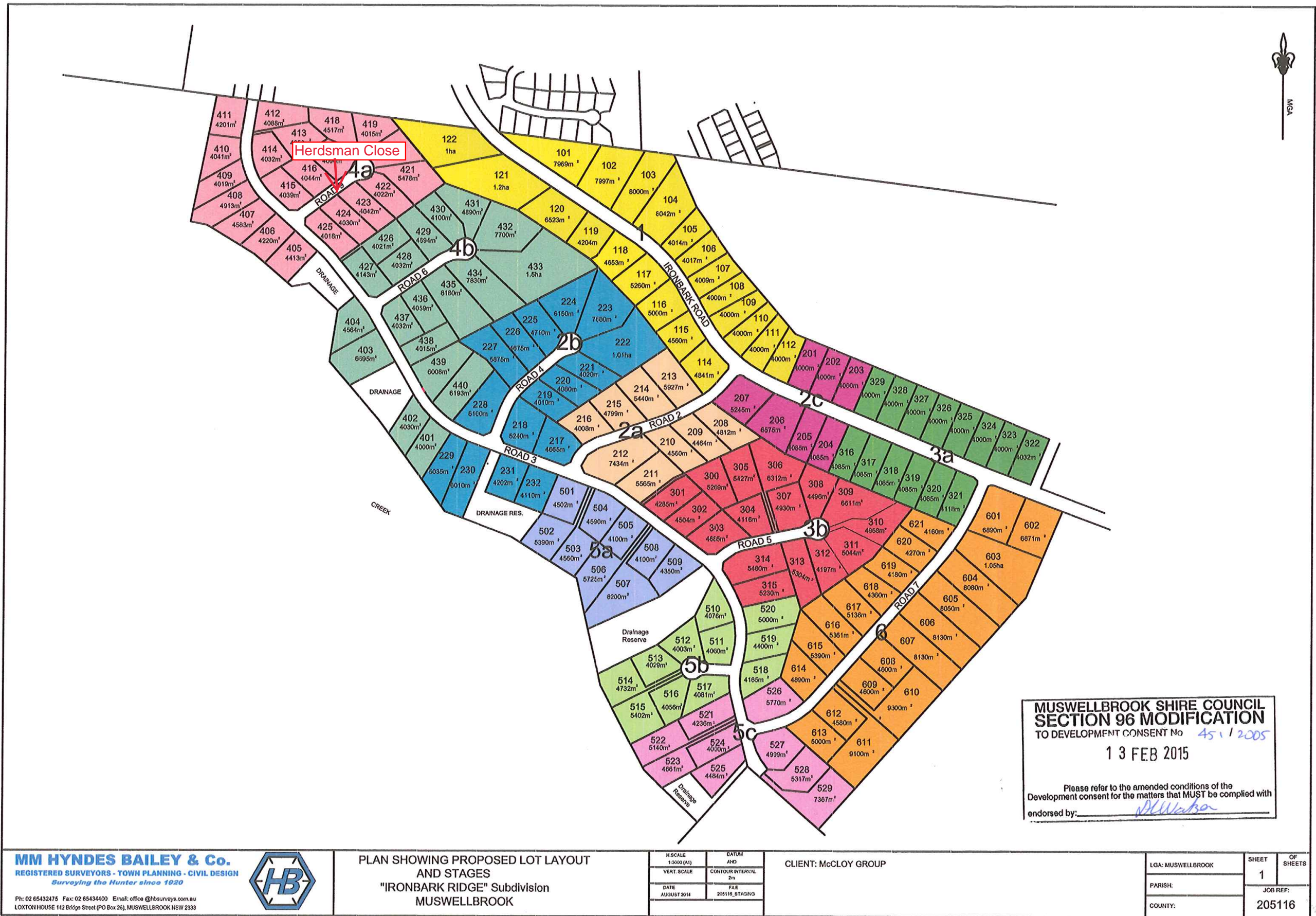
This matter has no direct financial impact upon Council’s adopted budget or forward estimates.

POLICY IMPLICATIONS

This matter has no specific policy implications for Council.

STATUTORY IMPLICATIONS

Nil.



10.2 DA 2021-87 - COMMERCIAL CHANGE OF USE AND ALTERATIONS AND ADDITIONS - 12 OGILVIE STREET, DENMAN

Attachments:	<p>A. DA 2021-87 - Section 4.15 Assessment</p> <p>B. DA 2021-87 Proposed Plans ↓</p> <p>C. DA 2021-87 Statement of Environmental Effects ↓</p>
Responsible Officer:	Derek Finnigan - Deputy General Manager
Author:	Hamish McTaggart - Co-Ordinator - Development
<i>Community Plan Issue:</i>	<i>A Council that is well managed, efficient and properly resourced and that is responsive to its communities and stakeholders</i>
<i>Community Plan Goal:</i>	<i>Maintain a strong focus on financial discipline to enable Council to properly respond to the needs of the communities it serves.</i>
<i>Community Plan Strategy:</i>	<i>Provide efficient and effective Development Application, Complying Development Certificate, Construction Certificate and Occupational Certificate assessment services.</i>

PURPOSE

The report relates to Development Application (DA) 2021/87, which involves the change of use of the retail premises at 12 Ogilvie Street, Denman to a restaurant and the carrying out of alterations and additions.

The proponent for the development application has requested that the matter be reported to Council for determination.

Council Officers are recommending that the development application be refused as the proposal does not comply with the car parking requirements of Section 16 of the Muswellbrook Development Control Plan 2009 (MDCP 2009) as no additional car parking is proposed to service the development. Due to this non-compliance the proposal is considered not to be in the public interest.

OFFICER'S RECOMMENDATION

Council refuses Development Application No. 2021/87 for the change of use of a retail premises to a restaurant and the carrying out of commercial alterations and additions at 12 Ogilvie Street, Denman (Lot 1 DP 997824 and Lot 12 DP 1277745) for the following reasons:

1. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not meet the development controls and objectives of Section 16.3 of the Muswellbrook Development Control Plan 2009 with regards to car parking requirements for non-residential development.
2. Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposal will have an adverse environmental impact by increasing demand for on-street parking in the area, extending parking into areas of residential development and reducing parking available for other businesses in the Denman Town Centre.
3. Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposal is not in the public interest due to the lack of car parking provision, or alternate arrangements being made with Council to support future parking provision in the Denman town centre.

Moved: _____ Seconded: _____

☐

Cr A. Barry

☐

Cr M. Bowditch

☐

Cr D. Douglas

☐

Cr J. Drayton

☐

Cr L. Dunn

☐

Cr J. Lecky

☐

Cr R. Mahajan

☐

Cr D. Marshall

☐

Cr G. McNeill

☐

Cr S. Reynolds

☐

Cr R. Scholes

☐

Cr B. Woodruff

DESCRIPTION OF THE PROPOSED DEVELOPMENT

The proposed development relates to 12 Ogilvie Street (Lot 1 DP 997824 and part Lot 2 DP 1277745).

The development site is zoned RU5 Village under the Muswellbrook Local Environmental Plan (MLEP) 2009, is located in the Denman Heritage Conservation Area and adjoins 'The Royal Hotel', a listed heritage item.

The proposed development was modified by the applicant through the assessment of the development application. The current development proposal involves:

- The change of use of the existing building to a licensed restaurant/small bar,
- The carrying out of alterations and additions to the existing building to support the new proposed use.
- The construction of a recessed weatherboard and brick clad extension to provide an additional area for food preparation and storage.
- The construction of a timber pergola to provide an outdoor seating area.
- The construction of a driveway from the existing Ogilvie St layback to provide a back of house access for delivery and service vehicles. The vehicle access is to be fenced and gated to restrict access for vehicles other than service and delivery vehicles.

No additional car parking spaces are proposed to support the new use of the premises or its expansion through the construction of an outdoor seating area.

The site and the floor plan of the proposed development are provided in images below:



Image.1 – Subject Site (Council Spatial Viewer)

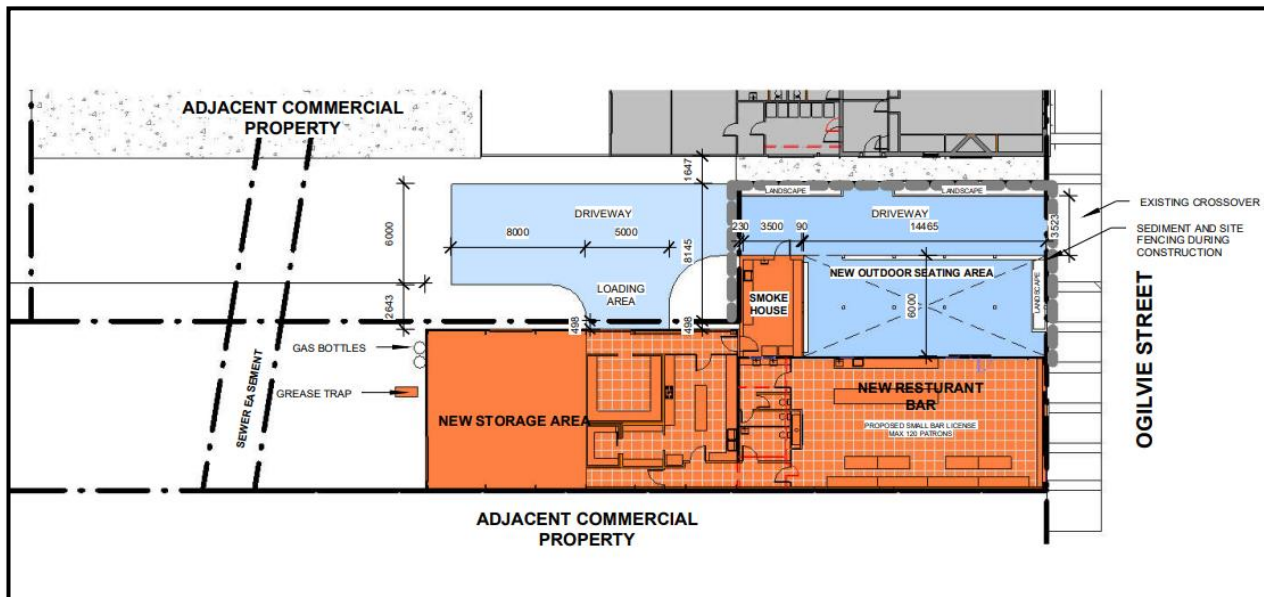


Image.2 – Floor Plan (Submitted Architectural Plans)

ASSESSMENT SUMMARY

Council Officers have assessed the DA under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (see Attachment A). Council Officers recommend that the development application be refused.

Key section 4.15 assessment issues and findings are:

- Council's Heritage Advisor raised no objection from a heritage impact perspective.
- Referral comments were also received from Council's Building Surveyor, Senior Environmental Health Officer, Water and Wastewater Engineers and Trade Waste Officer and recommend the inclusion of particular conditions of consent where relevant.
- Final referral comments from NSW Police raise no objection to the proposed development.
- The proposed development was referred to Council's Roads and Drainage Officers who objected to the proposed development due to the lack of car parking. Further information regarding these comments can be found under the referrals Roads and Drainage sub-heading of the attached Section 4.15 Assessment.
- The proposed development does not comply with Section 16 – car parking of the Muswellbrook DCP 2009. A total of twelve (12) off-street car parking spaces are required to service the proposed development. The applicant has not proposed any off-street car parking spaces and rejected approaches from Council Officers to review this issue.

After considering off-street car parking in Denman and previous Council determinations, the Assessing Officer formed the view that the proposed development does not meet the relevant DCP objectives. Although there is potential flexibility in the application of the DCP controls, the extent of the variation sought by the proponent is unreasonable. Granting consent to the proposal would reduce the benefits delivered by Council's recent efforts to expand car parking in the Denman CBD in collaboration with other business providers.

- The proposed development complies with the remaining relevant provisions of the Muswellbrook DCP.
- The proposed development complies with the relevant provisions of the Muswellbrook Local Environmental Plan 2009 (MLEP 2009).
- The site subject to this development application is identified as 'potentially contaminated' due to past land uses on the site. Further investigation into any site contamination and potential remediation

works are required for the development to proceed and to achieve compliance with the State Environmental Planning Policy (SEPP) No 55 – Remediation of Land.

The applicant is aware that further soil quality investigations are required to address this issue. However, the applicant has objected to engaging soil consultants to complete further investigations into this issue at this stage given the position of Council Officers regarding the off-street car parking requirements. Further commentary related to this point is included under the SEPP No. 55 – Remediation of Land in the attached Section 4.15 Assessment. Should Council wish to approve this development application, it is recommended that they do so with a deferred commencement condition requiring the completion of Preliminary Soil Analysis and Remediation Action Plan (if required) in relation to the soil qualities of the site and any required site remediation.

- While the proposed development supports the growth of Denman's identify as a tourist destination and provides additional entertainment and employment opportunities for the local community, granting development consent to the proposed development is not considered to be in the public interest due to the lack of car parking provision and the proponent's unwillingness to enter into a Planning Agreement to pay Council a contribution to facilitate the up-keep, maintenance and improvement of existing car parking in the town centre. A decision to accept this development application with no additional parking or financial contribution toward parking would be at odds with land provided to Council by other businesses to work toward the improvement of car parking in the Denman CBD.

OPTIONS

Council may:

- A. Refuse development consent for the reasons provided in the staff recommendation.
- B. Accept that the development does not propose additional car parking and request staff write to the proponent requesting a Preliminary Soil Contamination Assessment.
- C. Approve the proposed development subject to standard conditions of consent to be determined by the General Manager including a deferred commencement condition requiring the completion of Preliminary Soil Analysis and Remediation Action Plan (if required).

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 the determination at the Land and Environment Court.

CONCLUSION

Council Officers have completed an assessment of the proposed development against the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*. Council Officers recommend Council refuse development consent as the proposal is not in the public interest.

DEVELOPMENT ASSESSMENT REPORT

ADDRESS:	1 DP 997824 and Lot 12 DP 1277745 12 Ogilvie Street DENMAN			
APPLICATION No:	87/2021			
PROPOSAL:	Alterations and additions to commercial + Change of Use			
PLANS REF:	Drawings no.	Drawn by	Date	Received
	Cover Page	BDD Building Designers	11/01/2022	11/01/2022
	Site Plan	BDD Building Designers	11/01/2022	11/01/2022
	Floor Plan	BDD Building Designers	11/01/2022	11/01/2022
	Roof Plan & Stormwater	BDD Building Designers	11/01/2022	11/01/2022
	Elevations (A301)	BDD Building Designers	11/01/2022	11/01/2022
	Elevations (A300)	BDD Building Designers	11/01/2022	11/01/2022
	Sections	BDD Building Designers	11/01/2022	11/01/2022
OWNER:	Zizoom Pty Limited			
APPLICANT:	Mr H Walker Unit 12/2 Ocean Street Mereweather NSW 2291			
AUTHOR:	Ms T Jolly			
DATE LODGED:	11/08/2021			
DATE OF REPORT:	16 February 2022			

1. SITE AND LOCALITY DESCRIPTION

The subject Site is 1 DP 997824 and Lot 12 DP 1277745 (12 Ogilvie Street) Denman. Access to the site is provided via Ogilvie Street. The site contains an existing building. It is understood that the building was historically operated as a garage and more recently a retail premises. The building is currently vacant. Previous Approvals recorded for the site are:

Formatted Account	External Reference	Precis	Received Date	Determination I	Determination
005.2021.00000087.001	APPLICATION	Alterations and additions to commercial + Change of Use	11/08/2021		
005.2005.00000179.002	S96 APPLICATION	SECTION 96 AMENDMENT- REDUCE NUMBER OF LOTS FROM THREE (3) TO TWO (2)	25/05/2009	23/06/2009	Approved by Delegat
005.2005.00000179.001	APPLICATION	THREE (3) LOT COMMERCIAL SUBDIVISION	18/05/2005	21/09/2005	Approved

The site is located within the Denman Heritage Conservation Area and the site adjoins 'the Royal Hotel', a locally listed heritage item (I24) under the Muswellbrook Local Environmental Plan (MLEP) 2009.

The site has been identified as being potentially contaminated land due to the past garage use.

Figure 1. – Site Aerial Image (Source: NearMaps)

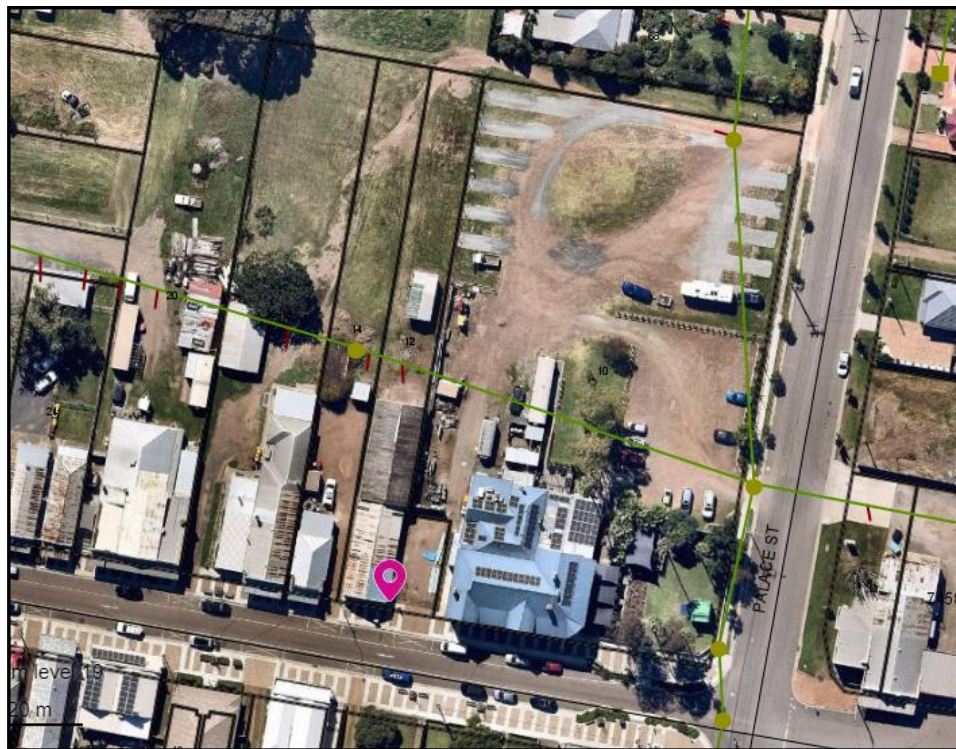


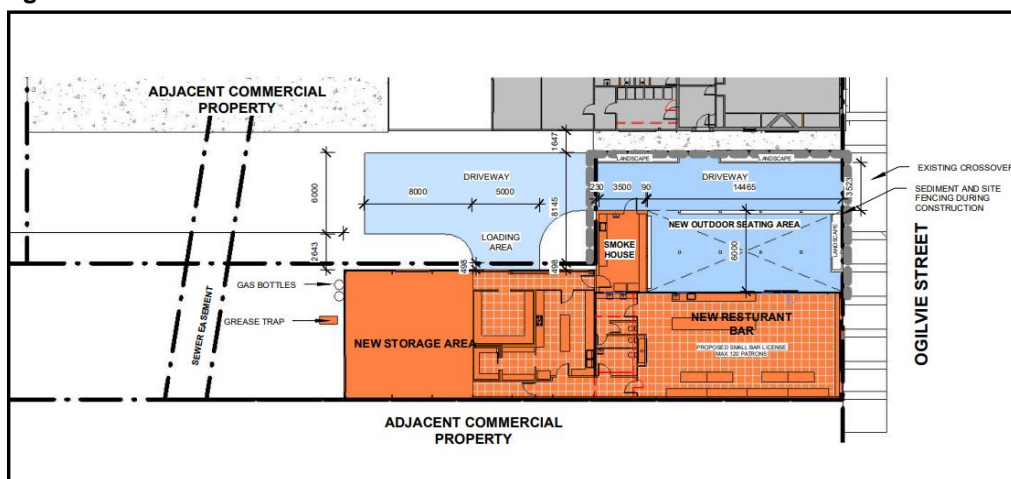
Figure 2. – Site Elevation (Source: Google Street View)

2. DESCRIPTION OF PROPOSAL

The proposed development involves:

- The change of use of the existing building to a licensed restaurant/small bar,
- The carrying out of alterations and additions to the existing building to support the new proposed use.
- The construction of a weatherboard and brick clad extension to provide additional area for food preparation and storage.
- The construction of a timber pergola to provide an outdoor seating area
- The construction of a driveway from an existing Ogilvie St layback to provide a back of house access for delivery and service vehicles. The vehicle access is to be fenced and gated to restrict access for vehicles other than service and delivery vehicles.

The site plan below provides an overview of the proposed site layout.

Figure 3. – Site Plan

3. SPECIALIST COMMENTS

3.1. Internal Referrals

3.1.1. Building Surveyor

Councils Building Surveyor reviewed fire safety requirements and provided a number of recommended conditions to be incorporated into any development consent.

3.1.2. Senior Environmental Health Officer

Referral comments provided by Council's Senior Environmental Health Officer (EHO) requested a Preliminary Soil Contamination Assessment to inform Council Officers considering the site is potentially contaminated.

The proponent costed the preparation of a Preliminary Soil Contamination Assessment but wrote to Council requesting that a decision be made on the acceptability or otherwise of the lack of car parking ahead of the preparation of this report. The proponent was concerned about the cost of the report when there is no certainty that Council would approve the proposed development due car parking.

Should Council resolve to approve the development application a 'deferred commencement' should be imposed in relation to the submission of a Preliminary Contamination Assessment, the completion of any further contamination investigations required by that report and any required remediation works.

Council's Senior Environmental Health Officer also provided referral comments regarding the fit-out and operation of the restaurant to comply with public health requirements.

3.1.3. Water and Waste Section

The proponent is required to obtain a Notice of Requirements in relation to the proposed development if approved.

3.1.4. Trade Waste Officer

Where the development application is approved the requirements of Council's Trade Waste Officer should be incorporated into recommended conditions of consent.

3.1.5. Heritage Advisor

The Heritage Advisor did not raise any objectives with the proposed design or recommend addition conditions of consent.

3.1.6. Roads and Drainage Section

Council Engineers advised that they did not support the proposed development and change of use without the provision of additional car parking.

The opposition to the proposed development by Council Engineers has informed the recommendation of this report.

3.2. External Referrals

3.2.1. NSW Police

The proposed development was referred to the NSW Police to provide comments on security, safety and liquor licensing requirements for the restaurant/bar proposed.

Initial concerns related to liquor licensing requirements and the connectivity between the premises and adjoining Royal Hotel. The applicant prepared revised plans in response. These plans included additional fencing/security measures and restricted patrons from walking between the premises and the Royal Hotel other than via Ogilvie Street entry/exit points.

These revised plans were provided to NSW Police who acknowledged the changes and advising that '*Police do not object to the development based on the updated site plans*'.

4. ASSESSMENT

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

Section 4.15 Matters for Consideration

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

4.1. Muswellbrook Local Environmental Plan 2009 (MLEP 2009)

Land Use Zone and Permitted Land Use

The development site is zoned RU5 Village pursuant to MLEP 2009. The proposal is best defined as change of use to a *restaurant or cafe*, a type of *commercial premises*, which is permitted with consent in the RU5 Village Zone.

Objectives of the RU5 Village Zone

- *To provide for a range of land uses, services and facilities that are associated with a rural village.*
- *To allow more flexibility in the development of the town of Denman and village of Sandy Hollow.*
- *To allow for future development of residential, commercial or low-impact land use within the town of Denman and village of Sandy Hollow.*
- *To ensure that non-residential uses do not result in adverse amenity impacts on residential premises.*
- *To minimise the impact of non-residential uses and ensure these are in character and compatible with surrounding development.*

The proposed development is compatible with the land use zone objectives, as while the proposed use relates to a commercial premises it is appropriately located in Ogilvie Street, the Denman main street and is compatible with nearby development.

Relevant Clauses applicable under the Muswellbrook Local Environmental Plan 2009

<i>Part 4 Principal development standards</i>	
<i>4.3 Height of buildings</i>	MLEP 2009 specifies a maximum building height of 8.5m in relation to the land. The proposal does not involve any changes to the existing building height which is 5.4m at its highest point. Complies

4.4 Floor space ratio	MLEP 2009 specifies a floor space ratio of 0.5 in relation to the land. The proposal does not involve building works that would result in floor space greater than the existing FSR of the site. Complies
Part 5 Miscellaneous provisions	
5.10 Heritage conservation	The subject site is located next to an item of Heritage Significance, the Royal Hotel, and is within the Denman Heritage Conservation Area. The application was referred to Council's Heritage advisor for a Heritage Assessment, which has been discussed above. Complies
Part 7 Additional local provisions	
7.6 Earthworks	The development is not expected to involve significant earthworks as the bulk of the proposed works involve internal alterations to an existing building. Complies

4.2. State Environmental Planning Policy No. 55 – Remediation of Land

Under Clause 7 of this SEPP a consent authority must not consent to the carrying out of any development on land unless:

- (a) *It has considered whether the land is contaminated, and*
- (b) *If the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) *If the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

When considering the site attributes of the land proposed for development Council Officers identified that the subject site is identified as being 'potentially contaminated' due to the previous land uses on the site.

Accordingly, Council requires soil testing be carried out to identify/confirm any site contaminants and where soil contaminants are identified a remediation action plan would need to be developed and put into action to remediate the site so as to support the new proposed use.

Council Officers requested the applicant to engage an appropriately skilled person prepare a Soil Contamination Assessment. The proponent priced a Soil Contamination Assessment and advised Council that they have reservations progressing this investigation given uncertainty on whether Council would approve the proposed development due to no car parking being proposed.

While the relationship of the proposed development with this SEPP remains unresolved it has not been listed as a reason for refusal. Should Council be interested in approving the development application a 'deferred commencement condition' could be put forward to require the submission of a Preliminary Contamination Assessment, the completion of any further contamination investigations required by that report and any required remediation works prior to the commencement of the development consent. 'Deferred commencement conditions' inhibit a person from acting with a development consent granted until requirements are satisfied.

4.3. State Environmental Planning Policy No.64 – Advertising and Signage

The application does not propose any new signage or changes to the existing signage on the site.

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

There are no draft EPIs relevant to the subject Application.

4.5. 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 7 – Village Zones

7. VILLAGE ZONES	
7.2 Assessment Process	
7.2.1 Character Statements	<p>The Denman Character Statement aims to protect the Heritage Values of Denman while promoting tourism and community spirit</p> <p>The proposed development, as a concept will be beneficial to the Denman, <u>if designed and constructed to comply with the relevant legislation.</u></p> <p>The proposed restaurant will provide an active street frontage and provide a suitable use that benefits the community.</p> <p>Complies</p>
7.4 Non-Residential Development	
7.4.1 Location	<p>This section of the Muswellbrook DCP discusses objectives and controls relating to development involving new buildings and/or businesses in the locality. The proposed development involves the change of use from a commercial premise to a different subcategory of commercial premises and is therefore does not cause a noncompliance with this section of the DCP.</p> <p>Complies</p>
7.4.2 Design Guidelines	<p>The proposal involves minor changes to the existing façade which do not detract from the Heritage values of the site while providing a more suitable frontage for a food and drink premises.</p> <p>Complies</p>
7.4.3 Vehicle Parking	<p>The proposed development does not comply with the rate of off-street car parking required by the DCP. See comments under the Section 16 sub-heading</p> <p>Does not Comply</p>
7.4.4 Signage and Use of Footpaths	<p>The proposal does not involve any signage or a request for the use of the footpath.</p> <p>Not Relevant</p>
7.4.5 Wastewater Disposal	<p>The site is connected to Council's reticulated sewer system. Any trade waste created by the development will be managed via the imposition of the conditions recommended by Council's Trade waste Officer.</p> <p>Complies</p>
7.4.6 Form, Massing and Scale	<p>The proposal does not involve the construction of new buildings and will not significantly alter the form, massing and scale of the development.</p> <p>Complies</p>
7.4.7 Access	<p>The subject site is relatively flat and therefore will not require any steps that would decrease the accessibility of the site.</p> <p>The Assessing Officer recommends including a condition to ensure that all construction works are compliant with the relevant Australian standards for accessibility.</p> <p>Complies</p>
7.4.8 Setbacks	<p>The proposal does not involve any changes to the</p>

	front setbacks on the site and will have a setback of 1.64m from the adjoining Royal Hotel. Complies
7.4.9 Landscaping	The proposal does not involve any significant landscaping, however, the plans provided show that there will be suitable greenery to soften and enhance the appearance of the development from the street. Complies

Section 15 – Heritage Conservation

Complies.

Section 16 – Car Parking and Access

Under this section, the parking requirement for a restaurant is

‘1 space per 7m² of gross floor area available for dining purposes’

Acknowledging that the proposed development involves the change of use of an existing building, Council Officers calculated the total car parking requirements as they related to the proposed extension of the building to create a new outdoor dining area only.

Council Officers calculated that (excluding the landscaped area) the proposed outdoor dining area would have an area of 81.595m²

Off-street parking area requirement – $81.595/7 = 11.656$ **off-street parking spaces**

The applicant has not proposed any additional car parking as part of this development application. **Accordingly, the proposed development does not comply with this Section of the DCP.**

Where a development application is inconsistent with a control imposed through a DCP Council Officers may undertake a merit based assessment to determine whether the proposed development remains compatible with the DCP Objectives that inform that control.

DCP objectives are:

- a) *To ensure adequate provision of off-street parking to maintain the existing levels of service and safety of the road network.*
- b) *To ensure a consistent and equitable basis for the assessment of parking provisions.*

In assessing the merits of the application, the following points are made:

- Council has historically been flexible in applying its off-street car parking requirements for development in the Denman CBD.
- In 2016 Council approved DA 2015/94 involving the extension of a Denman Hotel through the construction of an elevated deck and dining area. The assessment report for this application noted that a total of 38 off-street car parking spaces would be required to comply with the DCP. The application was approved by Council without a requirement for the provision of any additional car parking spaces.
- In 2013 Council approved DA 2013/96 for alterations and additions to a café at 16-18 Ogilvie Street. In its determination of this development application Council required the provision of an additional five (5) off-street parking spaces. These off-street parking spaces were not constructed by the proponent. No compliance action was taken on the café's non-compliance with the consent. The café has recently closed.

- There are physical/spatial limitations for this and other sites that may be redeveloped within the Denman CBD to provide off-street parking at the rates prescribed by the MDCP 2009. A review of the DCP provisions may be warranted to realise Council's strategic goal of supporting Denman's growth as a tourist destination.
- Council has recently constructed a new car park adjacent to the southern side of Ogilvie St that provides approximately 49 additional car parking spaces within walking distances of the site and CBD.
- While it may be reasonable to discount off-street parking requirements for the re-use of existing buildings this proposed development also increases of the commercial floor area, and thereby potential parking demand in the Denman CBD.
- Council Roads and Drainage Engineers have objected to the proposed development due to the lack of off-street parking provided and made the following comment in relation to the issue:
'Based on the current high demand of additional parking for DA 2021-87 for the restaurant at 12 Ogilvie St, Denman CI requires that the applicant consider providing additional parking for the facility. Currently demands in the CBD are high and it is unlikely to be supported in its current form unless significant additional parking can be sourced'.
- Council has entered into verbal agreements with landowners on the southern side of Ogilvie Street related to parking. Landholders who provide parts of their properties (at no cost) to Council for the construction of the new Denman town centre car park are not required to provide off-street car parking in accordance with the DCP. Properties on the southern side of Ogilvie Street have accepted a reduction to their holding size to provide the car park. Comparatively, properties on the northern side of Ogilvie Street have not contributed to the construction of the new Denman car park but benefit from the increased availability of car parking spaces. As this development application intends to rely on the increased availability of car parking in Denman from the construction of this new car park, it is considered reasonable that the proponent should make a financial contribution toward the maintenance and improvement of parking in Denman in lieu of providing off-street parking at the rate prescribed by the DCP.
- Council Officers reached out to the proponent to discuss this parking issue. The proponent rejected a meeting on the subject and requested the matter be reported to Council for determination.

DCP Merit Assessment Summary and Conclusion

While Council Officers recognise it is reasonable to apply a degree of flexibility, it is not considered reasonable to accept the extent of non-compliance being sought by the proponent. Not providing parking or a reasonable financial contribution toward car parking as part of this development would be inconsistent with both DCP objectives, would not support an equitable approach to the provision of car parking and would negatively impact the availability of car parking in the short to medium term.

The development application has been recommended for refusal.

Section 20 – Erosion and Sediment Control

The relevant objective of this section states:

'to demonstrate through the preparation of an Erosion and Sediment Control Plan or Strategy for developments over 250m² of disturbance that appropriate controls are planned to be installed'.

The proposed development does not involve the carrying out of substantial earthworks. The earthworks proposed would not present any issue in relation to the DCP requirements and it is recommended that a condition of consent is imposed to manage the carrying out of earthworks.

Section 21 – Contaminated land

Discussed under EHO comments and Remediation SEPP assessment. **Does not Comply**

Section 24 – Waste Management

A waste management plan has not been submitted with the development application. The Assessing Officer recommends including a standard condition that a Waste Management Plan be provided prior to the issue of an Occupation Certificate, should the application be approved.

Section 25 – Stormwater Management

The applicant has proposed to discharge the stormwater overflow from the new roof space to the existing stormwater drainage system. The Assessing Officer is satisfied that Council's Stormwater infrastructure on Ogilvie Street will be able to manage the additional stormwater overflow created and recommends including a condition to ensure that the proposed measures are carried out.

s7.12 Contributions

The cost of works for the proposed development is \$431,200.00. A developer contribution of \$4312 will apply to the proposed development should the Application be approved.

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

There are no planning agreements relevant to the subject Application.

4.7. 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.

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

Not relevant, the Application does not relate to a coastal area.

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

Key potential impacts of the proposed development have been considered and commented on under the sub-headings below.

Noise and Amenity

The applicant has proposed that the restaurant will operate from 10am – 12am, 7 days a week. The locality is known to have similar developments in the area that operate late hours, however, the Assessing Officer is concerned in relation to noise, light and other amenity impacts on weekends.

The Officer reviewed consents for similar development in the locality and recommend the following operating hours for the development, should the application be approved.

Hours of Operation

The restaurant premises may be open for business only between the following hours:-

Monday to Saturday	7:00am to 12:00am
Sunday	7:00am to 10:00pm

Upon expiry of the permitted hours, all restaurant service (and entertainment) shall immediately cease, no person shall be permitted entry and all customers on the premises shall be required to leave within the following half hour.

Traffic, Parking and Access

The applicant seeks approval for an extension of the commercial area of the premises without the provision of additional off-street parking, placing additional parking demands on the Ogilvie on-street parking and new communal parking area.

While Council Officers consider that these facilities may be capable of absorbing this increase in parking demand the purpose of this parking is to support the entirety of the Denman CBD.

Social & Economic Impact on the Locality

The proposed development is likely to have a positive Social and Economic Impact on the locality if constructed in accordance with the legislation and other relevant standards.

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

The site subject to this development application is located in the Denman town centre and is considered to have site attributes generally conducive to commercial development. It is noted that the site is identified as potentially contaminated.

4.11. Section 4.15(1)(d) any submissions made

The application was notified in accordance with the Muswellbrook Community Participation Plan from 26/08/2021 to 09/09/2021.

No submissions were received during the notification period.

4.12. Section 4.15(1)(e) the public interest.

The proposed development would be compatible with Council's strategic objective of supporting the growth of Denman as a tourist destination and would provide additional entertainment and employment opportunities for the local community.

However, aspects of the proposed development remain contrary to the public interest. While Council has at times accepted development with reduced or off-street car parking usually a contribution is made to the ongoing upkeep, maintenance and improvement of existing car parking. The approval of the application without a contribution would be inconsistent with concessions made by other businesses in the Denman CBD to provide land for the development of additional car parking spaces within the town centre, and set an undesirable precedent for future development applications.

5. CONCLUSION

The proposed development has been assessed against the relevant heads of consideration

of Section 4.15 of the Environmental Planning and Assessment Act 1979. As outlined above it is considered that the proposed development would not be in accordance with the relevant planning provisions.

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

1. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not meet the development controls and objectives of Section 16.3 of the Muswellbrook Development Control Plan 2009 with regard to car parking requirements for non-residential development.
2. Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposal will have an adverse environmental impact by increasing demand for on-street parking in the area, extending parking into areas of residential development and reducing parking available for other businesses in the Denman Town Centre.
3. Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposal is not in the public interest due to the lack of car parking provision, or alternate arrangements being made with Council to support future parking provision in the Denman town centre.

Signed by:



Tanya Jolly
Planning Assistant

Date: 16.02.2022

PROPOSED CHANGE OF USE WITH NEW RESTURANT/CAFE/BAR ALTERATIONS AND ADDITIONS - COMMERCIAL PROPERTY

LOT 01 DP997824 12 OGILVIE STREET DENMAN NSW 2328

DRAWING SCHEDULE	
Sheet Number	Sheet Name
A101	FLOOR PLAN
A000	COVERPAGE
A102	ROOF PLAN & STORMWATER
A300	ELEVATIONS
A301	ELEVATIONS
A400	SECTIONS
A401	SECTIONS
A100	SITE PLAN
A800	NOTIFICATION PLAN
A500	3D VIEWS



Property Report

12 OGILVIE STREET DENMAN 2328



Property Details

Address: 12 OGILVIE STREET DENMAN 2328
Lot/Section /Plan No: 1/-/DP997824
Council: MUSWELLBROOK SHIRE COUNCIL

Summary of planning controls

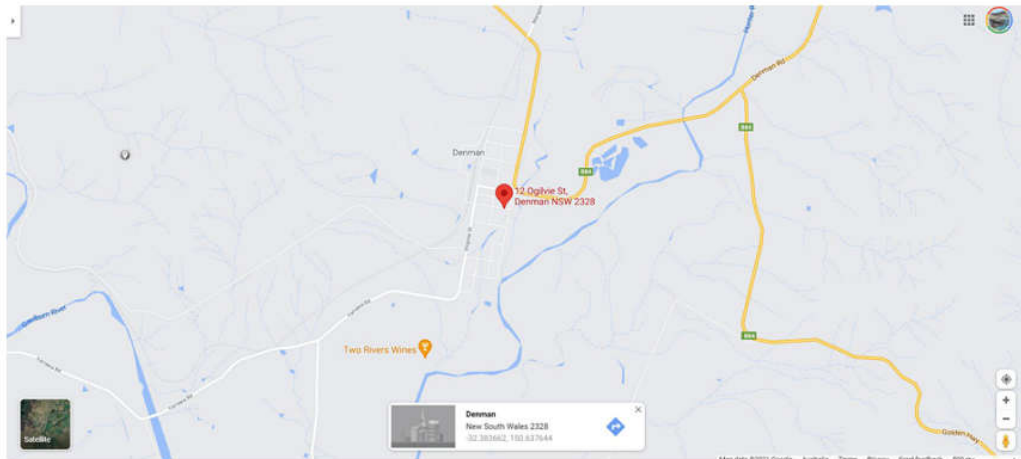
Planning controls held within the Planning Database are summarised below. The property may be affected by additional planning controls not outlined in this report. Please contact your council for more information.

