

# Muswellbrook Shire Council

# ORDINARY COUNCIL MEETING

# BUSINESS PAPER TUESDAY 26 SEPTEMBER 2023



# MUSWELLBROOK SHIRE COUNCIL

P.O Box 122

MUSWELLBROOK

20 September, 2023

Councillors,

You are hereby requested to attend the Ordinary Council Meeting to be held in the Training Room, Level 2, University of Newcastle - Upper Hunter Campus, 87 Hill Street, Muswellbrook, NSW 2333 Australia on <u>Tuesday 26 September 2023</u> commencing at 6:00 pm.

Derek Finnigan

**GENERAL MANAGER** 



# **Council Meetings**

# **Meeting Principles**

Council and committee meetings should be:

*Transparent*: Decisions are made in a way that is open and accountable.

*Informed*: Decisions are made based on relevant, quality information.

Inclusive: Decisions respect the diverse needs and interests of the local

community.

*Principled*: Decisions are informed by the principles prescribed under Chapter 3 of

the Act.

Trusted: The community has confidence that councillors and staff act ethically

and make decisions in the interests of the whole community.

Respectful: Councillors, staff and meeting attendees treat each other with respect.

Effective: Meetings are well organised, effectively run and skilfully chaired.

Orderly: Councillors, staff and meeting attendees behave in a way that

contributes to the orderly conduct of the meeting.

# **Public Forums**

The council may hold a public forum prior to each ordinary meeting of the council for the purpose of hearing oral submissions from members of the public on items of business to be considered at the meeting. Public forums may also be held prior to extraordinary council meetings and meetings of committees of the council.

To speak at a public forum, a person must first make an application to the council in the approved form. Applications to speak at the public forum must be received by no later than 9.00 am two (2) days prior to the day of the meeting before the date on which the public forum is to be held, and must identify the item of business on the agenda of the council meeting the person wishes to speak on, and whether they wish to speak 'for' or 'against' the item.

Approved speakers at the public forum are to register with the council any written, visual or audio material to be presented in support of their address to the council at the public forum, and to identify any equipment needs no more than 3 days before the public forum. The general manager or their delegate may refuse to allow such material to be presented.

Each speaker will be allowed 2 minutes to address the council. This time is to be strictly enforced by the chairperson.



# **Declarations of 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.



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- 1. Applications for Attendance via Audio Visual Link
- 2. Acknowledgement of Country
- 3. Civic Prayer
- 4. Apologies and Applications for a Leave of Absence



# 5. Election of Mayor and Deputy Mayor

# 5.1 Election of Mayor and Deputy Mayor

Attachments: {attachment-list-do-not-remove}

Responsible Officer: Derek Finnigan - General Manager

Author: Michelle Sandell-Hay – Governance Officer

Community Plan Issue: 6 - Community Leadership

Community Plan Goal: Collaborative and responsive leadership that meets the

expectations and anticipates the needs of the

community.

Community Plan Strategy: 6.2.1 - Maintain a strong focus on financial discipline to

enable Council to properly respond to the needs of

the communities it serves.

#### **PURPOSE**

An election for the office of Mayor and Deputy Mayor is to be conducted at the 26 September 2023 Ordinary Council Meeting.

### OFFICER'S RECOMMENDATION

Council resolves to conduct an election for the position of Mayor and Deputy Mayor by one of the following methods:

- 1. Open vote by a show of hands;
- 2. Ordinary ballot is by a secret ballot (place an "x" against the candidate of their choice);
- 3. Preferential ballot is by a secret ballot (place 1,2, 3 etc. against each candidate in order of preference).

Moved:	Seconded:
Government Election will be held.	· · · · · · · · · · · · · · · · · · ·
Shire for the period 26 September	2023 to the date in September 2024 upon which the Local
Councillors elect Councillor	as DEPUTY MAYOR of Muswellbrook
Government Election will be held.	
the period 26 September 2023 to t	the date in September 2024 upon which the Local
Councillors elect Councillor	as MAYOR of Muswellbrook Shire for



#### **BACKGROUND**

Mayors elected by Councillors normally hold their office for two years, unless a casual vacancy occurs (*Local Government Act 1993 section 230(1)*). Due to the postponement of the ordinary Council elections to 4 December 2021, Mayors elected by Councillors during the 2021-2024 term have a shorter term than the usual two years.

Councils that elect their Mayors are required under the *Local Government Act 1993* (*Section 290(1)(b)*) to hold mid-term Mayoral elections in the month of September. This means that the mid-term Mayoral elections will need to be held in September 2023.

Mayors elected at the mid-term Mayoral election in September 2023 will hold their office until the day of the council's next ordinary election in September 2024, when their civic office as a Councillor and Mayor will expire.

Deputy Mayors also hold their office for the term specified in Council's resolution.

#### CONSULTATION

Not applicable.

#### **REPORT**

The Mayoral elections are to be conducted at the first meeting of Council following a Local Government Election. Council resolved at that meeting to conduct the Mayoral election at the September 2023 Ordinary Council Meeting. Details of the method of election follow.

# i) METHOD OF ELECTION

If more than one Councillor is nominated for the Office of Mayor or Deputy Mayor, the Council is to resolve whether the election is to proceed by open voting, by ordinary ballot, or by preferential ballot.

The election is to be held at the Council Meeting at which the Council resolves on the method of voting.

Under the *Local Government (General) Regulation 2021* voting at a Council Meeting, including voting in an election at such a meeting, is to be by open means (such as on the voices or by show of hands). However, the Council may resolve that the voting in any election by Councillors for Mayor or Deputy Mayor is to be conducted by secret ballot.

Ordinary ballot and preferential ballot will be by secret ballot. In a preferential ballot, for votes to be formal, preferences must be shown for ALL candidates.

Attachment A (Office of Local Government Mayoral Elections Fact Sheet) provides further detail regarding the voting process for each method of election.

## ii) ELECTION OF MAYOR AND DEPUTY MAYOR

Procedures for the election of Mayor and Deputy Mayor are governed by the Local Government (General) Regulation 2021 (Section 394 and Schedule 7).

The General Manager is the Returning Officer.

A nomination for the Office of Mayor and Deputy Mayor is to be made in writing by two or more Councillors (one of whom may be the nominee) and is not valid unless the nominee has indicated consent to the nomination in writing. A Councillor may be nominated without notice.

Forms for this purpose are included with the Business Paper documents.

The nomination is to be delivered or sent to the Returning Officer.



The Returning Officer is to announce the names of the nominees at the Council Meeting at which the election is to be held.

If only one Councillor is nominated, that Councillor is elected.

#### **OPTIONS**

The Mayoral elections are to be conducted at the 26 September 2023 Ordinary Council Meeting.

#### CONCLUSION

The election for Mayor and Deputy Mayor will be conducted at the 26 September 2023 Ordinary Council Meeting.

# **SOCIAL IMPLICATIONS**

Nil.

## **FINANCIAL IMPLICATIONS**

Nil.

## **POLICY IMPLICATIONS**

Nil.

#### STATUTORY IMPLICATIONS

Local Government Act 1993, Part 2, Division 2, S225 - an area must have a mayor who is elected in accordance with this Division;

Local Government Act 1993, Part 2, Division 2, S227 - The mayor of an area is the person elected to the office of mayor by the councillors from among their number, unless there is a decision in force under this Division which provides for the election of the mayor by the electors.

#### **LEGAL IMPLICATIONS**

Nil identified.

# **OPERATIONAL PLAN IMPLICATIONS**

Not applicable.

# **RISK MANAGEMENT IMPLICATIONS**

Not applicable.

#### **WASTE MANAGEMENT IMPLICATIONS**

Not applicable.

#### **COMMUNITY CONSULTATION/MEDIA IMPLICATIONS**

The results of the election of the Mayor and Deputy Mayor will be provided on Council's website and Facebook page.

# **Fact Sheet**

# ELECTION OF MAYOR AND DEPUTY MAYOR BY COUNCILLORS



#### **Summary**

Councillors must elect a mayor from among their number every two years unless they have a popularly elected mayor.

Councillors may also elect a deputy mayor. The deputy mayor may be elected for the mayoral term or a shorter term.

The election of the mayor and the deputy mayor must be conducted in accordance with clause 394 and Schedule 7 of the Local Government (General) Regulation 2005 (the Regulation).

The purpose of this document is to assist councils to conduct mayoral and deputy mayoral elections in accordance with these requirements. It includes scripts for key activities to help returning officers exercise their functions. These scripts are provided in the text boxes inserted in the relevant parts of this document.

#### How can councils use this document?

Electing a mayor is an important activity. It is vital that the process is smooth, open and easy to follow and not rushed or confusing. Where necessary, it may be appropriate to stop and provide clarification for the benefit of councillors, staff or the gallery.

Returning officers can circulate this document prior to the meeting to help councillors understand the election process.

# Election of a mayor after an ordinary election of councillors

An election for mayor must be held within three weeks of the declaration of the ordinary election at a meeting of the council.

The returning officer is to be the general manager or a person appointed by the general manager.

As no mayor or deputy mayor will be present at the start of the meeting, the first business of the meeting should be the election of a chairperson to preside at the meeting. Alternatively, the returning officer may assume the chair for the purpose of conducting the election.

#### Mid-term election of a mayor

A mayor elected by councillors holds office for two years. A midterm mayoral election must be held in the September two years after the ordinary election of councillors or the first election of a new council following its establishment.

#### **Procedures**

#### Prior to the meeting

Before the council meeting at which the election is to be conducted, the returning officer will give notice of the election to the councillors.

The notice is to set out how a person may be nominated as a candidate for election as chairperson.

As returning officer, I now invite nominations for the position of mayor/deputy mayor for [name of council] for a two year period.

In accordance with the Local Government (General) Regulation 2005, two or more councillors may nominate a councillor (one of whom may be the nominee) for the position of mayor/deputy mayor. Nominations must be in writing and the nominee must consent to their nomination in writing.

A councillor may be nominated without notice for election as mayor or deputy mayor. The nomination is to be made in writing by two or more councillors (one of whom may be the nominee). The nomination is not valid unless the nominee has indicated consent to the nomination in writing.

The returning officer checks the nomination forms and writes the nominees' names on a candidates' sheet.

#### At the meeting

At the start of the first meeting after an ordinary election, in the absence of a chairperson, the returning officer assumes the chair and announces that the first item of business is to be the election of a mayor.

If a chairperson is present, they announce that the first item of business is the election of the mayor then vacates the chair for the returning officer who will then conduct the election.

The returning officer reads out the names of the nominees and seeks confirmation that the nominee has accepted the nomination.

If only one councillor has been nominated for the position of mayor/deputy mayor, the nominee is elected.

As there is only one nominee for the role of mayor/deputy mayor, I declare that [name of successful candidate] is elected as mayor/deputy mayor for the ensuing two years.

If more than one candidate has been nominated, the council must determine by resolution, the method of voting for the position of mayor/deputy mayor, by way of one of the following methods:

- Open voting i.e. by show of hands
- Ordinary ballot i.e. a secret ballot (place an "X" against the candidate of their choice)
- Preferential ballot i.e. place 1, 2, 3 etc. against each candidate.

The returning officer must ask for a motion to be put to the meeting by one of the councillors on the preferred method of voting for the election of a chairperson. This must then be seconded and voted on by the councillors.