Local Environmental Plans	Muswellbrook Local Environmental Plan 2009 (pub. 15-6-2012)
Land Zoning	RU5 - Village: (pub. 4-7-2014)
Height Of Building	8.5 m
Floor Space Ratio	0.5:1
Minimum Lot Size	750 m²
Heritage	Denman Residential Heritage Conservation Area Significance: Local Royal Hotel Significance: Local
Land Reservation Acquisition	NA
Foreshore Building Line	NA

Detailed planning information

State Environmental Planning Policies which apply to this property

State Environmental Planning Policies can specify planning controls for certain areas and/or types of development. They can also identify the development assessment system that applies and the type of environmental assessment that is required.



LOCATION MAP 01

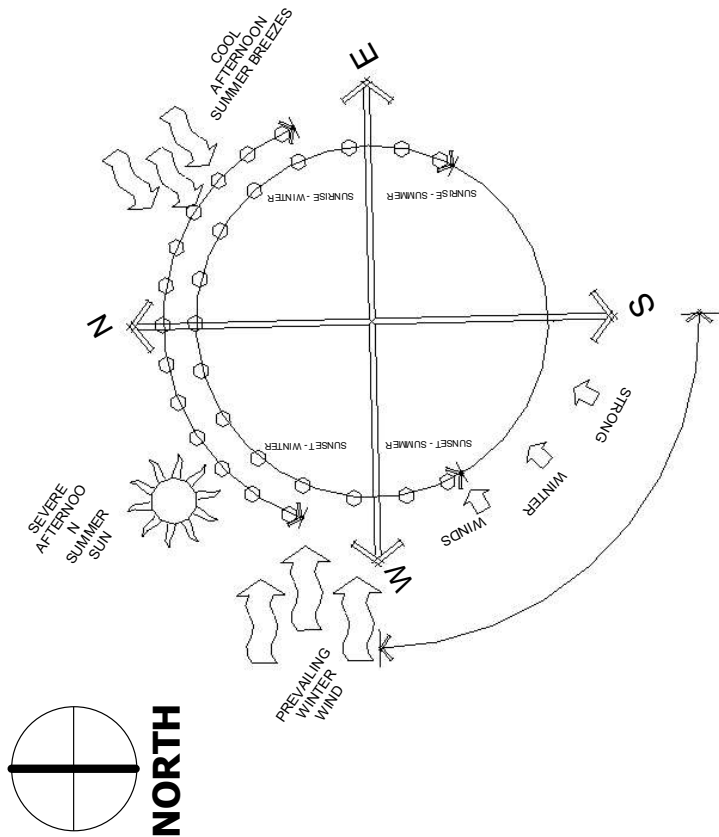


LOCATION MAP 02

This report provides general information only and does not replace a Section 10.7 Certificate (formerly Section 149)
1/06/2021 3:44 PM | 576623f-ac63-48e1-bd8c-d26ec350b2ba

FOR APPROVAL

REV	DESCRIPTION	DATE	CLIENT:	ADDRESS:	BUILDING DESIGN DIRECT PTY LTD	bdc BUILDING DESIGNERS			
6	FOR APPROVALS	11.01.2022	MARK ZIZZA	LOT 01 DP997824 12 OGILVIE STREET DENMAN NSW 2328	PO BOX 2151 DANGAR NSW 209 NEWCASTLE WEST NSW TELEPHONE: 1300 411 030 EMAIL: info@buildingdesigndirect.com WEBSITE: www.buildingdesigndirect.com				
			DESIGNER:	SHEET TITLE:		COPYRIGHT THIS DRAWING REMAINS THE PROPERTY OF BUILDING DESIGN DIRECT. IT MAY ONLY BE USED FOR THE PURPOSE FOR WHICH IT WAS COMMISSIONED AND IN ACCORDANCE WITH THE TERMS OF ENGAGEMENT FOR THE COMMISSION. UNAUTHORISED USE OF THIS DRAWING IS PROHIBITED. IF ANY DISCREPANCIES ON DRAWING PLEASE CONTACT BUILDING DESIGN DIRECT FOR CLARIFICATION BEFORE PROCEEDING			
			HUGH WALKER - HWD	COVERPAGE					
			DRAWN:	SCALE:	DATE DRAWN:	CHECKED:	JOB NUMBER:	SHEET NUMBER:	ISSUE:
			HW		MAY 16	HWD	2016001	A000	6



GENERAL NOTES

- PROVIDE VERTICAL BRICK CONTROL JOINTS AT ALL MAJOR OPENINGS AND AT A MAXIMUM OF 6000 CTS
- DOWNPIPE LOCATION INDICATIVE ONLY. PLUMBER TO LOCATE ON SITE. USE 100MM SEWER GRADE PVC. MAX 12000MM CTS
- CONFIRM ALL DIMENSIONS ON SITE PRIOR TO COMMENCEMENT OF ANY PARTICULAR STAGE OF WORKS. CONSULT MBS IF ANY DISCREPANCIES IN DESIGN AND MEASUREMENTS ARE FOUND
- ALL WORKS TO BE COMPLETED IN ACCORDANCE WITH ALL RELEVANT AUSTRALIAN STANDARDS
- ALL WORKS TO BE COMPLETED IN ACCORDANCE WITH CURRENT EDITION OF THE BUILDING CODE OF AUSTRALIA
- ALL CONSTRUCTION TO MEET ALL RELAVANT BUSHFIRE ATTACK LEVEL REQUIREMENTS AND TO AS3529

SEDIMENTATION CONTROL NOTES

- SITE WORKS ARE NOT TO START UNTIL THE EROSION AND SEDIMENTATION CONTROL MEASURES ARE INSTALLED AND FUNCTIONAL.
- ENTRY AND DEPARTURE OF VEHICLES IS TO BE CONFINED TO THE NOMINATED EXISTING VEHICLE ACCESS OR STABILISED SITE ACCESS.
- TOPSOIL IS TO STRIPPED FROM BUILDING SITE AND STOCKPILED FOR LATER USE IN LANDSCAPING THE SITE. TOPSOIL IS TO BE RESPREAD AND ALL DISTURBED AREAS REHABILITATED (TURFED) WITHIN 20 WORKING DAYS OF COMPLETION OF WORKS.
- THE FOOTPATH, OTHER THAN STABILISED SITE ACCESS IS NOT TO BE DISTURBED, INCLUDING STOCKPILING OF MATERIALS. WHERE ESSENTIAL WORKS (eg DRAINAGE) ARE REQUIRED, THE FOOTPATH IS TO BE REHABILITATED (TURFED) AS SOON AS POSSIBLE.
- WASTE BINS ARE TO BE PROVIDED FOR BUILDING WASTE OR WASTE ENCLOSURE MINIMUM 1800*1800*1200mm HIGH CONSTRUCTED USING STAR PICKETS AND 1200mm HIGH WEED CONTROL MAT. ARRANGEMENTS ARE TO BE MADE FOR REGULAR COLLECTION AND DISPOSAL OR RECYCLING OF CONSTRUCTION WASTE.
- ROOF DOWNPIPES TO BE CONNECTED TO STREET KERB OR OTHER STORMWATER DISPOSAL SYSTEM ON COMPETITION OF ROOF AND GUTTERING.
- ALL SEDIMENTATION CONTROLS ARE TO BE CHECKED DAILY (AT A MINIMUM WEEKLY) AND AFTER ALL RAIN EVENTS. ALL STRUCTURES TO BE CLEANED ON REACHING 50%% STORAGE CAPACITY TO ENSURE THEY ARE MAINTAINED IN FULL FUNCTIONAL CONDITION.

LEGEND

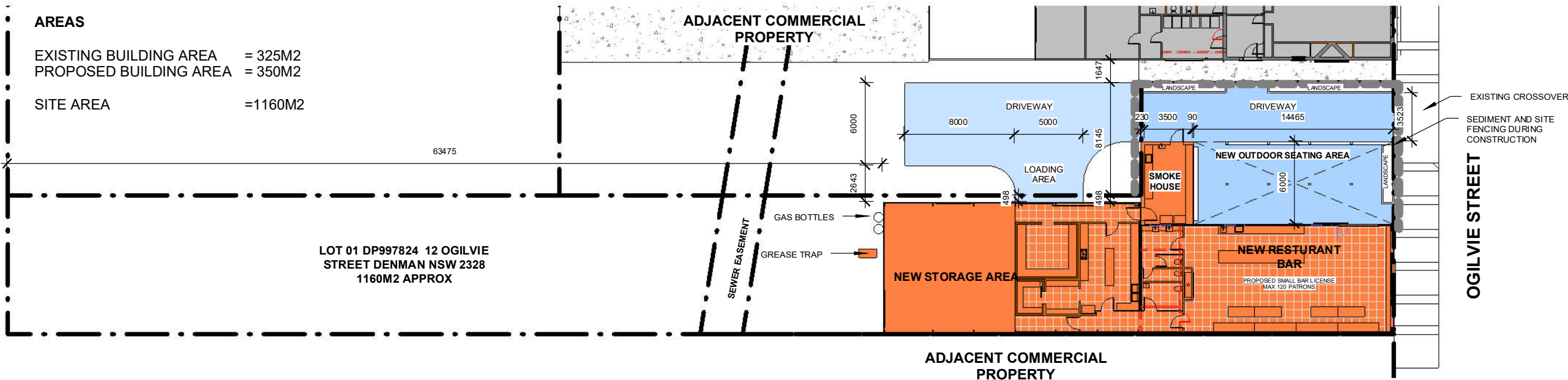
- SEDIMENT CONTROL FENCING
- ▨ STABILISED SITE ACCESS

EARTHWORKS NOTES

- CONTACT DIA BEFORE YOU DIG PRIOR TO ANY EARTHWORKS ON SITE
 - ANY CONTRACTORS WORKING ON SITE UNDERTAKING EXCAVATIONS TO REQUEST DIAL BEFORE DIG PLAN BEFORE PROCEEDING WITH WORKS
 - ALL CONTRACTORS WORKING ON SITE UNDERTAKING EXCAVATIONS TO REQUEST BRIEFING ON SERVICES LOCATION FROM SITE FOREMAN OR LEADING HAND PRIOR TO STARTING ANY WORK
 - SEDIMENT CONTROL FENCING TO LOCAL AUTHORITY ENGINEERING STANDARDS TO BE ERECTED PRIOR TO ANYTH EARTHWORKS ON SITE
 - EARTHWORKS TO BE HOSED DOWN AS REQUIRED DEPENDING ON NIEGHBOURS REQUIREMENTS/PROXIMITY AND WEATHER CONDITIONS
 - ALL EARTHWORKS TO BE COMPLETED IN ACCORDANCE WITH THE EARTHWORKS AND SEDIMENT CONTROL PLAN
 - IF ANY UNFORESEEN SERVICES ARE FOUND ON SITE EXCAVATION MUST CEASE AND CAN ONLY START WITH PERMISSION FROM SITE FOREMAN OR LEADING HAND AFTER CONFIRMATION OF SERVICES AND ANY ADDITIONAL REQUIREMENTS
 - EARTHWORKS ARE NOT TO EFFECT THE AMNENITY OF THE SURROUNDING PROPERTIES PUBLIC/PRIVATE LAND
 - ALL EXCAVATION AREAS TO BE FENCED AND SECURED AS REQUIRED BY LOCAL GOVERNMENT REQUIREMENTS
 - ALL LOOSE STOCKPILES TO BE COVERED IF REQUIRED DO TO WEATHER AND WIND ISSUES
- LANDSCAPE FALLS**
- ALL LANDSCAPING TO FALL AWAY FROM RAINWATER TANK AND FLOOR SLAB EDGE. DO NOT LANDSCAPE TO FLOOR LEVEL. STORMWATER SURGE PITS TO BE LOCATED WHERE POSSIBLE AWAY FROM HOUSE AND TO FALL AWAY FROM HOUSE TO STREET OR DESIGNATED STORMWATER PIT

AREAS

- EXISTING BUILDING AREA = 325M2
- PROPOSED BUILDING AREA = 350M2
- SITE AREA =1160M2

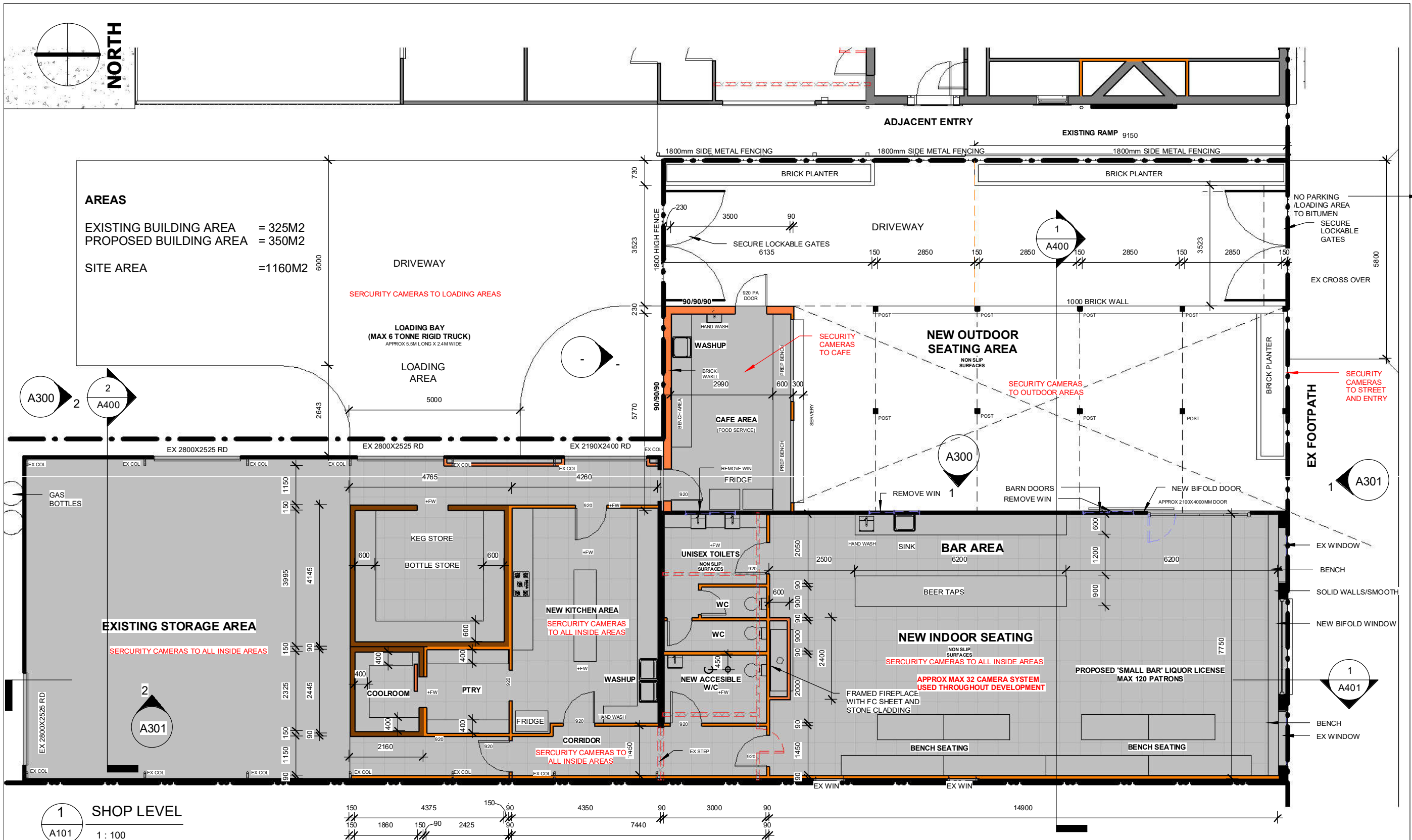


1 SITE PLAN
A100 1 : 300

FOR APPROVAL

REV	DESCRIPTION	DATE	CLIENT:	ADDRESS:	BUILDING DESIGN DIRECT PTY LTD	THIS DRAWING REMAINS THE PROPERTY OF BUILDING DESIGN DIRECT. IT MAY ONLY BE USED FOR THE PURPOSE FOR WHICH IT WAS COMMISSIONED AND IN ACCORDANCE WITH THE TERMS OF ENGAGEMENT FOR THE COMMISSION. UNAUTHORISED USE OF THIS DRAWING IS PROHIBITED.
6	FOR APPROVALS	11.01.2022	MARK ZIZZA	LOT 01 DP997824 12 OGILVIE STREET DENMAN NSW 2328	PO BOX 2151 DANGAR NSW 209 NEWCASTLE WEST NSW TELEPHONE: 1300 411 030 EMAIL: info@buildingdesigndirect.com WEBSITE: www.buildingdesigndirect.com	IF ANY DESCPRENCIES ON DRAWING PLEASE CONTACT BUILDING DESIGN DIRECT FOR CLARIFICATION BEFORE PROCEEDING
			DESIGNER:	SHEET TITLE:		
			HUGH WALKER - HWD	SITE PLAN		
			DRAWN:	JOB NUMBER:	SHEET NUMBER:	ISSUE:
			HW	2016001	A100	6
			SCALE:			
			As indicated			
			DATE DRAWN:			
			MAY 16			
			CHECKED:			
			HWD			





REV		DESCRIPTION	DATE	CLIENT:		ADDRESS:		BUILDING DESIGN DIRECT PTY LTD	
6		FOR APPROVALS	11.01.2022	MARK ZIZZA		LOT 01 DP997824 12 OGILVIE STREET DENMAN NSW 2328		PO BOX 2151 DANGAR NSW 209 NEWCASTLE WEST NSW	
				DESIGNER:		SHEET TITLE:		TELEPHONE: 1300 411 030	
				HUGH WALKER - HWD		FLOOR PLAN		EMAIL: info@buildingdesigndirect.com	
				DRAWN:		JOB NUMBER:		WEBSITE: www.buildingdesigndirect.com	
				HW		2016001			
				SCALE:		SHEET NUMBER:		ISSUE:	
				1 : 100		A101		6	
				DATE DRAWN:					
				MAY 16					
				CHECKED:					
				HWD					

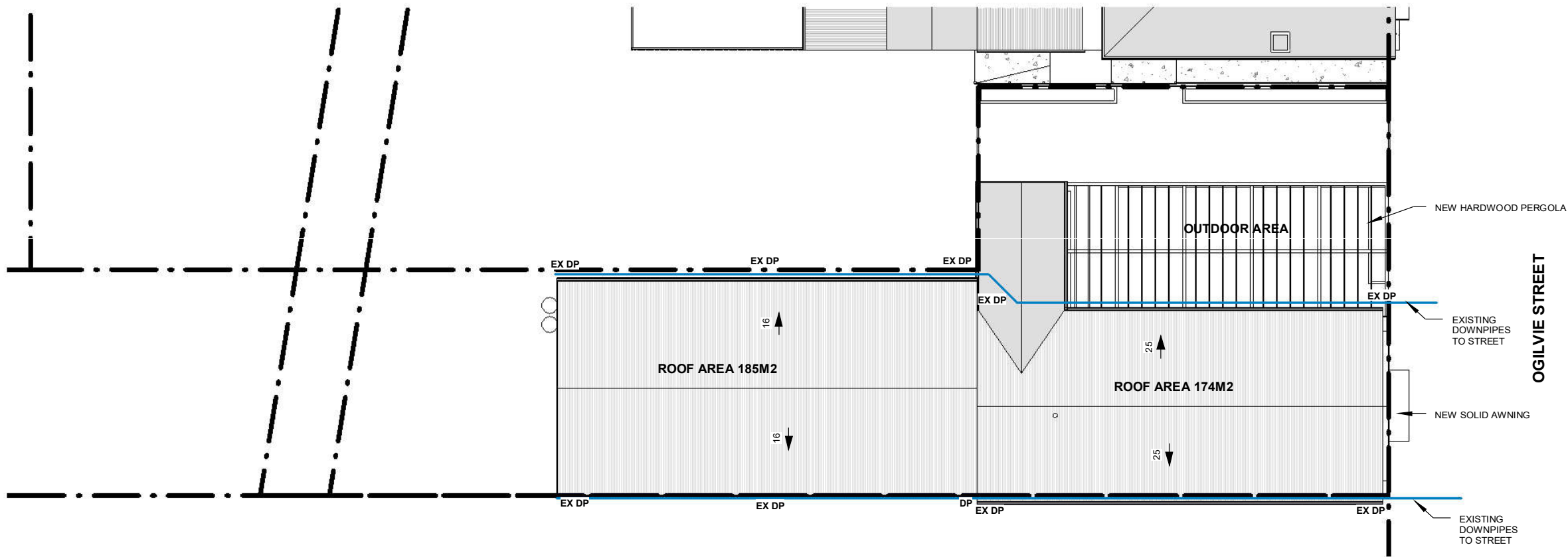
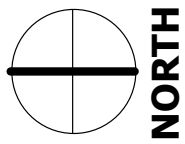
FOR APPROVAL

11/01/2022 12:52:37 PM

Copyright remains the property of Building Design Direct. It may only be used for the purpose for which it was commissioned and in accordance with the terms of engagement for the commission. Unauthorised use of this drawing is prohibited.

If any discrepancies on drawing please contact Building Design Direct for clarification before proceeding.

bdd
BUILDING DESIGNERS



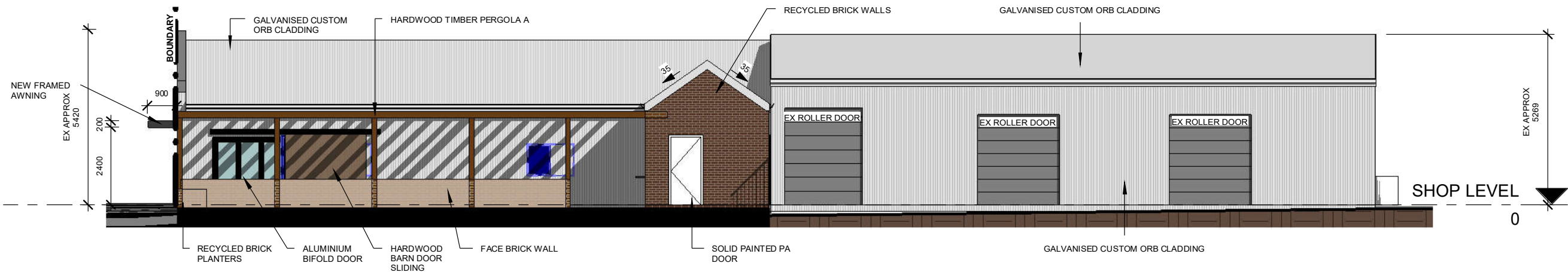
1 ROOF
A102 1 : 200

FOR APPROVAL

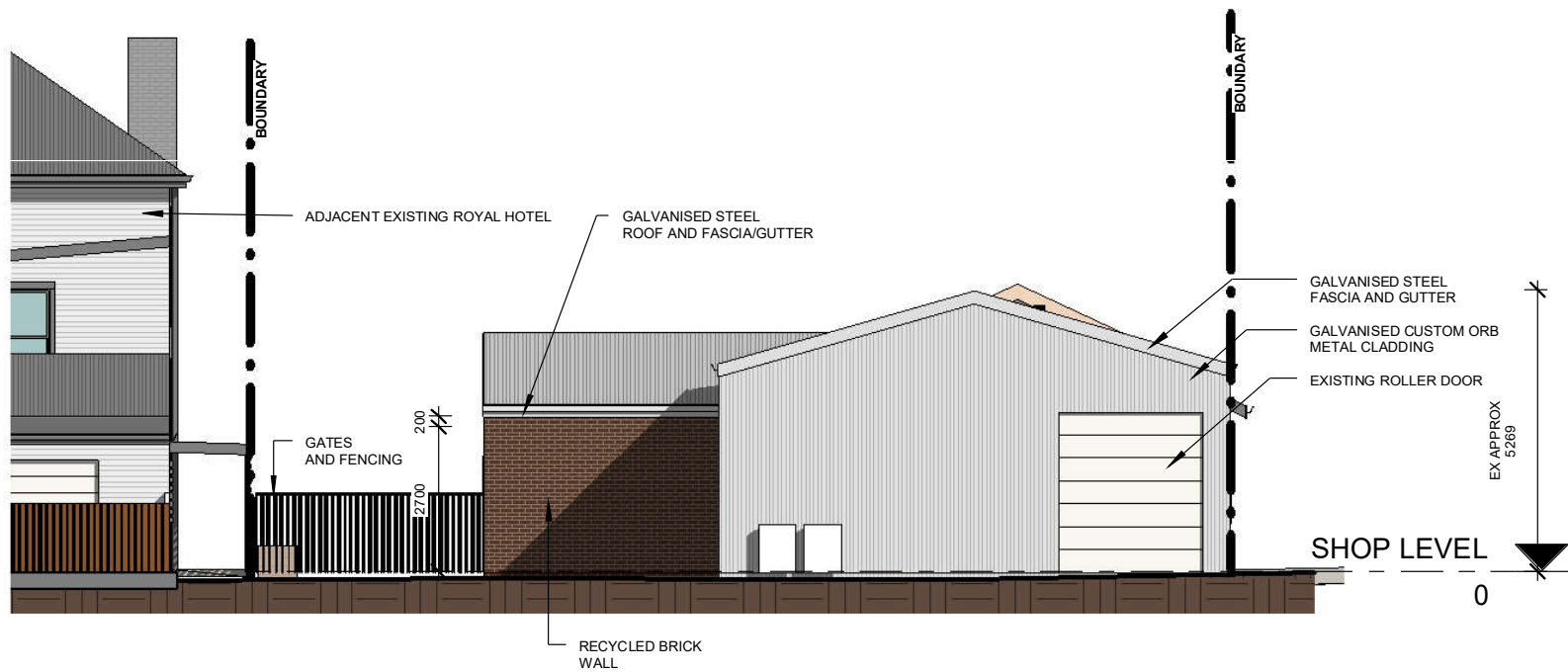
REV	DESCRIPTION	DATE	CLIENT:				ADDRESS:			BUILDING DESIGN DIRECT PTY LTD	
6	FOR APPROVALS	11.01.2022	MARK ZIZZA				LOT 01 DP997824 12 OGILVIE STREET DENMAN NSW 2328			PO BOX 2151 DANGAR NSW 209 NEWCASTLE WEST NSW	
			DESIGNER:				SHEET TITLE:			TELEPHONE: 1300 411 030	
			HUGH WALKER - HWD				ROOF PLAN & STORMWATER			EMAIL: info@buildingdesigndirect.com	
			DRAWN:	SCALE:	DATE DRAWN:	CHECKED:	JOB NUMBER:	SHEET NUMBER:	ISSUE:	WEBSITE: www.buildingdesigndirect.com	
			HW	1 : 200	MAY 16	HWD	2016001	A102	6	IF ANY DISCREPANCIES ON DRAWING PLEASE CONTACT BUILDING DESIGN DIRECT FOR CLARIFICATION BEFORE PROCEEDING	



11/01/2022 12:52:38 PM



1 SHOP EAST ELEVATION
A300 1 : 125



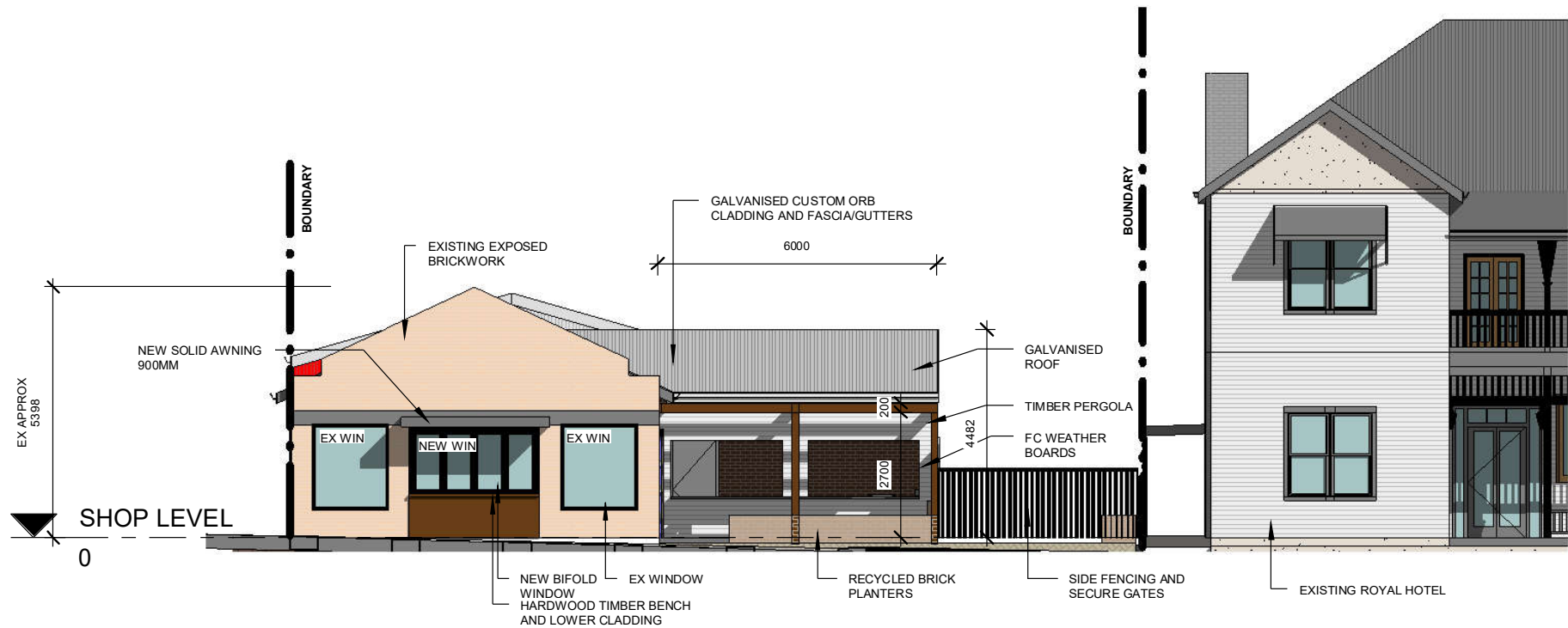
2 SHOP NORTH ELEVATION
A300 1 : 125

REV	DESCRIPTION	DATE	CLIENT: MARK ZIZZA				ADDRESS: LOT 01 DP997824 12 OGILVIE STREET DENMAN NSW 2328			<div><div>BUILDING DESIGN DIRECT PTY LTD PO BOX 2151 DANGAR NSW 209 NEWCASTLE WEST NSW TELEPHONE: 1300 411 030 EMAIL: info@buildingdesigndirect.com WEBSITE: www.buildingdesigndirect.com</div><div><div><div><div><div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></</div></div></div></div></div></div></div>		
-----	-------------	------	-----------------------	--	--	--	---	--	--	--	--	--

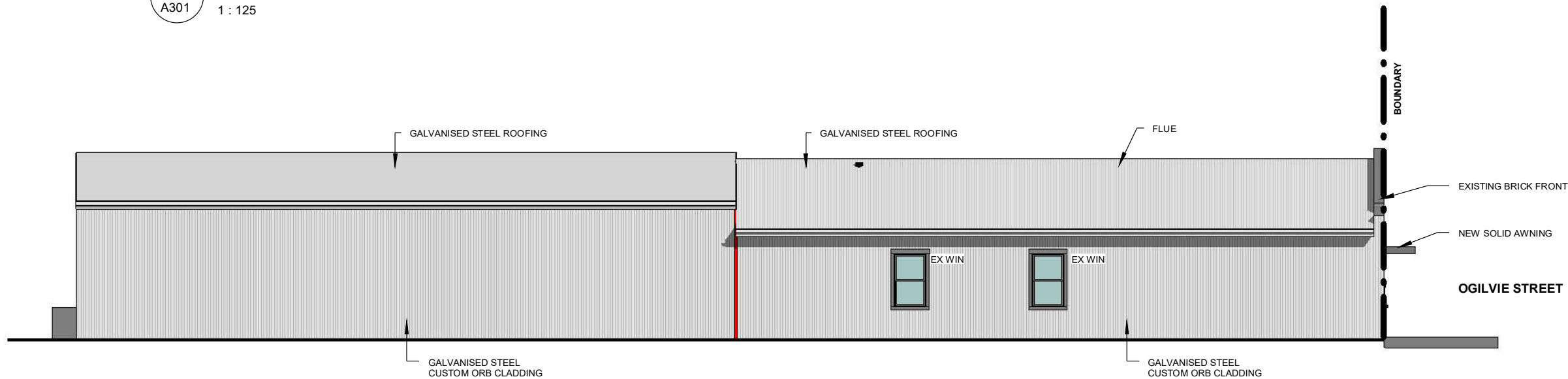
FOR APPROVAL



11/01/2022 12:52:38 PM



1 SHOP SOUTH ELEVATION
A301 1 : 125



2 SHOP WEST ELEVATION
A301 1 : 125

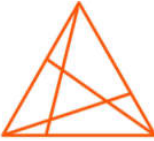
REV	DESCRIPTION	DATE	CLIENT:				ADDRESS:		
6	FOR APPROVALS	11.01.2022	MARK ZIZZA				LOT 01 DP997824 12 OGILVIE STREET DENMAN NSW 2328		
			DESIGNER:				SHEET TITLE:		
			HUGH WALKER - HWD				ELEVATIONS		
			DRAWN:	SCALE:	DATE DRAWN:	CHECKED:	JOB NUMBER:	SHEET NUMBER:	ISSUE:
			HW	1 : 125	MAY 16	HWD	2016001	A301	6

FOR APPROVAL

BUILDING DESIGN DIRECT PTY LTD
PO BOX 2151 DANGAR NSW 209
NEWCASTLE WEST NSW
TELEPHONE: 1300 411 030
EMAIL: info@buildingdesigndirect.com
WEBSITE: www.buildingdesigndirect.com

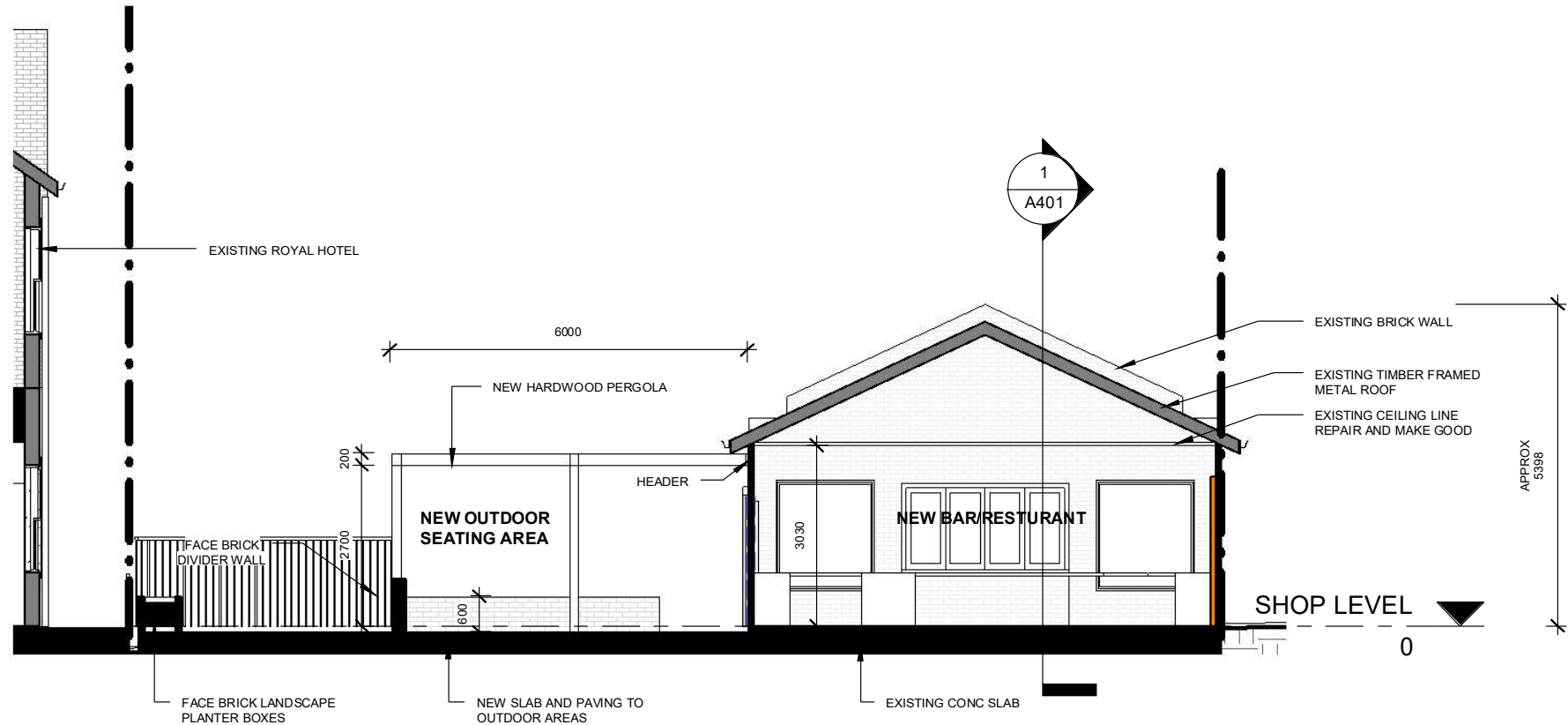
COPYRIGHT
THIS DRAWING REMAINS THE
PROPERTY OF BUILDING DESIGN
DIRECT. IT MAY ONLY BE USED FOR
THE PURPOSE FOR WHICH IT WAS
COMMISSIONED AND IN ACCORDANCE
WITH THE TERMS OF ENGAGEMENT
FOR THE COMMISSION. UNAUTHORISED
USE OF THIS DRAWING IS PROHIBITED.