**Note:** In the event of a tie, if there is a chairperson, they may use their casting vote. If there is a tie and no chairperson, an election for the role of chairperson should be conducted. Then the election for mayor resumes.

# Open voting (show of hands)

Open voting is the most transparent method of voting. It is also the least bureaucratic method and reflects normal council voting methods

The returning officer will advise the meeting of the method of voting and explains the process.

It has been resolved that the method of voting for the position of mayor/deputy mayor will be by show of hands.

Each councillor is entitled to vote for only one candidate in each round of voting.

I will now write each candidate's name on a slip of paper and deposit it in a barrel. The first name out of the barrel will be written first on the tally sheet, with second name out being written second on the tally sheet, etc.

When all candidates' names have been written on the tally sheet, the returning officer announces the names of the candidates and, commencing with the first candidate, states the following:

Would those councillors voting for [name of candidate] please raise your hand.

The returning officer records the number of votes for each successive candidate on the tally sheet and announces the number of votes received for each candidate.

The minute taker records the vote of each councillor.

The returning officer should check with the minute taker that each councillor has voted. If a councillor has not voted it should be confirmed that they are abstaining (an informal vote).

#### Two candidates

If there are only two candidates for the position of mayor/deputy mayor and the voting is higher for one candidate than another (number of formal votes recorded on the tally sheet), the returning officer then announces the result.

[Name of candidate] has the higher number of formal votes and as a result I declare that [name of candidate] is elected as mayor/deputy mayor for the ensuing two years.

In the event of a **tied vote**, the returning officer will advise the meeting of the following process.

In accordance with clause 12 of Schedule 7 of the Local Government (General) Regulation 2005, I will now write the names of the candidates on similar slips of paper, fold them and place them in the barrel. Please note that the candidate whose name is drawn out will be declared as mayor/deputy mayor.

It is appropriate to show the meeting the names and the barrel. Councillors may inspect but not touch the items.

The returning officer places the names of the candidates into the barrel and requests a staff member to shake the barrel.

The returning officer then draws a name out of the barrel and shows the meeting.

I declare that [name of candidate] is elected as mayor/deputy mayor for the ensuing two years.

The returning officer then draws out the remaining name and reads it for completeness. The second name should be shown to the meeting.

#### Three or more candidates

If there are three or more candidates, the candidate with the lowest number of votes for the position of mayor/deputy mayor is excluded.

[Name of candidate], having the lowest number of votes, is excluded.

The voting continues as above until there are only two candidates remaining (see voting for **two candidates** above).

In the event that the **lowest number of votes are tied**, the returning officer advises the meeting of the following process:

In accordance with clause 12 of Schedule 7 of the Local Government (General) Regulation 2005, I will now write the names of the candidates on similar slips of paper, fold them and place them in the barrel. Please note that the candidate whose name is drawn out will be excluded.

It is appropriate to show the meeting the names and the barrel. Councillors may inspect but not touch the items.

The returning officer places the names of the candidates into the barrel and requests a staff member to shake the barrel.

The returning officer then draws a name out of the barrel and shows it to the meeting.

I declare that [name of candidate] is excluded.

The returning officer then draws out the remaining name and reads it for completeness. The second name should be shown to the meeting.

# Ordinary ballot - (secret ballot)

The returning officer advises the meeting of the method of voting and explains the process.

It has been resolved that the method for voting for the position of mayor/deputy mayor will be by ordinary ballot, in other words by placing an "X" against the candidate of the councillor's choice.

The returning officer announces the names of the candidates for mayor/deputy mayor and writes each name on a slip of paper and deposits it in a barrel.

The returning officer requests that a staff member shakes the barrel and advises that the order in which the names will appear on the ballot paper will be determined by a draw out of the barrel, i.e. first name out of the barrel is written first on the ballot papers and so on.

It will be necessary to have a number of blank papers as this process may require more than one round of voting.

The returning officer writes the names on one set of the ballot papers and initials the front of each ballot paper.

A staff member distributes the ballot papers and collects them into the ballot box when completed and gives it to the returning officer who counts the votes and records them on the tally sheet.

The returning officer announces the results.

[Name of candidate], having the lowest number of votes, is excluded.

In the event that the **lowest number of votes are tied**, the returning officer advises the meeting of the following process:

In accordance with clause 12 of Schedule 7 of the Local Government (General) Regulation 2005, I will now write the names of the candidates on similar slips of paper, fold them and place them in the barrel. Please note that the candidate whose name is drawn out will be excluded.

It is appropriate to show the meeting the names and the barrel. Councillors may inspect but not touch the items.

The returning officer places the names of the candidates into the barrel and requests a staff member to shake the barrel.

The returning officer then draws a name out of the barrel and shows it to the meeting.

I declare that [name of candidate] is excluded.

The returning officer then draws out the remaining name and reads it for completeness. The second name should be shown to the meeting.

The returning officer writes the names of the remaining candidates on a further set of the ballot papers and initials the front of each ballot paper.

The staff member distributes ballot papers listing the remaining candidates and collects them into the ballot box when completed and gives it to the returning officer who again counts the votes and records them on the tally sheet and announces the results.

The process continues until two candidates remain, where a final vote takes place.

[Name of candidate] has the higher number of votes and I declare that [name of candidate] is elected as mayor/deputy mayor for the ensuing two years.

In the event of a **tied vote** between the two remaining candidates, the returning officer makes the following statement and announces the process.

The votes are tied between [name of candidate 1] and [name of candidate 2] having received [number] votes each, and, in accordance with clause 12 of Schedule 7 of the Local Government (General) Regulation 2005, I will now write the names of the candidates on similar slips of paper, fold them and place them in the barrel.

Please note that the candidate whose name is drawn out will be declared as mayor/deputy mayor.

It is appropriate to show the meeting the names and the barrel. Councillors may inspect but not touch the items.

The returning officer places the names of the candidates into the barrel and requests that a staff member shakes the barrel.

The returning officer then draws a name out of the barrel and shows the meeting.

I declare that [name of candidate] is elected as mayor/deputy mayor for the ensuing two years.

The returning officer then draws out the remaining name and reads it for completeness. The second name should be shown to the meeting.

#### **Preferential ballot**

The returning officer explains the process.

It has been resolved that the method for voting for the position of mayor/deputy mayor will be by preferential ballot, i.e. placing 1, 2 and so on against the candidate of the councillor's choice in order of preference for all candidates.

The returning officer announces the names of the candidates for mayor/deputy mayor and writes each candidate's name on a slip of paper and deposits it in a barrel.

The returning officer requests that a staff member shakes the barrel and advises that the order in which the names will appear on the ballot paper will be determined by a draw out of the barrel, i.e. first name out of the barrel is written first on the ballot papers and so on.

The returning officer writes the names on the ballot papers and initials the front of each ballot paper. This method of voting requires only one set of ballot papers.

A staff member distributes the ballot papers and collects them when completed and gives them to the returning officer who counts the first preference votes and records them on the tally sheet.

If a candidate has an absolute majority of first preference votes (more than half), the returning officer declares the outcome.

[Name of candidate], having an absolute majority of first preference votes, is elected as mayor/deputy mayor for the ensuing two years.

If no candidate has the absolute majority of first preference votes, the returning officer excludes the candidate with the lowest number of first preference votes.

[Name of candidate], having the lowest number of first preference votes, is excluded.

The preferences from the excluded candidate are distributed. This process continues until one candidate has received an absolute majority of votes, at which time the returning officer announces the result.

[Name of candidate], having an absolute majority of votes, is elected as mayor/deputy mayor for the ensuing two years.

In the event of a **tied vote** where there are only two candidates remaining in the election, the returning officer explains the process.

The votes are tied between [name of candidate 1] and [name of candidate 2] having received [number] votes each, and, in accordance with clause 12 of Schedule 7 of the Local Government (General) Regulation 2005, I will now write the names of the candidates on similar slips of paper, fold them and place them in the barrel. Please note that the candidate whose name is drawn out will be declared as mayor/deputy

It is appropriate to show the meeting the names and the barrel. Councillors may inspect but not touch the items.

The returning officer places the names of the candidates into the barrel and requests a staff member to shake the barrel. The returning officer then draws a name out of the barrel and shows the meeting.

I declare that [name of candidate] is elected as mayor/deputy mayor for the ensuing two years.

The returning officer then draws out the remaining name and reads it for completeness. The second name should be shown to the meeting.

In the event that the **lowest number of votes are tied** and where there are three or more candidates remaining in the election, the returning officer advises the meeting of the process.

In accordance with clause 12 of Schedule 7 of the Local Government (General) Regulation 2005, I will now write the names of the candidates on similar slips of paper, fold them and place them in the barrel. Please note that the candidate whose name is drawn out will be excluded and their preferences distributed.

It is appropriate to show the meeting the names and the barrel. Councillors may inspect but not touch the items.

The returning officer places the names of the candidates into the barrel and requests that a staff member shakes the barrel.

The returning officer then draws a name out of the barrel and shows the meeting.

I declare that [name of candidate] is excluded and any votes cast for them will be distributed by preference.

The returning officer then draws out the remaining name and reads it for completeness. The second name should be shown to the meeting.

# **Schedule 7 - Election of Mayor by Councillors**

#### Part 1 Preliminary

#### 1 Returning officer

The general manager (or a person appointed by the general manager) is the returning officer.

#### 2 Nomination

- (1) A councillor may be nominated without notice for election as mayor or deputy mayor
- (2) The nomination is to be made in writing by 2 or more councillors (one of whom may be the nominee). The nomination is not valid unless the nominee has indicated consent to the nomination in writing.
- (3) The nomination is to be delivered or sent to the returning officer.
- (4) The returning officer is to announce the names of the nominees at the council meeting at which the election is to be held.

#### 3 Election

- If only one councillor is nominated, that councillor is elected.
- (2) If more than one councillor is nominated, the council is to resolve whether the election is to proceed by preferential ballot, by ordinary ballot or by open voting.
- (3) The election is to be held at the council meeting at which the council resolves on the method of voting.
- (4) In this clause:

ballot has its normal meaning of secret ballot.

open voting means voting by a show of hands or similar means.

#### Part 2 Ordinary ballot or open voting

#### 4 Application of Part

This Part applies if the election proceeds by ordinary ballot or by open voting.

#### 5 Marking of ballot-papers

- If the election proceeds by ordinary ballot, the returning officer is to decide the manner in which votes are to be marked on the ballot-papers.
- (2) The formality of a ballot-paper under this Part must be determined in accordance with clause 345 (1) (b) and (c) and (6) of this Regulation as if it were a ballot-paper referred to in that clause.
- (3) An informal ballot-paper must be rejected at the count.

#### 6 Count-2 candidates

- If there are only 2 candidates, the candidate with the higher number of votes is elected.
- (2) If there are only 2 candidates and they are tied, the one elected is to be chosen by lot.

#### 7 Count—3 or more candidates

- (1) If there are 3 or more candidates, the one with the lowest number of votes is to be excluded.
- (2) If 3 or more candidates then remain, a further vote is to be taken of those candidates and the one with the lowest number of votes from that further vote is to be excluded.
- (3) If, after that, 3 or more candidates still remain, the procedure set out in subclause (2) is to be repeated until only 2 candidates remain.
- (4) A further vote is to be taken of the 2 remaining candidates.
- (5) Clause 6 of this Schedule then applies to the determination of the election as if the 2 remaining candidates had been the only candidates.
- (6) If at any stage during a count under subclause (1) or (2), 2 or more candidates are tied on the lowest number of votes, the one excluded is to be chosen by lot.

#### Part 3 Preferential ballot

#### **8 Application of Part**

This Part applies if the election proceeds by preferential ballot.

#### 9 Ballot-papers and voting

- (1) The ballot-papers are to contain the names of all the candidates. The Councillors are to mark their votes by placing the numbers "1", "2" and so on against the various names so as to indicate the order of their preference for all the candidates.
- (2) The formality of a ballot-paper under this Part is to be determined in accordance with clause 345 (1) (b) and (c) and (5) of this Regulation as if it were a ballot-paper referred to in that clause.
- (3) An informal ballot-paper must be rejected at the count.

#### 10 Count

- If a candidate has an absolute majority of first preference votes, that candidate is elected.
- (2) If not, the candidate with the lowest number of first preference votes is excluded and the votes on the unexhausted ballot-papers counted to him or her are transferred to the candidates with second preferences on those ballot-papers.
- (3) A candidate who then has an absolute majority of votes is elected, but, if no candidate then has an absolute majority of votes, the process of excluding the candidate who has the lowest number of votes and counting each of his or her unexhausted ballot-papers to the candidates remaining in the election next in order of the voter's preference is repeated until one candidate has received an absolute majority of votes. That candidate is
- (4) In this clause, "absolute majority", in relation to votes, means a number that is more than one-half of the number of unexhausted formal ballot-papers.

#### 11 Tied candidates

- (1) If, on any count of votes, there are 2 candidates in, or remaining in, the election and the numbers of votes cast for the 2 candidates are equal—the candidate whose name is first chosen by lot is taken to have received an absolute majority of votes and is therefore taken to be elected.
- (2) If, on any count of votes, there are 3 or more candidates in, or remaining in, the election and the numbers of votes cast for 2 or more candidates are equal and those candidates are the ones with the lowest number of votes on the count of the votes—the candidate whose name is first chosen by lot is taken to have the lowest number of votes and is therefore excluded.

#### Part 4 General

#### 12 Choosing by lot

To choose a candidate by lot, the names of the candidates who have equal numbers of votes are written on similar slips of paper by the returning officer, the slips are folded by the returning officer so as to prevent the names being seen, the slips are mixed and one is drawn at random by the returning officer and the candidate whose name is on the drawn slip is chosen.

#### 13 Result

The result of the election (including the name of the candidate elected as mayor or deputy mayor) is:

- to be declared to councillors at the council meeting at which the election is held by the returning officer, and
- to be delivered or sent to the Departmental Chief Executive and to the Chief Executive of Local Government New South Wales.



# 6. Confirmation of Minutes

# Ordinary Council Meeting held in 22 August, 2023

# **RECOMMENDATION**

The Minutes of	of the Ordinary	Council Meetir	ng held on 22	August 2023,	a copy of which has
been distribut	ted to all memb	ers, be taken a	s read and co	onfirmed as a t	rue record.

Seconded:	
	Seconded:

MINUTES OF THE ORDINARY COUNCIL MEETING OF THE MUSWELLBROOK SHIRE COUNCIL HELD IN TRAINING ROOM, UNIVERSITY OF NEWCASTLE - UPPER HUNTER - TEC 1, 87 HILL STREET, MUSWELLBROOK ON TUESDAY 22 AUGUST 2023 COMMENCING AT 6.00PM.

**PRESENT:** Cr S.M. Reynolds (Mayor), Cr A. Barry, Cr D. Douglas, Cr J.

Drayton, Cr L. Dunn, Cr J.A. Lecky, Cr G.T. McNeill, Cr R. Mahajan,

Cr D.E. Marshall Cr R. Scholes and Cr B.N. Woodruff.

IN ATTENDANCE: Mr D. Finnigan (General Manager), Ms S. Pope (Director – Planning

& Environment),Ms S. Welchman (Director - Community & Economy), Mr M. Lysaught (Director - Property & Place), Mr J. Hogan (Acting Chief Financial Officer), Mr P. Chambers (Chief Engineer), Mr P. Ball (Manager - Works), Mrs C. Middleton

(Communications Co-Ordinator), Mrs M. Sandell-Hay (Governance Officer), Ms K. Hamm (Executive Assistant), Ms A. Cox (Corporate

Planning & Reporting Officer) and 2 people and 1 media

representative in the public gallery.

# 1. Applications for Attendance via Audio Visual Link

Nil.

# 2. Acknowledgement of Country

The Acknowledgement of Country was read by Cr D. Douglas.

# 3. Civic Prayer

The Civic Prayer was read by Cr L. Dunn.

# 4. Apologies and Applications for a Leave of Absence

43 RESOLVED on the motion of Cr R. Mahajan and Cr D. Douglas that:

The apologies for inability to attend the meeting submitted by Cr M. Bowditch be ACCEPTED and the necessary Leave of Absence be GRANTED.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.



# 5. Confirmation of Minutes

#### Ordinary Council Meeting held in 25 July, 2023

44 RESOLVED on the motion of Cr B. Woodruff and Cr J. Drayton that:

The Minutes of the Ordinary Council Meeting held on **25 July, 2023**, a copy of which has been distributed to all members, be taken as read and confirmed as a true record.

and committed as a fide record.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.

Against: Nil.

# 6. Disclosure of any Pecuniary or Non-Pecuniary Interests

- **Cr D. Marshall** Declared a significant non-pecuniary interest in Item 10.2.3. Cr Marshall advised Council that his daughter works for a contractor at MACH Energy.
- **Cr D. Marshall** Declared a pecuniary interest in Item 10.3.1. Cr Marshall advised Council that he undertakes work at the Cemetery.
- **Cr B. Woodruff** Declared a pecuniary interest in Item 10.2.3. Cr Woodruff advised Council his employer undertakes work for the applicant.
- **Cr B. Woodruff** Declared a pecuniary interest in Item 10.2.4. Cr Woodruff advised Council his employer undertakes work for Mangoola Coal.
- **Cr L. Dunn** Declared an insignificant non-pecuniary interest in Item 10.1.1. Cr Dunn advised Council the applicant is a family friend.
- **Cr D. Douglas** Declared a pecuniary interest in Item 10.2.1. Cr Douglas advised Council that she is the CEO of Wanaruah Local Aboriginal Land Council.
- **Cr D. Douglas -** Declared a pecuniary interest in Item 10.2.2. Cr Douglas advised Council that the applicant provides funding to the Wanaruah Local Aboriginal Land Council, of which she is CEO.
- **Cr D. Douglas -** Declared a pecuniary interest in Item 10.2.3. Cr Douglas advised Council that MACH Energy provides funding to the Wanaruah Local Aboriginal Land Council. of which she is CEO.
- **Cr D. Douglas** Declared a pecuniary interest in Item 10.2.4. Cr Douglas advised Council that Mangoola Coal provides funding to the Wanaruah Local Aboriginal Land Council, of which she is CEO and her son is employed by Mangoola Coal.
- **Cr S. Reynolds** Declared an insignificant non-pecuniary interest in Item 10.1.1. Cr Reynolds advised Council the applicant sent an email regarding the development application.
- **Cr S. Reynolds** Declared a significant non-pecuniary interest in Item 10.5.2. Cr Reynolds advised Council his son attends Muswellbrook High School.



# 7. Mayoral Minute

Nil

# 8. Public Participation

#### **Disclosure of Interest**

Cr S. Reynolds - Declared an insignificant non-pecuniary interest in Item 10.1.1. Cr Reynolds advised Council the applicant sent an email regarding the development application.

Cr L. Dunn - Declared an insignificant non-pecuniary interest in Item 10.1.1. Cr Dunn advised Council the applicant is a family friend.

At 6:08 pm Cr S. Reynolds and Cr L. Dunn left the Council Chambers and therefore took no part in discussion or voting on this item.

**Mr. Hugh Walker** - in support of 10.1.1 - DA 2023-048 Granny Flat, Double Garage & Driveway - 11 Ogilvie Street, Denman.

# 9. Business Arising (From Previous Meetings)

Nil



# 10. Business (Specific Reports)

# 10.1. Planning and Environment

# 10.1.1. DA 2023-48 Granny Flat, Double Garage & Driveway - 11 Ogilvie Street, Denman

# **Disclosure of Interest**

Cr S. Reynolds declared an insignificant non-pecuniary interest in this Item. Cr Reynolds advised Council the applicant sent an email regarding the development application.

Cr L. Dunn declared an insignificant non-pecuniary interest in this Item. Cr Dunn advised Council the applicant is a family friend.

Cr L. Dunn and Cr S. Reynolds remained absent from the meeting.

Cr J. Lecky assumed the role of Chair for the conduct of this item.

45 RESOLVED on the motion of Cr G. McNeill and Cr D. Douglas that:

This matter be deferred to provide time for Applicant and Council Offers to try and resolve the issues.

<u>In Favour:</u> Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr G. McNeill, Cr R.

Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B. Woodruff.

Against: Nil.

At 6:17 pm Cr S. Reynolds and Cr L. Dunn returned to Council Chambers and resumed their chairs at the meeting table.

Cr S. Reynolds resumed the role of chair.



# 10.1.2. Preparation of Development Control Plan for 9036 New England Highway Muswellbrook

#### **MOTION**

MOVED by Cr D. Marshall and Cr B. Woodruff that:

Council ADOPTS the Draft Development Control Plan Chapter for 9036 New England Highway, Muswellbrook.

#### **FORESHADOW MOTION**

Moved by Cr R. Scholes:

Cr Marshall and Cr Woodruff agreed to WITHDRAW their original motion.

46 RESOLVED on the motion of Cr R. Scholes and Cr J. Lecky that:

This matter be deferred until such a time to allow for Council Officers to

consider all the issues.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.

Against: Nil.

# 10.1.3. Flying Fox Camp Management Policy MSC045E for adoption

47 RESOLVED on the motion of Cr D. Douglas and Cr R. Scholes that:
Council ADOPTS the attached Flying-fox Camp Management Policy.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.



# 10.1.4. Draft Heritage Strategy 2023-2026 for public exhibition

- 48 RESOLVED on the motion of Cr R. Scholes and Cr J. Lecky that:
  - Council endorses the attached DRAFT Heritage Strategy 2023-2026 to be placed on public exhibition via Council's website for a period of 28 days; and
  - 2. A further report be submitted to Council for consideration of submissions received during the exhibition period.
- In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L. Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B. Woodruff.

Against: Nil.

# 10.1.5. Monthly Report to Council - Planning, Environment and Regulatory Services

49 RESOLVED on the motion of Cr D. Marshall and Cr R. Mahajan that:

The information contained in this report be noted.

<u>In Favour:</u> Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.



# 10.2. Community Infrastructure

## 10.2.1. 2020-2021-0404 Indigenous Renaming of Hunter Beach

#### Disclosure of Interest

Cr D. Douglas declared a pecuniary interest in this Item. Cr Douglas advised Council that she is the CEO of Wanaruah Local Aboriginal Land Council.

At 6:25 pm Cr D. Douglas left the Council Chambers and therefore took no part in discussion or voting on this item.