IF ANY DISCREPANCIES ON DRAWING
PLEASE
CONTACT BUILDING DESIGN DIRECT
FOR
CLARIFICATION BEFORE PROCEEDING

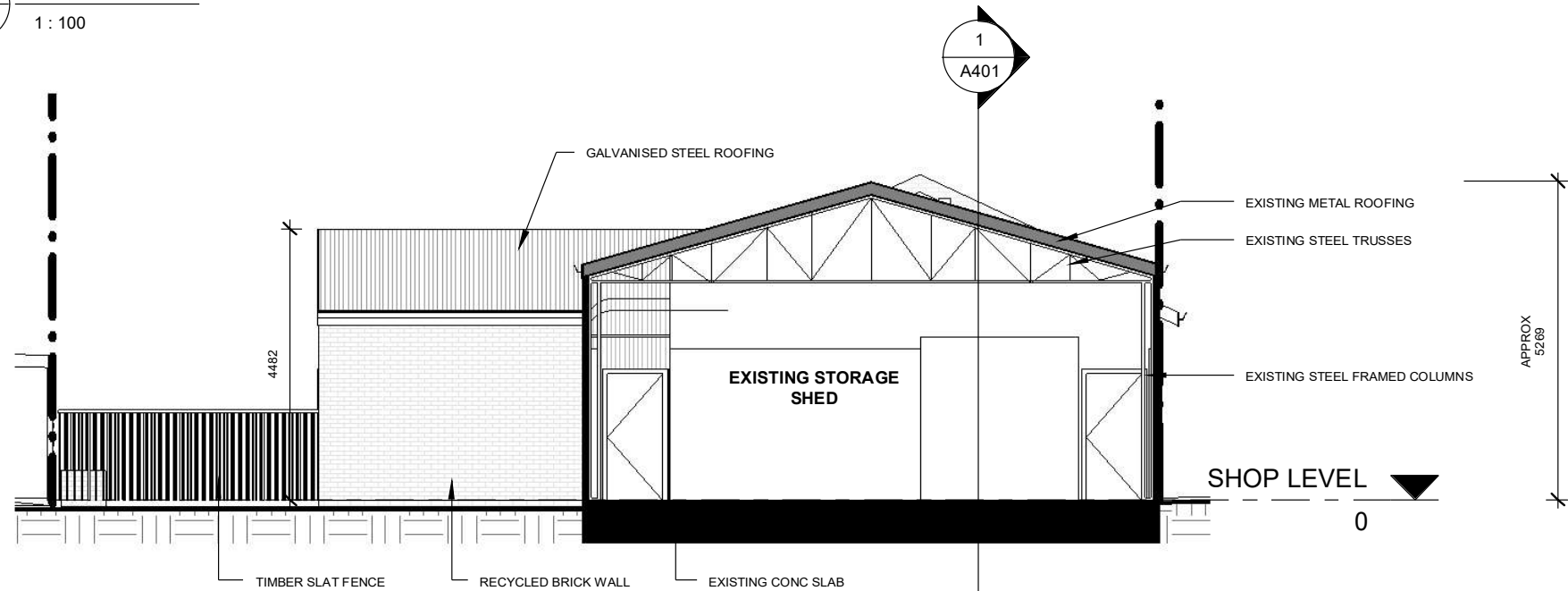


bdd
BUILDING DESIGNERS

11/01/2022 12:52:39 PM




1 SECTION 01
A400 1 : 100



2 SECTION 02
A400 1 : 100

FOR APPROVAL

REV	DESCRIPTION	DATE	CLIENT:				ADDRESS:			<div><div>BUILDING DESIGN DIRECT PTY LTD</div><div>PO BOX 2151 DANGAR NSW 209 NEWCASTLE WEST NSW</div><div>TELEPHONE: 1300 411 030</div><div>EMAIL: info@buildingdesigndirect.com WEBSITE: www.buildingdesigndirect.com</div></div> <div><div><div><div><div>COPYRIGHT</div><div>THIS DRAWING REMAINS THE PROPERTY OF BUILDING DESIGN DIRECT. IT MAY ONLY BE USED FOR THE PURPOSE FOR WHICH IT WAS COMMISSIONED AND IN ACCORDANCE WITH THE TERMS OF ENGAGEMENT FOR THE COMMISSION. UNAUTHORISED USE OF THIS DRAWING IS PROHIBITED.</div></div><div><div>IF ANY DISCREPANCIES ON DRAWING PLEASE CONTACT BUILDING DESIGN DIRECT FOR CLARIFICATION BEFORE PROCEEDING</div></div></div><div></div></div></div>	
6	FOR APPROVALS	11.01.2022	MARK ZIZZA				LOT 01 DP997824 12 OGILVIE STREET DENMAN NSW 2328				
			DESIGNER:				SHEET TITLE:				
			HUGH WALKER - HWD				SECTIONS				
			DRAWN:	SCALE:	DATE DRAWN:	CHECKED:	JOB NUMBER:	SHEET NUMBER:	ISSUE:		
			HW	1 : 100	MAY 16	HWD	2016001	A400	6		

11/01/2022 12:52:40





1 SECTION 03
A401 1 : 100

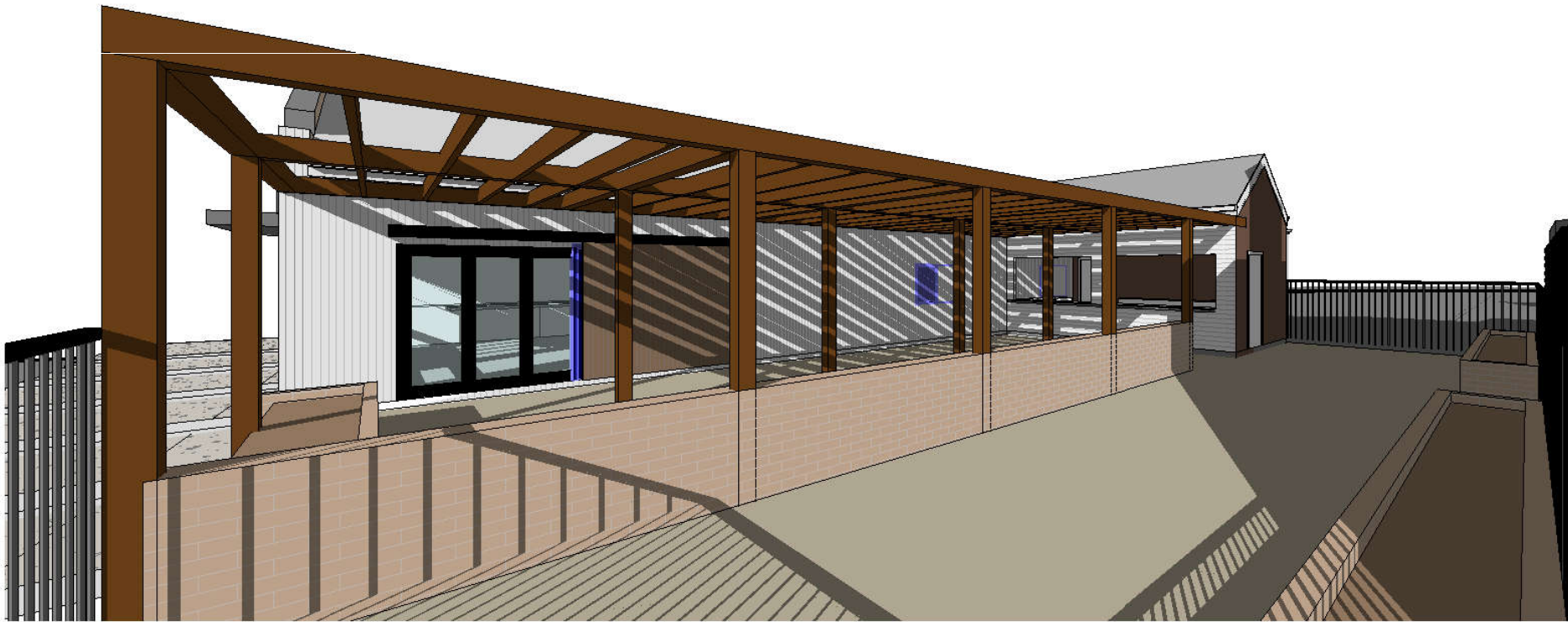
REV		DESCRIPTION	DATE	CLIENT: MARK ZIZZA				ADDRESS: LOT 01 DP997824 12 OGILVIE STREET DENMAN NSW 2328			BUILDING DESIGN DIRECT PTY LTD PO BOX 2151 DANGAR NSW 209 NEWCASTLE WEST NSW TELEPHONE: 1300 411 030 EMAIL: info@buildingdesigndirect.com WEBSITE: www.buildingdesigndirect.com		FOR APPROVAL	
6		FOR APPROVALS	11.01.2022	DESIGNER: HUGH WALKER - HWD				SHEET TITLE: SECTIONS			<div><div><div><div>COPYRIGHT:</div><div>THIS DRAWING REMAINS THE PROPERTY OF BUILDING DESIGN DIRECT. IT MAY ONLY BE USED FOR THE PURPOSE FOR WHICH IT WAS COMMISSIONED AND IN ACCORDANCE WITH THE TERMS OF ENGAGEMENT FOR THE COMMISSION. UNAUTHORISED USE OF THIS DRAWING IS PROHIBITED.</div></div><div><div>IF ANY DISCREPANCIES ON DRAWING PLEASE CONTACT BUILDING DESIGN DIRECT FOR CLARIFICATION BEFORE PROCEEDING</div></div></div><div><div><div><div>bdc</div><div>BUILDING DESIGNERS</div></div></div></div></div>			
				DRAWN:	SCALE:	DATE DRAWN:	CHECKED:	JOB NUMBER:	SHEET NUMBER:	ISSUE:				
				HW	1 : 100	MAY 16	HWD	2016001	A401	6				

11/01/2022 12:52:40 PM

11/01/2022 12:52:40 PM



1 PROPOSED 3D VIEW 01
A500



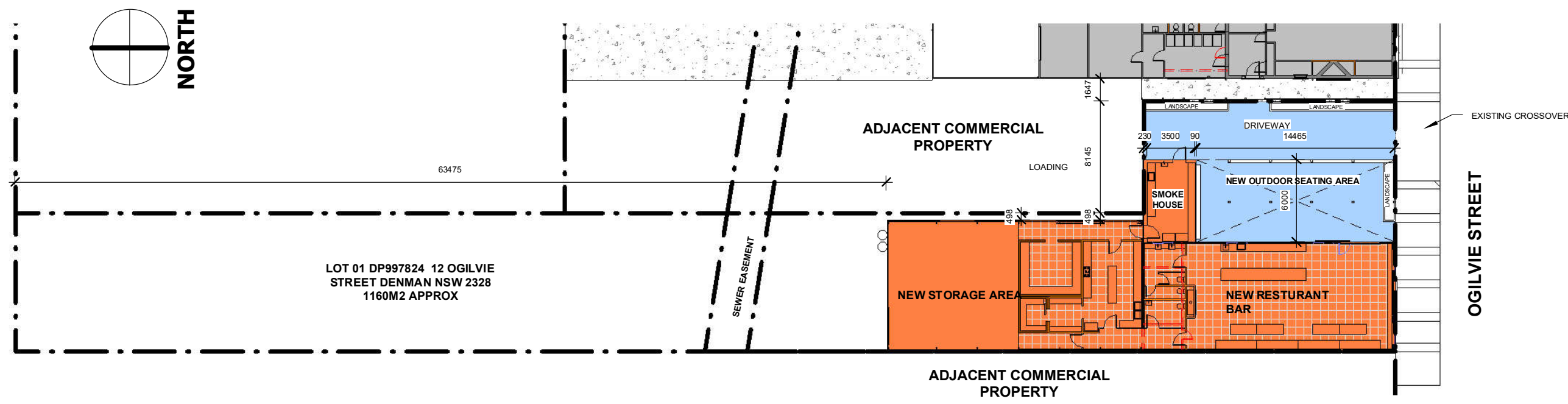
2 PROPOSED 3D VIEW 02
A500

REV	DESCRIPTION	DATE	CLIENT:				ADDRESS:			BUILDING DESIGN DIRECT PTY LTD	
6	FOR APPROVALS	11.01.2022	MARK ZIZZA				LOT 01 DP997824 12 OOLIVE STREET DENMAN NSW 2328			PO BOX 2151 DANGAR NSW 209 NEWCASTLE WEST NSW	
			DESIGNER:				SHEET TITLE:			COPYRIGHT	
			HUGH WALKER - HWD				3D VIEWS			THIS DRAWING REMAINS THE PROPERTY OF BUILDING DESIGN DIRECT. IT MAY ONLY BE USED FOR THE PURPOSE FOR WHICH IT WAS COMMISSIONED AND IN ACCORDANCE WITH THE TERMS OF ENGAGEMENT FOR THE COMMISSION. UNAUTHORISED USE OF THIS DRAWING IS PROHIBITED	
			DRAWN:	SCALE:	DATE DRAWN:	CHECKED:	JOB NUMBER:	SHEET NUMBER:	ISSUE:	IF ANY DISCREPANCIES ON DRAWING PLEASE CONTACT BUILDING DESIGN DIRECT FOR CLARIFICATION BEFORE PROCEEDING	
			HW		MAY 16	HWD	2016001	A500	6	bdc BUILDING DESIGNERS	

FOR APPROVAL



11/01/2022 12:52:41 PM



1 NOTIFICATION PLAN
A800 1 : 300



2 PROPOSED 3D VIEW
A800

FOR APPROVAL																					
REV	DESCRIPTION	DATE	CLIENT: MARK ZIZZA				ADDRESS: LOT 01 DP997824 12 OGILVIE STREET DENMAN NSW 2328		BUILDING DESIGN DIRECT PTY LTD PO BOX 2151 DANGAR NSW 209 NEWCASTLE WEST NSW TELEPHONE: 1300 411 030 EMAIL: info@buildingdesigndirect.com WEBSITE: www.buildingdesigndirect.com												
6	FOR APPROVALS	11.01.2022	DESIGNER: HUGH WALKER - HWD				SHEET TITLE: NOTIFICATION PLAN		<div><div><div>THIS DRAWING REMAINS THE PROPERTY OF BUILDING DESIGN DIRECT. IT MAY ONLY BE USED FOR THE PURPOSE FOR WHICH IT WAS COMMISSIONED AND IN ACCORDANCE WITH THE TERMS OF ENGAGEMENT FOR THE COMMISSION. UNAUTHORISED USE OF THIS DRAWING IS PROHIBITED.</div><div>IF ANY DISCREPANCIES ON DRAWING PLEASE CONTACT BUILDING DESIGN DIRECT FOR CLARIFICATION BEFORE PROCEEDING</div></div><div><div><div>bdd</div><div>BUILDING DESIGNERS</div></div></div></div>												
			DRAWN: HW				SCALE: 1 : 300					DATE DRAWN: MAY 16		CHECKED: HWD		JOB NUMBER: 2016001		SHEET NUMBER: A800		ISSUE: 6	

11/01/2022 12:52:41 PM



BDD Building Designers
PO Box 2151 Dangar NSW 2309
Phone: 1300 411 030
Email: info@buildingdesignndirect.com

STATEMENT OF ENVIRONMENTAL EFFECTS

PROPOSED NEW RESTURANT/BAR/CAFE

12 OGILIVIE STREET DENMAN NSE

APPLICANT: HUGH WALKER FOR MARK ZIZZA

PREPARED BY: BDD BUILDING DESIGNERS

JULY 2021



INTERIOR VIEW

CONTENTS

INTRODUCTION

SUBJECT SITE AND LAND

DESCRIPTION OF PROPOSAL

SECTION 79C MATTERS FOR CONSIDERATION

- Section 79c(1)(a)(i) – Environmental planning instructions
- Section 79c(1)(a)(ii) – Any draft environmental planning instrument
- Section 79c(1)(a)(iii) – Any development control plan
- Section 79c(1)(a)(iiia) – Planning agreements
- Section 79c(1)(a)(iv) – Regulations
- Section 79c(1)(b) – Likely impacts
 - Section 79c(1)(c) – Suitability of the site for development
 - Section 79c(1)(d) – Any submissions
 - Section 79c(1)(e) – The public interest

CONCLUSION

INTRODUCTION

This statement of environmental effects accompanies a development application for a change of use of an existing commercial building and the addition of a new restaurant/café/bar at 12 Ogilvie Street Denman NSW

It is intended to elaborate, where necessary, on aspects covered in the drawings as well as to provide additional information where required. The information following is provided to detail the merit of the above development in relation to the objective performance criteria and provisions set out in the Muswellbrook Council Development Control Plan. Relevant state environmental planning policies and the local environmental plan. It also provides an assessment of the likely environmental impacts in accordance with section 79C of the Environmental Planning and Assessment Act 1979.

SUBJECT SITE AND LAND

The subject site is located at **12 Ogilvie Street Denman NSW 2328** The locality of the site is depicted in **Figure 01 & 02**.

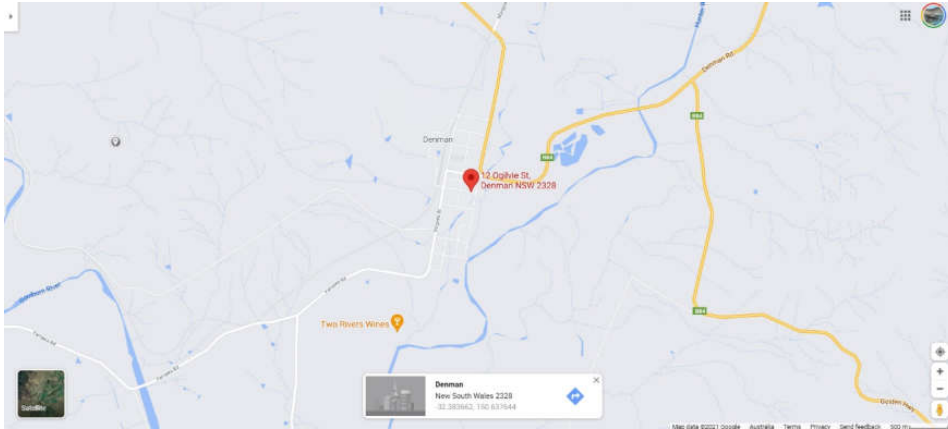


Figure 1 - Site Location – Ogilvie Street Denman



Figure 2: Close up view 12 Ogilvie Street Denman NSW

The existing building is located at 12 Ogilvie Street Denman

The existing premises is a vacant commercial space previously used as an automotive workshop and then retail space and now is vacant

The shop has access to existing sewer, water, and electricity and telephone services

The commercial property consists of a brick façade addressing Ogilvie Street which represents a traditional form and style typical of the area. Behind the brick façade is a series of simple timber and steel framed sheds and spaces. The rear structures are lightweight clad in Fc sheet and metal cladding.

There is an existing open area between the 12 Ogilvie Street and the adjacent Royal Hotel. This provides an opportunity for a large outdoor space or piazza.

The existing building and structure is simple and open to easy modification and enhancement.



Figure 3: Street view of 12 Ogilvie Street. The façade presents a simple rural industrial appearance. There is a large open space between 12 Ogilvie and 20 Ogilvie Streets. This provides an excellent outdoor area opportunity addressing Ogilvie Street with great natural light and access.



Figure 4: Existing view of structures onsite. They are simple rural industrial buildings. They are lightweight clad and present a very simple /practical appearance. This photo also highlights the great amount of open space that would create an excellent north facing courtyard/piazza with access directly off Ogilvie Street.

DESCRIPTION OF PROPOSAL

The following items listed below will form the basis of the development application for 12 Ogilvie Street Denman NSW

1. **Change of use to allow restaurant/bar/café**
2. **Refit existing building structure to accommodate new kitchen/bar/toilets/storage/seating areas**
3. **New outdoor seating areas**
4. **New café structure**
5. **Minor façade changes to allow new windows and doors**
6. **Loading area and driveway**
7. **Site fencing**

It is proposed to upgrade the existing building and structure to accommodate a new rustic bar/restaurant /café that is in keeping with the existing built character of the site and pays homage to the past history of the site.

The development will consist of an appealing outdoor seating area with hardwood pergola accompanied with landscape elements/lighting. This will engage the streetscape during the day and night. A café structure element will also provide further interest to the outdoor area and Ogilvie Street frontage.

New bifold doors will open the existing building up onto the courtyard and create a seamless transition between spaces.

The existing street façade will remain and present a rustic brick façade. The roller door will be replaced, and a new bifold window element added to create interaction with the streetscape. The façade will maintain its existing integrity without minimal disruption or change.

Elements of the existing building will be updated to include

1. New kitchen
2. New cool rooms / storage / bottle and keg store
3. Toilet facilities
4. Storage areas

The proposed development will create an appealing / lively and interactive space that will further enhance the Ogilvie Street tourist precinct and further enhance Denman's appeal to tourists stopping by on their travels. The upgrade of the existing site will further enhance the overall built form and quality of the streetscape.

The proposed new restaurant will operate from 10am-12am to cater primarily for lunch and dinners 7 days a week.

The restaurant will operate with 2-4 staff depending on time of day.

It is proposed to apply for all relevant liquor licenses with NSW Liquor/Gaming, Muswellbrook Council and NSW police once Development application has been resolved and approved. An additional application will be lodged at this point for the relevant license approvals. A small bar license will be required allowing for a maximum of 120 persons in the designated licensed area. Site fencing will secure and enclose the licensed areas. Additionally, a max 32 camera system will be installed to offer surveillance throughout the building and street surrounds.

There is an existing crossover from Ogilvie Street and it is proposed to allow delivery vehicles to access via secure gates to the rear proposed loading areas. Turning area has been provided so they can leave in a forward manner.



Artistic impression showing courtyard area off Ogilvie Street. It provides an interesting, natural and appealing area that is consistent with the heritage/rural themes in the context.



The new outdoor areas provide a great area for groups of people to enjoy the outdoor area and sunshine. It provides a dynamic space that is visible from Ogilvie Street and will engage with the wider context.

The addition of the new café structure element will create further interest to the space and the streetscape. It is about creating an interesting and inviting space that encourages people to enter, stay and feel comfortable in their surroundings.



The existing interior area will require little change, just some fixtures and fittings added to create new bar and seating areas. The fireplace will add warmth and interest to the space.

The space interacts well with the new courtyard and the Ogilvie Street Frontage. The building maintains its existing character and history but is enhanced slightly to accommodate the new use.

SECTION 79C MATTERS FOR CONSIDERATION

The proposal has been assessed having regard to the relevant matters for consideration under Section 79c of the Environmental Planning and Assessment Act 1979. The Matters are assessed under the following sections.

SECTION 79C(1)(a)(i) – ENVIRONMENTAL PLANNING INSTRUMENTS**Muswellbrook Council Local Environmental Plan 2011**

The Muswellbrook Local Environmental Plan 2011 (LEP 2011) applies to the subject site.

The site is Zoned Village and the proposal is permissible with Council's consent.

The development is considered a heritage building and located in a heritage conservation area.

There are no clauses of the LEP that are particularly relevant in the assessment of the proposal but the proposal is consistent with its aims and objectives.

State Environmental Planning Policy 60 (SEPP 60) – Exempt and Complying Development**SECTION 79C (1) (a) (ii) – ANY DRAFT ENVIRONMENTAL PLANNING INSTRUMENT**

There are no draft environmental planning instruments relating to the proposal

SECTION 79C(1)(a)(iii) – ANY DEVELOPMENT CONTROL PLAN**Muswellbrook Council Development Control Plan 2009**

–

Provisions	Assessment	Compliance
SECTION 03 – SITE ANALYSIS	<p>A site analysis drawing has been included with this application. This identifies the parameters and pros and cons of the site. This information has been used to best design and position the new additions.</p> <p>The proposed site is well positioned on Ogilvie Street to accommodate the proposed the design and works.</p> <p>The site is in a prominent tourist area and will enhance the overall tourist appeal of Denman</p> <p>The site has access to existing services and utilities</p> <p>The site has existing access to street carparking and access to the wider council carparking located off Ogilvie Street.</p> <p>There is an existing large crossover to the site.</p> <p>The site has previously been used for a variety of commercial activities.</p> <p>The site and existing structure require minimal modification to create the proposed new development.</p> <p>The proposed development will add further interest and appeal to the wider streetscape area.</p>	YES
SECTION 09 – LOCAL CENTRE DESIGN	<p>No significant changes to the existing built form</p> <p>No significant changes to existing setbacks or heights</p> <p>No significant change to existing character of streetscape</p> <p>No landscaping proposed</p> <p>Simple enhancements to the façade to create a better quality façade to entice customers</p> <p>The new café element and pergola area will enhance the overall site design by creating an open infill area that will enhance the Ogilvie Street built form.</p> <p>Simple outdoor eating/table area proposed and to work in conjunction with main street redevelopment.</p>	YES
SECTION 15 – HERITAGE CONSERVATION	<p>Only minor changes to the existing shop frontage addressing Ogilvie Street which includes</p> <ol style="list-style-type: none"> 1. Remove Roller door and add new window 2. New bifold doors to side of building 3. New hardwood pergola 4. New brick café structure 	YES

	<p>5. Landscaping brick planters</p> <p>All these items are in keeping with the rustic rural character of the existing building and site. They are consistent with wider Ogilvie Street built form and character,</p> <p>The proposed alterations and additions further enhance the existing building and site but maintain the character and history of the site.</p> <p>Heritage conservation/impact is further discussed in detail within the attached heritage impact statement.</p>	
Section 16 – CARPARKING	<p>No significant change to existing floor area. 22m2 added for café structure.</p> <p>Majority of visitors to the restaurant will utilise street Carparking and the large council carparking located off Ogilvie Street</p>	YES
Section 19 – PRIVATE USE OF FOOTPATHS	n/a all outdoor seating located off street behind the Ogilvie Street Building Line	N/A
Section 24 – WASTE MANAGENENT	<p>The proposed development will create minimal building waste as there are no major new building works.</p> <p>Any packaging from new equipment and furniture to be recycled where appropriate</p> <p>Ongoing waste production from the restaurant will utilise a designated and screen waste bin area. Private commercial bins will used and collected by private contractor when full</p>	
Section 25 – STORMWATER MANAGEMENT	The proposed new development does not propose any new roofs or downpipes and will utilise existing stormwater measure on site which discharge to the existing Ogilvie Street stormwater system	YES
SECTION 7 – VILLAGE AREAS	<p>The proposed new development does not negatively affect the existing Denman village character.</p> <p>The new development coupled with outdoor seating will serve to further enhance the streetscape and village by providing a quality new destination which will attract, locals and visitors alike.</p> <p>Providing some variation to restaurants and food variety will serve to better provide for tourists</p> <p>Simple updates to the façade while maintaining the original character of the site including hardwood pergola, cafe structure, courtyard, and bifold will assist in creating a more transparent and vibrant streetscape creating a more</p>	YES

	appealing place to stop and enjoy for residents and tourists, The proposed restaurant does not require any significant changes to function and does not dramatically affect the character of the existing building/	
SECTION 14 – OUTDOOR SIGNAGE	No new signage proposed	YES

SECTION 79C(1)(a)(iii) – PLANNING AGREEMENTS

There are no planning agreements.

SECTION 79C (1)(a)(iv) – REGULATIONS

There are no matters prescribed by the regulations for the proposal.

SECTION 79C(1)(b) – LIKELY IMPACTS

The proposed development will have no adverse impact.

SECTION 79C(1)(c) – SUITABILITY OF THE SITE FOR DEVELOPMENT

The proposed residential dwellings are entirely suitable for the site due to its location.

SECTION 79C(1)(d) – ANY SUBMISSIONS

To be considered by Council should notification be required.

SECTION 79C(1)(e) – THE PUBLIC INTEREST

For reasons set out in this statement, it is considered that there will be no public interest in the proposed, given the absence of any demonstrable adverse impacts.

CONCLUSION

The proposal satisfies the relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979 and the provisions set out in the Muswellbrook Council Development Control Plans Design Criteria.

In summary the proposed new restaurant/bar/café and associated outdoor areas are a simple and elegant upgrade to an existing vacant and underutilised commercial space.

The proposed new bar/restaurant has no negative effects on the streetscape, heritage and village character of the area.

The proposed new development will serve to further enhance the streetscape and also provide further options for tourists and residents alike in terms of food and entertainment. The restaurant will bring further interest and vibrancy to the streetscape and will also work with the proposed Ogilvie Street upgrades.

10.3 PLANNING PROPOSAL TO REZONE THE FORMER FORESTRY SITE - 72-74 MAITLAND STREET, MUSWELLBROOK

Attachments:	A. Planning Proposal - 72 to 74 Maitland Street Muswellbrook B. Gateway Determination ↓ C. TfNSW submission ↓ D. BCD submission ↓
Responsible Officer:	Derek Finnigan - Deputy General Manager
Author:	Sharon Pope - Executive Manager - Environment and Planning
Community Plan Issue:	<i>Diversify the economy, facilitate the development of intensive agricultur and other growth industries, make the Shire a more attractive place to invest and do business</i>
Community Plan Goal:	<i>Review the Local Environmental Plan and Development Control Plan to improve investment certainty for industry.</i>
Community Plan Strategy:	<i>Progress completion of an LEP and DCP.</i>

PURPOSE

Council has received a request to amend the *Muswellbrook Local Environmental (MLEP) 2009* in relation to 72-74 Maitland Street, Muswellbrook (Lot 100, DP 1261496). The Planning Proposal aims to rezone the site from RU3 Forestry zone to R1 General Residential zone. The change would allow the construction of an 'educational establishment' or residential development.

Council is the Planning Authority for this amendment. The Planning Proposal was publicly notified from 12 January 2022 to 2 February 2022. The purpose of the report is to request Council's endorsement to finalise the Planning Proposal.

OFFICER'S RECOMMENDATION

Council:

- Endorses the Planning Proposal contained in Attachment A (Planning Proposal – Administrative Amendment 72-74 Maitland Street Muswellbrook (PP_2021_6523) and requests a Parliamentary Counsel opinion to amend Muswellbrook Local Environmental Plan 2009; and**
- Makes the amending Plan under delegation pursuant to section 3.36 of the Environmental Planning and Assessment Act 1979.**

Moved: _____ **Seconded:** _____

☐

Cr A. Barry

☐

Cr M. Bowditch

☐

Cr D. Douglas

☐

Cr J. Drayton

☐

Cr L. Dunn

☐

Cr J. Lecky

☐

Cr R. Mahajan

☐

Cr D. Marshall

☐

Cr G. McNeill

☐

Cr S. Reynolds

☐

Cr R. Scholes

☐

Cr B. Woodruff

BACKGROUND

The subject land is Lot 100, DP 1261496 (72-74 Maitland Street, Muswellbrook). The land is currently zoned RU3 Forestry under the *MLEP 2009*. The property comprises several empty buildings used in association with the former land use, this being a plant nursery. The proponent intends to establish an 'educational establishment' on the property. A State Significant Development application (SSD) has been publicly notified for the site. The SSD application cannot be determined until the rezoning of the site is finalised.

Following rezoning, if the school proposal does not proceed, residential development would more likely occur on the property.

The preparation of a Planning Proposal is guided by DPIE's '*A Guide to preparing Local Environmental Plans*' and '*A Guide to preparing Planning Proposals*'.

REPORT

A. Location of the Planning Proposal

The site is located on Maitland Street (New England Highway). An aerial map and land zoning map of the site are provided in Figures 1 & 2 below.

The site is adjoined by the Muswellbrook Golf Course, which is zoned RE2 Private Recreation. Land to the south is zoned a combination of R1 General Residential, B2 Local Centre and B5 Business Development land and is occupied by a mixture of residential and commercial development.



Figure 1: Location of the Site, 72-74 Maitland Street, Muswellbrook

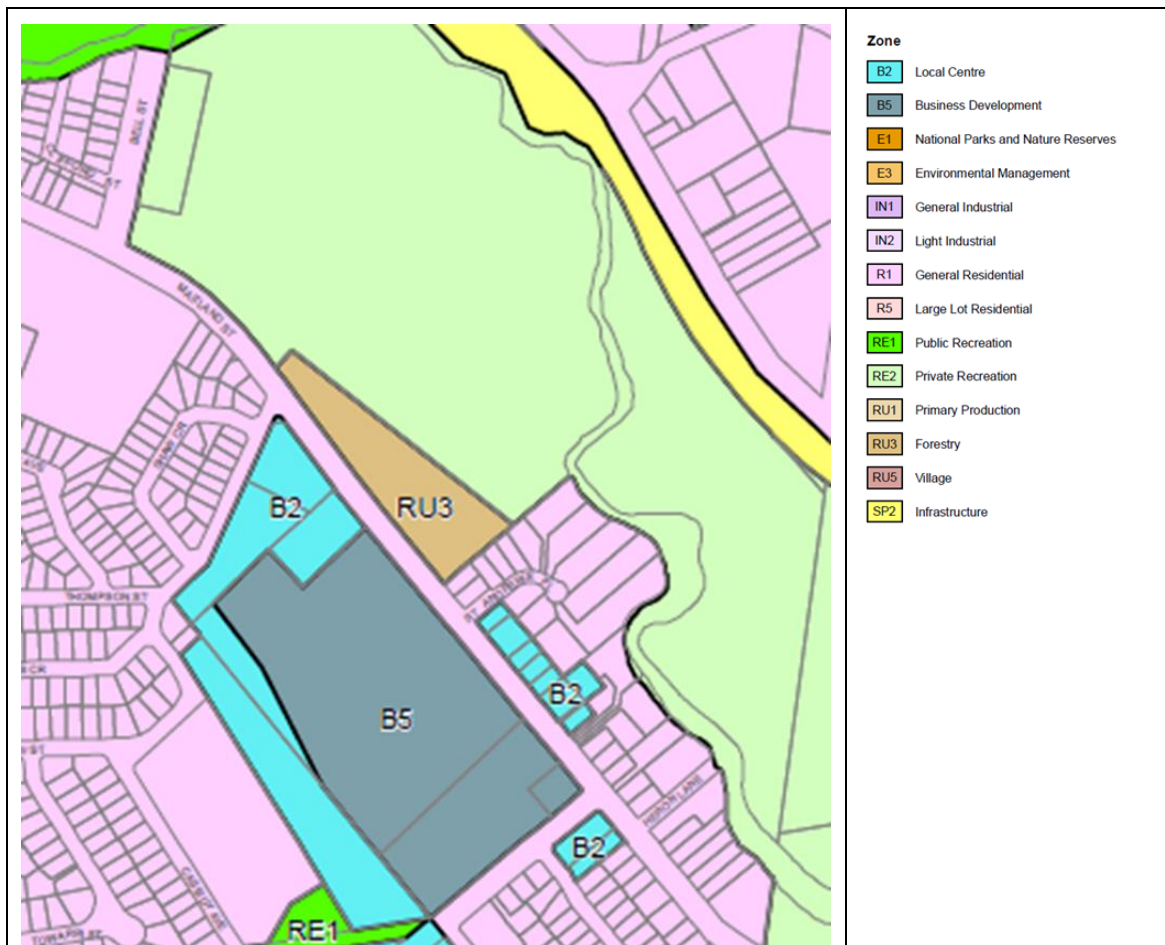


Figure 2: Current Zoning of the Subject Land

B. MLEP 2009 Amendments

The intent of the Planning Proposal for Lot 100, DP 1261496, 72-74 Maitland Street, Muswellbrook is to:

- (1) Rezone the subject land from RU3 Forestry zone to R1 General Residential zone;
- (2) Introduce a Floor Space Ratio (FSR) of 0.5:1 to the proposed residential land; and
- (3) Introduce a Maximum Building Height (MBH) of 8.5 m to the proposed residential land.

Any development application for the subject land will need to consider the likely potential impacts of, but not be limited to, additional traffic, site manoeuvrability and infrastructure provision associated with the development.

C. Consideration of Planning Proposal in Relation to Applicable Local and Regional Plans and Strategies

The site contains some areas of contamination due to the past use of the site. This contamination will be remediated as part of redevelopment of the site and the issue will be dealt with in more detail at the development application stage.

The site is affected by flooding from Muscle Creek and local overland stormwater flows. This matter is addressed more fully in the attached Planning Proposal (see attachment A) and in the consultation section of this report below.

The Planning Proposal is consistent with the aims and objectives of the applicable local and regional plans and strategies. Below is a brief outline of the planning proposal's consistency with the applicable local and regional plans and strategies.

Muswellbrook Local Strategic Plan 2020 – 2040 (LSPS)

The LSPS implements the actions in the Hunter Regional Plan and Council's own priorities as set out in the Muswellbrook Community Strategic Plan and other adopted strategies and actions. Improving education and training opportunities in the community is identified in the LSPS as desirable to improve liveability of the Shire.

Hunter Regional Plan 2036

Direction 23 of the *Hunter Regional Plan 2036* identifies growing centres and renewing corridors. Action 23.1 “*Concentrate growth in strategic centres, local centres and urban renewal corridors to support economic and population growth and a mix of uses.*”, is one focus of the proposed rezoning. The Planning Proposal is consistent with both the action and direction of the *Hunter Regional Plan 2036* as it will contribute to urban revitalisation for Muswellbrook by providing a new school facility. Furthermore, the proposed development will improve the streetscape and assist in supporting economic growth.

This Proposal is also consistent with Direction 13, and in particular “*Action 13.3 Amend planning controls to deliver greater certainty of land use.*” The current Forestry zoning is not appropriate for the site; changing the zoning would be consistent with this direction.

Muswellbrook Land Use Development Strategy

The *Land Use Development Strategy* sets out the future direction for land use in the Muswellbrook local government area for the next 20 years and establishes an overarching policy framework focused on the best use of land for the best community value. The proposal is consistent with the strategy as it provides opportunities for urban growth and encourages urban renewal in an area close to the Central Business District of Muswellbrook. The Strategy also focuses on encouraging the establishment of regional education and related facilities within the Muswellbrook town centre.

Muswellbrook Community Strategic Plan 2017-2027

The *Muswellbrook Community Strategic Plan 2017-2027* identifies community services and infrastructure to support the community as being important drivers of Muswellbrook Shire's future. The plan supports the development of Education and Training opportunities as a method of achieving this growth. The Planning Proposal is consistent with this aim as it will facilitate an ‘educational establishment’ (Junior, Middle and Senior School), as the preferred development, close to the Muswellbrook CBD.

CONSULTATION

Public and agency consultation required as part of the planning proposal process was specified by the Department of Planning, Industry and Environment (DPIE) as part of the Gateway Determination (see Attachment B).

The Planning Proposal was publicly notified from 12 January 2022 to 2 February 2022, with a notice on Council's website, a Facebook post and letters to the adjoining owners. Two submissions were received from government agencies: Transport for NSW (TfNSW) and the Biodiversity Conservation Division of the Department of Planning, Industry and Environment (BCD). A summary of the submissions and a planning response is provided below:

Transport for NSW (TfNSW)

No objection or requirements, will consider traffic matters in more detail at the development application stage (see Attachment C)

Biodiversity Conservation Division of DPIE (BCD)

BCD has no comment to provide on the biodiversity assessment (see Attachment D). BCD's recommendations in relation to the flood risk assessment relevant to the Planning Proposal are

1. BCD advises that the proposal is inconsistent with the 4.3(8) Ministerial Directions on flooding. BCD recommends that:

- the site should not be rezoned until the inconsistency with the management item MC2 of the Muswellbrook Flood Plain Risk Management Study and Plan is resolved.
- the proponent demonstrates that the school in its current form will not prevent the future construction of the MC2 flood mitigation works.
- flood planning levels applied to the development should be based on the levels with the MC2 flood mitigation works in place.

Note: Management item MC2 of the Muswellbrook Flood Plain Risk Management Study and Plan involves the construction of a flood bund on the Muswellbrook Golf Course.

Planning Comment

The Proponent has also advised that to meet the planning and construction guidelines for schools, a significant part of the site is required to be retained for open space and recreation purposes. This area is planned to occur on the part of the site that will become affected by the 1% AEP (Annual Exceedence Probability) if the MC2 flood mitigation works proceed.

The MC2 flood mitigation works have only undergone a limited prefeasibility assessment of options as part of the Floodplain Study. Implementation of this measure still requires detailed investigation, concept design (including feasibility, obtaining approvals, addressing land matters), and construction.

Council has not yet progressed completing investigations and a detailed cost benefit analysis for the MC2 flood mitigation works, and a funding source for these works has not been identified. In summary, it is still unclear that these works will proceed; however, Council is satisfied that the school proposal would not remove the ability to proceed with these works.

Council recently requested to have the Special Flood Consideration clause added to MLEP 2009 as a separate process being rolled out across the State. Council has also exhibited changes to MDCP 2009 to update the provisions related to planning for development on the floodplain.

These two mechanisms will require future development proposals to have regard to a range of flood scenarios, including increases that may result from management item MC2 of the Muswellbrook Flood Plain Risk Management Study and Plan.

2. BCD recommends that an additional survey is required to determine if there is a secondary overland flow path through the site. If a flow path is identified, then the flood impact assessment will need to be updated to determine:
 - new flood planning level for the development.
 - impacts of filling the secondary flow path.
 - impacts on emergency management.

Planning Comment

These matters will be addressed in the SSD application or other future development applications.

3. BCD advises that the proponent is required to develop a flood emergency response plan (FERP). The FERP must document how risk to life will be managed during the initial stages of the school development when there will be only portable buildings and for the final school development when permanent two-storey structures, designed to withstand Probable Maximum Flood (PMF) forces, will be available.

Planning Comment

These matters will be addressed in the SSD application or other future development applications.

4. Split zoning consistent with flood risk post construction of proposed council flood mitigation works is considered to be a more resilient planning outcome and would be more likely to be supported by BCD.

Planning Comment

The Proponent has also advised that to meet the planning and construction guidelines for schools, a significant part of the site is required to be retained for open space and recreation purposes. This area is planned to occur on the part of the site that will become affected by the 1% AEP if the MC2 flood mitigation works proceed. Having that part of the site zoned C3 Environmental Management may create future issues for the school's planning, as the SEPP (Educational Establishments and Childcare Facilities) 2017 does not generally apply to land that is zoned C3.

OPTIONS

Council may:

1. Resolve to finalise the Planning Proposal to amend MLEP 2009 to permit an educational establishment or residential development on Lot 100, DP 1261496. This is the preferred option as the current zone is an anomaly and no development can currently occur on the site due to its zoning; or
2. Reject the Amendment request and take no further action.

Where Council does not support finalisation of the planning proposal, Council is required to notify the Proponent as soon as practicable in writing that the proposal is not supported. The Proponent may seek a review of the decisions by DPIE.

CONCLUSION

It is recommended that Council support the applicant's request to amend the MLEP 2009 and finalise a Planning Proposal to amend Muswellbrook Local Environmental Plan 2009 (MLEP 2009) to:

- i) change the zoning of the land to R1 General Residential;
- iii) introduce a Floor Space Ratio (FSR) for the site; and
- iv) introduce a maximum building height for the site

SOCIAL IMPLICATIONS

The Planning Proposal will facilitate expansion of educational establishments (Junior, Middle and Senior School) in Muswellbrook.

FINANCIAL IMPLICATIONS

No known financial implications.

STATUTORY IMPLICATIONS

The Planning Proposal seeks to make an amendment to the MLEP 2009. The requested amendment is an Administrative Amendment involving a change to the zoning and several map layers applying to the lot.

LEGAL IMPLICATIONS

The proposal has been prepared in accordance with DPIE's '*Guide to preparing Local Environmental Plans*' and '*A Guide to preparing Planning Proposals*'.

RISK MANAGEMENT IMPLICATIONS

By following guidelines issued by DPIE any risks to Council in rezoning the site will be minimised.

Planning Proposal – Administrative Amendment – 72 to 74 Maitland Street, Muswellbrook

PP_2021_6523

Local Government Area:		Muswellbrook Shire Council (MSC)
Name of Draft LEP:		Muswellbrook Local Environment Plan 2009 - PP_2021_6521
Subject Land:		Lot 100 DP 1261496 Muswellbrook.
Land Owner:		Pacific Brook Christian School
Applicant:		DFP Planning Pty Limited
Folder Number:		PP018
Date:		08 Sept 2021
Author:		Sharon Pope - Muswellbrook Shire Council
Tables:	Table No.	Details
	1	Assessment of the Planning Proposal against relevant SEPPs
	2	Consistency with applicable Ministerial Directions
Maps:	No.	
	1	Locality
	2	Site Identification
	3	Flooding
	4	Zoning
	5	Maximum Building Height
	6	Floor Space Ratio

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

Part 1 – OBJECTIVES OR INTENDED OUTCOMES

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

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

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

Part 2 – EXPLANATION OF PROVISIONS

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

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

Part 3 – JUSTIFICATION

Section A – Need for the Planning Proposal

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

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

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

The current zone is an anomaly, limited development can currently occur on the site due to that zone. To facilitate a future development application for an 'educational establishment' or residential development, MLEP 2009 needs to be amended.

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

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

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

Other options considered and not pursued include:

- **Amending Schedule 1, Additional Permitted Uses** to permit a school. This was not pursued as the underlying objectives of the RU3 zone would still apply. Forestry NSW have sold the site and the objectives of the RU3 zone are no longer appropriate.
- **Amend Zone to B2 Local Centre or B5 Business Development.** There are significant areas of land zoned B2 and B5 in the vicinity that are currently under-developed, there is not justification to zone more land for business purposes. These zones would also encourage further ribbon development adjoining Maitland Street.
- **Split R1/C3 zone.** This zone arrangement was considered because of the submission from BCD. The reasons why this was not the preferred option are discussed in the consultation section (6.2 below). Having a split zone may impact the ability of the proposed school to utilise the site for recreation and other school related activities.

Section B – Relationship to Strategic Planning Framework

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

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

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

The Hunter Regional Plan 2036 (HREP).

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

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

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

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

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

Muswellbrook Community Strategic Plan 2017 – 2027

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

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

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

Muswellbrook Local Strategic Planning Statement 2020-2040

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

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

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

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

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

Table 3: Assessment of the Planning Proposal against relevant SEPPs

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

		<p>managed through the land development process.</p> <p>A Detailed Site Investigation and Remediation Action Plan have been prepared and identify the contaminated areas of the site requiring remediation and the method of remediation.</p>
SEPP (Infrastructure) 2007	<p>The aim of this Policy is to facilitate the effective delivery of infrastructure across the State by improving regulatory certainty and efficiency through a consistent planning regime for infrastructure and the provision of services.</p>	<p>Clause 104 of SEPP (Infrastructure) 2007 relates to traffic generating development and Schedule 3 of the SEPP identifies the types of traffic generating development to be referred to Roads and Maritime Services (RMS). The proposal is subject to Column 1 (purpose of development) and Column 3 (size or capacity – site with access to classified road). Schedule 3 includes the subdivision of 50 or more allotments, car parks with 50 or more car parking spaces and ‘any other purpose’ which creates 50 or more motor vehicle per hour.</p> <p>Clause 104 only relates to the determination of DAs. Nevertheless, the consideration of traffic impacts however it is expected that the planning proposal will be referred to the RMS.</p> <p>Division 5 of SEPP (Infrastructure) 2007 relates to Electricity transmission or distribution networks and contains provisions relating to exempt development, development without consent and notification requirements for certain works. The provisions primarily relate to works that might be carried out relating to this infrastructure and is not a matter relevant to the planning proposal. Overhead transmission lines are located along Maitland Street.</p>
State Environmental Planning Policy (State and Regional Development) 2011	<p>The aims of this Policy are as follows—</p> <p>(a) to identify development that is State significant development,</p> <p>(b) to identify development that is State significant infrastructure and critical State significant infrastructure,</p> <p>(c) to identify development that is regionally significant development.</p>	<p>Clause 15(1) of Schedule 1 of <i>State Environmental Planning Policy (State and Regional Development) 2011</i> (SEPP SRD) identifies the future proposed school as SSD as it a new school.</p>

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

4.5 Is the planning proposal consistent with applicable Ministerial Directions?

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

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

Compliance with Section 9.1 Directions	
Direction	Response
investigation of the land carried out in accordance with the contaminated land planning guidelines.	
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones (1) The objectives of this direction are: (a) to encourage a variety and choice of housing types to provide for existing and future housing needs, (b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, (c) to minimise the impact of residential development on the environment and resource lands. (4) A planning proposal must include provisions that encourage the provision of housing that will: (a) broaden the choice of building types and locations available in the housing market, and (b) make more efficient use of existing infrastructure and services, and (c) reduce the consumption of land for housing and associated urban development on the urban fringe, and (d) be of good design. (5) A planning proposal must, in relation to land to which this direction applies: (a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and (b) not contain provisions which will reduce the permissible residential density of land.	<p>Should an educational establishment not be capable of proceeding on the site, the proposed rezoning would facilitate the subdivision and development of the land for a residential purpose.</p> <p>This potential for residential development is generally in keeping with the Direction for residential zones through enabling a variety of housing types, making efficient use of existing infrastructure and services, consolidating residential development away from the urban fringe and achieving a residential density that is consistent with the surrounding established character of the locality.</p>

4 Hazard and Risk

1.3 Flood Prone Land

- (1) The objectives of this direction are:
- (a) to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and
 - (b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land
- (4) A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas).
- (5) A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.
- (6) A planning proposal must not contain provisions that apply to the flood planning areas which:
- (a) permit development in floodway areas,
 - (b) permit development that will result in significant flood impacts to other properties,
 - (c) permit a significant increase in the development of that land,
 - (d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or
 - (e) permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development.
- (7) A planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).
- (8) For the purposes of a planning proposal, a relevant planning authority must not determine a flood planning level that is inconsistent with the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas) unless a relevant planning authority provides adequate justification for the proposed departure from that Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).

The site falls within a flood planning area identified in the Muswellbrook Floodplain Management Study and Plan. Royal Hosking DVH (RHDHV) prepared a Flood Information and Levels Memo for the site. The letter identifies flood risk on the site from Muscle Creek and potential mitigation measures.

A portion of the site is considered to provide flood storage area. Planning for flooding will occur in any subsequent development application.

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

<p>(a) allow that land use to be carried out in the zone the land is situated on, or</p> <p>(b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or</p> <p>(c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.</p> <p>(5) A planning proposal must not contain or refer to drawings that show details of the development proposal.</p>	<p>Management Study and Plan and the requirements of MDCP 2009 will apply to any proposed development.</p>
7. Metropolitan Planning	Not Applicable

Section C – Environmental, Social and Economic Impact

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

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

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

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

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

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

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

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

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

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

Acoustic

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

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

Contamination/ Remediation Action Plan

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

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

The Detailed Site Investigation identified the following:

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

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

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

Flooding

The site falls within a flood planning area identified in the Muswellbrook Floodplain Management Study and Plan. Royal Hoskining DVH (RHDHV) prepared a Flood Information and Levels Memo for the site. The letter identifies flood risk on the site from Muscle Creek and potential mitigation measures.

RHDHV prepared the Muscle Creek Flood Study in 2017 as part of the Hunter River (Muswellbrook to Denman) Flood Risk Management Study and Plan (FRMS&P). Map 5 illustrates flood hazard and flood categories applying to the site.

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

Traffic

The Proponent has provided advice relating to traffic and parking conditions for the proposed school development. Traffic is a design issue for future development proposals to address.

Aboriginal Cultural Heritage

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

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

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

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

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

Section D – State and Commonwealth Interests**6.1 Is there adequate public infrastructure for the planning proposal**

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

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

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

This Planning Proposal will required public notification and that TfNSW and the BCD be provided with an opportunity to comment during the exhibition period.

Transport for NSW (TfNSW)

No objection or requirements, will consider traffic matters in more detail at the development application stage.

Biodiversity Conservation Division of DPIE (BCD)

BCD has no comment to provide on the biodiversity assessment. BCD's recommendations in relation to the flood risk assessment relevant to the Planning Proposal are:

1. BCD advises that the proposal is inconsistent with the 4.3(8) Ministerial Directions on flooding. BCD recommends that:

- the site should not be rezoned until the inconsistency with the management item MC2 of the Muswellbrook Flood Plain Risk Management Study and Plan is resolved.
- the proponent demonstrates that the school in its current form will not prevent the future construction of the MC2 flood mitigation works.
- flood planning levels applied to the development should be based on the levels with the MC2 flood mitigation works in place.

Planning Comment

The Proponent has also advised that to meet the planning and construction guidelines for schools, a significant part of the site is required to be retained for open space and recreation purposes. This area falls has been planned to occur on the part of the site that will become affected by the 1% AEP if the MC2 flood mitigation works proceed.

The MC2 flood mitigation works have only undergone a limited prefeasibility assessment of options as part of the Floodplain Study. Implementation of this measure still requires detailed investigation, concept design (including feasibility, obtaining approvals, addressing land matters), and construction.

Council has not yet progressed completing investigations and a detailed cost benefit analysis for the MC2 flood mitigation works, and a funding source for these works has not been identified. In summary, it is still unclear that these works will proceed, however Council is satisfied that the school proposal would not remove the ability to proceed with these works.

Council recently requested to have the Special Flood Consideration clause added to MLEP 2009 as a separate process being rolled out across the State. Council has also exhibited changes to MDCP 2009 to update the provisions related to planning for development on the floodplain.

These two mechanisms will require future development proposals to have regard to a range of flood scenarios, including increases that may result from management item MC2 of the Muswellbrook Flood Plain Risk Management Study and Plan.

2. BCD recommends that an additional survey is required to determine if there is a secondary overland flow path through the site. If a flow path is identified, then the flood impact assessment will need to be updated to determine:

- new flood planning level for the development.
- impacts of filling the secondary flow path
- impacts on emergency management.

Planning Comment

These matters will be addressed in the SSD application or other future development applications.

3. BCD advises that the proponent is required to develop a flood emergency response plan (FERP). The FERP must document how risk to life will be managed during the initial stages of the school development when there will be only portable buildings and for the final school development when permanent two-storey structures, designed to withstand PMF forces, will be available.

Planning Comment

These matters will be addressed in the SSD application or other future development applications.

4. Split zoning consistent with flood risk post construction of proposed council flood mitigation works is considered to be a more resilient planning outcome and would be more likely to be supported by BCD.

Planning Comment

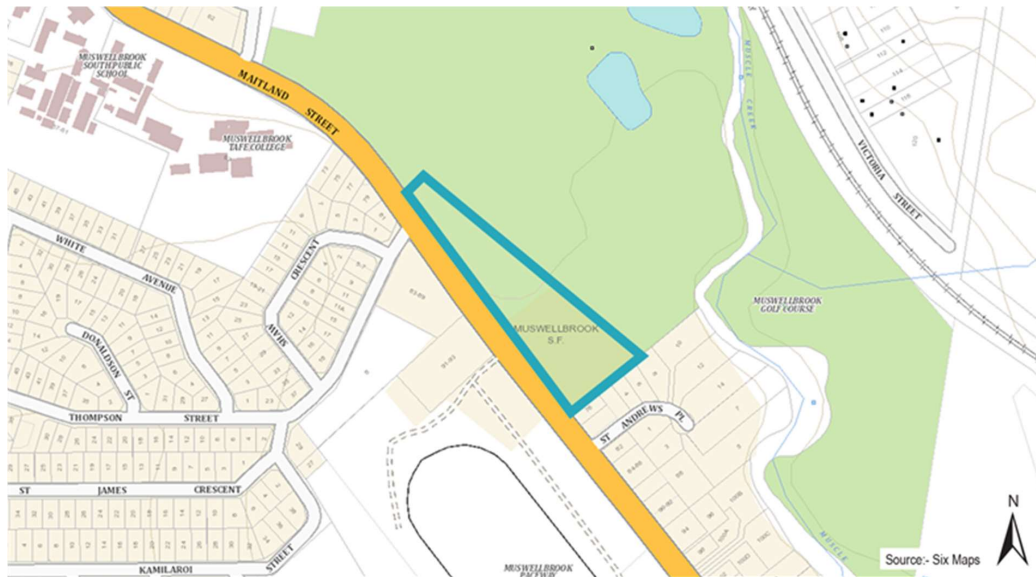
The Proponent has also advised that to meet the planning and construction guidelines for schools, a significant part of the site is required to be retained for open space and recreation purposes. This area falls has been planned to occur on the part of the site that will become affected by the 1% AEP if the MC2 flood mitigation works proceed. Having that part of the site zoned C3 Environmental Management may create future issues for the school's planning, as the SEPP (Educational Establishments and Childcare Facilities) 2017 does not generally apply to land that is zoned C3.

Part 4 – MAPPING

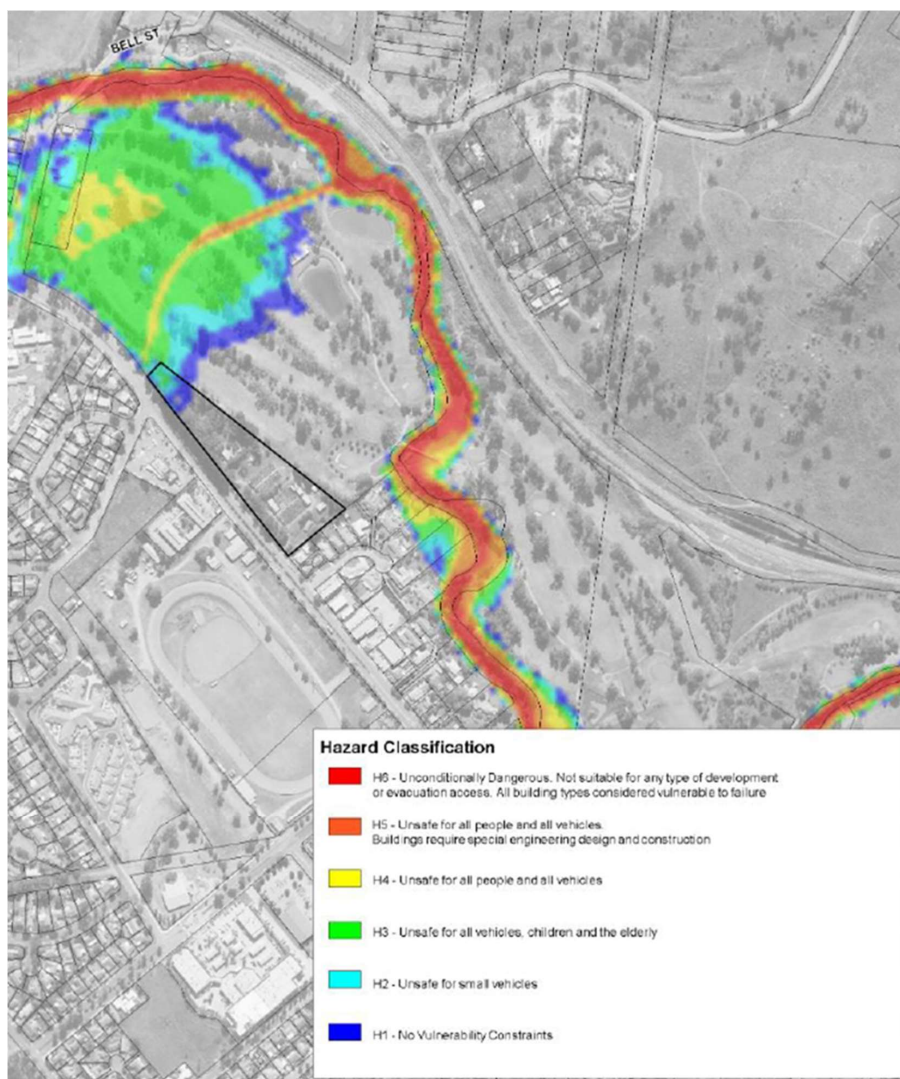
Map 1 – Locality



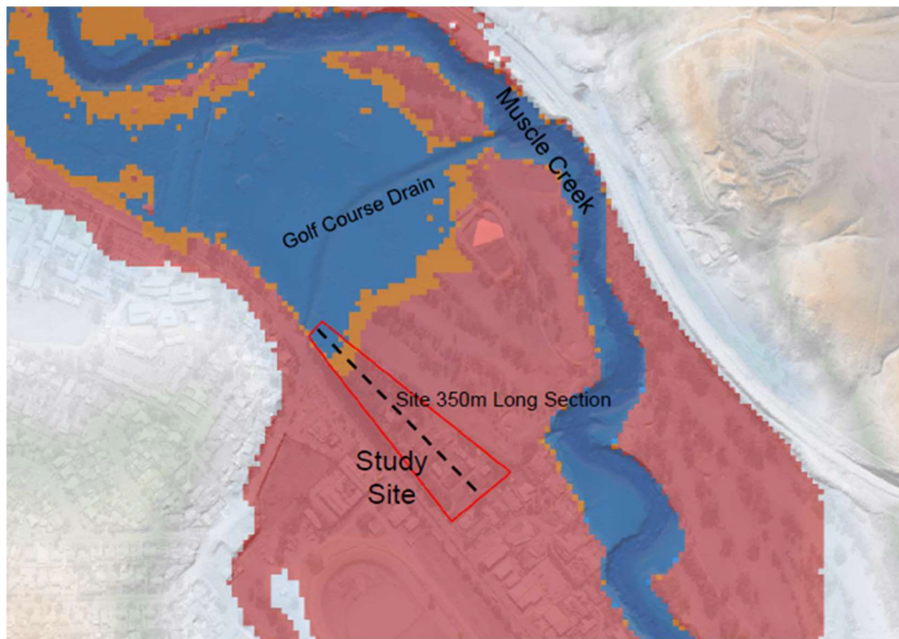
Map 2 - Site Identification Map



Map 3 – Flood mapping



(a) Flood Hazard Classification

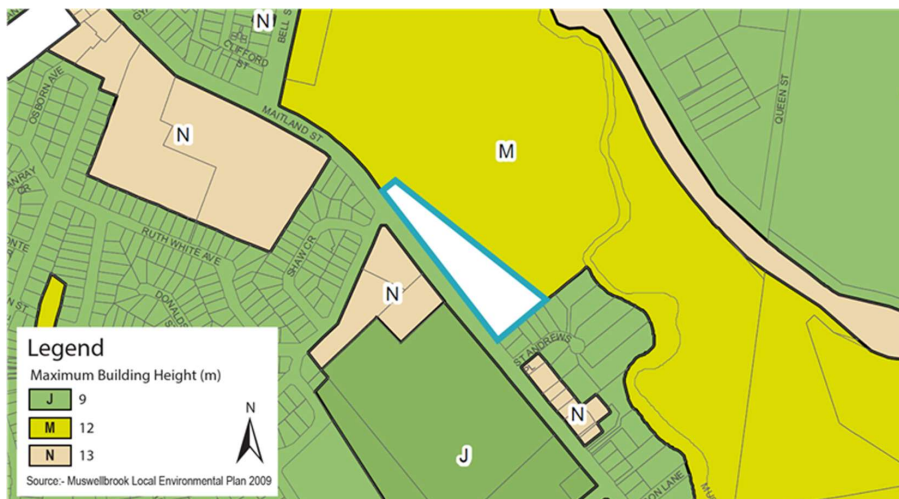


(b) Flood categories. Blue identifies 1 in 20-year flood, orange indicates 1 in 100 year flood and pink indicates Probable Maximum Flood.

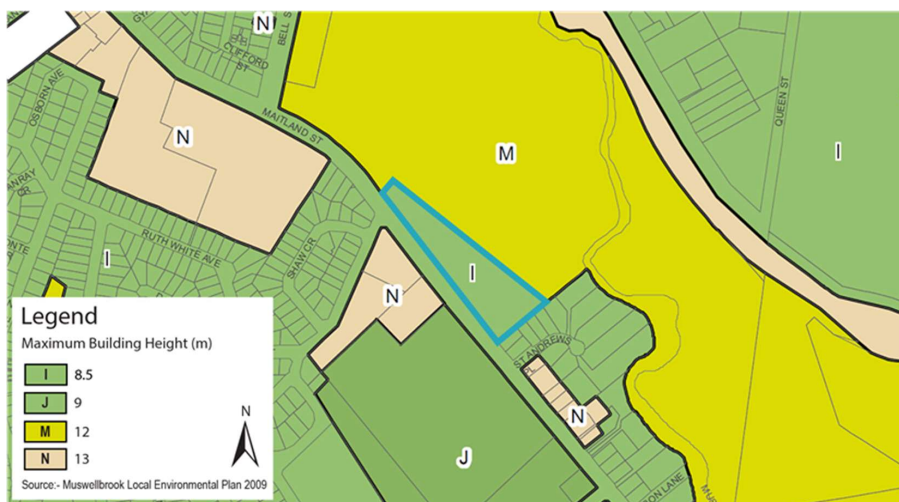
Map 4 - Muswellbrook LEP 2009 - Land Zoning Map Sheet (LZN-008)*(a) Current Land Zoning – RU3 Forestry**(b) Proposed Zoning – R1 General Residential*

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

(a) Current Building Height – Nil

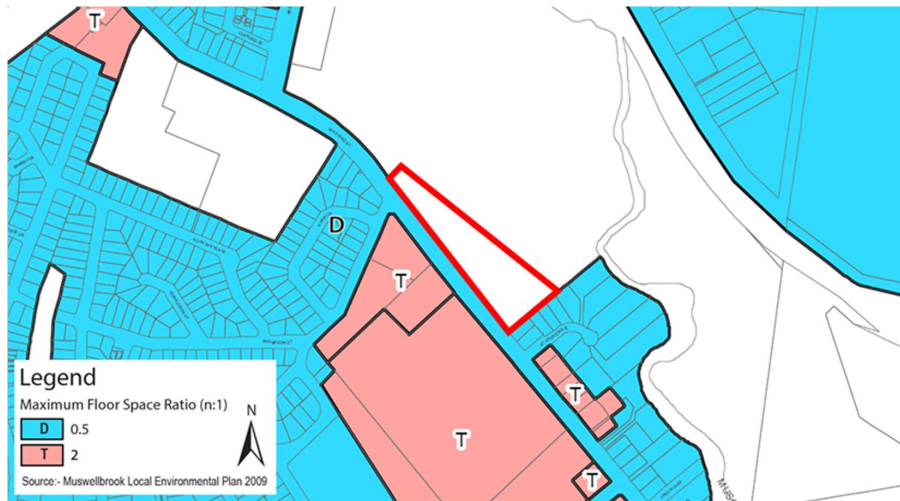


(b) Proposed building height – 8.5m

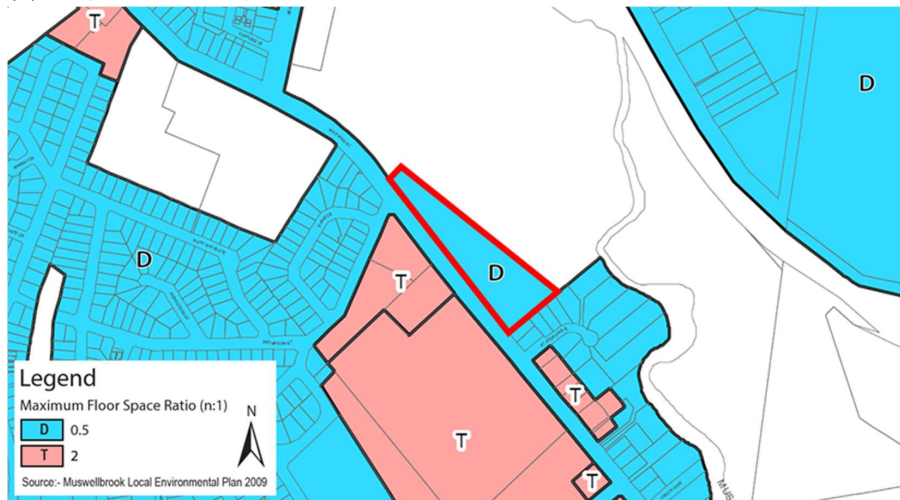


Map 6- Muswellbrook LEP 2009 – Maximum Floor Space Ration (LZN-008)

(a) Current Floor Space Ratio – Nil



(b) Proposed Floor Space Ratio – 0.5:1



Part 5 – COMMUNITY CONSULTATION

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

Part 6 – PROJECT TIMELINE

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

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

Attachment 1

State Environmental Planning Policies

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

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

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

Attachment 2

Directions under Section 9.1

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

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

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

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

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

Attachment 3

Evaluation Criteria for the Issuing of an Authorisation

3 Racecourse Road, Muswellbrook

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

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

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

Attachment 4

Gateway Determination, XXXXXXXX



Planning,
Industry &
Environment

Gateway Determination

Planning proposal (Department Ref: PP-2021-6523): to rezone 72-74 Maitland Road, Muswellbrook from RU3 Forestry to R1 General Residential

I, the Manager, Central Coast and Hunter Region at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the *Muswellbrook Local Environmental Plan 2009* to rezone 72-74 Maitland Road, Muswellbrook from RU3 Forestry to R1 General Residential should proceed subject to the following conditions:

1. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal is classified as low impact as described in *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018) and must be made publicly available for a minimum of **14 days**;
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018); and
 - (c) public exhibition is to commence within **one month** following the date of the Gateway determination.
2. Consultation is required with the Biodiversity Conservation Division and Transport for NSW under section 3.34(2)(d) of the Act. Agencies are to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.
3. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
4. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:
 - (a) the planning proposal authority has satisfied all the conditions of the Gateway determination;
 - (b) the planning proposal is consistent with section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and

- (c) there are no outstanding written objections from public authorities.
5. The time frame for completing the LEP is to be **6 months** following the date of the Gateway determination.

Dated 24th day of November 2021.



Ben Holmes
Manager, Central Coast and Hunter Region
Planning and Assessment
Department of Planning, Industry and
Environment

Delegate of the Minister for Planning and
Public Spaces

PP-2021-6523 (IRF21/4444)



CR2022/000092

SF2022/006560

MK

20 January 2022

General Manager
Muswellbrook Shire Council
PO Box 122
MUSWELLBROOK NSW 2333

Attention: Sharon Pope

NEW ENGLAND HIGHWAY (HW09) MAITLAND ROAD: PP 2021-6523, AMENDMENT TO LEP – REZONING (RU3 FORESTRY TO R1 GENERAL RESIDENTIAL), 72-74 MAITLAND ROAD MUSWELLBROOK

I refer to the abovementioned Planning Proposal referred to Transport for NSW (TfNSW) on 10 January 2022 for comment. It is understood that this application is to facilitate an Educational Establishment referred to as Pacific Brook Christian School.

TfNSW key interests are the safety and efficiency of the transport network, the needs of our customers and the integration of land use and transport in accordance with Future Transport Strategy 2056.

New England Highway (HW09) (Maitland Road) is a classified State road. Council is the roads authority for both roads and all other public roads in the area, in accordance with Section 7 of the *Roads Act 1993*.

TfNSW has reviewed the information provided and notes that a separate application through the NSW Government Major Projects Planning Portal (SSD 16858710) has been received for an Education Establishment. An assessment of this application is currently being undertaken. Subject to satisfactory traffic and transportation planning outcomes in the SSD application, TfNSW raises no objection to or requirements for this subject Planning Proposal.

On Council's determination of this matter, please forward a copy of the Notice of Determination to TfNSW for our records. Should you require further information please contact Masa Kimura, Development Services Case Officer, on 02 4908 7688 or 0407 707 999 or by emailing development.north@transport.nsw.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read "Marg Johnston".

Marg Johnston
Team Leader Development Services

Transport for NSW
6 Stewart Avenue, Newcastle West NSW 2302
Locked Bag 2030, Newcastle West NSW 2302
T – (02) 4908 7688

Level 1, 76 Victoria Street, Grafton NSW 2460
PO Box 576, Grafton NSW 2460
T – (02) 6640 1362

1 of 1



Planning,
Industry &
Environment

Our ref: DOC21/1022910-48

Your ref: SSD-16858710

Ms Jasmine Tranquille

Planning Officer
Social and Other Infrastructure Assessments
Planning and Assessment Division
Department of Planning, Industry and Environment
Jasmine.Tranquille@planning.nsw.gov.au

Dear Ms Tranquille

Pacific Brook Christian School (SSD 16858710) – Review of Environmental Impact Statement

I refer to your e-mail dated 17 November 2021 in which the Planning and Assessment Division (P&A) of the Department of Planning, Industry and Environment (the Department) invited Biodiversity and Conservation Division (BCD) to provide advice in relation to the Pacific Brook Christian School project (SSD 16858710) in Muswellbrook.

BCD have reviewed the Environmental Impact Statement, including relevant appendices, in relation to impacts on biodiversity and flood risk assessment.

BCD has no comment to provide on the biodiversity assessment. BCD's recommendations in relation to the flood risk assessment are provided in **Attachment A** and detailed comments are provided in **Attachment B**.

If you require any further information regarding this matter, please contact Brendan Mee, A/Senior Team Leader Planning, on 4904 2730 or via email at huntercentralcoast@environment.nsw.gov.au

Yours sincerely

A handwritten signature in black ink, appearing to read 'Pauline Dunne', on a light grey rectangular background.

PAULINE DUNNE
Acting Director Hunter Central Coast Branch
Biodiversity and Conservation Division

Date: 14 December 2021

Enclosure: Attachments A and B

Attachment A

BCD's recommendations**Pacific Brook Christian School Project (SSD 16858710) – Review of EIS**

Flooding and flood risk

1. BCD advises that the proposal is inconsistent with the 4.3(8) Ministerial Directions on flooding.

BCD recommends that:

- the site should not be rezoned until the inconsistency with the management item MC2 of the Muswellbrook Flood Plain Risk Management Study and Plan is resolved.
 - the proponent demonstrates that the school in its current form will not prevent the future construction of the MC2 flood mitigation works.
 - flood planning levels applied to the development should be based on the levels with the MC2 flood mitigation works in place.
2. BCD recommends that an additional survey is required to determine if there is a secondary overland flow path through the site. If a flow path is identified, then the flood impact assessment will need to be updated to determine:
 - new flood planning level for the development.
 - impacts of filling the secondary flow path
 - impacts on emergency management.
 3. BCD advises that the proponent is required to develop a flood emergency response plan (FERP). The FERP must document how risk to life will be managed during the initial stages of the school development when there will be only portable buildings and for the final school development when permanent two-storey structures, designed to withstand PMF forces, will be available.
 4. It is recommended that the bus storage and maintenance area be relocated to a less flood impacted area of the site and all stored chemicals and oils be required to be stored above the flood planning level. Hazardous materials if required to be kept on site should be stored-elsewhere on site in secure facilities.
 5. BCD recommends that the proponent assess climate change impacts and updates the design floor levels for school facilities.
 6. Split zoning consistent with flood risk post construction of proposed council flood mitigation works is considered to be a more resilient planning outcome and would be more likely to be supported by BCD.
 7. BCD recommends that the maximum allowable off-site increase in 1% AEP flood levels for residential properties is 10mm. If achieving a maximum afflux of 10mm is not practical then affluxes up to 50mm can be considered for major projects, provided the impacts are well understood and appropriately justified.
 8. BCD advises that proprietary stormwater quality inserts are not appropriate for this proposal, and that the design of pollution control should be changed to incorporate Water-sensitive Urban Design (WSUD) features instead of the proposed proprietary inserts. If the proponent

determines that proprietary inserts are the best solution, then the proponent must prepare a detailed maintenance plan and covenant that requires the inserts to be retained in a workable form for the life of the development.

9. The Structural certification report and the stormwater report Appendix 16 require amendments to ensure consistency with other provided documentation.

Attachment B

BCD's detailed comments**Pacific Brook Christian School Project (SSD 16858710) – Review of EIS**

Flooding and flood risk**1. The proposal is not consistent with Ministerial Direction No.4.3(8) Flooding**

The rezoning proposal has not satisfactorily demonstrated consistency with the 4.3(8) Ministerial Directions on flooding.