50 RESOLVED on the motion of Cr R. Scholes and Cr G. McNeill that: Council:

- Notes the recommended Indigenous name for this area provided by the Wanaruah Local Aboriginal Land Council;
- 2. Supports community consultation on the renaming of the Hunter Beach site to "Tarinpa", which translates as "Red River Gum Tree Place";
- Supports initiatives for Wanaruah Local Aboriginal Land Council to investigate and prepare options for an Indigenous artwork mural for the accessible toilet block, to be provided to Council in a separate report.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr J. Drayton, Cr L. Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B. Woodruff.

Against: Nil.

# 10.2.2. Hunter Valley Energy Coal (Mt Arthur Coal) s.138 Roads Act 1993 Permit for Maintenance Edderton Road

#### Disclosure of Interest

Cr D. Douglas declared a pecuniary interest in this Item. Cr Douglas advised Council that the applicant provides funding to the Wanaruah Local Aboriginal Land Council, of which she is CEO.

Cr D. Douglas remained absent from the meeting.

51 RESOLVED on the motion of Cr J. Lecky and Cr D. Marshall that:

Council delegates to the General Manager authority to sign the s.138 *Roads Act 1993* permit for the ongoing maintenance of the portion of Edderton Road from the intersection of Denman Road for a length of 6.1km known as Stage 1 & Stage 2 in the Edderton Road Realignment Deed.

<u>In Favour:</u> Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr J. Drayton, Cr L. Dunn, Cr G.

McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B. Woodruff.

Against: Nil.

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# 10.2.3. MACH Energy s.138 Roads Act 1993 Permit for Routine Maintenance Council Public Roads

#### Disclosure of Interest

Cr D. Marshall declared a significant non-pecuniary interest in this Item.. Cr Marshall advised Council that his daughter works for a contractor at MACH Energy.

Cr D. Douglas declared a pecuniary interest in this Item. Cr Douglas advised Council that MACH Energy provides funding to the Wanaruah Local Aboriginal Land Council, of which she is CEO

Cr B. Woodruff declared a pecuniary interest in the Item. Cr Woodruff advised Council his employer undertakes work for the applicant.

Cr D. Douglas remained absent from the meeting and at 6:27 pm Cr D. Marshall and Cr B. Woodruff left the Council Chambers and therefore took no part in discussion or voting on this item.

52 RESOLVED on the motion of Cr J. Drayton and Cr J. Lecky that:

Council delegates to the General Manager authority to sign the s.138 *Roads Act 1993* permit for the ongoing maintenance of Council public roads as specified in the Mount Pleasant Project Road Maintenance Plan.

<u>In Favour:</u> Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr J. Drayton, Cr L. Dunn, Cr G.

McNeill, Cr R. Mahajan and Cr R. Scholes.

Against: Nil.

At 6:28 pm Cr D. Marshall returned to Council Chambers and resumed his chair at the meeting table.

# 10.2.4. Easement for Electricity Purposes Lot 4 DP1280220 Wybong Road Disclosure of Interest

Cr B. Woodruff declared a pecuniary interest in the Item. Cr Woodruff advised Council his employer undertakes work for the applicant.

Cr D. Douglas declared a pecuniary interest in the Item. Cr Douglas advised Council that the applicant provides funding to the Wanaruah Local Aboriginal Land Council, of which she is CEO.

Cr D. Douglas and Cr B. Woodruff remained absent from the meeting.

53 RESOLVED on the motion of Cr R. Scholes and Cr J. Drayton that:

Council delegates authority to the General Manager to sign the Plan of Easement and 88B instrument to register an easement for Electricity and Other Purposes affecting Lot 4 DP1280220 under the seal of Council and in accordance with the Regulations.



In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr J. Drayton, Cr L. Dunn, Cr G.

McNeill, Cr R. Mahajan, Cr D. Marshall and Cr R. Scholes.

Against: Nil.

At 6:29 pm Cr B. Woodruff and Cr D. Douglas returned to Council Chambers and resumed their chairs at the meeting table.

#### 10.2.5. 2023-24 Capital Works Program - Roads and Drainage

54 RESOLVED on the motion of Cr R. Scholes and Cr D. Marshall that:

#### Council:

- 1. ENDORSES the attached priority lists of work and the undertaking of the 2023-24 Capital Works Programs to the limit of approved funding under the various programs:
  - a. Footpath Renewals as per attachment 1,
  - b. Pram Ramp Renewal as per attachment 2,
  - c. Kerb and Gutter Renewals as per attachment 3,
  - d. Road Resealing as per attachment 4;
  - e. Heavy Patching as per attachment 6;
  - f. Safety Devices as per attachment 7;
  - g. Carpark Renewal as per attachment 8 with priority given to the renewal of pavement within the Muswellbrook Railway Station Carpark (school bus interchange).
- ENDORSES the expenditure of the Rural Road Renewal budget on the identified section of road at Ch7.3 km Martindale Road.
- 3. NOTES the funding offer from the 2023-24 Get NSW Active Program for project GRF-612 new shared path Turtle St Denman to construct a new footpath on the southern side of Turtle St Denman (Paxton St to Denman Creek) and resolve that this project be added to the Capital Program and the budget be adjusted to include an allocation of \$322,459.
- 4. ENDORSES the Regional Road REPAIR Project at Ch 7.6km on the Bylong Valley Way to be constructed over two (2) financial years and that the 2023-24 budget to be adjusted to add the \$50,000 allocation from Transport for NSW REPAIR Program.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L. Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.



# 10.2.6. 2023/2024 Design and Investigation Program

55 RESOLVED on the motion of Cr B. Woodruff and Cr J. Lecky that:

Council endorses the attached prioritised list of projects to be funded by the 2023-24 Operational Budget for Investigation and Design, to the limit of

approved funding.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.

Against: Nil.

#### 10.2.7. Waste Extension Consultation Outcomes

56 RESOLVED on the motion of Cr D. Douglas and Cr R. Scholes that:

Council RESOLVES:

 not to proceed with an extension of waste services to additional rural areas at this time; and

2. to consider carrying out further community consultation should multiple requests for a waste service extension be received.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.

Against: Nil.

# 10.2.8. Water and Wastewater Levels of Service for FY 2022-23, Quarter 4

57 RESOLVED on the motion of Cr B. Woodruff and Cr D. Marshall that:

Council notes the information contained in the report.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.



# 10.3. Property and Place

# 10.3.1. Cemetery Policy MSC040E for Adoption

#### **Disclosure of Interest**

Cr D. Marshall declared a pecuniary interest in this Item. Cr Marshall advised Council that he undertakes work at the Cemetery.

At 6:35 pm Cr D. Marshall left the Council Chambers and therefore took no part in discussion or voting on this item.

58 RESOLVED on the motion of Cr B. Woodruff and Cr L. Dunn that: Council ADOPTS the *Cemetery Policy* attached to this report.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr R. Scholes and Cr B. Woodruff.

Against: Nil.

At 6:38 pm Cr D. Marshall returned to Council Chambers and resumed his chair at the meeting table.

# 10.3.2. Closed Circuit Television (CCTV) in Public Places Policy MSC036E for Adoption

59 RESOLVED on the motion of Cr D. Douglas and Cr B. Woodruff that:
Council ADOPTS the Closed Circuit Television (CCTV) in Public Places

Policy.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.



#### 10.3.3. Henry Dangar Drive - Plane Trees

- 60 RESOLVED on the motion of Cr G. McNeill and Cr D. Marshall that: Council APPROVES:
  - 1. Managing, on a case by case basis, the matters described in the report;
  - 2. Prioritising the renewal of concrete footpath on Henry Dangar Drive (between Day Street and Dixon Circuit); and
  - 3. Carrying out discrete tree removal and replacement if issues cannot be appropriately resolved, regarding tree preservation
  - 4. Other than in Emergency situations all requests for Tree Removal are submitted to Council for consideration.
- In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L. Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.

Against: Nil.

# 10.3.4. Major Projects: Status Update

RESOLVED on the motion of Cr R. Scholes and Cr G. McNeill that:

Council NOTES the information contained in the report.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.

Against: Nil.

## 10.4. Corporate Services

# 10.4.1 Communications and Media Policy MSC048E for Adoption

62 RESOLVED on the motion of Cr J. Drayton and Cr B. Woodruff that:

Council:

- ADOPTS the Communications and Media Policy subject to clarification; and
- 2. RESCINDS the Media Delegations Policy.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.

Against: Nil.

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# 10.4.2. Governance Policy MSC00E for Adoption

63 RESOLVED on the motion of Cr G. McNeill and Cr A. Barry that:

Council ADOPTS the Governance Policy attached as an appendix to the

report.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.

Against: Nil.

# 10.4.3. Procurement Policy MSC01E for additional public exhibition

64 RESOLVED on the motion of Cr L. Dunn and Cr B. Woodruff that:

Council NOTES that the Procurement Policy has been placed on public

exhibition for an additional 28 days.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.

Against: Nil.

# 10.4.4. Draft Employment of Relatives Policy and Procedure MSC11E for Public Exhibition

65 RESOLVED on the motion of Cr D. Douglas and Cr R. Mahajan that:

- Council APPROVES the attached DRAFT Employment of Relatives Policy and Procedure to be placed on public exhibition via Council's website for a period of 28 days; and
- 2. A further report be submitted to Council for consideration of submissions received during the exhibition period.

<u>In Favour:</u> Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.



# 10.4.5. 2023 Christmas Spectacular Sponsorship Request

66 RESOLVED on the motion of Cr D. Douglas and Cr J. Drayton that:

Council supports the Christmas Spectacular for 2023 as a sponsor with a contribution of \$7,500 (ex GST) allocated from the sundries donation budget.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.

Against: Nil.

# 10.4.6. Determination of Number of Councillors for 2024-2028 Term of Council

67 RESOLVED on the motion of Cr B. Woodruff and Cr D. Marshall that:

In accordance with section 224(2) of the Local Government Act 1993, Council determine the number of Councillors for the 2024-2028 term of office to be 12.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.

Against: Nil.

#### 10.4.7. Authorisation Under Section 226 of the Local Government Act

68 RESOLVED on the motion of Cr A. Barry and Cr D. Douglas that:

Council notes the information provided in the report.

<u>In Favour:</u> Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.



#### 10.4.8. Final Operating and Capital Budget Carryovers 2023-2024

69 RESOLVED on the motion of Cr J. Lecky and Cr R. Scholes that:

Council NOTES the final Operating and Capital Carryover projects for 2023-

24.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.

Against: Nil.

# 10.4.9. Monthly Financial Report - July 2023

70 RESOLVED on the motion of Cr J. Lecky and Cr R. Mahajan that:

Council NOTES the Financial Reports for the month ending 31 July 2023.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.

Against: Nil.

# 10.4.10. Report on Investments held as at 31 July 2023

71 RESOLVED on the motion of Cr J. Lecky and Cr R. Scholes that:

Council NOTES Council's Investments as at 31 July 2023.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.



# 10.5. Community and Economy

#### 10.5.1. Promotional Video of Local Government Area

72 RESOLVED on the motion of Cr G. McNeill and Cr D. Marshall that:

Council NOTES the information contained in this report.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.

Nil. Against:

#### 10.5.2. Fee Waiver - Muswellbrook High School

Disclosure of Interest

Cr S. Reynolds declared a significant non-pecuniary interest in this Item. Cr Reynolds advised Council that his son attends Muswellbrook High School.