Ministerial Direction No. 4.3(8) Flooding, issued in July 2021 under section 9.1(2), of the *Environmental Planning and Assessment Act 1979* states that the flood planning area must be consistent with a Floodplain Risk Management Study or Plan adopted by the relevant council.

The Flood Impact Assessment (FIA), prepared by Royal HaskoningDHV 2021 (Appendix 21 of the Environmental Impact Assessment) is not consistent with management item MC2 of Council's Muswellbrook Flood Plain Risk Management Study and Plan (FRMS&P) adopted 2019. Management item MC2 is a medium-high priority action in the FRMS&P. It is a construction of a flood bund on Muswellbrook Golf Course and significantly reduces flood downstream of Bell Street by:

- preventing an overland flow path forming downstream of the Bell Street bridge
- preventing above floor flooding of 31 homes in a 1% AEP flood event
- significantly reducing flood affectation and damages for all flood events
- provides 1% AEP flood immunity to the Bell Street bridge. The bridge is an important transport link, and improvement of level of service in flood events will improve the community's resilience to flooding.

The FRMS&P identified that MC2 will increase flood levels upstream of the Bell Street Bridge, including at the proposed school site. Construction of the proposed MC2 mitigation works will increase the 1% AEP flood extent and increase flood depths up to 500mm across the lower portion of the subject site.

The FIA has not included the MC2 golf course bund in its hydraulic modelling. Consequently, the FIA is underestimating the flood risk to the school, its future occupants and impacts on neighbouring properties.

Recommendation 1

BCD advises that the proposal is inconsistent with the 4.3(8) Ministerial Directions on flooding.

BCD recommends that:

- the site should not be rezoned until the inconsistency with the management item MC2 of the Muswellbrook Flood Plain Risk Management Study and Plan is resolved.
- the proponent demonstrates that the school in its current form will not prevent the future construction of the MC2 flood mitigation works.
- flood planning levels applied to the development should be based on the levels with the MC2 flood mitigation works in place.

2. An overland flow path through the site may not have been identified

BCD considers that the FIA may not have identified an overland flow path and may be underestimating flood planning levels, flood affectation and flood hazard across the site.

Figure 6 'Design Flood Levels (RHDHV, 2019) – Long Section' shows a local depression at chainage 200 m with an elevation of 148.5m. Figure 8 'Hazard Categorisation (1% AEP) 2019 from S&P' shows the elevation, immediately upstream on Muscle Creek is 148.92m AHD. This suggests that a breakout of Muscle Creek commences in floods with an AEP greater than 1%. This secondary flow path would originate near St Andrews Place (location 3) and flow through the subject site along the local depression, identified in Figure 8. However, no such flow path has been identified in the FIA.

The existence of a secondary flow path through the site would likely mean that the FIA is underestimating the flood planning levels and flood affectation across the site. It would also impact on emergency management.

More detailed topographical information is required to determine if a secondary flow path through the site exists.

Recommendation 2

BCD recommends that an additional survey is required to determine if there is a secondary overland flow path through the site. If a flow path is identified, then the flood impact assessment will need to be updated to determine:

- new flood planning level for the development.
- impacts of filling the secondary flow path
- impacts on emergency management.

3. The proponent has not addressed risk to life during large flood events

It is proposed that the school will accommodate up to 656 students, including a special needs facility. A comprehensive evacuation plan will need to be developed to ensure safety of the students during large flood events.

A Flood Emergency Response Plan (FERP) is required to mitigate risk to life. The FIA shows that the school grounds will be flooded with depths up to 2m. This poses a large risk to life and a FERP is required to mitigate these risks. The FIA proposes that the school should evacuate to high ground on Thomas Street. The FIA has not assessed if there is time available to safely evacuate the school. The FIA also suggests that occupants could shelter in any of the two-storey buildings on site if required.

In the event that the FERP requires occupants to shelter in place then all building proposed to be used as refuge must use flood compatible materials and be constructed in accordance with the requirements of ABCB Construction of Buildings in Flood Hazard Areas.

The FERP must be developed in consultation with Muswellbrook Shire Council and the NSW SES.

The existing Operational Management Plan, EIS Appendix 27, mentions the need to develop a fire evacuation plan. However, flood evacuation/shelter in place arrangements are not included.

The initial stages of the school will accommodate students in modular portable single storey buildings, which are unlikely to be elevated or robust enough for shelter in place to be an

option. Evacuation will therefore be the only option for extreme flood events. Footings and tie downs for portable buildings should be designed to resist PMF forces to ensure that portable buildings do not become flood debris in an extreme event and impact the Bell Street bridge.

A flood warning system does not currently exist in Muscle Creek. Muswellbrook Council is currently designing a flash flood warning system for Muscle Creek. If this system is not operational prior to occupation of the school, then an interim evacuation plan will be required.

Recommendation 3

BCD advises that the proponent is required to develop a flood emergency response plan (FERP). The FERP must document how risk to life will be managed during the initial stages of the school development when there will be only portable buildings and for the final school development when permanent two-storey structures, designed to withstand PMF forces, will be available.

4. The proposed bus storage and maintenance area is located within the flood planning area

The bus storage and maintenance area is located in the lowest portion of the site and is noted as currently affected by up to 500mm of flooding in a 1% AEP event and will likely need to be filled. The bus shed site will be subject to an additional 500mm of flooding if the proposed flood mitigation works on the adjacent golf course are constructed. Relocation of the bus storage and maintenance area to a less impacted area of the site would be a better outcome and provide less potential for damage of the infrastructure or pollution of the environment should oils and chemicals be stored in this facility.

Recommendation 4

It is recommended that the bus storage and maintenance area be relocated to a less flood impacted area of the site and all stored chemicals and oils be required to be stored above the flood planning level. Hazardous materials if required to be kept on site should be stored elsewhere on site in secure facilities.

5. Climate change has not been considered as required by SEARS.

The provided SEARS item 17 required the effects of climate change, including an increase in rainfall intensity, to be considered. BCD notes that the FIA has only considered the current 1% flood conditions. A development of this scale should consider climate change given the likely investment and lifespan for the built form.

Recommendation 5

BCD recommends that the proponent assess climate change impacts and updates the design floor levels for school facilities.

6. The extent of rezoning should be reduced to ensure buildings are not located on portions of the site within the flood planning area

The flood planning area on the site should be revised to include the impact of proposed flood mitigation works on the golf course (M2 noted in point 4 above). The remainder of the site could be rezoned from forestry use to a recreational use or other use compatible with the agricultural activities or sporting activities on the school which would still allow use as part of the school facility without increasing flood risk. Some changes to the proposed building layout and/or some fill may be required to ensure the school buildings can be constructed in a non-discriminatory accessible manner whilst complying with the revised flood planning levels.

Recommendation 6

Split zoning consistent with flood risk post construction of proposed council flood mitigation works is considered to be a more resilient planning outcome and would be more likely to be supported by BCD.

7. Flood impacts may exceed acceptable levels for properties on St Andrews Close

The FIA estimates that the development will increase 1% AEP flood levels at point 6 by 77mm. Point 6 is within the subject site but is very close to the residential properties on St Andrews Close. BCD considers that the maximum tolerable afflux for a development of this type is 10mm. Consequently, further assessment is required to determine the flood afflux along St Andrews Close and how these impacts could be mitigated. If the proponent considers that achieving a maximum afflux of 10mm is not possible or practical then affluxes up to 50mm can be considered for major projects, provided the impacts are well understood and appropriately justified. Any justification will need to:

- Document the extent of the affluxes above 10mm.
- Identify all residential properties that transition from not flooded to flooded in a 1% AEP event.
- Identify any sensitive receivers. These are land uses that:
 - Require ongoing functionality during and after a flood event such as hospitals and emergency services facilities.
 - Require high levels of assistance with evacuation, such as seniors housing, group homes, boarding houses, hostels, caravan parks, educational establishments, centre-based childcare facilities, and hospitals
 - Store hazardous materials that pose environmental and health risks if exposed to flood waters.
- Impacts on the frequency of flooding in smaller events than the 1% AEP event
- Demonstrate that there are no practical alternative design measures that could further mitigate impacts for that location.
- Demonstrate that the proposed afflux is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

Recommendation 7

BCD recommends that the maximum allowable off-site increase in 1% AEP flood levels for residential properties is 10mm. If achieving a maximum afflux of 10mm is not practical then affluxes up to 50mm can be considered for major projects, provided the impacts are well understood and appropriately justified.

8. Pollution controls do not include Water sensitive urban design (WSUD) features

The stormwater quality treatment design should be changed to incorporate WSUD features instead of the proposed proprietary inserts. The proposed stormwater strategy, Appendix 36A to the EIS, includes modelling and plans to achieve the required pollution reduction targets consistent with development. This is achieved using proprietary pit inserts such as Oceanguard and Polysorb cartridges. Proprietary treatment is generally used in city developments where it is not possible to use water sensitive urban design pollution treatment due to significant site constraints. However, the school is in a rural township with ample land available.

BCD considers it likely that proprietary pit inserts will be removed as part of maintenance activities and the projected pollution reduction targets no longer achieved. Contractors in rural areas are not typically experienced in maintaining and replacing propriety provision pit insert cartridges, and are familiar with standard WSUD stormwater treatment devices, which also serve as landscaping features.

Recommendation 8

BCD advises that proprietary stormwater quality inserts are not appropriate for this proposal. And the design of pollution control should be changed to incorporate WSUD features instead of the proposed proprietary inserts. If the proponent determines that proprietary inserts are the best solution, then the proponent must prepare a detailed maintenance plan and covenant that requires the inserts to be retained in a workable form for the life of the development.

9. The report has minor inconsistencies

The structural certification by Birzulis Assoc dated 15 September 2021 does not specify requirements for the modular construction proposed initially for the school development. The certificate also needs to reference the ABCB Construction of Buildings in Flood Hazard Areas Standard to ensure that structural design includes analysis of potential flood loads up to the PMF event.

Appendix 16 - Stormwater report includes a section on page 8 which incorrectly refers to 374 cubic metres of absorption tank and Bayside City Council. It is likely that this is an editorial error from an earlier report.

Recommendation 9

The Structural certification report and the stormwater report Appendix 16 require amendments to ensure consistency with other provided documentation.

10.4 AMENDMENT TO MUSWELLBROOK DCP 2009 - SECTION 13 - FLOODPLAIN MANAGEMENT

Attachments:	A. Proposed Section 13 - Floodplain Management B. Existing Section 13 - Flood Prone Land ↓
Responsible Officer:	Derek Finnigan - Deputy General Manager
Author:	Sharon Pope - Executive Manager - Environment and Planning
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

The purpose of the report is to adopt proposed changes to *Muswellbrook DCP 2009, Section 13 – Floodplain Management*. The changes were publicly notified, and no submissions were received.

OFFICER'S RECOMMENDATION

Council adopts Section 13 – Floodplain Management for Muswellbrook DCP 2009, as provided in Attachment A.

Moved: _____ Seconded: _____

BACKGROUND

Section 13 of the Muswellbrook Development Control Plan 2009 (MDCP 2009) provides direction to staff and proponents of development with regards to consideration of potential flooding. Council's adopted Hunter River Floodplain Risk Management Study and Plan 2019 recommends various changes to the MDCP 2009 to provide additional clarity on the matters that need to be addressed by new development. The State Government introduced the *Flood-prone Land Package* for the whole of NSW in July 2021, which also recommends councils update their Development Control Plan provisions to effectively implement the new package.

REPORT

It is proposed to amend Section 13 of the Muswellbrook DCP 2009 – Floodplain Management to:

- Include recommendations from the Muswellbrook Floodplain Risk Management Study and Plan 2019;
- Implement the *NSW Flood-prone Land Package*, in particular the *Considering Flooding in Land Use Planning Guideline July 2021*;
- Provide clarification on finished floor levels for different types of development; and
- Reference legislation, plans and policies that are relevant to planning for the potential impacts of flooding.

The whole section has been re-drafted to change formatting, eliminate repetition and to generally improve useability by staff and developers. A copy of the revised Section 13 is provided in Attachment A.

Muswellbrook Shire is fortunate that most of our urban zoned land is above 1% Annual Exceedance Probability (AEP) flood levels resulting from Hunter River flooding or is protected by levees. Other watercourses, such as Muscle Creek and the Goulburn River, also present a flood risk to some properties. There is sufficient flood free land in Muswellbrook Shire to enable new development to occur with no flood hazard. Because of this, Section 13 is generally only applicable to a minor number of development applications each year. However, due to the operation of s733 of the *Local Government Act* (LG Act), it is important that Council considers new development in line with the best available flooding advice and management tools.

CONSULTATION

Internal Consultation

Consultation has occurred with the Community Infrastructure Department and Planning staff on the proposed changes to Section 13.

Public Consultation

At the 31 August 2021 Ordinary Council Meeting, Council resolved to publicly notify the revised 'Section 13 – Floodplain Management' of MDCP 2009.

The draft revised Section 13 - Floodplain Management was publicly notified from Wednesday, 19 January 2022 until 5:00pm Wednesday, 16 February 2022.

A notice was published on Council's website, Facebook and letters were sent to local surveying firms, engineering firms and planning consultancies.

No submissions were received.

Changes since Exhibition

Responses from staff have led to additional changes to remove ambiguity, particularly around new commercial, industrial and tourist and visitor accommodation on greenfield versus brown field sites.

OPTIONS

Option 1

Council resolves to adopt Section 13 – Floodplain Management of Muswellbrook DCP 2009 provided in attachment A. This is the preferred option as the information and requirements in the current Section 13 are now out of date and do not implement the recommendations in the Muswellbrook Floodplain Risk Management Study and Plan 2019 or the *NSW Flood-prone Land Package*. A copy of the current provisions is provided in Attachment B.

Option 2

Council resolves to adopt Section 13 – Floodplain Management of Muswellbrook DCP 2009 with further changes than those provided in attachment A. Councillors would need to identify required changes and provide reasons for the changes.

CONCLUSION

The community relies on access to Council policies to guide the planning and design of new development, and to make informed decisions regarding the purchase of properties and businesses.

Due to the operation of s733 of the LG Act it is important that Council considers the potential for flooding of new development in line with the best available advice.

Updates to MDCP 2009 enable staff, developers and the community to readily find information regarding Council's current policies.

SOCIAL IMPLICATIONS

The intention of flood controls is to ensure people and their property are not adversely affected by future floods. Flooding of residential properties is very disruptive to occupants and lessens wellbeing.

FINANCIAL IMPLICATIONS

Nil

POLICY IMPLICATIONS

Changes to MDCP 2009 will represent the new policy of Council regarding consideration of flood potential in new development.

LEGAL IMPLICATIONS

The principal purpose of a development control plan is to provide guidance to persons proposing to carry out new development.

Council is expected to incorporate the NSW Government's Flood Prone Land Policy in land use planning and development approval decisions. In doing so, Councillors and Council are afforded protection under section 733 of the Local Government Act 1993 from legal action regarding the decisions that are made.

OPERATIONAL PLAN IMPLICATIONS

The proposed changes assist with efficient and effective development application assessment services.

RISK MANAGEMENT IMPLICATIONS

There are no risks associated with the amendments to the MDCP 2009 provided the requirements of the Environmental Planning & Assessment Act and Regulations and NSW Government's Flood Prone Land Policy are followed.

13 Floodplain Management

13.1 Introduction

The management of flood prone land in NSW is primarily the responsibility of councils by implementing the provisions in the NSW Government's *Flood Prone Land Policy* and the associated *NSW Floodplain Development Manual 2005*.

13.2 Application of this Part

This part applies to land within the Muswellbrook Council area which is flood prone or partially flood prone land.

Land is identified as flood prone:

- In flood studies prepared under the provisions of the *NSW Floodplain Development Manual 2005* and adopted by Council;
- in overland flow studies undertaken by or on behalf of Council, being the best available information at the time; or
- where flood studies are not available, but the land contains an intermittent or permanent watercourse.

13.3 Objectives

The **objectives** of this part are to:

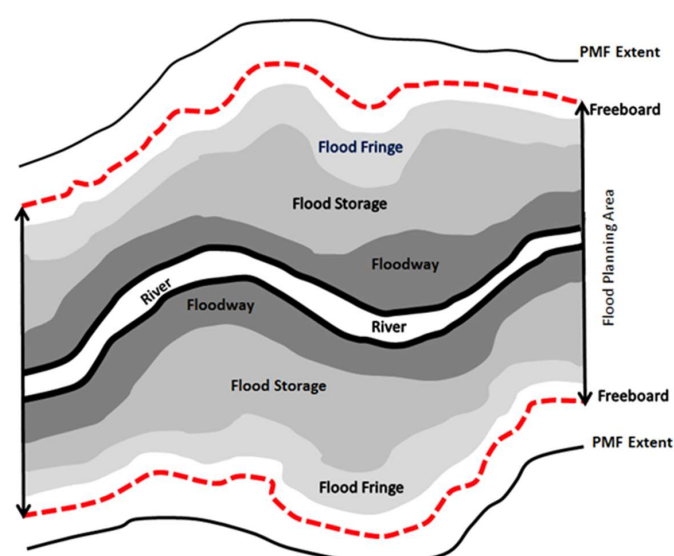
- To establish guidelines for the development of flood prone land that are consistent with the NSW Flood Policy and NSW Floodplain Development Manual (2005) and as updated by the associated Floodplain Risk Management Guides;
- limit the intensification of residential uses and other inappropriate uses in flood affected areas;
- To promote flood compatible design and building that considers requirements for the development of flood prone land and does not adversely impact on adjoining properties or pose unnecessary risk or cost to the public or emergency services;
- ensure measures are implemented to reduce private and public losses resulting from flooding and manage risks to property and life from flood events;
- To ensure that the development or use of floodplains waterways and riparian corridors does not adversely impact upon aesthetic, recreational and ecological values and takes into account potential changes resulting from climate change;
- Provide guidance for assessing the LEP criteria for Development Consent, taking into account Council's responsibilities for floodplain management and flood related development standards as specified in other relevant legislation including the *Local Government Act 1993* and *Water Management Act 2000*.

13.4 Definitions and flood planning concepts

The terms that are used in this part are consistent with the *NSW Floodplain Development Manual 2005* and can be found in the Dictionary.

Flood Planning concepts are summarised in the following figure.

Figure 1: Plan of floodplain and hydraulic categories



Key terms

AEP - Annual Exceedance Probability

AHD means Australian Height Datum. A common national surface level datum approximately corresponding to mean sea level.

ARR means the publication - Australian Rainfall and Runoff.

Effective warning time means sufficient warning time to enable complete evacuation of people who could be expected on the site, to a non-flood affected area by a reliable access path.

FHA – Flood Hazard Assessment

FIRA – Flood Impact & Risk Assessment

FPA – Flood Planning Area

FPL – Flood Planning Level

FRM – Flood Risk Management

Greenfield v Brownfield – a greenfield site is typically vacant and lacks constraints imposed by:

- existing development on the site,
- proximity to development on adjoining land; or
- a small lot size that would make raising floor levels above the 1% AEP flood level impractical.

In contrast, a brownfield site carries these constraints. An example of brownfield sites in Muswellbrook would be the employment zoned land along Maitland Street.

To avoid economic losses due to damage to stock, structures and fittings and an inability to trade, development on brownfield sites should be designed to achieve the best flood protection levels possible.

Habitable room in a residential situation is a living or working area, such as a lounge room, dining room, rumpus room, kitchen, bedroom, or workroom. In an industrial or commercial situation, it is an area used for offices or to store valuable possessions susceptible to flood damage.

PMF - Probable Maximum Flood level

Reliable Access means a path of travel for people of all abilities to move from a flood affected area to a non-flood affected area

Non - urban use means a use more typically located on rural or environmental land, such as farm sheds, grain silos, greenhouses, stockyards and rural fire sheds.

Additional Guidance material:

- [Section 9.1 Ministerial Direction on local planning direction on flooding](#)
- [Planning circular on flooding PS21-006](#)
- [Guideline: Considering Flooding in Land Use Planning](#)
- [State Environmental Planning Policy Amendment \(Flood Planning\) 2021](#)
- The NSW Government's Floodplain Development Manual (2005) - <https://www.environment.nsw.gov.au/topics/water/floodplains/floodplain-manual>
- Floodplain risk management (FRM) guidelines - <https://www.environment.nsw.gov.au/topics/water/floodplains/floodplain-guidelines>
- Muswellbrook Floodplain Risk Management Study and Plan (2019)

These documents are updated from time to time, the most recent version should be considered.

13.5 Application Requirements

The extent of **flood related information** required to be submitted with an application depends on several factors, including:

1. the type of development proposed;
2. the scale of the development proposed;
3. the extent to which the site is affected by flooding; and
4. the amount of flood related information already held by Council regarding flood behaviour at that site and within its catchment.

Item	When required	Plans or information to be provided
A. Survey plans	All applications Note: some applications for ancillary development may not require survey details if certified by a structural engineer. This is at the discretion of Council.	A survey plan signed off by a registered surveyor indicating the following: 1. Existing ground levels at each corner of the proposed building envelope. 2. The floor levels of existing buildings or structures that are to be retained, as well as proposed finished floor levels for all new buildings and structures; and 3. The location of any existing buildings or structures. 4. Any earthworks proposed or filling of land; and 5. All contours to be minimum of 250mm. All levels must be relative to <i>Australian Height Datum (AHD)</i> . Levels relating to an arbitrary assumed datum are not acceptable.
B. Flood Hazard Assessment (FHA)	Where the development site is not within the area of a Flood Study adopted by Council, but the development site: a) is within 40 metres of a defined watercourse; or	As specified in the section below titled Flood Hazard Assessment

Item	When required	Plans or information to be provided
	b) is within 20 metres of a major drainage system or drainage easement; or c) has a history of flooding; and d) the development will result in intensification of development on potentially flood prone land. (NB. Intensification would not include minor development such as carports, garden sheds, cattle yards, farm structures and farm sheds under 200sqm).	
C. Flood Impact & Risk Assessment (FIRA)	When development will result in intensification of development: a) on land below the 1% AEP Flood level and is identified as Flood Hazard category H3, H4, H5 or H6 in a Council adopted Flood Study; or b) on land that a Flood Risk Assessment has identified is unsafe for vehicles, or wading by elderly people or children during a 1% AEP flood; or c) on land below the 1% AEP Flood level and the development includes land filling or solid structures that may increase local flooding during a 1% AEP flood by more than 100mm within 10m of the development. (NB. Intensification would not include minor development such as carports, garden sheds, cattle yards, farm structures and farm sheds under 200sqm).	As specified in the section below titled Flood Impact & Risk Assessment
D. Flood management compliance report	All applications (NB. May be included in the Statement of Environmental Effects or Flood Impact & Risk Assessment rather than as a separate report).	An assessment prepared by a suitably qualified engineer, on how the proposed development will achieve the objectives (Section 13.3) and development controls (Sections 13.5 to 13.10). All relevant controls are to be listed and an explanation is to be given on how each control has been met.
E. Flood plan	Based on an assessed need by Council Officers, but generally: a) if vehicular access to the development uses public or private roads that are flood	An evacuation plan prepared by a suitably qualified person, is to provide an outline of measures proposed for the timely, orderly, and safe evacuation of persons and companion animals from the site.

Item	When required	Plans or information to be provided
	affected and identified as Flood Hazard category H3, H4, H5 or H6 in a Council adopted Flood Study, or b) where wading depths to evacuate the property during a 1% AEP flood event exceed 500mm.	It must take account of the effective warning time during periods of flood, any floodplain risk management plan, relevant state government disaster plan, advice received from the State Emergency Services (SES) or as determined by Council. It must be prepared in accordance with the principles of the <i>NSW Floodplain Development Manual 2005</i> or more recent versions of the Manual.

Flood Hazard Assessment

The Flood Hazard Assessment shall:

1. Clearly demonstrate the flood hazards associated with the development site.
2. Be undertaken and certified by a suitably qualified Civil/Hydraulic Engineer. A suitably qualified professional is a member of a recognised organisation and has experience, education, qualifications, and indemnity insurance to undertake the work competently.
3. Provide all spot levels relative to Australian Height Datum (AHD).
4. Clearly set out the methodology adopted and provide enough detail to enable easy checking of calculations and validity of assumptions used.
5. Present available historical rainfall and flood height data if available.
6. Present complete model results including those for sensitivity testing.
7. Include maps/figures of the catchment, site, model layout and cross section locations.
8. Include tabulations and/or figures model parameters and results.
9. Identify appropriate access routes and emergency management procedures over the full range of floods up to the PMF.
10. Provide survey data including Digital Terrain Model (in a format compatible with Council's GIS) and model data files arranged in an orderly file structure.
11. Provide topographic levels with an accuracy of 100mm, structures and the like shall be to an accuracy 10mm.
12. Use Rainfall intensity/frequency/durations determined from Australian Rainfall and Runoff (ARR) 2019 or later.
13. Assess flows using a rainfall-runoff hydrologic model and compared to peak flows using the Rational Method from ARR for urban or rural catchments as appropriate.
14. Consider the effects of climate change on rainfall and flood patterns.
15. Assess the 1% AEP and the PMF flood events using a steady state backwater analysis technique (or better) with a sensitivity analysis on assumed or assessed parameters.
16. Provide flood heights in metres to two (2) decimal places, while flood velocity shall be reported in metres per second to one (1) decimal place.
17. Compare assessed flood levels to historic flood levels in the vicinity, if available.
18. Not extrapolate anecdotal data and assessments based on levels or flows from other parts of the catchment or adjacent catchment unless it can be demonstrated that such an assessment is clearly conservative and results in an upper bound design level.
19. All data is to be made available electronically to Council free of cost, to form part of a local government area database.

Flood Impact & Risk Assessment

Flood Impact Assessments shall:

1. Clearly demonstrate the flood impacts and risks associated with the development and that the development is consistent with the current version of the NSW Floodplain Development Manual, any relevant local flood study, floodplain management study or Flood Risk Assessment applying to the land.
2. Identify compliance with the flood controls in Section 13.6 to 13.10 of the DCP (below) or justify non-compliance.
3. Be undertaken and certified by a suitably qualified Civil/Hydraulic Engineer. A suitably qualified professional is a member of a recognised organisation and has suitable experience, education, qualifications, and indemnity insurance to undertake the work competently.
4. All levels shall be relative to Australian Height Datum (AHD).
5. Topographic levels shall be to an accuracy of 100mm, structures and the like shall be to an accuracy of 10mm.
6. Describe the watercourse, creek or drainage system that is relevant to the flood characteristics of the site, whether located on, adjacent to or remote from the development site.
7. Clearly set out the methodology adopted and provide enough detail to enable easy checking of calculations and validity of assumptions used.
8. Present complete model results including flood heights (levels), flow distributions, velocities and flood storage variations for all calibration, validation and design events demonstrating the change in hydraulic behaviour due to proposed site filling and/or structures, within 10m of the development and all sites across the floodplain affected by the development.
9. Include tabulations and/or figures depicting the spatial distribution of model parameters, flow and velocity at each section.
10. Identify appropriate access routes and emergency management procedures over the full range of floods up to the PMF.
11. Provide survey data to Council in an electronic format, including Digital Terrain Model data and model data files.

13.6 Flood Controls

1. Development must be consistent with the current version of the NSW Floodplain Development Manual, any relevant local flood study, floodplain management study and plan applying to the land that has been endorsed by Council, or the recommendations of a Flood Impact & Risk Assessment completed for the development.
2. Generally, buildings and other structures, including fences, must be designed so as not to impede the flow of floodwaters or entrap debris.
3. Filling within the floodplain must be supported by a detailed flood risk & impact assessment certified by a suitably qualified consulting engineer that can adequately demonstrate:
 - a) Filling is not within a core riparian zone.
 - b) Filling will not substantially impede the flow of floodwater and not contribute to flooding or ponding of water on any other property; and
 - c) For a dwelling pad in a rural area, filling is minimal and is balanced by a borrow pit on the same site, and neither are situated in high hazard floodwaters (H3 or higher in a 1% AEP flood).
4. New structures are to meet the flood planning levels and floor heights specified in the Table 2 below.
5. Flood planning levels and floor heights for additions or alterations to existing residential development will be assessed on the merits of the situation, having regard to meeting an acceptable level of risk to life and flood damage. In general, additions that will increase the existing floor area by more than 20% as it existed on 1 January 2022 will be required to meet the floor heights in Table 2.
6. The construction methods and materials that form part of the development that will be below the flood planning level, including filling, must be capable of withstanding the force of flowing floodwaters, including debris and buoyancy forces and immersion for a prolonged period.
7. Development on land below the 1% AEP will only be permitted where effective warning time and reliable access is available for evacuation to an area free of risk from flooding. Evacuation should be consistent with any relevant flood evacuation strategy.
8. Evacuation Plans, when required, are to be prepared to Council's satisfaction demonstrating the Plan provides for:
 - a) Low flood hazard emergency vehicle road access (NSW SES, NSW RFS) during a 1% AEP flood event; and
 - b) Failsafe, comprehensive flood-alert measures.

Alternative shelter in place arrangements will need to be justified and comply with guidance issued by NSW SES, DPIE or equivalent agencies.

9. No Torrens Title subdivision that may result in intensification of development is to occur on land wholly inundated by flooding during the PMF event, unless it is demonstrated that:
- a) The risk of flooding can be effectively and appropriately mitigated without impacting the adjacent floodplain or unnecessary risk or cost to the public or emergency services.

b) There is adequate flood free land above the 1% AEP flood level suitable for the development, vehicle parking and effluent disposal (if applicable); and

c) There is flood free access to each lot or a satisfactory Flood Evacuation Plan.

Table 2 - Flood Planning Levels and floor height requirements in areas affected by flooding
(see section 13.7 for development protected by a levee)

Type of Development	When required	Minimum Floor Height Requirements
Residential	Habitable rooms	1% AEP flood level + 500mm freeboard
	Non-habitable rooms and garages.	5% AEP flood level
	Carports, open area parking, Garden sheds and other ancillary structures (excluding garages)	No requirement
	Basement car parking	Constructed to preclude entry of floodwater at levels up to the 1% AEP flood level + 500mm freeboard. Additional requirement for basement levels to implement a means of evacuation, and a pump-out system to remove flood waters.
	Unsealed electrical installations	To be located above the 1% AEP flood level + 500mm freeboard
Tourist and Visitor Accommodation on a greenfield site (other than caravan parks and camping grounds).	Internal floor height of habitable elements of the development	1% AEP flood level + 500mm freeboard
	Unsealed electrical installations	To be located above the 1% AEP flood level + 500mm freeboard
Tourist and Visitor Accommodation on a brownfield site (other than caravan parks and camping grounds).	Internal floor height of habitable elements of the development	1% AEP flood level + 500mm freeboard or an alternative solution that precludes floodwater up to the 1% AEP flood level unless it is demonstrated that this would be impractical.

Type of Development	When required	Minimum Floor Height Requirements
	Unsealed electrical installations	To be located above the 1% AEP flood level + 500mm freeboard
Commercial, Retail, Industrial, Service Station, Mining and Quarry related development	Greenfield sites - Offices, storerooms, retail floor spaces and facilities providing safe storage for chemicals	1% AEP flood level.
	Brownfield sites - Offices, storerooms, retail floor spaces and facilities providing safe storage for chemicals	1% AEP flood level unless it is demonstrated that this would be impractical. Unsealed electrical installations to be located above the 1% AEP flood level.
Recreation facilities and Emergency Facility buildings (e.g. Fire Stations)	Offices, storerooms, retail floor spaces and facilities providing safe storage for chemicals	1% AEP flood level unless it is demonstrated that this would be impractical. Unsealed electrical installations to be located above the 1% AEP flood level.
Caravan Parks and Camping Grounds	Habitable rooms in structures with a slab or fixed foundation flooring system	1% AEP flood level
	Non-habitable rooms and garages	5% AEP flood level
	Carports, garden sheds and habitable structures that are mounted on skids, wheels or other non-fixed foundations and can be moved within effective flood warning times.	No requirement
	Unsealed electrical installations	1% AEP flood level + 500mm freeboard
Sensitive Uses identified in the Special Flood Considerations clause in MLEP 2009 (e.g. residential care facilities, hospitals, respite care, child care centres etc.) that are difficult to evacuate.	Habitable floor height	Probable Maximum Flood level
	Non-Habitable rooms/areas	Probable Maximum Flood level
	Parking areas	1% AEP flood level
	Vehicular access between a flood free public road and the Development	Probable Maximum Flood level unless an alternative solution is approved as part of an evacuation plan
	Unsealed electrical installations	Probable Maximum Flood level

13.7 DEVELOPMENT PROTECTED BY A LEVEE

- In addition to achieving the objectives of Section 13.3 and Flood Planning Controls in section 13.6 (other than Flood Planning Levels and Floor Heights in Table 2), development protected by a levee must achieve the following:
- 1. Minimum floor levels for all developments in the township of Denman protected by the levee shall be 107.25m AHD (Australian Height Datum).
 - 2. Minimum floor levels for all developments in the township of Muswellbrook protected by the levee shall be 146.3 AHD (Australian Height Datum).
 - 3. Where new buildings or additions are proposed within 40m of an existing levee an engineer's certificate shall be submitted certifying that the proposed structure has been designed to withstand flood pressures, including debris and buoyancy forces, imposed in the event of an adjacent levee failure. Loads imposed will be assessed from the velocity/depth data indicated in **Table 3**.

Table 3: Velocity and depth of flood waters due to a levee breach

Height of Adjacent Levee	Distance from Levee							
	5.0		10.0		20.0		30.0	
	V (m/s)	D (m)	V (m/s)	D (m)	V (m/s)	D (m)	V (m/s)	D (m)
1.0	2.6	0.25	1.0	0.3	*	*	*	*
2.0	5.0	0.4	3.7	0.35	2.0	0.5	*	*
3.0	6.4	0.6	5.5	0.5	4.0	0.5	3.2	0.7

NOTE: V = velocity of flow; D = depth of flow; * = values not determined

13.8 INTEGRITY OF THE HUNTER VALLEY FLOOD MITIGATION SCHEME

Development on and within the vicinity of structures (including levees, floodgates, spillways and drains) operated by Council, but constructed under the *Hunter Valley Flood Mitigation Scheme*, will be managed by Council under the *Water Management Act* to ensure the continuing integrity of those structures.

The Guidelines in the NSW Office of Environment and Heritage document '*Guidelines for Development within the Hunter Valley Flood Mitigation Scheme*', as updated from time to time, shall be applied to land in and around the towns of Denman and Muswellbrook where the structures are placed.

13.9 FENCING IN HIGH HAZARD FLOODWAYS

Fencing in high hazard floodways shall be an open type of fencing, such as 5 strand wire fences and post and rail fences that do not restrict the flow of flood waters or increase flood hazards or flood damage to other properties or increase afflux by more than 100mm. The fencing design should be resistant to blockage or designed to be collapsible under heavy flood loadings.

13.10 CONSIDERATION OF FLOOD MITIGATION MEASURES

The Muswellbrook Floodplain Risk Management Study and Plan (2019) identifies options for flood mitigation works in Muswellbrook. New development is not to preclude the delivery of these mitigation works.

Muswellbrook Shire Development Control Plan
Section 13
Flood Prone Land

SECTION 13 – FLOOD PRONE LAND**INTRODUCTION**

This plan has been prepared in accordance with Section 72 of the Environmental Planning and Assessment Act (EPA Act) 1979 and Regulations. This plan came into force on 10th January 1994 in accordance with the procedure outlined in Clause 24(2) of the Environmental Planning and Assessment Regulation 1980. This plan is based on recommendations of the **Floodplain Management Plan** prepared for Muswellbrook Shire Council (Cameron McNamara 1988).

13.1.1 Application

This plan shall apply to all land within the Muswellbrook Council area which is flood prone land.

Where this is an inconsistency between this plan and another development control plan applying to the land which is the subject of this plan, the provisions of this development control plan shall prevail.

Council shall take into consideration the provisions of this plan in its determination of development applications relating to land to which this plan applies. Under the provision of Section 90(1) of the Environmental Planning and Assessment Act, 1979 (as amended), Council is required to consider a range of factors in its determination of a development application which would include the provisions of this plan.

13.1.2 Definitions

In this plan:

AEP (annual exceedance probability) means the likelihood of a flood being equalled or exceeded in any single year. A one per cent (1%) AEP event has a likelihood of one change in one hundred of being equalled or exceeded in any single year eg. 1 in 100 years.

COUNCIL means Muswellbrook Shire Council.

DEVELOPMENT means the erection of a building or the carrying out of work, in, on, over or under that land, or the use of that land or of a building or work on that land and includes the subdivision of that land.

EVACUATION PLAN means an outline of measures proposed for the timely, orderly and safe evacuation of persons from flood affected areas.

FLOOD HAZARD means potential for damage to property or risk to persons as a result of flooding.

FLOOD STORAGE AREA means those parts of the floodplain which are used for the temporary storage of floodwater during the passage of a flood.

FLOODWAY means those areas of land where a significant volume of water flows during floods and includes the channel of a river or stream and those portions of the flood plain adjoining the channel which constitute the main flow path for floodwaters.

HABITABLE AREA means a room or rooms (other than a bathroom, laundry, W.C., garage, storage shed or workshop or the like) that are designed, constructed or adapted for activities normally associated with domestic living.

**Muswellbrook Shire Development Control Plan
Section 13
Flood Prone Land**

HIGH HAZARD means possible danger to persons; evacuated by trucks difficult, potential for structural damage; possibility of high social disruption and financial losses.

MINOR ADDITION means an addition of not more than 20 square metres in area.

13.1.3 Aims and Objectives

This plan aims to:

- Provide planning provision and guidelines for the determination of development in accordance with the Floodplain Management Plan;
- Minimise the public and private costs of flood damage and risks to life associated with flood events.

The objectives of the plan are to:

- Inhibit the intensification of residential and other inappropriate uses in flood affected areas;
- Ensure that any developments which do take place are designed and constructed in a manner which is compatible with the flood risk of the area.

13.1 DEVELOPMENT AND BUILDING PRINCIPLES

Controls

The following principles must be considered in Council's determination of development proposals on land to which this plan applies. Applicants shall be advised of these principles prior to submitting development applications. These principles require that:

- Proposed development will not result in increased flood hazard or flood damage to other properties;
- Proposed development should be of a type, height and scale that is compatible with the existing urban and historic fabric of the area;
- Construction methods and materials for that part of the development below the 1% AEP flood levels (as determined by Council) should conform with the flood proofing code as detailed in Section 12.
- Proposed development shall be able to withstand the force of flowing floodwaters, including debris and buoyancy forces.

13.2 NEW RESIDENTIAL DEVELOPMENT

- a) The applicant is required to obtain development consent prior to obtaining building consent for new dwellings in any residential zone.
- b) In determining a development application Council will follow the principles outlined in Section 13.1.
- c) The floor level of all habitable areas shall be at least 0.5m above the 1% AEP flood level, as determined by Council.
- d) Materials used are in conformity with the flood proofing code, Section 13.8.

Muswellbrook Shire Development Control Plan
Section 13
Flood Prone Land

- e) The proposed structure can withstand the force of flowing floodwaters including debris and buoyancy forces.
- f) A report is provided by a suitably qualified consulting engineer stating that the requirements outlined above have been incorporated into the design of the development.

13.3 ALTERATIONS AND ADDITIONS TO RESIDENTIAL BUILDINGS

- a) The applicant is required to obtain development consent for all additions to existing dwellings other than minor renovations or repairs for structures in the residential zone as shown on the map;
- b) In determining a development application Council will follow the principles outlined in Section 13.1;
- c) Any habitable addition to a dwelling house shall not exceed a total area of 35m² of additional floor area of the house;
- d) Any extension which exceeds 20m² of additional floor area of the house classed as habitable shall have a floor level at least 0.5m above the 1% flood level, as determined by Council;
- e) Any addition to existing dwelling houses shall be related to the floor area of that dwelling as it existing in December 1988.
- f) Materials used are in conformity with the flood proofing codes, Section 13.8.
- g) The proposed additions can withstand the force of flowing floodwaters including debris and buoyancy forces.
- h) A report is provided by a suitably qualified consulting engineer stating that the requirements outlined in (f) and (g) above have been incorporated into the design of the additions.

13.4 NON-RESIDENTIAL DEVELOPMENT

A range of non residential uses are permitted in the flood affected areas. These are listed in the Muswellbrook Local Environmental Plan as amended.

- a) Floor levels for non residential uses, excluding habitable areas, may be permitted below flood level provided the development is in accordance with the principles outlined in Section 13.1.
- b) The floor level of all habitable areas of proposed development shall be at least 0.5m above the 1% AEP flood level except in the case of change of use of an existing building.
- c) The development will not result in increased flood hazard or flood damage to other properties or increase afflux by more than 0.1 metres.
- d) The construction methods and materials for that part of the development below the 1% AEP flood level shall conform with the flood proofing code, Section 13.8.

**Muswellbrook Shire Development Control Plan
Section 13
Flood Prone Land**

- e) The proposed development can withstand the force of flowing floodwaters, including debris and buoyancy forces.
- f) Provision shall be made for the safe storage and/or timely removal of goods, materials, plant and equipment in the event of a flood.
- g) A report be provided by a suitable qualified consulting engineer stating that the requirements outlined in (d) and (e) above have been incorporated in the design of the development.

An evacuation plan for users of the development is prepared (to the satisfaction of Council) and maintained throughout the life of the development.

In considering development application on non-residential zones, Council shall have regard to:

- ❖ the primary objective of the Special Infrastructure (SP2) and Local Centre (B2) Zone, which is to facilitate the existing and continued operation of public uses;
- ❖ the primary objective of the RE1 – Public Open Space zone, which is to facilitate the use of publicly zoned land for recreational purposes;
- ❖ the primary objective of the RE2 - Private Open Space zone, which identifies land suitable for private public recreation use;
- ❖ the primary purpose of the RU1 Primary Production zone, which is to preserve prime alluvial land for agricultural use. In the area covered by this Development Control Plan RU1 and W1 - Waterways zoning also recognises the eroding nature of some of the river bank.

In determining an application in this area Council will require the following:

- a) The floor level of all habitable areas of the proposed development shall be at least 0.5m above the 1% AEP flood level, except in the case of a change of use of an existing building.
- b) The development will not result in increase flood hazard or flood damage to other properties or increase afflux by more than 0.1m.
- c) The construction methods and materials for that part of the development below the 1%AEP flood levels shall conform with the flood proofing code.
- d) The proposed development can withstand the force of flowing floodwaters, including debris and buoyancy forces.
- e) Provision shall be made for the safe storage and/or timely removal of goods, material, plant and equipment in the event of a flood.
- f) A report be provided by a suitably qualified Consulting Engineer stating that the requirements outlined in (a) - (e) above have been incorporated in the design of the development.

**Muswellbrook Shire Development Control Plan
Section 13
Flood Prone Land**

An evacuation plan for users of the development is prepared (to the satisfaction of Council) and maintained throughout the life of the development.

In considering development applications in non-residential zones, Council shall have regard to:

- The primary objective of the B2 - Local Centre zone which is to recognise the established non-retail functions of the existing business areas outside the main business centre of Muswellbrook.
- The primary objective of the SP2 – Special Infrastructure zone, which is to facilitate the existing and continued operation of public uses.

In determining development proposals, Council should require that:

- a) The principles on Part 13.1 of this Development Control Plan are taken into account;
- b) provision has been made for the safe storage and/or timely removal of goods, material, plant and equipment in the event of a flood;
- c) the floor level of all habitable areas should be at least 0.5m above the 1%AEP flood level determined by Council;
- d) an evacuation plan for users of the development is prepared (to the satisfaction of Council) and maintained throughout the life of the development;
- e) a report be provided by a suitably qualified consulting engineer to confirm that the principles and provision of this Development Control Plan have been incorporated into the design of the development.

13.5 DEVELOPMENT PROTECTED BY A LEVEE

- Minimum floor levels for all developments in the township of Denman protected by the levee shall be 107.25m AHD (Australian Height Datum).
- Minimum floor levels for all developments in the township of Muswellbrook protected by the levee shall be 146.3 AHD (Australian Height Datum).
- Where new buildings or additions are proposed within 40m of the existing levee a structural engineer's certificate shall be submitted with a construction certificate certifying that the proposed structure has been designed to withstand the flood pressures, including debris and buoyancy forces, imposed in the event of an adjacent levee failure.

Loads imposed will be assessed from the velocity/depth data indicated below:

Muswellbrook Shire Development Control Plan
Section 13
Flood Prone Land

**VELOCITY AND DEPTH FLOOD WATERS
 DUE TO A LEVEE BREACH**

Height of Adjacent Levee	Distance from Levee							
	5.0		10.0		20.0		30.0	
	V (m/s)	D (m)	V (m/s)	D (m)	V (m/s)	D (m)	V (m/s)	D (m)
1.0	2.6	0.25	1.0	0.3	*	*	*	*
2.0	5.0	0.4	3.7	0.35	2.0	0.5	*	*
3.0	6.4	0.6	5.5	0.5	4.0	0.5	3.2	0.7

NOTE: V = velocity of flow
 D = depth of flow
 * = values not determined

13.6 RURAL AREAS

13.6.1 Prior to any subdivision or new development on land affected by the 1% AEP flood, a report from a suitably qualified consulting engineer shall be submitted detailing information on flood levels and flood velocities. The report will also satisfactorily demonstrate that the development or development proposed on allotments to be subdivided, will not increase the flood hazard or flood damage to other properties and shall also satisfy Council that the afflux created at any other point on the flood plain will not be increased by more than 0.1m as a result of the development.

13.6.2 Minor additions to existing dwellinghouses, such as verandahs, patios or the like, will be permitted to be constructed below flood level provided materials used are in conformity with the flood proofing code.

13.6.3 Additions to the floor area of dwellings as at December 1988, such additions comprising no more than 20m² of total additional habitable area of the house at December 1988, may be carried out at the existing floor level provided:

- Materials used are in conformity with the flood proofing code;
- The proposed additions can withstand the force of flowing floodwaters including debris and buoyancy forces;
- A report is provided by a suitably qualified consulting engineer stating that the requirements outlined in (a) and (b) above have been incorporated into the design of the additions.

13.6.4 Additions to the floor area of dwellings as at December 1988, such additions comprising more than 20m² of total additional habitable area of the house may be carried out, provided:

**Muswellbrook Shire Development Control Plan
Section 13
Flood Prone Land**

- a) The floor level is at least 0.5m above the 1% AEP flood level, as determined by Council;
- b) Material used are in conformity with the flood proofing code;
- c) The proposed additions can withstand the force of flowing floodwaters including debris and buoyancy forces;
- d) A report is provided by a suitably qualified consulting engineer stating that the requirements outlined in (a), (b) and (c) above have been incorporated into the design of the additions.

13.6.5 New dwellings, including replacement of dwellings, may be carried out, provided:

- a) The information required by Clause 13.6.1 is submitted with the development application and Council is satisfied the dwelling is not located in a high hazard flood area;
- b) The floor level is at least 0.5m above the 1% AEP flood level, as determined by Council;
- c) Materials used are in conformity with the flood proofing code;
- d) The proposed building can withstand the force of flowing floodwaters including debris and buoyancy forces;
- e) A report is provided by a suitably qualified consulting engineer stating that the requirements outlined in (a), (b), (c) and (d) above have been incorporated into the design of the additions.

13.6.6 Other rural buildings such as hay sheds, machinery sheds, dairies and the like will be permitted to be erected below flood level, provided:

- a) The information required by Clause 13.6.1 is submitted with the development application;
- b) The proposed building can withstand the force of flowing floodwaters including debris and buoyancy forces and a structural engineer's certificate is submitted stating that the building has been designed to withstand such forces.

13.7 FENCING

- Council will require lodgement of a development application for the erection of fencing in the Racecourse Road area other than rural fences such as 5 wire fences.
- In determining the application, Council will require a report from a Structural Engineer to verify that:
 - The construction will not result in increased flood hazards or flood damage to other properties or increase afflux by more than 0.1 metres.

13.8 FLOOD PROOFING CODE

As part of the Floodplain Management Plan, a Flood Proofing Code as outlined below will be adopted for all buildings or structures including alteration, extensions, renovations and repairs to existing buildings located in flood prone land.

Construction Methods and Materials

Materials used shall be as listed below. These materials will be used in all situations where the component specified will be inundated by the 1% AEP flood.

Muswellbrook Shire Development Control Plan
Section 13
Flood Prone Land

Component	1 st Preference	2 nd Preference
Flooring and Sub Floor Structure	<ul style="list-style-type: none"> concrete slab-on-ground monolith construction. <p><i>Nb: clay filling is not permitted beneath slab-on-ground construction, which could be inundated.</i></p> <ul style="list-style-type: none"> Suspension reinforced concrete slab. 	<ul style="list-style-type: none"> Timber floor (T & G boarding, marine plywood) full epoxy sealed joints.
Nails, bolts, hinges and fittings	<ul style="list-style-type: none"> Brass, nylon or stainless Removable pin hinges 	<ul style="list-style-type: none"> Galvanised steel aluminium
Floor Covering	<ul style="list-style-type: none"> clay tiles concrete, precast or insitu concrete tiles epoxy, formed-in-place mastic flooring, formed-in rubber sheets or tiles with chemical-set adhesives silicon floors formed-in-place vinyl sheets or tiles ceramic tiles, fixed with mortar or chemical-set adhesive asphalt tiles, fixed with water resistant adhesive 	<ul style="list-style-type: none"> cement/bituminous formed-in-place cement/latex formed-in-place rubber tiles with chemicals set adhesive terrazzo vinyl tile with chemical set adhesive vinyl-asbestos tiles asphaltic adhesives loose rugs alkali-resistant grout
Wall Structure	<ul style="list-style-type: none"> solid brickwork, blockwork reinforced, concrete or mass concrete. 	<ul style="list-style-type: none"> Two skins of brickwork or blockwork with inspection openings.
Roofing Structure	<ul style="list-style-type: none"> Reinforced concrete Galvanised metal construction 	<ul style="list-style-type: none"> Timber trusses
Doors	<ul style="list-style-type: none"> Solid panel with water proof adhesives Flush door with marine ply filled with closed cell foam Painted metal construction Aluminium or galvanised steel frame 	<ul style="list-style-type: none"> Flush panel or single panel with marine plywood and water proof adhesive T&G lined door, framed ledged and braced Painted steel Timber frame fully epoxy Sealed before assembly
Insulation	<ul style="list-style-type: none"> Foam or closed cell types 	<ul style="list-style-type: none"> Reflective insulation
Wall and Ceiling	<ul style="list-style-type: none"> Asbestos-cement board Brick, face or glazed Clay tile glazed in water proof mortar Concrete Concrete block Steel with water proof applications Stone, natural solid or veneer, water proof grout 	<ul style="list-style-type: none"> Brick, common Plastic wall tiles Metals, non ferrous Rubber mouldings and trim Wood, solid or exterior grade plywood fully sealed.

**Muswellbrook Shire Development Control Plan
Section 13
Flood Prone Land**

	<ul style="list-style-type: none"> • Glass blocks • Glass • Plastic sheeting or wall with water proof adhesive 	
Windows	<ul style="list-style-type: none"> • Aluminium frame with stainless steel or brass rollers • Galvanised or painted steel 	<ul style="list-style-type: none"> • Epoxy sealed timber water proof glues with stainless steel or brass fittings

Electrical and Mechanical Equipment

For dwellings constructed on flood liable land, the electrical and mechanical materials, equipment and installation should confirm to the following requirements:

Main Power Supply - subject to approval of the relevant county council the incoming main commercial power service equipment, including all metering equipment, shall be located above the 1% AEP flood. Means shall be available to easily disconnect the dwelling from the main power supply.

Wiring - all wiring, power outlets, switches, etc. should, to the maximum extent possible, be located above the 1% AEP flood. All electrical wiring installed below the 1% AEP flood should be suitable for continuous submergence in water and should contain no fibrous components. Only submersible type splices should be used below the 1% AEP flood. All conduits located below the 1% AEP flood should be so installed that they will be self draining if subjected to flooding.

Equipment - all equipment installed below or partially below the 1% AEP flood should be capable of disconnection by a single plug and socket assembly.

Reconnection - should any electrical device and/or part of the wiring be flooded, it should be thoroughly cleaned or replaced and checked by an approved electrical contractor before reconnection.

Heating and Air Conditioning Systems

Heating and air conditioning systems should, to the maximum extent possible, be installed in areas and spaces of the house above the 1% AEP flood. When this is not feasible, every precaution should be taken to minimise the damage caused by submersion according to the following guidelines.

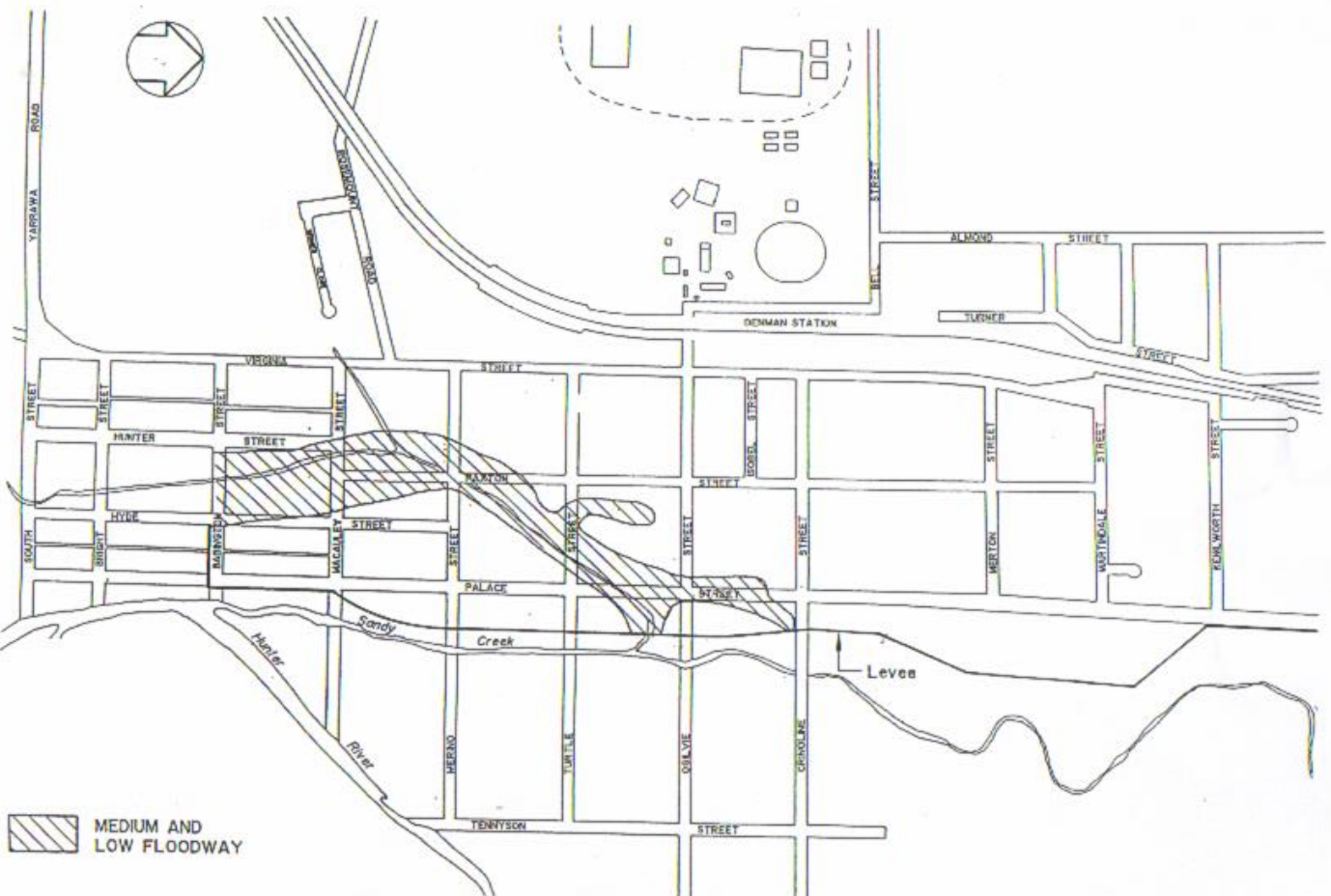
Fuel - heating systems using gas or oil as a fuel should have a manually operated valve located in the fuel supply line to enable fuel cut-off.

Installation - the heating equipment and fuel storage tanks should be mounted on and securely anchored to a foundation pad of sufficient mass to overcome buoyancy and prevent movement that could damage the fuel supply line. All storage tanks should be vented to an elevation of 600mm above the 1% AEP flood.

Ducting - all duct work below the 1% AEP flood should be provided with openings for drainage and cleaning. Self draining may be achieved by constructing the duct work on a suitable grade. Where duct work must pass through a water-tight wall or floor below the 1% AEP flood, the duct work should be protected by a closure assembly operated from above the 1% AEP flood.

**Muswellbrook Shire Development Control Plan
Section 13
Flood Prone Land**

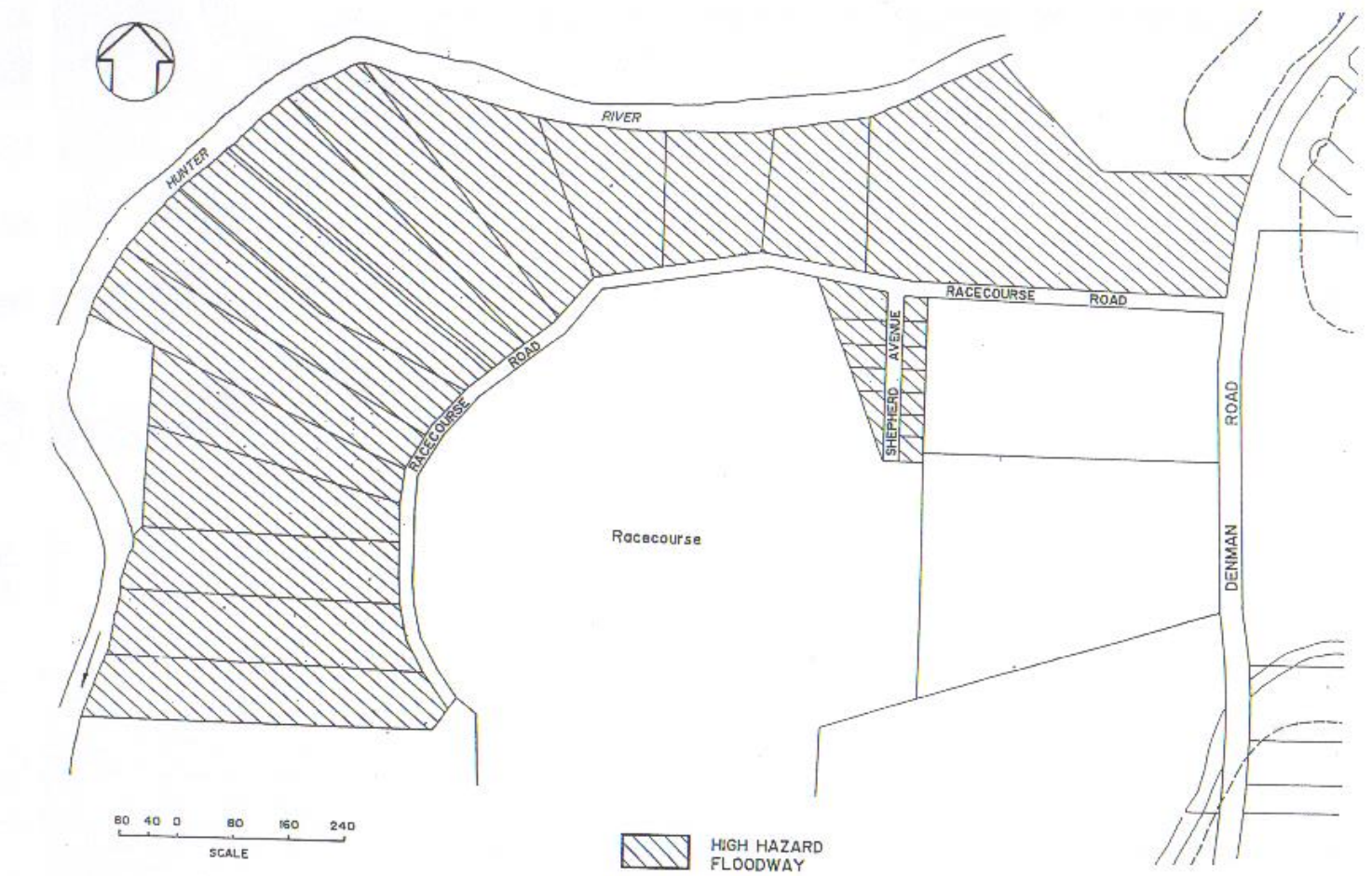
Muswellbrook Shire Development Control Plan
Section 13
Flood Prone Land



Version date – April 2009

13-11

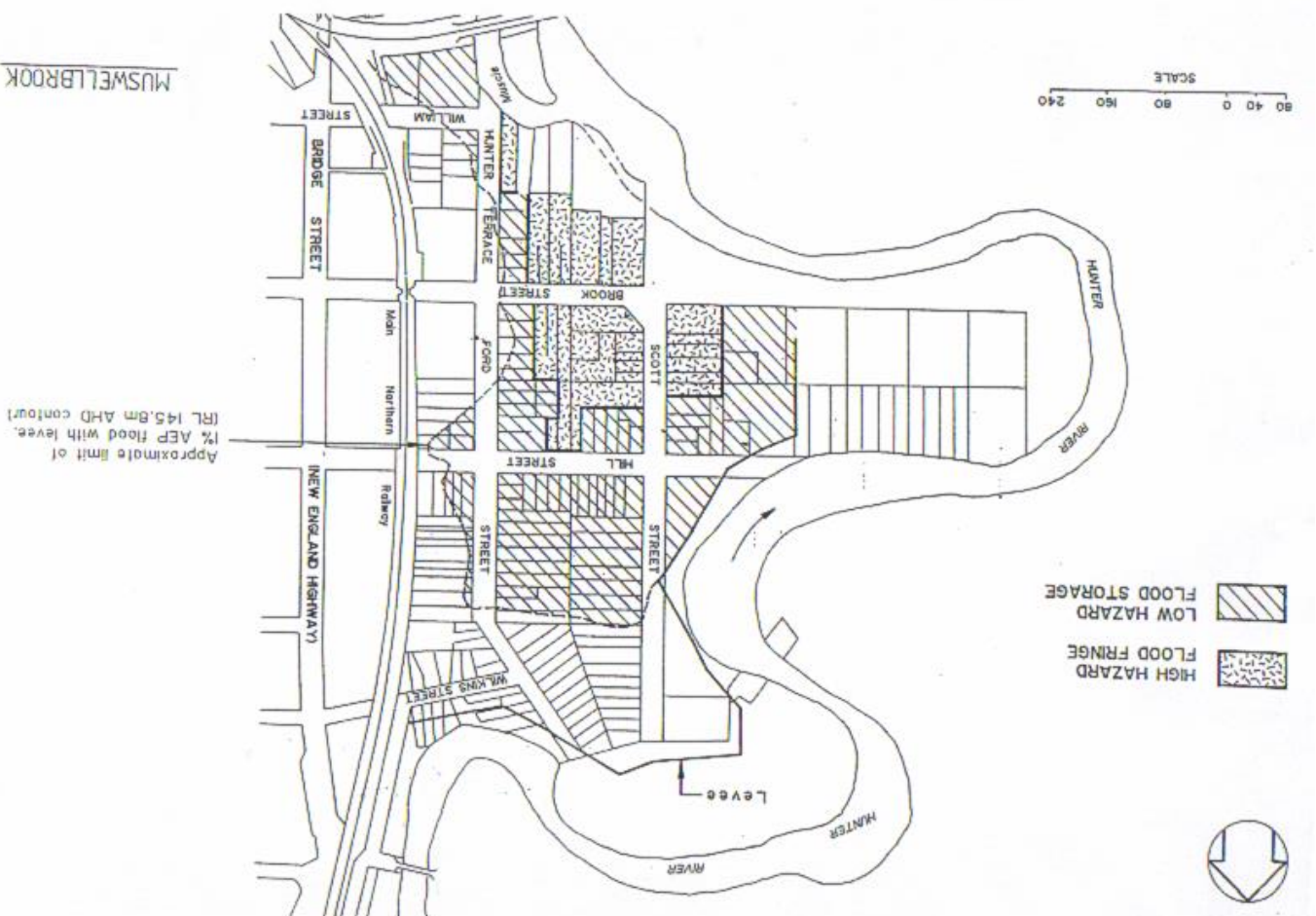
Muswellbrook Shire Development Control Plan
Section 13
Flood Prone Land



Version date – April 2009

13-12

Muswellbrook Shire Development Control Plan
Section 13
Flood Prone Land



Version date – April 2009

13-13

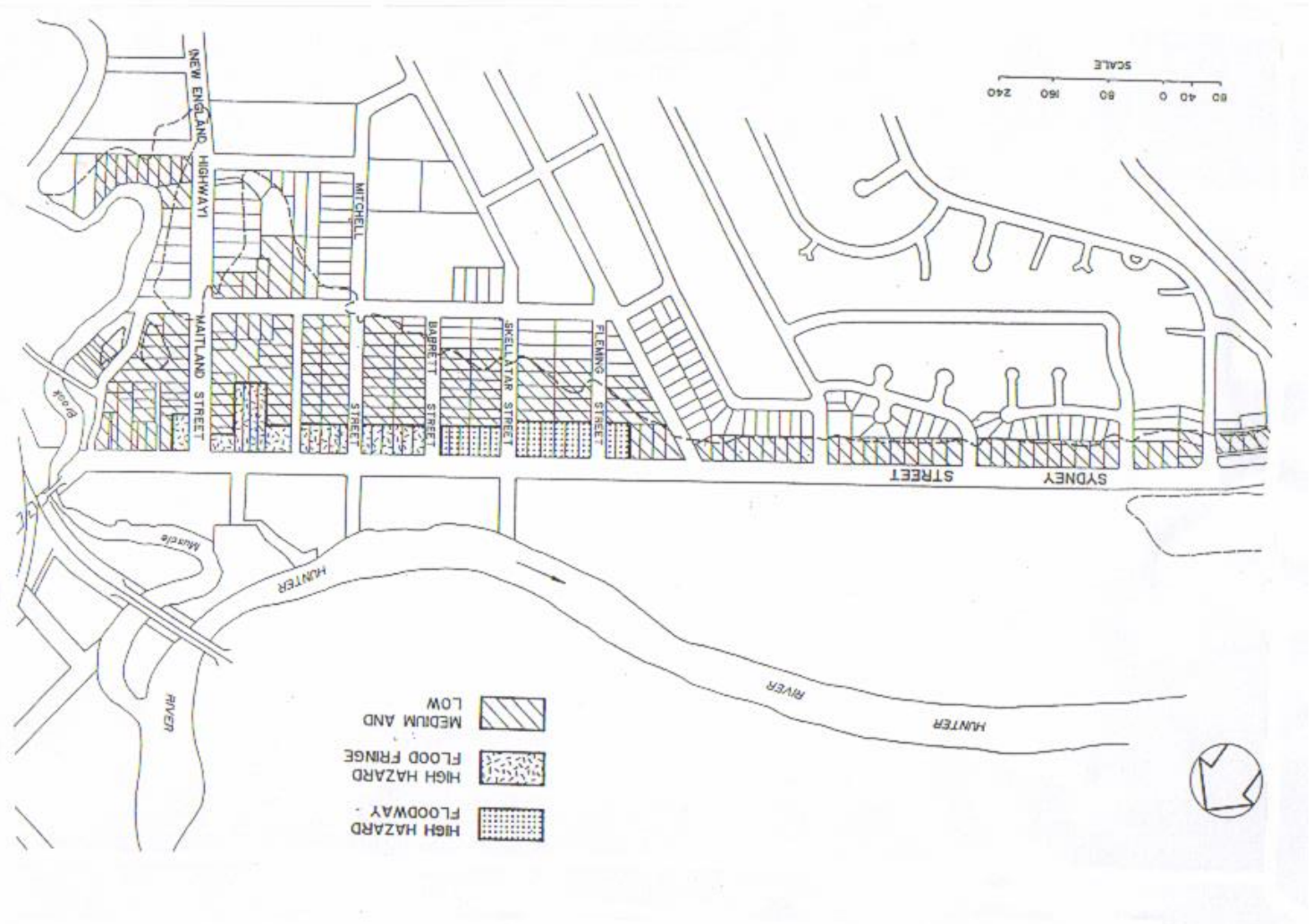
Muswellbrook Shire Development Control Plan
Section 13
Flood Prone Land



Version date – April 2009

13-14

Muswellbrook Shire Development Control Plan
Section 13
Flood Prone Land



Version date – April 2009

13-15

10.5 SUBMISSION ON DRAFT HUNTER REGIONAL PLAN 2041

Attachments:	A. Draft Submission - Hunter Regional Plan 2041
Responsible Officer:	Fiona Plesman - General Manager
Author:	Sharon Pope - Executive Manager - Environment and Planning
Community Plan Issue:	<i>Diversify the economy, facilitate the development of intensive agricultur and other growth industries, make the Shire a more attractive place to invest and do business</i>
Community Plan Goal:	<i>Review the Local Environmental Plan and Development Control Plan to improve investment certainty for industry.</i>
Community Plan Strategy:	<i>Progress completion of an LEP and DCP.</i>

PURPOSE

The draft Hunter Regional Plan 2041 is on exhibition until Friday 4 March 2022. The purpose of this report is to consider Council's submission to the Draft Hunter Regional Plan 2041.

OFFICER'S RECOMMENDATION

Council authorises the General Manager to make a submission on the draft Hunter Regional Plan 2041 in accordance with Attachment A.

Moved: _____ **Seconded:** _____

BACKGROUND

The Hunter Regional Plan is the 20-year blueprint setting a policy framework for land use planning decisions in the Region by identifying a number of high level strategies.

The draft Plan was a result of a review of the current Plan. The past 2 years have shown how important it is to keep strategic planning documents contemporary to adapt to meet changing circumstances and needs.

The Hunter Regional Plan applies to the Local Government areas of Mid-Coast, Upper Hunter, Muswellbrook, Singleton, Dungog, Cessnock, Lake Macquarie, Port Stephens and Newcastle. Once adopted, Council's land use and development application determination decisions will be required to implement the Plan.

The Department of Planning, Industry and Environment (DPIE) will collaborate with each local council on to achieve delivery of the Plan.

The draft plan contains the following ideas to support the delivery of the vision:

1. **New pathways** to promote economic self-determination and greater recognition and respect of traditional custodians, along with greater connection with Country and integrating Aboriginal cultural knowledge and practice into urban design and planning
2. A new approach and energy to how we **sequence planning for new land uses and infrastructure** to accelerate proposals that will support the vision and bring even greater public value
3. Establishment of **net zero emissions as a guiding principle** for all planning decisions
4. A focus on creating a **15-minute region** made up of **mixed-use neighbourhoods** in various contexts, as a response to the new ways people live and work in light of the COVID-19 pandemic, including the value people place on local, vibrant neighbourhoods where most everyday needs can be met within a 15-minute walk, bike ride, public transport trip or drive in rural areas.

5. **Emphasis on consolidation approaches** to growth over expansion, the achievement of optimum residential densities in various contexts to make public transport and neighbourhood mixes successful, and the establishment of flexible land uses in new and existing neighbourhoods to allow communities to evolve over time.
6. **A renewed focus on green infrastructure, public spaces and nature**, by drawing from the opportunities of a rapidly growing region to plan for a better future, and using planning decisions to reinforce, enhance and improve quality of life.
7. **Prioritisation of walking, cycling and public transport** in urban towns and village settings.
8. **Reinforcing the importance of equity** so that people have greater choice in where and how they live, how they travel and where and how they work.

Transition to net zero emissions

A significant change to the Regional Plan is a new focus on ensuring the Hunter makes a sustainable transition to a net zero emissions future and remains the leading regional economy in NSW. The Plan identifies the need for the land currently used for mining and energy generation to be available for new opportunities for jobs in renewables and green industries.

Rather than returning land to its pre-mining state, or as agricultural or biodiversity land, the Plan states there may be opportunities to utilise mining infrastructure to leave an economic legacy for the community, with opportunities for future investors to develop the land post-relinquishment.

REPORT

A draft submission is provided in Attachment A. Many of the Objectives and strategies are supported. The key points from the submission are outlined below:

Urban Development Program: staff support this initiative. A template for monitoring land availability should be created by DPIE and financial assistance provided to councils to:

- develop mechanisms to readily report on key parameters; and
- develop place strategies without undue increases in demand on council resources.

Objective 1 – Diversify the Hunter’s Mining, energy and industrial capacity: staff support the need for diversification of employment opportunities.

Objective 3: Create a 15 minute region made up of mixed, multi-modal, inclusive and vibrant local community; and

Objective 4: Plan for “Nimble Neighbourhoods”, diverse housing and sequenced development

Staff support the general objectives but are concerned by some of the strategies. They may work well in the coastal locations of the Region, but the reason many people choose to live in the Upper Hunter is in part to be able to purchase a larger house lot. The current ratio of infill (5%) to greenfield (95%) will be difficult to change to 40% & 60%.

New housing needs to consider issues arising from the current and future climate. Summer temperatures in the Muswellbrook are already substantially higher than coastal location. Poorly designed, smaller lot subdivisions, where the road, roof and other hard surfaces dominate over lawn and treed areas have the potential to increase urban heat effects.

The increase in rainfall falling in storms also requires careful consideration of WSUD.

Objective 8: Build an inter-connected and globally focused Hunter

Staff support this objective and strategies.

Muswellbrook Shire provides opportunities for warehousing and distribution given the rail and road connections and large tracts of land currently held for mining operations and power stations. Completing the rail connection to Dubbo would allow links the inland rail corridor.

Central Hunter

The separation of Singleton and Muswellbrook from the Upper Hunter into the Central Hunter subregion

is not supported. There is not sufficient justification to support disruption of the branding and place making/awareness that already exists.

The Liddell and Bayswater Significant Growth Area land use plan included in the draft Hunter Regional Plan should not be “locked in”. The studies that have occurred to generate this land use plan are not available to the public, and there hasn’t been a consultation program with Council, government agencies or the broader community. Council wants to be involved in the place delivery group pathway for this site.

The proposal to carefully manage the landscape values of the rural areas of Muswellbrook Shire are supported.

OPTIONS

Council may

- Authorise the General Manager to make the draft submission in Attachment A ; or
- Make further changes to the draft submission and authorise the General Manager to make the amended submission.

CONCLUSION

The draft Hunter Regional Plan 2041 identifies several high-level strategies to direct land use planning decisions. While many of the objectives and strategies are supported, a number of comments are warranted, including an objection to placing Muswellbrook and Singleton LGAs into a sub-region called “Central Hunter”.

SOCIAL IMPLICATIONS

The Regional Plan 2041 aims to improve social outcomes as the region grows and changes.

FINANCIAL IMPLICATIONS

Ongoing Operational and Maintenance Costs Implications Associated with Capital Project

1. Financial Implications – Capital

Nil

2. Financial Implications – Operational

Some of the Strategies and actions will require resources, primarily staff time, but in some instances the engagement of specialist consultants. The quantum of the financial impact is difficult to assess at this time.

POLICY IMPLICATIONS

Once finalised, the Hunter Regional Plan 2041 will be a Policy that Council refers to and implements over time when making land use policy decisions and developing Operational Plans, Delivery Plans and updating the Muswellbrook Local Strategic Planning Statement (LSPS).

STATUTORY IMPLICATIONS

The Environmental Planning and Assessment Act 1979 and Ministerial Directions require Council to implement the Plan once adopted.

LEGAL IMPLICATIONS

Nil

OPERATIONAL PLAN IMPLICATIONS

Some of the Strategies and actions will require resources, primarily staff time, but in some instances the engagement of specialist consultants. This will need to be considered when developing future Operational Plans. The Objectives in the draft Hunter Regional Plan 2041 will need to be considered and incorporated in the Muswellbrook LSPS.