At 6:51 pm Cr S. Reynolds left the Council Chambers and therefore took no part in discussion or voting on this item.

Cr J. Lecky assumed the role of Chair for the conduct of this item.

73 RESOLVED on the motion of Cr D. Marshall and Cr D. Douglas that:

> Council APPROVES the fee reduction request from Muswellbrook High School for the use of the Muswellbrook Library Seminar Room between 11 September 2023 – 20 September 2023 and 9 October 2023 - 17 October

2023.

Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L. Dunn, Cr G. In Favour:

McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B. Woodruff.

Against: Nil.

At 6:52 pm Cr S. Reynolds returned to Council Chambers and resumed the role of chair for the remainder of the meeting.

#### 10.5.3. **Disability Inclusion Action Plan 2022 - 2026**

74 RESOLVED on the motion of Cr A. Barry and Cr J. Lecky that:

Council ENDORSES the Disability Inclusion Action Plan to be placed on

public exhibition for a period of 28 days.

Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L. In Favour:

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.



Against: Nil.

## 10.5.4. Community Services

75 RESOLVED on the motion of Cr D. Marshall and Cr D. Douglas that:

The information contained in this report be noted.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.

Against: Nil.

# 10.5.5. Report on Council Grant Funding and Community Engagement

76 RESOLVED on the motion of Cr D. Douglas and Cr D. Marshall that:

Council:

- 1. NOTES the information contained in this report;
- 2. APPROVES Council applying for funding for new gym equipment at the Aquatic Centre under the Clubgrants Category 3 Infrastructure Grants program; and
- 3. APPROVES the current balance of Local Roads and Community Infrastructure funding remaining of \$216,410.50 be allocated to the Denman Children Centre Extension project.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.

Against: Nil.

# 11. Minutes of Committee Meetings

# 11.1. Events Steering Committee Meeting - 8 August, 2023

77 RESOLVED on the motion of Cr D. Douglas and Cr J. Drayton that:

The minutes for the Events Steering Committee meeting held on 8 August,

2023 be NOTED.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.



#### 12. Notices of Motion

# 12.1. Amendments to State Planning Policy

#### MOTION

Moved by Cr J. Drayton and Cr S. Reynolds that:

- Council prepares an advocacy strategy and program requesting the NSW Government undertake a review of the social considerations in Part 2.3 of the State Environmental Planning Policy (Resources and Energy) 2021 in consultation with Council together with other key stakeholders.
- 2. Pending the review, it is Council's position for all new development applications and modifications for mining and energy developments in the Shire that agreement be reached between the applicant and Council as to an appropriate percentage (minimum of 25%) of new permanent mine and energy workers are required to have a permanent residence in the Muswellbrook local government area.

## **FORESHADOW MOTION**

This matter be deferred until further wording has been refined.

- 78 RESOLVED on the motion of Cr J. Drayton and Cr S. Reynolds that:
  - Council prepares an advocacy strategy and program requesting the NSW Government undertake a review of the social considerations in Part 2.3 of the State Environmental Planning Policy (Resources and Energy) 2021 in consultation with Council together with other key stakeholders.
  - 2. Pending the review, it is Council's position for all new development applications and modifications for mining and energy developments in the Shire that agreement be reached between the applicant and Council as to an appropriate percentage (minimum of 25%) of new permanent mine and energy workers are required to have a permanent residence in the Muswellbrook local government area.
  - 3. It will be Councils policy that we object to a Mining / Energy development applicant or a modification if this agreement is not reached.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L. Dunn, Cr G. McNeill, Cr R. Mahajan, Cr R. Scholes and Cr B. Woodruff.

Against: Cr D. Marshall.

# 13. Councillors Reports

#### 13.1 Nomination For Ministers' Awards For Women In Local Government

Cr Lecky advised that she is very excited to be nominated for Elected Representative Award in the Ministers' Awards for Women in Local Government.

#### 13.2 National Tree Planting Day

Cr Woodruff advised that he attended the National Tree Planting Day in Denman along side Council Staff and a small, dedicated crew with apprioximately 400 plants being planted.

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### 13.3 Country Mayors Association & Coalition of Regional Energy Mayors Meetings

Cr Reynolds advised that he attended the Country Mayors Association meeting in Sydney and put forward Council's recommendation to support the NSW Rural Doctors Network Bush Bursary Sponsorship.

Cr Reynolds further advised he attended the Coalition of Regional Energy Mayors (CoREM) meeting with Ms Pope where Council's positions on traversing back roads with Renewable Energy movements was made very clear. It was identified that there has been a lack of planning and strategy.

Cr Reynolds further advised the Department of Planning have admitted that it is going to cost 10's of millions of dollars in bridges, bypasses and road upgrades on Muswellbrook LGA alone to allow 10 trucks per night for 10 years that raises concerns on the safety of our residents. Cr Reynolds advised that although we are not in the Renewable Energy Zone that we will seek special permission to access grants of \$250,000 for extra Staff in Planning Department over 3 years.

### 13.4 Vietnam Memorial

Cr Scholes advised he represented the Mayor at the Vietnam Memorial 50th Anniversary which he has been lucky to attend for the 3rd year in a row.

# 13.5 Upper Hunter Weeds Authority Meeting

Cr McNeill advised that he attended along with Cr Marshall the Upper Hunter Weeds Authority meeting and a motion was passed to write to the Agriculture Minister and the State Government to maintain the grant funding for Biosecurity in our LGA.

# 14. Written Questions

Nil

# 15. Questions for Next Meeting

# 15.1 Pool Compliance Campaign

Cr Dunn inquired if a campaign could be conducted on Pool Compliance and changes in Pool Compliance Policies?



# 16. Adjournment into Closed Council

79 RESOLVED on the motion of Cr G. McNeill and Cr D. Marshall that:

Council adjourn into Closed Session and members of the press and public be excluded from the meeting of the Closed Session, and access to the correspondence and reports relating to the items considered during the course of the Closed Session be withheld unless declassified by separate resolution. This action is taken in accordance with Section 10A(2) of the Local

Government Act, 1993 as the items listed come within the provisions outlined

in Section 17 below.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.

Against: Nil.

### 17. Closed Council

# 17.1. Contract 2022-2023-0546 - Muswellbrook Indoor Sports and Youth Centre - Principal Design Consultant

80 RESOLVED on the motion of Cr R. Scholes and Cr D. Marshall that:

Council awards Mode Design Corp Pty Ltd contract 2022-2023-0546 for Principal Design Consultant for the Muswellbrook Indoor Sports and Youth

Centre.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.

Against: Nil.



# 17.2. Contract 2020-2021-0448 - Donald Horne Building - Variation Summary and Financial Close-out

- 81 RESOLVED on the motion of Cr B. Woodruff and Cr G. McNeill that: Council:
  - 1. Continues to negotiate further with the Contractor;
  - 2. If the negotiations are unsuccessful, Council pursues its claim to the full extent of its contractual entitlement; and
  - 3. Authorises the General Manager to negotiate a Deed of Settlement and Release.
- In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L. Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.

Against: Nil.

# 17.3. Contract 2019-2020-0406 - Muswellbrook Aquatic Centre Offer - Financial Close-out

- 82 RESOLVED on the motion of Cr D. Douglas and Cr R. Scholes that: Council:
  - 1. Rejects the revised offer provided by the Contractor;
  - 2. Approves pursuing Council's entitlement by claiming the completion undertakings as detailed in the report; and
  - 3. Authorises the General Manager to negotiate a revised Final Deed of Settlement and Release.
- <u>In Favour:</u> Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L. Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B. Woodruff.

Against: Nil.



## 17.4. Purchase of Denman Property

RESOLVED on the motion of Cr B. Woodruff and Cr J. Drayton that:

Council:

- 1. Purchase of the Property identified in the report; and
- 2. Classifies the property as operational land.
- 3. Authorises the General Manager to execute the Contract

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.

Against: Nil.

# 18. Resumption of Open Council

84 RESOLVED on the motion of Cr B. Woodruff and Cr A. Barry that:

The meeting return to Open Council.

In Favour: Cr S. Reynolds, Cr J. Lecky, Cr A. Barry, Cr D. Douglas, Cr J. Drayton, Cr L.

Dunn, Cr G. McNeill, Cr R. Mahajan, Cr D. Marshall, Cr R. Scholes and Cr B.

Woodruff.

Against: Nil.

The Mayor read out the resolutions from Closed Council.

# 19. Closure

The meeting was declared closed at 7.33pm.

THE MINUTES OF THE MEETING (PAGES 1 to 22) WERE CONFIRMED AT THE ORDINARY COUNCIL MEETING OF THE MUSWELLBROOK SHIRE COUNCIL HELD ON 26 SEPTEMBER 2023 AND ARE A FULL AND ACCURATE RECORD OF PROCEEDINGS OF THE MEETING HELD ON 22 AUGUST 2023.

Mr D. Finnigan	Cr S. Reynolds
General Manager	Chairperson



# 7. Disclosure of any Pecuniary or Non-Pecuniary Interests

Mayoral Minute
Nil.
Public Participation
Nil.
Business Arising (From Previous Meetings)
Nil.



# 11. Business (Specific Reports)

# 11.1. Planning and Environment

# 11.1.1. DA 2023-48 Granny Flat, Double Garage & Driveway - 11 Ogilvie Street, Denman

1. Attachment A - DA 2023-48 Development Assessment Report [11.1.1.1 - 16 pages]

2. Attachment B - DA 2023-48 - Statement of Environmental Effects [11.1.1.2 - 14 pages]

3. Attachment C - DA 2023-48 Architectural Plans [11.1.1.3 - 14 pages]

4. Attachment D - Stage 2 extensions [11.1.1.4 - 1 page]

Responsible Officer: Sharon Pope - Director - Planning & Environment

Author: Sharon Pope (Director - Planning & Environment)

Community Plan Issue: 6 - Community Leadership

Community Plan Goal: Collaborative and responsive leadership that meets the expectations and anticipates the needs of the community.

expectations and anticipates the needs of the community.

6.1.2 - Utilise best practice models of community engagement to ensure decision making is meeting

the expectations of the community.

# **PURPOSE**

**Attachments:** 

The report has been prepared to assist Council in the determination of development application (DA) 2023-48.

This application seeks approval for the construction of a secondary dwelling, double garage, and an associated driveway. The site subject is 11 Ogilvie Street, Denman (Lot 1 DP 306325).

The development application was considered at the Council meeting on 22 August 2023 and determination was deferred to allow the Proponent and Council staff to have further discussions to address issues with the project.

The development application is being reported to Council for determination.

# **OFFICER'S RECOMMENDATION**

### Council:

1.	APPROVES I	DA 2023-48	for the	constru	ction of	a seconda	ary dw	elling,	double g	arage, a	ınd
	an associate	d driveway	at 11	Ogilvie	Street	Denman	(Lot	1 DP	306325)	subject	to
	conditions; ar	nd									

2.	DELEGATES	the setting	of conditions	to the	General	Manager.
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Moved:	Seconded:	



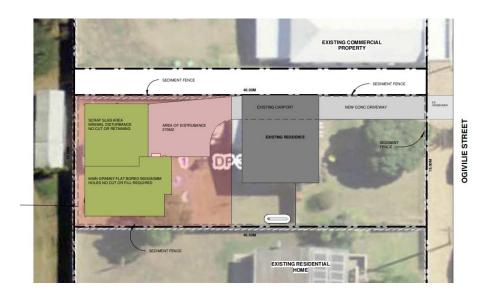
# **DESCRIPTION OF THE SITE AND PROPOSAL**

The proposed development involves the construction of a secondary dwelling at 11 Ogilvie Street, Denman (Lot 1 DP 306325).

A dwelling is currently located on the subject land, which would be retained on the site with the secondary dwelling under the proposal.

The land is within the core business area of the Denman Town Centre. There are no other sites occupied by residential dwellings in this part of the Denman Town Centre. Council has recently completed improvement works for pedestrian and parking access in this part of Denman.

The images below provide a layout of the proposed development and identify its location in context with nearby commercial land uses.







### **BACKGROUND**

At the 22 August 2023 Ordinary Council Meeting, Council considered a report on the proposal, with staff recommending that 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 proposal is inconsistent with the Denman Character Statement under Section 07 of the Muswellbrook Development Control Plan 2009.
- 2. Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposal would have an adverse environmental impact by virtue of its poor relationship with the existing local context and setting and its impact on the pedestrian and traffic linkages in the locality.
- 3. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the proposed development is not compatible with the subject site as a development involving the intensification of residential land use within an established commercial precinct.
- 4. Pursuant to Section 4.15(1)(e) the proposed development is contrary to the public interest as it would be detrimental to the Denman Town Centre to permit the intensification of residential land use within this core business area and detract from the commercial, retail, and tourism identity of Denman Town Centre.

Staff held a meeting with the Applicant and the landowner on 1 September 2023. The medium to long-term future of Denman was discussed, with acknowledgement that the town was growing, and a substantial number of new homes are expected over the next 10 years. This, combined with Denman's visitor appeal, means the need for more general commercial offices, health, retail, and food and drink premises is expected.

While not part of his current plans, the landowner had some plans prepared to show how the current dwelling could be extended toward Ogilvie Street (see attachment D), for use as a dwelling, visitor accommodation, commercial offices, or food and drink premises. The façade could be designed to be more in keeping with the heritage streetscape, and the closer proximity to the street could help with passive surveillance.

The Applicant and the landowner also advised:

- the secondary dwelling is proposed to be occupied by a family member; and
- the landowner would be willing to accept a condition requiring the first 4 to 5m of Colourbond fence adjoining the pedestrian pathway, along the western side boundary of the property, to be replaced with a simple wooden picket fence with a maximum height of 1.2m to improve the visibility of cars and pedestrians as they approach Ogilvie Street. This would address staff concerns about conflict with the movement of pedestrians and cars exiting the site.

### **ASSESSMENT SUMARY**

The proposal has been assessed against the relevant matters prescribed by s4.15 of the Environmental Planning and Assessment Act 1979. A copy of the Assessment Report is provided in Attachment A.

Although the proposal complies with the State Environmental Planning Policies, Muswellbrook LEP 2009 and many aspects of Muswellbrook DCP 2009, Staff originally recommended that the application be refused. The character statement for Denman seeks to establish smaller scale specialty shops and limited residential intensification on the main street.

The proposed development would also increase the number of vehicle movements to and from the site across the Ogilvie Street footpath. This would increase the risk of vehicle and



pedestrian conflict and adversely affect pedestrian egress within this core commercial and pedestrian precinct.

The Applicant has provided a plan illustrating how the existing dwelling could be extended to improve its presence to Ogilvie Street and provide passive surveillance for pedestrians. It is not part of this application.

The existing dwelling, with the extension, would be suitable for conversion to professional consulting rooms, offices, or similar, subject to approval and meeting Building Code of Australia requirements, but would require a contribution to Council for parking in the area, given limitations on being able to provide parking on the site. This would provide a benefit in reducing vehicle movements across the footpath.

The conversion of dwellings to general commercial offices, health, retail, and food and drink premises is common in Ogilvie Street.

The offer to replace some of the existing Colourbond fence with a simple wooden picket fence with a maximum height of 1.2m to improve the visibility of cars and pedestrians would also provide an improvement to the streetscape.

In conclusion, based on the above factors, Council Officers consider that the proposed development is consistent with the DCP controls and objectives of Section 7 of the DCP.

## **COMMUNITY CONSULATATION**

the proposal was publicly notified in accordance with the requirements of the Muswellbrook Community Participation Plan. No submissions were received by Council.

### **OPTIONS**

Council may:

- A. Resolve to grant development consent to the proposed development and delegate to the General Manager the preparation of appropriate conditions of consent.
- B. Resolve to refuse the proposed development subject to the reasons for refusal originally provided to the Council meeting held on 22 August 2023.

## **CONCLUSION**

A development application has been lodged for a secondary dwelling at 11 Ogilvie Street, Denman. A Section 4.15 Assessment Report has been completed in relation to the proposed development. This assessment recommends that the proposal be approved subject to conditions.

### **LEGAL IMPLICATIONS**

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

# **DEVELOPMENT ASSESSMENT REPORT**

**REPORT TO: COUNCIL** 

ADDRESS: LOT: 1 DP: 306325 11 Ogilvie Street DENMAN

**APPLICATION No: 2023/48** 

PROPOSAL: Granny Flat, Double Garage and Driveway

**OWNER:** Mr K J Thrift

APPLICANT: Hugh Walker 101 WARNE STREET WELLINGTON 2820

AUTHOR: Sharon Pope

DATE LODGED: 08 May 2023

DATE OF REPORT: 18 Sept 2023

**RECOMMENDATION** 

It is recommended that development consent for DA 2023-48 for the construction of a Secondary Dwelling, Double Garage and Driveway be approved subject to conditions.

## 2. SITE LOCALITY AND DESCRIPTION

The Site subject to this development application is Lot 1 DP 306325 and known as 11 Ogilvie Street, Denman. The site is located on the main street of Denman and is in the RU5 Village Zone. The site has an approximate area of 618m and currently contains a dwelling house on the site. Access to the site is provided via Ogilvie Street, Denman. There is a laneway located to the rear of the site that was created as part of the Denman Town Centre Concept Masterplan that was approved by Council on 8 November 2016.



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

Flood Prone Land	YES □ NO ⊠
Bushfire Prone Land	YES □ NO ⊠
Terrestrial Vegetation	YES □ NO ⊠
Heritage Conservation Item	YES □ NO ⊠
Heritage Conservation Zone	YES ⊠ NO □
Contaminated Land	YES □ NO ⊠
Mine Subsidence	YES □ NO ⊠
Classified Road Frontage	YES □ NO ⊠
Council Infrastructure within Site	YES ⊠ NO □
Other	YES □ NO ⊠

# 3. DESCRIPTION OF PROPOSAL

The proposal seeks development approval for:

1. the construction of a secondary dwelling and garage to the rear of the site. The secondary dwelling will have a total area of 58m² and the proposed garage will have a total area of 50m². The Applicant has advised that the secondary dwelling is intended to be occupied by a relative of the landowner.

2. Access is proposed via a new concrete driveway connecting to an existing crossover on Ogilvie Street, Denman.



Figure 2. – Site Plan (Source: Applicant)

Notification Required	YES ⊠ NO □
Notification Dates	24/05/2023 - 07/06/2023
Number of Submissions	0
Standard Local Development	YES ⊠ NO □
Regionally Significant Development	YES □ NO ⊠
Designated Development	YES □ NO ⊠
Integrated Development	YES □ NO ⊠

## 4. RELEVANT HISTORY

The Assessing Officer could not find any relevant recent approvals for the site on Council's system.

### 5. REFERRAL COMMENTS

The application was referred to Council's Roads and drainage Officers, Water and Waste Officers, Technical Services Officer, and Heritage Advisor.

# Roads and Drainage

Comments provided noted that it would be possible for the proposed development to comply with requirements related to stormwater management, driveway width and parking. In providing comments Council Engineers have raised concerns related to:

- the resulting increase in traffic entering and exiting the site via Ogilvie Street which functions as the core Denman commercial precinct and the prominent pedestrian thoroughfare.
- The inclusion of a rear roller door in the proposed shed toward the Council laneway.
   The laneway is not a dedicated road and thereby legal access is not confirmed nor necessarily supported. There may not be appropriate site distances for vehicles exiting the shed into the laneway.

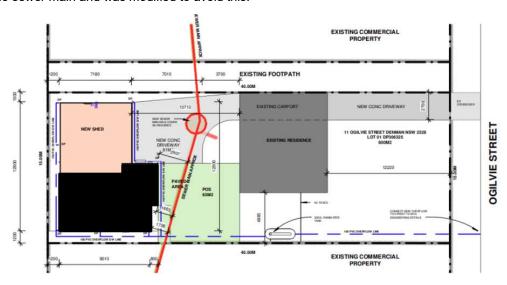
### **Planning Comment**

The Applicant has indicated he would be willing to accept a condition requiring the first 4 to 5m of Colourbond fence adjoining the pedestrian pathway, along the western side boundary of the property, to be replaced with a simple wooden picket fence with a maximum height of 1.2m to improve the visibility of cars and pedestrians as they approach Ogilvie.

A condition of consent would be required to remove the rear roller door in the proposed shed toward the Council laneway.

### Water and Waste

The application was referred to councils' water and waste engineers who reviewed the application and noted that the proposed granny flat will need to be 1.5m from the sewer main located on the site. The design that was initially proposed by the applicant was too close to the sewer main and was modified to avoid this.



The standard condition requiring a notice of requirements would be necessary for the development.

# Heritage Advisor

The subject site is located within the Denman General Heritage Conservation Area. The application was referred to Council's Heritage Advisor who reviewed the application and noted that while a development in a conservation area should normally be submitted with a

heritage impact statement, in this case it may not be necessary, given that the development is set so far back from the front boundary and only 1 storey.

The Advisor did not raise any concerns relating to the development other that recommending that the building have eaves 450mm to 600mm as eaves are a characteristic of the conservation area.

## **Planning Comment**

It is recommended that a condition of consent be included requiring that the building have eaves 450mm to 600mm, should Council resolve to approve the development.

### 6. ASSESSMENT

#### Section 4.15 Matters for Consideration

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

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

### A. Muswellbrook Local Environmental Plan 2009 (MLEP 2009)

Relevant Clauses applicable under the Muswellbrook Local Environmental Plan 2009 are:

### Part 2 Permitted or prohibited development

Land use Zone	RU5 Village
Proposed Use	Secondary Dwelling
Permissibility	Permitted with Consent

Under the Muswellbrook LEP 2009, secondary dwelling means a self-contained dwelling that—

- (a) is established in conjunction with another dwelling (the principal dwelling), and
- (b) is on the same lot of land as the principal dwelling, and
- (c) is located within, or is attached to, or is separate from, the principal dwelling.

The objectives under the RU5 Village Zone are as follows:

- 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 not contrary to the objectives under the RU5 Village Zone.