Enquiries
Please ask for Sharon Pope
Direct 02 6549 3868
Our reference
Your reference

22 February 2022

DPIE

Dear Sir or Madam,

Submission on draft Hunter Regional Plan 2041

Urban Development Program

Regular monitoring of land supply, dwelling production and demand will enable better decisions on urban renewal priorities, release of land for development and the infrastructure and servicing required to enable delivery.

A Hunter urban development program committee will be established. The committee will:

- identify and remove barriers and disincentives for infill housing;
- oversee a pipeline of housing and employment land supply across the Hunter;
- track the supply of infill and greenfield land supply, completions, and infrastructure servicing data of housing and employment land;
- identify opportunities to accelerate the supply of land for housing and employment including improvements to land rezoning, release and servicing;
- make land use and infrastructure sequencing recommendations that may result in more cost-effective housing and job delivery;
- provide annual updates on the implementation of the regional plan; and
- provide annual updates to a sequencing plan and delivery report.

A sequencing and delivery report will be prepared to include:

- evaluation of investigation areas against the criteria;
- Hunter-wide sequencing priorities covering all place strategies;
- roles and responsibilities for place strategies; and
- resourcing, collaboration and funding agreements.

Comment

Muswellbrook Shire Council supports this initiative. A template for monitoring land availability should be created by DPIE and financial assistance provided to councils to:

- develop mechanisms to readily report on key parameters; and
- develop place strategies without undue increases in demand on council resources.

Objective 1 – Diversify the Hunter's Mining, energy and industrial capacity

Muswellbrook Shire Council	(02) 6549 3700	@ council@muswellbrook.nsw.gov.au
Campbell's Corner 60-82 Bridge Street Muswellbrook NSW 2333		PO Box 122 Muswellbrook 2333
muswellbrook.nsw.gov.au	muswellbrook shire council	ABN 86 864 180 944

Page 1 of 6

The Plan highlights a shift in the government's approach to post-mining land use considerations. Rather than returning land to its pre-mining state, or as agricultural or biodiversity land, the Plan states there may be opportunities to utilise mining infrastructure to leave an economic legacy for the community, with opportunities for future investors to develop the land post-relinquishment.

The department will investigate site compatibility mechanisms to allow development applications to be lodged for non-permissible uses and associated subdivision for the areas of interest parts of mine sites consistent with the Hunter Regional Plan. This will also consider mechanisms to provide more flexibility in post mining land uses as part of the development consent process.

Managing industrial capacity and creating flexible planning and development controls will need to respond to new opportunities and technologies, including catalytic investments and transition to net zero emissions. This may mean a shift from traditional industrial and manufacturing into advanced and smart manufacturing, artificial intelligence and robotics, or more distributed manufacturing. E-commerce is increasing demand for warehouse and logistic properties to accommodate automated warehousing.

Comment

Muswellbrook Shire Council supports the need for diversification of employment opportunities.

Objective 2: Ensure economic self-determination for Aboriginal communities

The NSW Government is committed to improving the economic self-determination of Aboriginal communities in NSW. The principles of self-determination and co-design can be implemented across the region so that Aboriginal people have greater choice, access and agency over land, water, housing and resources.

Comment

Muswellbrook Shire Council supports this objective and strategies.

Objective 3: Create a 15 minute region made up of mixed, multi-modal, inclusive and vibrant local community

Objective 4: Plan for “Nimble Neighbourhoods”, diverse housing and sequenced development

For many decades, growth in the Hunter has assumed that we would use our cars to meet most of our needs, often involving travelling long distances to do so. We've designed growth, both in land use, urban design and transport infrastructure, in a way that has made personal vehicle use the most attractive choice, and indeed often the only realistic choice.

There are two scales of access:

- Local neighbourhood scale where most everyday needs are accessible within 15 minutes by walking or cycling. In rural contexts it is recognised that the reasonable, and yet still ambitious goal, is for some local needs to be accessible within short walks or bike-rides, but that the majority of such needs should be accessible within a 15-minute personal vehicle drive.
- The second scale recognises that many more infrequent and specialised needs and goods would not typically be expected to be reachable by all residents in such a local way, but should still be accessible relatively easily without being dependent on a car. This second scale, the 30-minute connected community scale, allows for reasonably easy travel across communities and differing contexts by walking, cycling or public transport to less frequent, more specialised needs within 30-minutes.

Development proposals will need to demonstrate how various employment, commercial, community, recreation and education services will be located within 15-minute walking (urban contexts) and cycling (suburban contexts) trips of housing in residential and mixed-use zones, with achieved densities that allow for such local uses to succeed and flourish.

Rural towns and villages provide a unique lifestyle choice. While these areas are not intended to accommodate significant growth, councils may undertake planning to ensure they can grow sustainably, be resilient, and respond to change.

Urban densities in new and existing neighbourhoods will represent an optimum, not a minimum, net density necessary for the following outcomes:

- increase housing choice and affordability;
- successfully achieve and support the level of local mix of uses and services being sought;
- achieve and support attractive walking, cycling and public transport;
- achieve and support the highly efficient use of land and infrastructure that are necessary to achieve a 15-minute region;
- assist the region in achieving net zero; and
- improve the health and wellbeing of Hunter residents, workers, and visitors.

Comment

Muswellbrook Shire Council supports the general objectives but are concerned by some of the strategies. They may work well in the coastal locations of the Region, but the reason many people choose to live in the Upper Hunter is in part to be able to purchase a larger house lot. The current ratio of infill (5%) to greenfield (95%) will be difficult to change to 40% & 60%.

New housing needs to consider issues arising from the current and future climate. Summer temperatures in the Muswellbrook are already substantially higher than coastal location. Poorly designed, smaller lot subdivisions, where the road, roof and other hard surfaces dominate over lawn and treed areas have the potential to increase urban heat effects.

The increase in rainfall falling in storms also requires careful consideration of WSUD.

Council is already planning to introduce the use of an R2 Residential rather than the blanket R1 General Residential zone currently in place in MLEP 2009. The R1 will be limited to locations closer to the Town Centre, train station, main roads and Rutherford Road shops.

Objective 5: Increase green infrastructure and quality public spaces and improve the natural environment

The Hunter's waterways, national parks, protected areas and World Heritage wilderness areas all contribute to healthy lifestyles, liveability and economic prosperity.

These areas need to be made more resilient to climate change, bushfire, urban edge effects and weed and pest infestation. They need to be reconnected to allow plant and animal species to move among communities and migrate in response to changing climatic conditions. Investing in conservation (including biodiversity offsets) that protects, and where possible, enhances habitat connections will benefit the environment and the community.

Any extensions to growth areas should be designed to connect to the established open space network or planned in a place strategy including extensions to walking and cycling routes.

Councils should seek to incorporate goals to increase the urban forest when preparing place strategies or other place-based planning so that targets will be met in local neighbourhoods. This will also help address urban heat risks reduce the impact of increasing heat waves.

Upper Hunter Valley Link

This link contains important valley floor forest and woodland remnants and covers the only viable north-south corridor across the Upper Hunter. The aim of conservation planning will be to connect, protect and enhance the large patches of existing vegetation between Wollemi National Park, Manobalai Nature Reserve and the Liverpool Range. It will be achieved through private land incentive programs and other mechanisms such as biodiversity offsetting.

Comment

Muswellbrook Shire Council supports this objective and strategies.

Objective 6: Reach net zero and increase resilience and sustainable infrastructure

The NSW Climate Change Policy Framework commits NSW to achieving net zero emissions by 2050. To successfully achieve this goal, the state's objective is to deliver a 50 per cent cut in emissions by 2030 compared to 2005 levels. This will help ensure significant progress is continual and achievable.

To progress successfully towards a net zero emissions Hunter, the regional plan seeks to make climate change a guiding principle for all planning decisions.

Councils are expected to engage the community to understand place-based risks (shocks and stresses), vulnerabilities and capabilities and provide information to develop resilience and adaptation plans. To assist councils in natural hazard management and risk mitigation the NSW Government has prepared *Planning for Bushfire Protection Guideline 2019*, *NSW Coastal Management Framework*, *Floodplain Risk Management Program* and a draft *Planning for a more resilient NSW*. These policies and guidelines ensure sensitive land uses and infrastructure such as homes, hospitals and schools are appropriately located, so communities are not placed at high risk, and people can safely evacuate if there is an emergency.

Comment

Muswellbrook Shire Council supports this objective and strategies.

Objective 7: Plan for businesses and services at the heart of healthy, prosperous and innovative communities

The diversity and vitality of the Hunter's towns and centres will need to respond to economic trends, technological advances, consumer behaviours and the development of the 24-hour economy.

The Hunter has the potential to be recognised as a world-class location for sustainable and nature-based and cultural tourism. Existing infrastructure, access, proximity to global gateways combined with the environmental and cultural values, including Aboriginal heritage, can be significant drawcards for domestic and international visitors.

Comment

Muswellbrook Shire Council supports this objective and strategies.

Objective 8: Build an inter-connected and globally focused Hunter

The Hunter has strong links to the surrounding regions of the New England North West, North Coast, Central West and Orana, and Central Coast, with people and freight moving between these regions every day.

The Hunter has different communities, assets and features, that while individually unique, effectively function as a connected and collective whole that together underpin our identity and lifestyles. Connectivity plays an important role in linking this diversity together and opening up opportunities to leverage a global economy and visitor market.

Comment

Muswellbrook Shire Council supports this objective and strategies.

Muswellbrook Shire provides opportunities for warehousing and distribution given the rail and road connections and large tracts of land currently held for mining operations and power stations. Completing the rail connection to Dubbo would allow links the inland rail corridor.

Central Hunter

The regional plan divides the Hunter into six districts that are considered to share similar characteristics, such as economy and infrastructure, geography and settlement patterns, housing markets, community expectation and levels of self-containment.

The district-based approach is used to:

- identify planning priorities that build on and provide direction to the regional plan vision and objectives;
- identify regionally significant growth areas and actions for achieving the regional plan objectives;
- guide the application, weighting and prioritisation of state interests set out in planning mechanisms; and
- inform other plans and programs, including local strategic planning statements and local plans and place strategies, to prioritise and coordinate the planning and provision of infrastructure and services.

The Central Hunter is a new district is anchored by the Muswellbrook and Singleton townships. The Central Hunter is considered to be the industry and innovation centre of the Hunter. It has globally acknowledged mining, equine and viticulture sectors and offers a rural lifestyle connected to metropolitan cities. The diverse landscape sustains heavy industry, agriculture, tourism and biodiversity.

It is separated from the Upper Hunter, which is distinguished by a quality rural lifestyle in a vibrant, caring and sustainable community. Rural industries represent the predominant land uses and help drive the Upper Hunter's economic performance. Key sectors include primary production (beef cattle), horse farming (equine), mining, meat processing and local government administration.

Several mines in the Central Hunter district are scheduled to cease mining and commence closure shortly, as are the Liddell and Bayswater Power Stations. Other coal mines are considering commencement or expansion. Both scenarios present opportunities to enable alternative post-mining land uses.

Opportunities to co-locate other employment generating activities on the Liddell site are being explored. The site is in single ownership, has both rail and highway access, as well as significant land, water and infrastructure assets. This makes it well suited to facilitate investment in jobs, particularly in the manufacturing, waste, freight, hydrogen, data and agribusiness sectors.

The Plan nominates the Liddell site as a regionally significant growth area with a plan showing future land uses across the combined site. The site is expected to be progressed as a Place Delivery Group pathway.

Considering visual amenity more generally, the landscape values of lands adjoining major road approaches to Singleton, Muswellbrook and surrounding villages and the vineyard region will be managed to provide a rural experience, potential wildlife corridors and a barrier to movement of airborne particulate matter.

Comment

The separation of Singleton and Muswellbrook from the Upper Hunter into the Central Hunter subregion is not supported. There is not sufficient justification to support disruption of the branding and place making/awareness that already exists.

The characteristics of the three LGAs are more similar than different, and while the Upper Hunter does not contain an active mine, many residents from the Upper Hunter work in mines or the power stations. The wellbeing of residents and economy of the Upper Hunter will be affected by the future transitions.

Cattle grazing, dairy farming and fodder production is a strong theme in all 3 LGAs. Merriwa has close ties with Sandy Hollow and Muswellbrook and the Golden Hwy is an important corridor to the West and other coal mining communities. Some of the Horse Studs have properties in both subregions, with stallions in one sub-region and mares/foals in another.

The Liddell and Bayswater Significant Growth Area land use plan included in the draft Hunter Regional Plan should not be "locked in". The studies that have occurred to generate this land use plan are not available to the public, and there hasn't been a consultation program with Council, government agencies or the broader community. Council wants to be involved in the place delivery group pathway for this site.

The proposal to carefully manage the landscape values of the rural areas of Muswellbrook Shire are supported.

If you have any enquiries, please contact me on Sharon.pope@muswellbrook.nsw.gov.au or ph 6549 3868.

Regards

Sharon Pope
Executive Manager Environment and Planning

10.6 SUBMISSION ON AGRITOURISM AMENDMENT ORDER

Attachments:	A. Agritourism Order Information Sheet B. Agritourism nominations ↓
Responsible Officer:	Derek Finnigan - Deputy General Manager
Author:	Sharon Pope - Executive Manager - Environment and Planning
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

The Department of Planning, Industry and Environment (DPIE) is seeking Council's feedback on inclusion of new land use terms and clauses in the Muswellbrook Local Environment Plan 2009 (MLEP 2009), to provide farmers with additional income sources (see attachment A). A State Environmental Planning Policy will be introduced in mid-2022 to amend LEPs across the State in accordance with advice received from councils.

OFFICER'S RECOMMENDATION

Council authorises the General Manager to make a submission on Council's behalf to seek inclusion of the agritourism terms and clauses in Muswellbrook LEP 2009 as shown in the nominations outlined in Attachment B.

Moved: _____ **Seconded:** _____

BACKGROUND

DPIE circulated a Standard Instrument LEP Agritourism Amendment Order to all NSW councils in December 2021. The proposed Order is intended to provide farmers with additional income sources to allow them to be more resilient, to enable recovery from natural disasters and the economic impacts of the COVID-19 pandemic, and to provide opportunities for sustainable tourism outlined in regional plans.

CONSULTATION

The Information Sheet related to the Order was circulated to staff in the Community Infrastructure and Environmental Health areas for input.

REPORT

Proposed changes in the LEP Order include:

- new land use terms for 'agritourism', 'farm gate premises'¹ and 'farm experience premises'
- changes to the definition of 'farm stay accommodation'
- optional clauses to be inserted into the Standard Instrument LEP for 'farm stay accommodation' and 'farm gate premises'
- transferring 'cellar door premises' to become a subset of 'farm gate premises'.

Councils were asked to nominate to adopt the optional clauses and/or specify the land use zones to

permit the new land uses in their LEPs and provide justification for their nominations.

The Information Sheet related to the Order is provided in Attachment A.

Councils were required to submit:

- preliminary responses to the Standard Instrument LEP Agritourism nomination form **by Friday 25 February 2022**. These responses informed drafting of amendments.
- final responses to the Standard Instrument LEP Agritourism Nomination and council minutes or a letter **by Thursday 31 March 2022**.

This two-step process acknowledged that, due to Local Government elections, it would be difficult for councils to meet and consider the draft Order before March.

Staff prepared a preliminary response (see attachment B) based on knowledge of the Shire's local road infrastructure, local visual character and the inability of on-site waste management systems to deal with large fluctuations in waste volumes.

OPTIONS

That Council authorises:

1. The General Manager to make a submission on Council's behalf to seek inclusion of the agritourism terms and clauses in Muswellbrook LEP 2009 as outlined in Attachment B. This is the preferred option as it balances the ability of rural property owners to diversify their income streams with the need to maintain amenity, the environment and to acknowledge that many of the Shire's rural roads are only suited to moderate levels of traffic; or
2. Resolves to seek inclusion of agritourism terms and clauses in Muswellbrook LEP 2009 in a different manner. Councillors would need to identify the changes they would prefer.

CONCLUSION

Allowing agritourism activities aligns with goals in the Community Strategic Plan and planning priorities in the Muswellbrook Shire Local Strategic Planning Statement. Inclusion of the agritourism terms and clauses in Muswellbrook LEP 2009 as outlined in Attachment B balances the ability of rural property owners to diversify their income streams with environmental and infrastructure constraints.

POLICY IMPLICATIONS

The proposed changes will be made to Muswellbrook LEP 2009 by the Department of Planning, Industry and Environment at a future date through a change to the Standard Template LEP and a State Environmental Planning Policy.

Facilitating agritourism activities aligns with goals in the Community Strategic Plan and planning priorities in the Muswellbrook Shire Local Strategic Planning Statement.

STATUTORY IMPLICATIONS

The new terms and clauses will need to be considered by proponents, staff and Councillors for any new development that it would apply to.

LEGAL IMPLICATIONS

Nil known.

OPERATIONAL PLAN IMPLICATIONS

Nil known.

RISK MANAGEMENT IMPLICATIONS

Nil known.

Standard Instrument LEP Agritourism Amendment Order

Information sheet



December 2021

Standard Instrument LEP Agritourism Amendment Order

Following the exhibition of the [explanation of intended effect](#) (EIE) in March-April 2021, the [draft Standard Instrument \(Local Environmental Plans\) Amendment \(Agritourism\) Order 2021 \(LEP Order\)](#) has been prepared which will amend the Standard Instrument LEP.

This is the first stage of rolling out the proposals in the EIE.

A summary of the submissions made to the EIE can be found in the [Submission and Survey Analysis Report](#).

What are the proposed changes?

Proposed changes in the LEP Order include

- new land use terms for 'agritourism', 'farm gate premises'¹ and 'farm experience premises'²
- changes to the definition of 'farm stay accommodation'
- optional clauses to be inserted into the Standard Instrument LEP for 'farm stay accommodation' and 'farm gate premises'
- transferring 'cellar door premises' to become a subset of 'farm gate premises'.

What are the benefits of the changes?

The changes will provide farmers with additional income sources to allow them to be more resilient. They will enable them to better recover from natural disasters and the economic impacts of the COVID-19 pandemic and provide opportunities for sustainable tourism outlined in regional plans.

What do the changes mean for councils?

Councils can now nominate to adopt the optional clauses and/or specify the land use zones to permit the new land uses in their LEPs and provide justification for their nominations.

Councils need to submit:

- preliminary responses to the [Standard Instrument LEP Agritourism nomination form](#) by **Friday 25 February 2022**. These responses will inform the drafting of amendments.
- final responses to the Standard Instrument LEP Agritourism Nomination and council minutes or a letter by **Thursday 31 March 2022**.

What happens next?

The department proposes to make the LEP Order in early 2022.

A state environmental planning policy to amend relevant LEPs without the need for a planning proposal is proposed to be made in mid-2022.

Agritourism permissibility

The LEP Order includes new agritourism land uses, as shown in Figure 1.

¹ Farm gate premises were previously identified as 'farm gate activities' in the EIE.

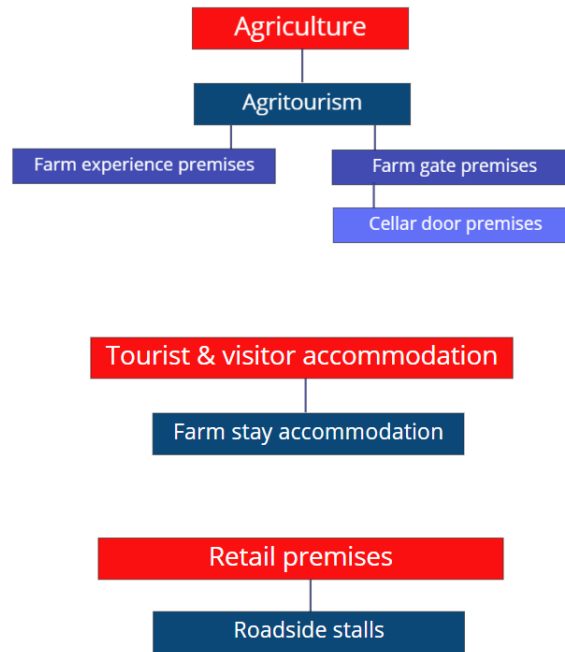
² Farm experience premises were previously identified as 'farm events' in the EIE

Standard Instrument LEP Agritourism Amendment Order

Information sheet



Figure 1: Hierarchy of land uses



Agritourism land use, farm gate premises and farm experience premises

Agritourism, and the subsets of this use, farm gate premises and farm experience premises will sit under the parent term of 'agriculture' and will be permissible in land use zones where agriculture is permissible.

They will not be automatically permissible where other subsets of agriculture, such as extensive agriculture or intensive plant agriculture, are permissible.

Councils wishing to allow agritourism, farm gate premises or farm experience premises in other zones can nominate these zones through the Standard Instrument LEP Agritourism Nomination.

Farm stay accommodation and roadside stalls

Farm stay accommodation and roadside stalls will remain under their existing parent terms and continue to be permitted where tourist and visitor accommodation and retail premises, respectively, are permitted, or where the use is specified as permissible in a land use zone under the relevant LEP.

Cellar door premises

Cellar door premises will continue to be permitted in land use zones in which they are currently permissible and will also be permitted where agriculture, agritourism or farm gate premises are permitted under the relevant LEP.

Standard Instrument LEP Agritourism Amendment Order



Information sheet

Councils that wish to expand these land uses into other zones can nominate the relevant zones through the Standard Instrument LEP Agritourism Nomination.

Agritourism definitions

The table below details changes to the definitions of farm stay accommodation, farm experience premises and farm gate premises made in response to submissions received during exhibition of the EIE.

Table 1. Changes to definitions

Land use	Definition changes	Reason
Farm stay accommodation	Now includes moveable dwellings as defined in the SI LEP to facilitate small-scale camping on farms	<p>A response to council requests to clarify the type of camping allowed under the revised farm stay accommodation definition</p> <p>A section 68 approval under the <i>Local Government Act 1993</i> will be required to install a moveable dwelling on a farm unless the council's local approvals policy allows the activity without approval.</p>
Farm experience premises	<p>Farm events has been amended to farm experience premises</p> <p>Farm experience premises now include farm field days</p>	<p>The amendment to the term recognises guests will visit a farm to take part in tourist and recreational activities and to experience the features of the farm and farm life.</p> <p>Including farm field days is a response to submissions requesting specific activities be included in the definition.</p> <p>The department proposes to prepare model DCP clauses to assist councils where further parameters for farm experience premises are required.</p>
Farm gate premises	<p>Roadside stalls will remain as a form of retail premises and will not become a form of farm gate premises</p> <p>Clarifies that animal processing is not permitted as part of farm gate premises</p>	<p>This will ensure roadside stalls remain permissible in zones other than rural zones.</p> <p>Exempt development provisions are being prepared for roadside stalls in rural zones having regard to submissions received during the exhibition of the EIE.</p> <p>Animal processing has not been included as a form of agritourism as it has potentially significant impacts and less potential to generate tourism. The processing of other agricultural produce can be undertaken under the definition.</p>

Standard Instrument LEP Agritourism Amendment Order



Information sheet

Principal use of the land

Submissions received during the exhibition of the EIE requested the department clarify the meaning of land principally used as primary production for commercial purposes. The LEP Order will amend the existing definition of farm stay accommodation and include in the new definitions for farm gate premises and farm experience premises a requirement that these uses must be undertaken on land that is a primary production business as defined under the *Income Tax Assessment Act 1997 (Cth)*, or which is rated 'farmland' by the council under the *Local Government Act 1993*. This approach will give applicants two options to show their development will be on land used for commercial farming and not a hobby or recreational farm.³

For farm experience premises and farm gate premises, the relevant use must also be ancillary to the farm. Ancillary uses are explained in [Planning Circular](#) *How to characterise development*.

Optional clauses

The optional clauses recognise the importance of local controls and have been prepared to allow councils to apply numerical standards that best fit their local strategic plans. Heads of consideration have also been included in each clause to require both applicants and council officers to address the impacts of the development. Please note that under [LEP Practice Note PN 11-001](#) *Preparing LEPs using the Standard Instrument: standard clauses*, councils cannot add local clauses that can be addressed using the optional clauses.

The development standards in the optional clauses that have been amended in response to submissions to the EIE are detailed in the table below.

Table 2 Changes to development standards

Type of development	Standard in EIE	Amended standard	Reason
Farm stay accommodation building – maximum guests	3 times the number of bedrooms in clause 5.4(5) or another number nominated by council	3 times the number of bedrooms in clause 5.4(5) or 20 guests	This will provide a maximum cap on guests to ensure that farm stays are small scale. Councils can reduce the number of guests for a development through a condition of development consent.
Farm stay accommodation building – maximum gross floor area (GFA) for a building	75sqm or a number that council specifies (that is not more than 75sqm)	A number the council nominates which is greater than 60sqm	This will provide flexibility for councils to nominate an area that reflects their strategic planning. Councils can reduce the GFA for a development through a condition of development consent.

³ See [Taxation Ruling TR 97/11](#) Income tax: am I carrying on a business of primary production? and [section 515](#) of the *Local Government Act 1993*.

Standard Instrument LEP Agritourism Amendment Order



Information sheet

Type of development	Standard in EIE	Amended standard	Reason
			Changes are proposed to the Codes SEPP to allow buildings for farm stay accommodation up to 60sqm as complying development.
Farm stay accommodation – GFA exclusion for dwellings	As above	The maximum GFA will not apply to a change of use of an existing dwelling.	This will allow a dwelling house which is larger than 60sqm to be converted into farm stay accommodation without the need for substantial work to limit its size.
Farm stay accommodation - maximum number of days for guests in a moveable dwelling	14 days	The maximum number of consecutive days guests can stay in moveable dwellings will be included in model conditions of consent.	The department will prepare model conditions of consent for farm stay accommodation, farm experience premises and farm gate premises that councils can choose to adopt. This will complement model conditions of consent currently being prepared for other types of development.
Farm stay accommodation - dwelling entitlement	Modify clause 2.6 to prevent the creation of a dwelling entitlement in relation to farm stay accommodation	Farm stay accommodation will be required to be on: (i) the same lot as an existing lawful dwelling house, or (ii) on a lot for which a minimum size is shown for a dwelling house on the council's Lot Size Map and the size of which is not less than the minimum size shown.	This clause is intended to prevent the fragmentation of agricultural land.
Farm gate premises – maximum gross floor area	200sqm or the number council specifies in its LEP	A number council nominates which is no greater than 200sqm	Caps have been placed on the maximum floor area and number of guests for farm gate premises to ensure they remain small scale.

Standard Instrument LEP Agritourism Amendment Order



Information sheet

Type of development	Standard in EIE	Amended standard	Reason
Farm gate premises - maximum number of guests	50 guests or the number council specifies in its LEP	A number council nominates which is no greater than 50 guests	Caps have been placed on the maximum floor area and number of guests for farm gate premises to ensure they remain small scale.

Poultry and pig farm setbacks

The amendment proposed in the EIE regarding setback requirements for poultry and pig farms has been included in the LEP Order.

The Order will amend clause 5.18 of the SI LEP to increase the setback requirements for poultry and pig farms permitted without consent, as proposed, to mitigate biosecurity risks.

However, most of the submissions received were not in favour of increasing the current limit of poultry farms permitted without consent to 10,000 birds. The submissions raised concerns about amenity and environmental impacts.

In response to these submissions, the department has proposed to not increase the development consent threshold for poultry farms from 1,000 to 10,000 birds.

More information

For more information on the changes you can:

- visit the [department's website](#)
- visit the [NSW planning portal](#).
- email the project team at agritourism@dpie.nsw.gov.au.

NSW Planning Portal – Agritourism Nomination Form

Summary –

1. Adopt the LEP order optional clause for:
 - farm stay accommodation
 - farm gate premises
2. Nominate zones to permit or prohibit new land uses for agritourism, farm experience premises, farm gate premises.
3. Nominate additional zones to permit or prohibit farm stay accommodation, cellar door premises, roadside stalls.

Detail:

5.23 Farm stay accommodation [optional]

(1) The objectives of this clause are—

- (a) to diversify the uses of agricultural land without adversely impacting the principal use of the land for a primary production business, and
- (b) to balance the impact of tourism and related commercial uses with the use of land for primary production, the environment, scenic values, infrastructure and adjoining land uses.
- (c) [set out other objectives of the clause] **No extra objectives**

(2) Development consent must not be granted to development for the purposes of farm stay accommodation on a landholding unless the consent authority is satisfied that—

- (a) the maximum number of guests accommodated in bedrooms at any 1 time will not be more than the greater of—
 - (i) 3 times the number of bedrooms permitted under clause 5.4(5), or
 - (ii) 20 guests, and
- (b) the gross floor area of a building used to accommodate guests will not be more than [insert number no less than 60 – 150] square metres, and
- (c) the maximum number of guests accommodated in moveable dwellings on the landholding will not be more than [insert number no more than 20 - 10] at any 1 time, and
- (d) the maximum number of moveable dwellings used for the accommodation of guests will not be more than [insert number no more than 6 – 5] , and
- (e) all buildings or moveable dwellings used to accommodate guests will be—

- (i) on the same lot as an existing lawful dwelling house, or
- (ii) on a lot—

(A) for which a minimum size is shown for a dwelling house on the Lot Size Map, and

(B) the size of which is not less than the minimum size shown.

- (3) Subclause (2)(b) does not apply if the development is the change of use of an existing dwelling to farm stay accommodation.
- (4) Development consent must not be granted to development for the purposes of farm stay accommodation on land unless the consent authority has considered—
- (a) whether the development will result in noise or pollution that will have significant adverse impact on the following on or near the land—
 - (i) residential accommodation,
 - (ii) primary production operations,
 - (iii) other land uses, and
 - (b) whether the development will have significant adverse impact on the following on or near the land—
 - (i) the visual amenity, heritage or scenic values,
 - (ii) native or significant flora or fauna,
 - (iii) water quality,
 - (iv) traffic,
 - (v) the safety of persons, and
 - (c) whether the development is on bush fire prone land or flood prone land, and
 - (d) the suitability of the land for the proposed development, and
 - (e) the compatibility of the development with nearby land uses.

5.24 Farm gate premises [optional]

- (1) The objectives of this clause are—
- (a) to allow for small scale tourism and related commercial uses on land used for primary production without adversely impacting the principal use of the land for primary production, and
 - (b) to balance the impact of tourism and related commercial uses with the use of land for primary production, the environment, scenic values, infrastructure and adjoining land uses.
 - (c) [set out other objectives of the clause] **No extra objectives**
- (2) Development consent must not be granted to development for the purposes of farm gate premises on a landholding unless the consent authority is satisfied that—
- (a) the gross floor area of a building used for farm gate premises will not be more than [insert number no more than 200 – **200**] square metres, and
 - (b) the maximum number of persons that will be permitted on the landholding at any 1 time for the purposes of the farm gate premises will not be more [insert number not more than 50 – **30**] persons.

(3) Development consent must not be granted to development for the purposes of farm gate premises on land unless the consent authority has considered—

(a) whether the development will result in noise or pollution that will have significant adverse impact on the following on or near the land—

- (i) residential accommodation,
- (ii) primary production operations,
- (iii) other land uses, and

(b) whether the development will have significant adverse impact on the following on or near the land—

- (i) the visual amenity, heritage or scenic values,
- (ii) native or significant flora or fauna,
- (iii) water quality,
- (iv) traffic,
- (v) the safety of persons, and

(c) whether the development is on bush fire prone land or flood prone land, and

(d) the suitability of the land for the proposed development, and

(e) the compatibility of the development with nearby land uses.

Dictionary

Insert the definition agritourism.

Agritourism means the following—

- (a) farm gate premises,
- (b) farm experience premises.

Note— Agritourism is a type of agriculture

Farm stay accommodation means a building or place—

- (a) on a farm —
 - (i) that is a primary production business, or
 - (ii) on land categorised as farmland under the Local Government Act 1995, section 515, and
- (b) used to provide temporary accommodation to paying guests of the farm including in buildings or moveable dwellings.

Note— Farm stay accommodation is a type of tourist and visitor accommodation

Farm experience premises means a building or place—

- (a) on a farm that is—
 - (i) a primary production business, or
 - (ii) on land categorised as farmland under the Local Government Act 1995, section 515, and
- (b) that is ancillary to the farm, and
- (c) that is used to provide visitors to the farm with small scale and low impact tourist or recreational services on a commercial basis including the following—
 - (i) horse riding,
 - (ii) farm tours,
 - (iii) functions or conferences,
 - (iv) farm field days.

Note— Farm experience premises is a type of agritourism

Farm gate premises—

- (a) means a building or place—
 - (i) on a farm that is—
 - (A) a primary production business, or
 - (B) on land categorised as farmland under the Local Government Act 1995, section 515, and
 - (ii) that is ancillary to the farm, and
 - (iii) that is used to provide visitors to the farm with agricultural products predominantly from the farm or other farms in the region or with services or activities related to the products, including the following—
 - (A) processing, packaging and sale of the products, but not the processing of animals,
 - (B) a restaurant or cafe,
 - (C) a facility for holding tastings or workshops, or providing information or education, related to the products, and (b) includes cellar door premises.

Note— Farm gate premises is a type of agritourism

Please indicate whether Council seeks to permit agritourism in the following zones:

RU1 Primary Production: **Permit with consent**
RU2 Rural Landscape: Not applicable
RU3 Forestry: **Prohibit**
RU4 Primary Production Small Lots: Not applicable
RU5 Village: **Prohibit**
RU6 Transition: Not applicable
E3 Environmental Management : **Permit with consent**
E4 Environmental Living : Not applicable

Please indicate whether Council seeks to permit farm experience premises in the following zones:

RU1 Primary Production: **Permit with consent**
RU2 Rural Landscape: Not applicable
RU3 Forestry: **Prohibit**
RU4 Primary Production Small Lots: Not applicable
RU5 Village: **Prohibit**
RU6 Transition: Not applicable
E3 Environmental Management : **Permit with consent**
E4 Environmental Living : Not applicable

Please indicate whether Council seeks to permit farm gate premises in the following zones:

RU1 Primary Production: **Permit with consent**
RU2 Rural Landscape: Not applicable
RU3 Forestry: **Prohibit**
RU4 Primary Production Small Lots: Not applicable
RU5 Village: **Prohibit**
RU6 Transition: Not applicable
E3 Environmental Management : **Permit with consent**
E4 Environmental Living : Not applicable

Please nominate additional zones in which to permit farm stay accommodation

RU1 Primary Production: Already permissible or prohibited
RU2 Rural Landscape: Not applicable
RU3 Forestry: Already permissible or prohibited
RU4 Primary Production Small Lots: Not applicable
RU5 Village: Already permissible or prohibited
RU6 Transition: Not applicable
E3 Environmental Management : Already permissible or prohibited
E4 Environmental Living : Not applicable

Please nominate additional zones in which to permit cellar door premises.

RU1 Primary Production: Already permissible or prohibited
RU2 Rural Landscape: Not applicable

RU3 Forestry: Already permissible or prohibited

RU4 Primary Production Small Lots: Not applicable

RU5 Village: Already permissible or prohibited

RU6 Transition: Not applicable

E3 Environmental Management : Already permissible or prohibited

E4 Environmental Living : Not applicable

Please nominate additional zones in which to permit roadside stall

RU1 Primary Production: Already permissible or prohibited

RU2 Rural Landscape: Not applicable

RU3 Forestry: Already permissible or prohibited

RU4 Primary Production Small Lots: Not applicable

RU5 Village: Already permissible or prohibited

RU6 Transition: Not applicable

E3 Environmental Management : **Permit with consent**

E4 Environmental Living : Not applicable

10.7 UPDATE REPORT TO COUNCIL - PLANNING, ENVIRONMENT AND REGULATORY SERVICES

Attachments:	Nil
Responsible Officer:	Sharon Pope - Executive Manager - Environment and Planning
Author:	Tracy Ward - Sustainability Officer Michael Brady - Sustainability Officer Kelly Lynch - 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>Appropriate matters are reported to Council in a timely manner in accordance with the Financial Control and Reporting Policy.</i>

PURPOSE

To provide an update on activities in the Planning, Environmental and Regulatory Services section.

OFFICER'S RECOMMENDATION

The information contained in this report be noted.