# Part 4 Principal Development Standards

Relevant Clause	Control	Proposed	Compliance
4.1 Minimum subdivision lot size	750m <sup>2</sup>	1 = 2	☐ Yes ☐ No ☐ NA
4.3 Height of buildings	8.5m	4.880m	☐ Yes ☐ No ☐ NA
4.4 Floor space ratio	0.5	0.20	☐ Yes ☐ No ☐ NA
4.6 Exception to Development Standards			☐ Yes ☐ No ☒ NA

### Part 5 Miscellaneous Provisions

### 5.4 Controls relating to miscellaneous uses.

Section 9 under this Clause states that

- "(9) Secondary dwellings on land other than land in a rural zone- If development for the purposes of a secondary dwelling is permitted under this Plan on land other than land in a rural zone, the total floor area of the dwelling, excluding any area used for parking, must not exceed whichever of the following is the greater—
  - (a) 60 square meters,
  - (b) 33% of the total floor area of the principal dwelling"

The proposed secondary dwelling will have a floor area of 60m2 and therefore complies with this requirement.

### 5.10 Heritage Conservation

Section 4 under this clause states that "the consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5), or a heritage conservation management plan is submitted under subclause (6)"

The application was referred to Council's Heritage Advisor and the effect of the proposed development on the heritage conservation rea was found to be minimal due to the development being located behind the existing building on the site. **Complies** 

## Part 7 Additional Local Provisions

Relevant Clause	Compliance
7.1 Terrestrial Biodiversity	☐ Yes ☐ No ☒ NA
7.3 Rural Workers Dwelling	☐ Yes ☐ No ☒ NA
7.4 Subdivision services	☐ Yes ☐ No ☒ NA
7.5 Dwellings in Rural or Conservation Zones	☐ Yes ☐ No ☒ NA
7.6 Earthworks	
	Minimal earthworks proposed.
Other	☐ Yes ☐ No ☒ NA

# B. State Environmental Planning Policies Relevant to Muswellbrook Shire

SEPP (Biodiversity and Conservation) 2021
Satisfactory: ⊠ Yes □ No □ NA
Chapter 2 Vegetation in non-rural areas
This chapter aims to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation by outlining the types of clearing permitted with or without consent and relevant provisions for the same.
The proposal does not involve the clearing of any native vegetation and therefore this section of the SEPP does not need to be considered further.
Chapter 3 Koala habitat protection 2020
This Chapter applies in the Muswellbrook Shire Council local government area. This environmental planning instrument encourages the conservation and management of natural vegetation areas that provide habitat for koalas.
Under Schedule 2 of this SEPP, the Central Coast Koala Management Plan is applicable within the Muswellbrook Shire Council. This Chapter applies to land in the following land use zones:  (a) Zone RU1 Primary Production,  (b) Zone RU2 Rural Landscape,  (c) Zone RU3 Forestry.
The proposed development is located on land zoned RU5 Village. As the proposed development is not located within the above zones, this chapter does not apply.
SEPP (Building Sustainability Index: BASIX) 2004
Satisfactory: ⊠ Yes □ No □ NA

SEPP (Housing) 2021
Satisfactory: □ Yes □ No ⊠ NA
This SEPP aims to enable the development of diverse housing types by encouraging the development of housing that will meet the needs of more vulnerable members of the community.
The proposal does not involve any affordable or diverse housing as defined under this SEPP and therefore does not need to be considered further.
SEPP (Industry and Employment) 2021
Satisfactory: □ Yes □ No ⊠ NA
Chapter 2 Western Sydney employment area
Not Applicable
Chapter 3 Advertising and signage
The proposal does not involve any signage and therefore, this chapter under the SEPP does not need to be considered further.
SEPP No 65—Design Quality of Residential Apartment Development
Satisfactory: □ Yes □ No ⊠ NA
This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed-use development with a residential accommodation component.
The proposal does not involve any residential apartment development and therefore, this chapter under the SEPP does not need to be considered further.
SEPP (Planning Systems) 2021
Satisfactory: □ Yes □ No ☒ NA
Chapter 2 State and regional development
The proposed development is not classified as State or regional development under this SEPP.
Chapter 3 Aboriginal land
The proposed development is not located within the Aboriginal Land Application Map and therefore this section of the SEPP does not need to be considered further.
SEPP (Primary Production) 2021
Satisfactory: □ Yes □ No ☒ NA
The proposal does not involve any Primary Production use as defined under this SEPP and therefore does not need to be considered further.
SEPP (Resilience and Hazards (2021)

Satisfactory: ☐ Yes ☐ No ☒ NA

Chapter 2 Coastal Management

The proposed development is not located in a coastal zone and therefore this section of the SEPP is not applicable.

Chapter 3 Hazardous and offensive development

The proposal does not involve any hazardous or offensive development and will not be impacted by any such nearby development and therefore this section of the SEPP does not need to be considered further.

Chapter 4 Remediation of Land

This chapter under the SEPP requires that 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.

Council Officers are unaware of any activities which have been carried out on the site that may have caused the contamination of the land. No visual evidence of any contamination was observed by Council Officers during an inspection of the site. Furthermore, there are no known previous investigations regarding contamination on the subject land or land use restrictions issued by the EPA. The site has historically been used as a residential property, which is unlikely to have any significant contamination.

It is therefore considered that the subject site is unlikely to be affected by contamination requiring remediation in accordance with the SEPP. The proposed development may therefore proceed without the need to further consider the provisions of this SEPP.

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

There are no draft EPIs relevant to the subject Application.

Section 4.15(1)(a)(iii) the provisions of any development control plan Muswellbrook DCP 2009

Section 3 Site Analysis	
Satisfactory: ☐ Yes ☐ No ☒ NA	
Section 5 Subdivision	
Satisfactory: ☐ Yes ☐ No ☒ NA	
Section 6 Residential Development	
Satisfactory: ⊠ Yes □ No □ NA	
6.1.1 Context	A Site Plan has been provided in accordance with Section 3 of this DCP.
6.1.2 Front Setbacks	The proposed garage and secondary dwelling will be located to rear of the site and will not have any impact on the front setbacks of the site.  Complies
6.1.3 Side and Rear Setbacks	Setback requirement = 0.9m Western Setback = 1m Eastern Setback = 1.2m Southern (Rear) Setback = 1.2m Complies
6.1.4 Building Height and Scale	The proposed buildings will be an appropriate height and scale to the existing buildings in the locality. <b>Complies</b>
6.1.5 Front Fencing and Retaining Walls	None proposed
6.1.6 Garages, Carports and Sheds	The proposal involves a garage 7m x 7m. The
	materials to be used for the construction of the shed can be managed by a standard condition. Complies.
6.1.7 Dwelling Entry	The proposed secondary dwelling will not be visible from the street. The existing dwelling addresses the street.
6.1.8 Accessibility and Adaptability	The proposal does not involve any multi dwelling houses. Not Relevant
6.1.9 Reflective Materials	Managed by Standard Condition

o. r. o r tonocuro matemate			
6.2 Urban Landscape			
6.2.1 Usable Open Space	No multi dwelling housing or residential flat buildings proposed. <b>Not applicable</b>		
6.2.2 Carparking	Secondary dwellings do not have a car parking requirement under Section 16; however, the proposed garage allows for car parking for the primary dwelling, which currently does not have any car parking on site.		
6.2.3 Landscaped Area	Adequate space for landscaping available on site. Complies		
6.2.4 Landscaping	Complies		
6.2.5 Dual Occupancy Housing, Multi Dwelling Housing and Secondary Dwellings	Occupancy rate permissible for development = 618/166.67 = 3.7 persons		
	Occupancy rate = 1.79 x 2 = 3.58 Complies		
	Number of bedrooms in existing dwelling = 2 bedrooms		
	Proposed number of bedrooms in secondary dwelling = 2		
6.3 Environmental			
6.3.1 Topography	A site inappartian abouted that the proposed site is		
6.3. Г Городгарпу	A site inspection showed that the proposed site is relatively flat and will require minimal cut/fill.		
	The applicant has stated that the granny flat will be raised above ground and not require any cut/fill.		
	Complies		
6.3.2 Solar Access	The proposed development has been designed to provide adequate daylight and natural ventilation to habitable rooms and adequate sunlight to private open spaces.		
	The overshadowing of habitable rooms and private open spaces is highly unlikely as there are no structures in the vicinity to do so.		
	Complies		
6.3.3 Visual Privacy	The proposed building will be located an adequate distance away from habitable rooms of adjacent buildings and visual privacy for all residents will be maintained. <b>Compiles</b>		

6.3.4 Acoustic Privacy	The proposal is for a residential shed and secondary dwelling, which is unlikely to create a significant increase in noise. <b>Complies</b>		
6.4 Site Operation			
6.4.1 Energy Conservation	BASIX Compliance provided. Complies		
6.4.2 Stormwater Management	Stormwater to be connected to existing stormwater or to the street. Condition recommended to provide stormwater design details prior to CC.		
6.4.3 Security, Site Facilities and Services	The proposed development allows for adequate safety and security by allowing for passive surveillance, achieved through design, locating habitable rooms to the front of the dwelling accommodates this provision. The Assessing Officer recommends including a standard condition to ensure that adequate site facilities are provided. Complies		

# Section 7 - Village Zones

#### Satisfactory

### 7.2.3 Character Statements

The controls under this section of the DCP states that "Council must not grant development consent to new development in Denman that would result in an inconsistency or compromise the integrity of the character statement for Denman".

The relevant parts of the Denman Character Statement specify that the main street, consisting of Ogilvie Street and adjoining side streets, serves as a focal point for the community, encouraging interaction among residents. It is characterized by smaller scale specialty shops catering to local needs. Additionally, higher density residential development is only allowed in appropriate locations close to the main street, ensuring a short walking distance and maintaining existing residential amenities with landscaped buffers on-site.

The Ogilvie Street precinct is the core business area for Denman. The subject site contains the only dwelling on Ogilvie Street in the block between Palace and Paxton Streets. Although there are several former dwellings that have been converted to offices, retail premises and food and drink premises.

The proposal represents an intensification of residential development on that land. The Applicant has provided a plan showing how the existing dwelling could be extended to bring it closer to Ogilvie Street. It could then be used for residential purpose, visitor accommodation or allow for a new commercial use.

The closer proximity would improve connection to the street (vibrancy and surveillance) and a new facade would improve appearance in the heritage streetscape. While this extension is not part of the current proposal it is illustrative of what might happen as Denman continues to grow and retail/commercial space become more viable.

The proposed secondary dwelling is a construction style that could be relocated.

7.3 Residential Development
This Section of the DCP requires compliance with the controls referenced in Section 6 of the DCP.
The proposed development has been assessed under these provisions under the Section 6 heading and while it is considered to comply with the relevant provisions of this Section its compatibility with the s7.2.3 Character Statement provisions remains an issue for the DA assessment.
Section 15 – Heritage Conservation
Satisfactory: ☑ Yes ☐ No ☐ NA
Discussed under Heritage Advisor comments.
Section 16 - Car Parking and Access
Satisfactory: ⊠ Yes □ No □ NA
Secondary dwellings do not have a car parking requirement under Section 16; however, the proposed garage provides car parking for the primary dwelling, which currently only has driveway car parking on site.
Section 20 – Erosion and Sediment Control
Satisfactory: ☑ Yes ☐ No ☐ NA
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 total floor area of the proposed development is less than 250m2 and therefore does not an Erosion Control as Sediment Plan. The proposed development does not involve the carrying out of substantial earthworks. A condition of consent is recommended to manage the carrying out of earthworks.
Section 21 Contaminated Land
Not Applicable
Section 24 – Waste Minimisation and Management Systems Satisfactory
Salisiaciory
A Site minimisation Management Plan has not been submitted. The proposed development is

Section 25 – Stormwater Management
Satisfactory: ⊠ Yes □ No □ Not Applicable
Stormwater to be connected to existing stormwater or to the street. Condition recommended to provide stormwater design details prior to CC.
Section 26 – Site Specific Controls
Satisfactory: ☐ Yes ☐ No ☒ Not Applicable

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

There are no planning agreements relevant to the subject Application.