Moved: _____ Seconded: _____

REPORT

PLANNING AND ENVIRONMENT

Schedule 1: Development Applications Approved (1 January to 22 February 2022)

DA No.	DESCRIPTION	PROPERTY	VALUE (\$)
2018/54/2	S4.55 (1A) Modification - Facade Modification and add. Sun Shading to northern lobby glazing	140 Bridge Street Muswellbrook	\$4,983,672
2021/163	Single Storey Dwelling	191 Woodland Ridge Road Muscle Creek	\$473,214
2021/161	Inground Swimming Pool with Safety Barrier	2 Jillaroo Way Muswellbrook	\$45,000
2021/154	Single Storey Dwelling	42 Babbler Crescent Muscle Creek	\$419,620
2021/151	Inground Pool and Associated Barrier	9 Kamilaroi Street Muswellbrook	\$38,410
2021/149	Ancillary Development - Double garage and carport	62a Cook Street Muswellbrook	\$43,000
2021/143	Retaining wall	8 Bowfield Place Muswellbrook	\$30,803
2021/142	Ancillary Development - Shed	184 Skellatar Stock Route	\$16,852

DA No.	DESCRIPTION	PROPERTY	VALUE (\$)
		Muswellbrook	
2021/136	Alterations & additions to commercial & Partial Demolition	5 Ogilvie Street Denman	\$68,735
2021/110	Dwelling	3 Osborn Avenue Muswellbrook	\$92,901
2021/88	Single Storey Dwelling	2 Billabong Close Muswellbrook	\$631,185
2022/3	Forestry (Private Native Forestry Plan)	1245 Sandy Creek Road Muswellbrook	—
2000/251	S4.55 (2) Increase of Stop Butt Heights - Shooting Range	Wire Lane Muswellbrook	—

Schedule 2: Development Applications Currently Being Assessed

DA No.	DESCRIPTION	PROPERTY	RECEIVED	VALUE (\$)
2019/41/2	S4.55 (1A) Modification - Variation to approved lot layout Minor changes to proposed boundary layout to avoid physical site constraints and change to Lot 102 to create possible dwelling site off Castlerock Road due to costs of battle axe handle in original layout.	Castlerock Road Muswellbrook	21/02/2022	-
2022/17	Single Storey Dwelling	2 Shaw Crescent Muswellbrook	18/02/2022	\$400,000
2022/16	Ancillary Development - Shed	23 Finnegan Crescent Muswellbrook	18/02/2022	\$19,500
2022/15	Ancillary Development - Shed	87 Queen Street Muswellbrook	14/02/2022	\$19,818
2022/14	Alterations and additions to industrial Shed	29 Wallarah Road Muswellbrook	10/02/2022	\$27,082
2022/13	Manufactured Dwelling	59 Dolahentys Branch Road Mccullys Gap	09/02/2022	\$310,381
2022/12	Ancillary Development - Shed	7 Bronte Crescent Muswellbrook	09/02/2022	\$18,154
2022/11	Ancillary Development - Shed	10 St Heliers Street Muswellbrook	07/02/2022	\$23,679
2022/10	Ancillary Development - Shed with Bathroom and 2 Water Tanks	8 Yammanie Way Muswellbrook	04/02/2022	\$65,000
2022/9	Ancillary Development - Shed Extension	91 Woodland Ridge Road Muscle Creek	27/01/2022	\$17,951
2022/8	Ancillary Development - Shed	59 Stockyard Parade Muswellbrook	27/01/2022	\$28,119
2022/7	Ancillary Development - Shed	10 Ted Clay Street Muswellbrook	21/01/2022	\$33,000

DA No.	DESCRIPTION	PROPERTY	RECEIVED	VALUE (\$)
2022/6	Ancillary Development - Shed	5a St Heliers Street Muswellbrook	20/01/2022	\$36,687
2022/5	Storage Facility & Signage	Victoria Street Muswellbrook	17/01/2022	\$1,304,330
2021/33/2	S4.55 (2) Modification of Development Consent for Continued Operation of Wind Monitoring Mast Development	Sandy Creek Road McCullys Gap	14/01/2022	-
2022/4	Ancillary Development - Garage	36-38 Finnegan Crescent Muswellbrook Ns	13/01/2022	\$19,500
2022/2	Ancillary Development - Shed	11 Sepoy Crescent Muswellbrook	05/01/2022	\$10,000
2022/1	Single Storey Dwelling	1490 Denman Road Denman	05/01/2022	\$735,110
2021/165	Ancillary Development - Shed	45 Queen Street Muswellbrook	22/12/2021	\$47,800
2021/164	Single Storey Dwelling	3 Shearer's Close Muswellbrook	21/12/2021	\$340,000
2021/162	Ancillary Development - Carport	2 Hyde Street Denman	21/12/2021	\$10,000
2021/160	Dwelling	24 Pendula Way Denman	14/12/2021	\$387,065
2021/159	Ancillary Development - Pool decks fencing and Shed	2a Bimbadeen Drive Muswellbrook	13/12/2021	\$57,000
2021/158	Change of Use to Health Services Facility	79 Brook Street Muswellbrook	09/12/2021	\$24,750
2021/157	Dwelling	420 Giants Creek Road Sandy Hollow	09/12/2021	\$445,170
2021/156	Boundary Adjustment to Three 3 existing lots	10 Ogilvie Street Denman	07/12/2021	\$10,000
2021/155	Ancillary Development - 2 x Carports	57 Queen Street Muswellbrook	07/12/2021	\$20,000
2021/153	Ancillary Development - Shed	3 Kenilworth Street Denman	01/12/2021	\$30,757
2021/152	Artisan Food and Drink Industry (Change of Use)	Thomas Mitchell Drive Muswellbrook	01/12/2021	\$15,000
2021/150	Ancillary Development - Patio Awning	22 Pendula Way Denman	01/12/2021	\$30,300
2021/148	Ancillary Development - Shed	24 Henry Dangar Drive Muswellbrook	30/11/2021	\$36,000
2021/147	Ancillary Development - Shed	18a Grey Gum Road Denman	30/11/2021	\$46,595
2021/146	Colourbond Steel Sheds and	24 Glen Munro Road	25/11/2021	\$117,381

DA No.	DESCRIPTION	PROPERTY	RECEIVED	VALUE (\$)
	Transportable Lunchroom	Muswellbrook		
2021/145	Ancillary Development - Skillion Roof over Existing Deck	40 Lorne Street Muswellbrook	22/11/2021	\$13,000
2021/144	Ancillary Development - Carport	9 Barrington Street Muswellbrook	17/11/2021	\$6,300
2021/141	Two Storey Dwelling	Honeyeater Close Denman	16/11/2021	\$250,000
2021/140	Ancillary Development - Carport	152 Queen Street Muswellbrook	11/11/2021	\$9,999
2021/139	Educational establishment	57 Maitland Street Muswellbrook	11/11/2021	\$4,489,151
2021/138	Ancillary Development - Shed	24 Paxton Street Denman	11/11/2021	\$45,579
2021/137	Change Of Use to Educational Facility	820 Rosemount Road Denman	09/11/2021	-
2021/135	Multi-dwelling housing Ancillary Works and Strata Subdivision	66 Sowerby Street Muswellbrook	05/11/2021	\$498,000
2021/133	Ancillary Development - Shed	81 Queen Street Muswellbrook	01/11/2021	\$22,000
2021/129	Animal Boarding & Training Facility	1949 Martindale Road Martindale	18/10/2021	\$33,338,800
2021/128	Ancillary Development - Shed	16 Grey Gum Road Denman	15/10/2021	\$44,000
2021/125	Self Storage Facility	Turner Street Denman	07/10/2021	\$3,555,527
2021/121	Alterations and Additions to Shed (Community Facility)	95 - 107 Maitland Street Muswellbrook	28/09/2021	\$39,120
2021/119	Three (3) Lot Subdivision	1607 Merriwa Road Sandy Hollow	27/09/2021	-
2021/118	Patio Awning	11 Grant Miller Street Muswellbrook	27/09/2021	\$19,900
2021/116	Single Storey Dwelling	29 Aberdeen Street Muswellbrook	24/09/2021	\$311,125
2021/114	Alterations to industrial - Landscape material supply and storage	22 Common Road Muswellbrook	21/09/2021	\$20,000
2021/111	Ancillary Development - Shed	59 Sowerby Street Muswellbrook	14/09/2021	\$21,000
2021/117	Ancillary Development - Shed	121 Ironbark Road Muswellbrook	01/09/2021	\$50,000
2021/99	Alterations and Additions to Muswellbrook Indoor Sports/Youth Centre	Rutherford Road Muswellbrook	27/08/2021	\$1,263,665
2021/97	Subdivision of One (1) Lot into Two	128-130 Palace Street	23/08/2021	\$10,000

DA No.	DESCRIPTION	PROPERTY	RECEIVED	VALUE (\$)
	(2) Lots	Denman		
2021/89	Ancillary Development - Retaining walls and Driveway	14 Calgaroo Avenue Muswellbrook	12/08/2021	\$20,000
2021/87	Alterations and additions to commercial + Change of Use	12 Ogilvie Street Denman	11/08/2021	\$431,200
2021/73	Temporary use of the land for receipt and dismantling of rail wagons with off-site disposal	18 Strathmore Road Muswellbrook	09/07/2021	\$50,000
2021/70	Dwelling alterations - Converting existing garage into a bedroom and ensuite	27 Cousins Street Muswellbrook	06/07/2021	\$36,300
2020/96/2	S4.55 (1a) Modification - Recreation Facility (Outdoor) - Formula Kart	Hebden Road Hebden	29/06/2021	-
2021/61	Alterations and additions to Commercial Premises	4 Lorne Street Muswellbrook	15/06/2021	\$75,000
2021/58	Organics Recycling Facility	252 Coal Road Muswellbrook	02/06/2021	\$3,850,000
2021/55	Waste Transfer Station	32-36 Glen Munro Road Muswellbrook	27/05/2021	\$7,985,117
2021/52	Ancillary Development - Carport	23 Palace Street Denman	19/05/2021	\$19,187
2021/45	Rural Fire Service Shed	20 Dorset Road Kayuga	05/05/2021	\$800,000
2021/35	Temporary Installation of Portable Building for Community Centre Office and Construction of new Community Centre	5 Jersey Place Muswellbrook	23/04/2021	\$850,000
2021/32	Staged Development - Demolition, 23 Room Boarding House and Subdivision of One (1) lot in Two (2) Lots.	41 Maitland Street Muswellbrook	15/04/2021	\$645,000
2002/342/6	S4.55(2) Modification Wilds Quarry - Addition of 30,000tpa of Commercial and Demolition Waste sorting and processing (brick, tile, concrete, asphalt, glass).	8440 New England Highway Muswellbrook	13/04/2021	-
2021/10	Entertainment Facility (Muswellbrook Regional Entertainment and Conference Centre)	30 Brook Street Muswellbrook	02/02/2021	\$26,998,400
2020/105	Ancillary Development - Shed with Attached Awning	15 Edinglassie Drive Muswellbrook	11/09/2020	\$40,000
2020/102	Hotel Accommodation (Royal Hotel)	10 Ogilvie Street Denman	04/09/2020	\$20,000
2020/83	Subdivision of one lot (1) into three (3)	60-62 Palace Street Denman	03/08/2020	\$10,000

DA No.	DESCRIPTION	PROPERTY	RECEIVED	VALUE (\$)
2020/7	Additions and Alterations to existing Hotel	184 Bridge Street Muswellbrook	24/01/2020	\$110,000
2019/53	Subdivision of Two (2) Lots into Seventy Five (75) Lots	9027 New England Highway Muswellbrook	27/06/2019	\$4,875,600
2018/112	NEW DWELLING	57 Ford Street Muswellbrook	05/12/2018	\$195,000
2017/60	Change of Use - Building Materials Recycling Depot	7 Glen Munro Road Muswellbrook	23/06/2017	

20.1.12 Inspect onsite wastewater sewerage systems to ensure they are installed and maintained in compliance with regulatory requirements

On-site Wastewater Statistics - 13 Month Analysis (2021/2022)

	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Applications Received (new installation)	3	1	-	-	-	-	-	0	0	-	-	-	-
Applications Approved (new installation)	3	1	-	-	-	-	-	0	0	-	-	-	-
Inspections (new system)	0	1	-	-	-	-	-	3	0	-	-	-	-
Inspections (existing system)	0	0	-	-	-	-	-	14	3	-	-	-	-

24.1.5 Registration and inspection of regulated premises (caravan parks, food outlets, skin penetration premises, hairdressers, mortuaries, air handling systems) in accordance with regulatory requirements to ensure public health and safety is protected.

	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Applications Received (new businesses)	2	2	-	-	-	-	-	0	0	-	-	-	-
Inspections (new businesses)	0	2	-	-	-	-	-	0	0	-	-	-	-
Inspections (existing businesses)	35	3	-	-	-	-	-	11	9	-	-	-	-
Reinspections	0	0	-	-	-	-	-	0	0	-	-	-	-

24.1.8 Ensure statutory requirements under the Private Swimming Pools Program (Swimming Pool Act 1992) are implemented.

Swimming Pool Compliance Statistics – 13-month analysis (2021/2022)

	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Applications for Compliance Certs.	4	4	4	8	11	5	8	5	5	-	-	-	-
Total compliance inspections (not inc. Final Insp. for Occ. Certs)	8	5	12	12	9	26	9	6	8	-	-	-	-
Initial Inspections	8	2	9	8	7	21	7	5	5	-	-	-	-
Re-inspections	0	3	3	4	2	5	2	1	3	-	-	-	-
Compliance Certs / Occ. Certs issued	5	3	9	9	2	6	4	6	4	-	-	-	-

Total Pools in Council's Swimming Pool Register = 963

Compliance at 30 June 2018 = 65.7%

Compliance at 30 June 2019 = 43.0%

Compliance at 30 June 2020 = 26.7%

Compliance at 30 June 2021 = 20.8%

Compliance at 22 February 2022 = 23%

Current Compliance = 23% (i.e. 222 out of 963 pools have a valid Compliance Certificate or Occupation Certificate. Note: Certificate is valid for 3 years)

Percentage of pools inspected Financial Year 2021/2022 = 9.8%

(i.e. 95 out of 963 pools have had at least one inspection carried out during June 2021 – February 2022)

SUSTAINABILITY

Due to limited Council meetings while LG elections were occurring, this report provides information for the period Oct 2021 to January 2022.

Excellence in the Environment Awards

Council was awarded top prize in Division A (for council areas with a population below 30,000) in the *Communication, Education and Empowerment* category for our Sustainable Futures - Muswellbrook Connect project at the 2021 Local Government NSW (LGNSW) Excellence in the Environment Awards.

This award was won due to the connection we have with our local community, especially given COVID restrictions. Partnerships with groups such as Warrior Disability Services, Hunter Sustainability Landcare Team, Denman Community Garden and Penguin Community Garden are key to the program's success.

As well as developing and posting our own videos this program also involved giving out over 1000 packets of seed and 1500 plants for free to residents, installing 40 x 10 000 Steps signs along twenty-one walking routes. Developing and installing 7 Test Yourself stations along the Muscle Creek Loop and delivering online workshops.

https://www.muswellbrookchronicle.com.au/story/7515042/muswellbrook-council-wins-ignsw-excellence-in-the-environment-award/?cs=1487&fbclid=IwAR3I7rD1E2xwLhzv7f59J6SpZyo9vFbOgtNanbdHypV5z8NoKh_yV44Inaw

Community War On Waste Grants

Applications open soon for another round of Community War on Waste Grants like those awarded in 2021. These grants are aimed at assisting community groups to divert waste from landfill. They are funded through the NSW Government's Better Waste and Recycling Fund.

Some examples of projects that could gain funding include:

- Projects that reduce food waste through composting and/or worm farming.
- A product to help you recycle. For example, soft plastic recycling bins or cardboard balers.
- A program that involves purchasing and using reuse cups. For example, quality drink bottles instead of single use plastic bottles.

Sustainable Procurement

The Sustainability Unit are working with other departments to improve Council's procurement processes to increase the level of sustainability. This will ensure that purchasing decisions Council makes considers all aspects of sustainability including economic, social and environmental aspects.

AGL Walkway

Staff have been preparing for the revegetation work for the AGL Muscle Creek Walkway Project. This has included sending out an RFQ and ordering materials for weed and erosion control and planting work. This work will be difficult due to the steep slopes and erodible soil.

Quotes for an Augmented Reality experience are currently being assessed. This will involve creating points along the path where the community can stop and use their smart devices to interact with educational message in an augmented reality. The aim would be to develop a similar experience as seen in this link.

<https://youtu.be/n6mS7QNf3bl>



Muscle Creek and Denman Hyde Park Revegetation Works

Weed control works are continuing along Muscle Creek and at the Hyde park wetland in Denman. The Sustainability Unit is responsible for the revegetation work on sloped areas along the Creek and completing and establishing National Tree Day plantings at sites include Hyde Park.

Muscle Creek Riparian Restoration Project

The Muscle Creek Riparian Restoration Project on Muscle Creek next to the Golf Course has been completed.

This project involved 1.5 hectares of weed control, planting over 1000 native seedlings, signage, volunteer tree planting events and workshops.

Project supporters included Muswellbrook Golf Club, Warrior Disability Services, Muswellbrook Girl Guides, Polly Farmer Foundation, Martindale Creek Catchment Landcare, Muscle Creek Landcare and local community members.

This project was assisted by the NSW Government through its Environmental Trust.

Rehabilitation of Muscle Creek Project

Work on this grant funded project continues with a contractor appointed and supplies received. Seed propagation workshops have been held in collaboration with Martindale Creek Catchment Landcare. This project is supported by the NSW Government through the Environmental Trust.

Bird Watching

More bird watching walks have been held along Muscle Creek with local residents and experts from the Hunter Bird Observers Club. More field trips and production of a bird watching information flyer are proposed. These activities also form part of the Rehabilitation of Muscle Creek Project. Each year Council promotes the Aussie Backyard Bird Count. This helps encourage residents to take an interest in our local environment and showcases the revegetation work Council undertakes.

Polly Farmer Foundation Partnership

Polly Farmer Foundation participants completed a tour of Muscle Creek and a visit to the Sustainability Hub.

These activities enabled the students to learn more about our local environment and become inspired to continue working on different projects relating to the environment.

Work will now start on designing a Muscle Creek sign to help Council attract more residents and visitors to appreciate the recreational and environmental values of Muscle Creek.



This work is part of Council's Rehabilitation of Muscle Creek for Community and Environmental Benefit project. This project has been assisted by the NSW Government through its Environmental Trust.

Endangered Denman Pomaderris

Recently staff from the Sustainability Unit, the NSW Government's Saving our Species program and Muscle Creek Landcare planted some Denman Pomaderris. This critically endangered species is only found in bushland in Denman.

The aim of the project is to work with the Denman community to establish self-sustaining populations to reduce the risk of extinction, gain valuable insights to assist future translocations, and promote conservation of the species within the community.



Reuse Shop

The Reuse Shop is actively promoted to the community. This involves posting photos each week on Facebook.

Support for Community and Educational Groups

The Sustainability Unit provided plants and educational materials to MOOSH for their school holiday program.

Muswellbrook Connect

Council continues to support the seed library at the Sustainability Hub. With the support of the library, Penguin Community Garden and Warrior Disability Services this work helps encourage people to grow healthy food. We also use this work to help encourage residents to compost and use worm farms and thus reduce food waste.

The Sustainability Hub also has free seeds, fridge magnets and flyers for residents to collect. Weekly themed Muswellbrook Connect Facebook posts encourage residents to live sustainably during lockdown

Sustainable Futures – Muswellbrook

The popularity of the Sustainable Futures – Muswellbrook Facebook page continues to grow. It has now received 1,379 page likes and 1,472 page followers. This page continues to be a great way for Council to engage with the community around a range of sustainability topics. This includes promoting the Community Recycling Centres, correct waste management practices, sewerage management, the Reuse Shop, soft plastic recycling, Sustainability Hub activities, reducing food waste, plastic free July, worm farms, composting, grant projects and more.

Net Zero Strategy

The Sustainability Unit with the assistance of Environment NSW compiled data for the Net Zero Road

What is the Muswellbrook Seed Library?

The Muswellbrook Seed Library is a collaboration between The Act Belong Commit Program, The Upper Hunter Regional Library, Muswellbrook Shire Council's Sustainability Hub and the Penguin Garden Club. The Seed Library has been funded as part of the NSW Healthy Towns Challenge.

Our aim is to exchange seeds across the community so that community members can successfully grow healthy food and plants in their own garden.

How does it work?

Just like the Muswellbrook Library, this seed library works by borrowing, using and returning all for free.

We hope you can bring some seeds back but this is not essential. You can bring back seeds from the same plant or another plant—just make sure they are cleaned and stored in a labelled envelope.

1. Visit the Seed Library located at the Muswellbrook Library and at the Sustainability Hub on Wilkinson Ave.
2. Choose a packet of seeds to grow that you would like and that is suitable for the time of year. You can take up to 3 packets at a time. Keep the envelope.
3. Sow the seeds in your own garden and look after them.
4. Save the best plants for their seeds and eat the rest.



How to plant your seeds

- Get some good soil or compost. You can make some good compost at home with a compost bin and worm farm.
- Spread seeds over the top of the soil. Spread them out enough so each plant can start to grow without interference from other plants.
- Spread a fine dusting of soil or compost on top of the seeds. The depth of the soil should be the same as the size of the seed i.e. small seeds only need a small amount of soil on top.
- Water the seed. It is best to use a spray bottle on mist. As too much water at once can cause soil erosion.
- Water the seed every day until the plant is grown. Then use less water over time.

How to save seeds

Most seeds, such as from spinach or beans, are called 'dry' seeds. To save them, remove them from their seed capsules and store them somewhere cool and dry.

To save 'fleshy' seeds such as tomatoes or pumpkins, soak the pulp in water overnight to allow it to ferment. This removes the natural germination inhibitors and, after washing and straining through a sieve, the seed can be dried and stored.

Put your seeds in the same envelope they came in (or another envelope), write the name of the plant and the date collected and return it to the library.

We have empty seed packets at the library that you can take home to fill or save the envelope you take from the library so you can use it when returning the seed.



Map. The Road Map highlighted areas that need improvement as well as some very easy steps to take to achieve Net Zero. Some of the identified projects include upgrading streetlighting to LEDs and completing energy audits to identify simple efficiency projects.

Renewable Energy Power Purchase Agreement

Together with five other Hunter Councils, Council has secured a ten-year power purchase agreement with Mojo Energy. This agreement will provide 100% renewable energy to all of Council's large sites and streetlighting. The agreement will result in lower electricity prices and pricing stability for Council.

Flying Fox monitoring

The Sustainability Unit continue to monitor the local Grey Headed Flying Fox population as a part of CSIRO's National Flying Fox Monitoring Program.

Air Quality Monitoring

Council's regular air quality monitoring conducted with ANSTO was continued except during periods of lockdown.

11 COMMUNITY INFRASTRUCTURE

11.1 WATER AND SEWERAGE DEVELOPMENT SERVICING PLANS

Attachments:	A. MSC Water DSP 2021 - Under Separate Cover B. MSC Sewer DSP 2021 - Under Separate Cover C. Previous Report to Council 31 Aug 21 ↓ D. Singleton and Upper Hunter DCs ↓
Responsible Officer:	Derek Finnigan - Deputy General Manager
Author:	Gamini Hemachandra - Project Engineer
Community Plan Issue:	<i>A safe, secure and reliable water supply and sewerage services are provided to all residents that will ensure public health</i>
Community Plan Goal:	<i>Provide safe, secure, efficient and effective water, sewerage and waste services in compliance with regulatory requirements.</i>
Community Plan Strategy:	<i>Ensure substantial achievement of Best Practice Water Supply and Sewerage Guidelines.</i>

PURPOSE

The report is submitted for Council's consideration to adopt the attached Water and Sewerage Development Servicing Plans previously reported to Council at the 31 August 2021 Ordinary Council Meeting and subsequent placing of the draft documents on public exhibition from 17 November 2021 to 21 January 2022.

OFFICER'S RECOMMENDATION

Council:

- Adopts the Water Development Servicing Plan and Sewerage Development Servicing Plan attached to the report, indexing the charges to a 2022-23 level for application from 1 July 2022.**
- Maintains Development Services Charges in Council's approved schedule of Fees and Charges, adjusted to the Consumer Price Index variation for each financial year; and**
- Obtains registration of the adopted Developer Servicing Plans with the NSW Department of Planning, Industry and Environment – Water.**

Moved: _____ **Seconded:** _____

BACKGROUND

Development Servicing Plans (**DSP**) prescribe water supply and sewerage developer charges to be levied on developments accessing Council's water supply and sewerage infrastructure. The developer charges are upfront charges, levied by Local Water Utilities (Muswellbrook Shire Council is the Local Water Utility for Muswellbrook Shire), to recover part of the infrastructure costs incurred in servicing new developments or additions to existing developments. The power of Local Water Utilities to levy charges for developer services derives from section 64 of the *Local Government Act 1993* by means of a cross reference to section 306 of the *Water Management Act 2000*.

Developer charges and DSP should be reviewed by a Local Water Utility at intervals of four to eight years.

A report, entitled 'Development Servicing Plans – Water Supply and Sewerage Services' was submitted to the 31 August 2021 Ordinary Council Meeting. Council's resolution in relation to the report was:

11.1 **DEVELOPMENT SERVICING PLANS - WATER SUPPLY AND SEWERAGE SERVICES**

RESOLVED on the motion of Crs Reynolds and Foy that:

Council:

1. Approves placing the draft Development Servicing Plan – Water Supply and draft Development Servicing Plan – Sewerage Services on public exhibition for a period of thirty working days; and
2. Requests a further report be submitted to Council following the period of public exhibition of the draft Development Servicing Plans.

Following an initial audit by an independent auditor, the draft Development Servicing Plans were publicly displayed on Council's website and in the Muswellbrook Shire Council administration centre from 17 November 2021 to 21 January 2022. The plans were also sent by email to the following organisations:

- Urban Development Institute Australia.
- Housing Industry Association Australia.

Council did not receive any submissions from community or interest groups in relation to the draft DSP during the period of public exhibition.

CONSULTATION

Department of Planning, Industry and Environment - Water

Water and Wastewater Assets and Operations teams

REPORT

Preparation and adoption of Development Servicing Plans (**DSP**) enables Council to comply with the NSW Government's Best Practice Management of Water Supply and Sewerage Framework. Council's current DSPs for Water and Sewerage services have been reviewed based on the financial planning aspects of Council's adopted Integrated Water Cycle Management Strategy.

Developer charges serve three important related functions:

1. they provide a source of funding for infrastructure required for new development;
2. they provide signals regarding the cost of urban development and thus encourage less costly forms and areas of development; and
3. they are an integral part of the fair pricing of water related services.

Following public submission of the draft Water Supply and Sewerage Services Developer Servicing Plans, the report requests Council's adoption of the attached DSPs and integration into Council's approved schedule of 2022-23 Fees and Charges.

Once adopted by Council, the adopted DSP will be forwarded to the Department of Planning, Industry and Environment – Water (**DPIE Water**) for final concurrence. Throughout the review process, the DSPs have been reviewed in consultation with DPIE Water.

Development Charges (DC)

Council's existing 2021-22 Fees and Charges for water and sewer DC are:

Water supply DC

\$7,732.50 per ET (Equivalent Tenement) for Muswellbrook, Denman and Sandy Hollow service areas.

Sewerage service DC

\$8,558.00 per ET for Muswellbrook and Denman service areas.

Should Council adopt the Water and Sewerage Development Servicing Plans, Council will apply the revised Development Charges effective from 1 July 2022 for the 2022-23 financial year, after making adjustments for CPI on the current year's charges.

Charges given in the DSP for 2021-22 are as follows:

Water supply DC

\$8,223 per ET (Equivalent Tenement) for Muswellbrook, Denman and Sandy Hollow service areas.

Sewerage service DC

\$6,384 per ET for Muswellbrook and Denman service areas.

Note: An 'equivalent tenement' or ET is considered to be the demand or loading a development will have on infrastructure in terms of the water consumption or sewage discharge for an average detached residential dwelling in the water and sewer service areas of the Local Government Area.

The reason for the difference in water supply and sewerage service current and adjusted DC is that the new DC as specified in the DSPs are based on actual data gained over the course of developing the DSPs provided as attachments to the report. The previous versions of the DSPs were prepared in 2012 and adopted by Council in 2014.

For purposes of comparison, the 2021-22 Development Charges for Upper Hunter Shire Council and Singleton Council are provided in attachment 4 of the report.

Whilst Muswellbrook Shire Council has historically applied universal DC across the Shire, both Singleton Council and Upper Hunter Shire Council apply location dependent DC. Each Council's water and sewerage systems have different technical features and asset ages, which impacts on permissible DC. The main township charges are similar to Muswellbrook's, though rural charges tend to be different, which may reflect specific service requirements. DC are not discretionary. They must comply with DPIE Water guidelines. Historically, NSW Councils have vied with each other to attract development by applying subsidised DC, but such practice is no longer permissible and is against the sustainability principles espoused by the 'Fit for the Future' program, to which Council is committed.

Developer charges for Essential Community Services

The new DSP propose that Council exempt Crown developments for essential services (education, health, community amenities and law and order) from Developer Charges. Council may charge such developments only for direct connection cost, for example, a lead-in main, relating to the development.

Other Exemptions

The following developments will be exempted from DC:

- Erection of a single dwelling house on an existing vacant allotment of land that has been previously rated for a water and sewerage access charge;
- Alterations or additions to a single dwelling house where such alterations do not create additional dwellings; and
- Subdivisions or boundary adjustments of lands that do not create any additional allotments.

Calculation of DCs

Council will adopt *Water Directorate Section 64 Determination of Equivalent Tenement Guidelines* for the calculation of water and sewage loading for the calculation of DC.

An 'equivalent tenement' or ET is considered to be the demand or loading a development will have on infrastructure in terms of the water consumption or sewage discharge for an average detached residential dwelling in the water and sewer service areas of the Local Government Area (LGA).

In Muswellbrook Shire LGA, local ET values used for the preparation of DSPs are:

Water: 1 ET equals 265 KL/year.

Sewage: 1 ET is 160 KL/year (with an assumed Sewer Discharge Factor (SDF) of 0.6).

OPTIONS

Council may decide to adopt a partial cost recovery approach to servicing future development, with the remaining revenue for future headworks coming from a combination of increased usage/access charges and increased income generated from growth.

Whichever option is selected, Council will carry out financial modelling that considers revenue requirements for:

1. Operations and maintenance cost.
2. Capital costs for headworks required for;
 - future developments;
 - increased level of service; and
 - asset renewal.

Council may decide not to adopt the draft Development Servicing Plans attached to the report and instead decide to develop fresh Development Servicing Plans. This will, however, mean that Muswellbrook Shire Council will not pass the proposed audit of compliance with the DPIE Water Best Practice Guidelines.

CONCLUSION

It is considered appropriate to adopt the DSPs attached to the report as they were exhibited as per the DPIE Water Best Practice Guidelines in consultation with DPIE Water.

SOCIAL IMPLICATIONS

Certainty and consistency of water and sewer development charges across Muswellbrook, Denman and Sandy Hollow means that the entire Shire will have appeal for future development.

FINANCIAL IMPLICATIONS

Council must demonstrate to DPIE Water that it is capable of fully funding its Local Water Utility water and sewerage business units from Section 64 and user charges income in a sustainable manner.

Preliminary analysis indicated that the Water DC should be around \$15,249 for Denman and Sandy Hollow, and \$8,223 for Muswellbrook. A uniform charge of \$8,223 suggests undercharging of approximately \$7,000 for Denman and Sandy Hollow. Capping of DC as given in the attached Water Supply DSP, though permitted under the Best Practice Guidelines, may cause a shortfall of approximately \$4.95 million over the next 30-year planning period based on projected growth. It is anticipated that the impact of the reduction will be recovered mainly through a higher commercial usage charge from future industrial developments. A slight revision of a \$5 increase of the typical residential bill (TRB) as shown in the Water Supply DSP will also help to recover some of the revenue loss.

If there is a development downturn, Council may decide to adopt a partial cost recovery approach to servicing development, with the remaining value for future headworks coming from a combination of increased usage/access charge and increased income generated from growth. Increased usage/access charges may be unpalatable from the community's perspective if such charges are attributed to subsidising DC. Council's adopted population growth assumption in the Integrated Water Cycle Management Strategy (0.6% per annum) appears optimistic, given the resources sector's shift from aggressive developments to lean production. Council could also develop a new policy that will effectively convert DC for identified developments into a 'High Usage Charge' per kilolitre via the individual water bills in lieu of upfront DC.

Should Council adopt the Water and Sewerage Development Servicing Plans, Council will apply the revised Development Charges effective from 1 July 2022 for the 2022-23 financial year, after making adjustments for Consumer Price Index (CPI) on the current year charges.

POLICY IMPLICATIONS

Once adopted by Council, the Water Supply DSP and the Sewerage Services DSP become Council policy.

In order to comply with the NSW Government's Best Practice Management of Water Supply and Sewerage Services Framework, Developer Servicing Plans should be reviewed and updated every four to eight years.

STATUTORY IMPLICATIONS

Adopted DSPs are the basis for applying S 64 of the *Local Government Act 1993* for the purpose of capital cost recovery allowed under the *Water Management Act 2000*.

LEGAL IMPLICATIONS

Adopted DSP registered by DPIE Water will regularise the application of DC for new developments in the Muswellbrook Shire LGA.

OPERATIONAL PLAN IMPLICATIONS

Submission of the report complies in principle with Item 20.1.2 of the Operational Plan: 'Ensure substantial achievement of Best Practice Water Supply and Sewerage Guidelines'.

RISK MANAGEMENT IMPLICATIONS

Discussions have already been held with DPIE Water in relation to proposed DSP and developer charges. However, there is still a low risk that DPIE Water may not endorse the Plans in their current form.

WASTE MANAGEMENT IMPLICATIONS

Not applicable.

COMMUNITY CONSULTATION/MEDIA IMPLICATIONS

The draft Developer Servicing Plans were placed on public exhibition for more than 30 working days, from 17 November 2021 to 21 January 2022.

ORDINARY MEETING

31 AUGUST 2021

11.1 DEVELOPMENT SERVICING PLANS - WATER SUPPLY AND SEWERAGE SERVICES

Attachments:	A. Development Servicing Plan-Water Supply Draft - Under Separate Cover B. Development Servicing Plan -Sewerage Draft - Under Separate Cover C. DSP Preparation Process
Responsible Officer:	Derek Finnigan - Deputy General Manager
Author:	Gamini Hemachandra - Project Engineer
Community Plan Issue:	<i>A safe, secure and reliable water supply and sewerage services are provided to all residents that will ensure public health</i>
Community Plan Goal:	<i>Provide safe, secure, efficient and effective water, sewerage and waste services in compliance with regulatory requirements.</i>
Community Plan Strategy:	<i>Ensure substantial achievement of Best Practice Water Supply and Sewerage Guidelines.</i>

PURPOSE

The report is submitted for Council's consideration of placing the draft Development Servicing Plans for Water and Sewer services on public exhibition for a period of thirty working days.

OFFICER'S RECOMMENDATION**Council:**

1. Approves placing the draft Development Servicing Plan – Water Supply and draft Development Servicing Plan – Sewerage Services on public exhibition for a period of thirty working days; and
2. Requests a further report be submitted to Council following the period of public exhibition of the draft Development Servicing Plans.

ORDINARY MEETING**31 AUGUST 2021****Moved:** _____ **Seconded:** _____**BACKGROUND**

Development Servicing Plans (DSPs) prescribe water supply and sewerage developer charges to be levied on developments utilising Council's water supply and sewerage infrastructure. The developer charges are upfront charges, levied by Local Water Utilities (Muswellbrook Shire Council is the Local Water Utility for Muswellbrook Shire), to recover part of the infrastructure costs incurred in servicing new developments or additions to existing developments. The power of Local Water Utilities to levy charges for developer services derives from section 64 of the *Local Government Act 1993* by means of a cross reference to section 306 of the *Water Management Act 2000*.

Developer charges and DSP should be reviewed by a Local Water Utility after a period of 4 to 8 years.

Accordingly, Council's current DSP, prepared in 2012 and adopted by Council in 2014, have been reviewed.

Reviewing DSP is conducted in compliance with guidelines issued by the Minister for Land and water, pursuant to Section 306 of the Water Management Act 2000. The procedure as given in the guidelines is attached, for information purposes, to this report.

Public Works Advisory (PWA) was commissioned by Council to review the existing DSP and reproduce DSP suitable for the next 4 to 8 years.

The draft DSP are attached for Council's consideration to place the documents on public exhibition for a period of 30 working days.

The draft documents will also be audited by auditors approved by the Department of Planning Industry and Environment - Water prior to placing the draft documents on public exhibition for 30 working days.

CONSULTATION

Department of Planning, Industry and Environment – Water representatives

CONSULTATION WITH COUNCILLOR SPOKESPERSON

A copy of the report has been forwarded to the Mayor, Councillor Scholes, the Deputy Mayor, Councillor Ledlin, and the Councillor Spokesperson for Infrastructure, Councillor Woodruff, for review.

REPORT

Preparation and adoption of Development Servicing Plans (DSP) enables Council to comply with the NSW Government's Best Practice Management of Water Supply and Sewerage Framework. Council's current DSP for Water and Sewer services have been revised by based on the financial planning aspects of Council's adopted IWCM Strategy.

The draft documents will be audited by the NSW Department of Planning, Industry and Environment - Water prior to placing the draft documents on public exhibition.

DSP will be finalised in consultation with Public Works Advisory, taking into account community feedback received through the public consultation process. The draft DCP will then be submitted to Council for final consideration and adoption.

OPTIONS

Council may decide to place the draft Development Servicing Plans for water and sewer services on public exhibition for a period of thirty days or decide not to place the draft plans on public exhibition.

ORDINARY MEETING**31 AUGUST 2021**

CONCLUSION

Adoption of revised Development Servicing Plans will enable Council to comply with the NSW Government's Best Practice Management of Water Supply and Sewerage Services Framework. In order to finalise the strategies, it is essential to exhibit draft documents for thirty working days

it is recommended that Council approves placing the audited draft Development Servicing Plans, for Water Supply and Sewerage Services on public exhibition for a period of thirty working days.

SOCIAL IMPLICATIONS

Nil known

FINANCIAL IMPLICATIONS

The Developer Servicing Plans will prescribe headworks charges associated with development.

POLICY IMPLICATIONS

In order to comply with the NSW Government's Best Practice Management of Water Supply and Sewerage Services Framework, Developer Servicing Plans should be reviewed and updated every 4 to 8 years.

STATUTORY IMPLICATIONS

Nil known.

LEGAL IMPLICATIONS

Local Government Act 1993.

Water Management Act 2000.

OPERATIONAL PLAN IMPLICATIONS

Submission of the report complies in principle with Item 20.1.2 of the Operational Plan: 'Ensure substantial achievement of Best Practice Water Supply and Sewerage Guidelines'.

RISK MANAGEMENT IMPLICATIONS

In order to regularise the levying of headworks charges, adopted Development Servicing Plans must be registered with the NSW Department of Planning, Industry and Environment - Water.

WASTE MANAGEMENT IMPLICATIONS

Nil.

COMMUNITY CONSULTATION/MEDIA IMPLICATIONS

Subject to Council's approval, the draft Development Servicing Plans will be placed on public exhibition for a period of 30 working days.

Section 64- Headworks Charges – Developer Charges (in \$)

Year- 2021-2022

Singleton

Service Area	Water DC- \$/ET	Sewerage DC- \$/ET
Singleton town, Singleton Heights, Hunterview, Pinnacle	6345	3795
Maison Dieu -Rural and Industrial	9475	8935
Broke, Jerry Plins, Mount Thorley	12585	Not Serviced
Bridgeman Ridge, Hunter Green and Gowrie Gates	6345	3795
Rural Residential zoned areas	12585	Not Serviced
Rural zoned areas	3390	Not Serviced

Upper Hunter Developer Charges

Service Area	Water DC- \$/ET	Sewerage DC - \$/ET
Scone /Aberdeen	7553.90	8742.65
Merriwa	7553.90	2480.87
Murrundai	7553.90	2480.87