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

Environmental Planning and Assessment Regulation 2021 applies to the development. Development Contributions The cost of works for the proposed development is \$150,000. A developer contribution of \$1500.00 will apply to the proposed development should the Application be approved.

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

Not applicable

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

### **Context and Setting**

The proposed secondary dwelling is located within the main street of Denman, a predominantly commercial area and identified as the "Denman main street" under the Muswellbrook DCP. While the existing use of the site is a dwelling, further intensification of the site for residential use is not considered to align with Council's goals for the locality. However, it is also to be noted that there are currently no definitive controls under the Muswellbrook LEP or DCP to not permit the erection of a secondary dwelling at the site other than requiring the land to be consistent with the Denman Character Statement. It is also noted that many of the current shops and offices were formerly dwellings.

The implementation of the Denman Town Centre Masterplan is a strategic goal under Councils 2022-2026 Delivery Program. The Denman Town Centre Upgrade Works Concept Plans were approved by Council at the 28 June 2018 meeting of Council and has been in progress over the last 5 years.

The Concept Master Plan informs future planning directions, identifies opportunities for improved retail, commercial and public activities, improves access in and around the village centre, creates high quality public spaces and address issues relating to parking and stormwater management.

The core aim of the Plan was to improve economic prosperity in the Shire, which translates to more commercial development in the main street.

### **Built Form**

The proposed secondary dwelling would have colorbond clad walls and roofing. The dwelling would be elevated on stilts. No sub-floor cladding has been proposed. No information has

been provided around the colour selection for the cladding. A condition of consent would be required to ensure colours are submitted for approval and low reflective surfaces a reused.

### **Potential Impact on Adjacent Properties**

The subject site is surrounded by commercial developments. Intensified residential use may create conflicts between commercial and residential activities such as noise disturbances for residents. The commercial uses would take precedent.

### Access, Transport and Traffic

The subject site currently has an existing crossover with an unsealed driveway providing property access. There is a pedestrian laneway along the western boundary of the site. Proposing the installation of a new garage and formal driveway adjacent to the pedestrian access laneway raises concerns regarding potential conflicts with pedestrian movement and access.

Additional traffic movements onto and out of the site via Ogilvie Street will increase conflict between pedestrian traffic that utilises the Ogilvie Street core business area and the traffic generated by occupants of the development.

Further along Ogilvie Street, Council has constructed infrastructure to minimise vehicle-pedestrian conflict. Council provided parking to the rear of Ogilvie Street in the laneway behind the development and widened the footpath in Ogilive Street.

The Applicant has indicated he would be willing to accept a condition requiring the first 4 to 5m of Colourbond fence adjoining the pedestrian pathway, along the western side boundary of the property, to be replaced with a simple wooden picket fence with a maximum height of 1.2m to improve the visibility of cars and pedestrians as they approach Ogilvie.

A condition of consent would be required to remove the rear roller door in the proposed shed toward the Council laneway.

### **Public Domain**

As discussed above, the proposed development has the potential to impact the public domain in terms of pedestrian safety, traffic flow, visual aesthetics, and access to the Denman main Street.

# Heritage

Discussed under Heritage Advisor comments.

# Safety, Security & Crime Prevention

The proposed development is unlikely to have a significant impact on safety and security in the locality.

# Social and Economic Impact on the Locality

The proposal would increase residential use within the Denman Town Centre. An extension to the existing dwelling, to bring it closer to the street would assist with future commercial investment and improve the appearance of the building.

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

The proposed development involves the intensification of a residential use within the main street but is behind an existing residential building.

### Section 4.15(1)(d) any submissions made

The Application was notified to adjoining owners from 24/06/2023 - 07/07/2023. A notice was also placed on Council's website and Facebook page at the commencement of the notification period.

No submissions were received during the notification period.

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

The proposed development is inconsistent with established commercial land uses within the development precinct. However, the Applicant has demonstrated that the secondary dwelling would not impede the potential to expand the existing dwelling toward Ogilvie Street. Council would need to accept a contribution toward provision of parking in the locality as there would be restricted space for on-site parking. This would work in favour of limited

### 7. 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 is substantially in accordance with the relevant planning provisions.

It is recommended the application be approved subject to conditions.

Report Prepared by: Sharon Pope 18 Sept 2023.



PLAY DESIGN STUDIO 101 WARNE STREET WELLINGTON NSW 2820 0435832810 INFO@PLAYDESIGNSTUDIO.COM.AU

# STATEMENT OF ENVIRONMENTAL EFFECTS

PROPOSED GRANNY FLAT AND GARAGE

11 OGILIVIE STREET DENMAN NSW

APPLICANT: HUGH WALKER FOR KYLE THRIFT

PREPARED BY: PLAY DESIGN STUDIO

**MAY 2023** 



**EXTERNAL VIEW** 

# **CONTENTS**

INTRODUCTION

SUBJECT SITE AND LAND

**DESCRIPTION OF PROPOSAL** 

**PLANNING MATTERS FOR CONSIDERATION** 

CONCLUSION

### **INTRODUCTION**

This statement of environmental effects accompanies a development application for a new Granny Flat and Garage at 11 Ogilvie Street Denman NSW 2328

It is intended to elaborate, where necessary, on aspects covered in the drawings as well as to proved 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 the Environmental Planning and Assessment Act 1979.

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# **SUBJECT SITE AND LAND**

The subject site is located at 11 Ogilvie Street Denman NSW 2328 The locality of the site is depicted in Figure 01 & 02.

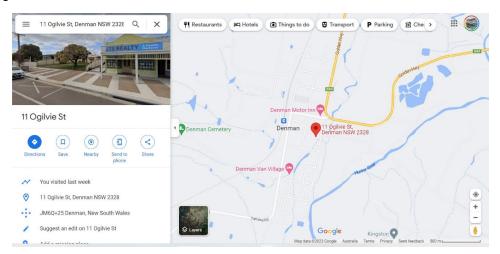


Figure 1 - Site Location - Ogilvie Street Denman



Figure 2: Close up view 11 Ogilvie Street Denman NSW

The existing site and house is located at 11 Ogilvie Street Denman

The site comprises and existing small single level home and carport accessed off Ogilvie Street.

The site is level and flat with minimal vegetation and trees on site.

The site is surrounded by a variety of properties with most of them being commercial properties on Ogilvie Street.

The existing house is a simple metal clad home on bearers and joists. The carport is attached to the side of the existing house to the west.

The rear of site where the granny flat is located is primarily flat and cleared and provides a good site area for the proposed building works.

The site access has power / water / sewer / NBN/ phone

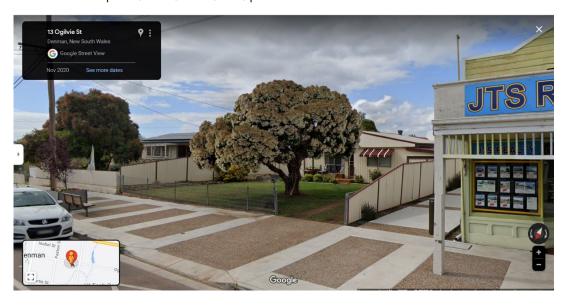


Figure 3: Street view of 11 Ogilvie Street. Simple Single level residence clad in metal cladding.

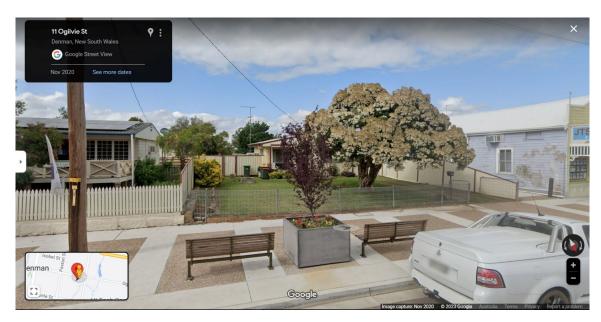


Figure 4: Existing view of 11 Ogilvie Street Denman

### **DESCRIPTION OF PROPOSAL**

The following items listed below will form the basis of the development application for 11 Ogilvie Street Denman NSW

- 1. New Granny flat 60m2, 2 bed, living areas, laundry, bathroom, deck areas
- 2. Double Garage
- 3. New driveway

It is proposed to construct a new granny flat to the rear of the property.

The site area is clear and flat and makes development and construction simple.

The granny flat will be constructed on bearers and joists and the garage on a concrete slab.

The design of the building is designed as a simple Australian outbuilding aesthetic that should complement the heritage nature of the area.

Simple gable and hip forms are used to create traditional elements. The building is clad in galvanised steel which should soften and blend with context over time.

The bulk scale and design of the building is similar to surrounding homes and properties in the context.

The proposed granny flat and garage will not adversely affect surrounding properties of the context.

The proposed design offers good sized double garage and workspace areas for resident vehicles and weekend hobbies.



View of Granny flat and garage. Simple galvanised steel building that is modern but offers traditional forms that will assist in blending into the context. It is a similar height bulk and scale as surrounding buildings.



Another view of the proposed granny flat. The granny flat offers a simple open plan living arrangement and a nice north facing deck. It is of traditional design and scale but with a modern simple appearance.

### 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.

#### **ENVIRONMENTAL PLANNING INSTRUMENTS**

#### Muswellbrook Council Local Environmental Plan 2008

The Muswellbrook Local Environmental Plan 2009(LEP 2009) applies to the subject site. The site is Zoned RU5 Village and the proposal is permissible with Councils 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

### ANY DRAFT ENVIRONMENTAL PLANNING INSTRUMENT

There are no draft environmental planning instruments relating to the proposal

#### ANY DEVELOPMENT CONTROL PLAN

**Muswellbrook Council Development Control Plan 2009** 

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Provisions	Assessment	Compliance
SECTION 03 – SITE ANALYSIS	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.	YES
	The rear of the site has a good clear flat area for building works	
	The rear of the site is bound by a council carpark and surrounding commercial properties. The granny flat site area should not adversely affect surrounding properties.	
	There is an existing crossover for access.	
	The granny flat will provide additional accommodation in the heart of Denman.	
	The granny flat is well positioned to the rear of the property and will not dominant the streetscape of Ogilvie Street.	
	Site analysis plan is included in architectural plans.	
SECTION 06 -	6.1 BUILT FORM	YES
RESIDENTIAL DEVELOPMENT	6.1.1 Context	
	Site analysis complete in architectural plans	
	Design is derived by recommendations from site analysis plan	
	6.1.2 Front Setbacks	
	Granny flat is setback 24.4m	
	6.1.3 Side & Rear Setbacks	
	Side setbacks 1.2m	
	6.1.4 Building Height and scale	
	Max height 4.46m above ground level Proposed building is of a height and scale typical of residential structures in the context.	
	6.1.6 Garages	
	Garage is located behind existing main house and not visible.	
	Garage doors do not dominate the streetscape.	
	Garage is integrated into the overall design.	

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#### 6.1.7 Dwelling Entry

Granny flat is located well behind the existing property and is not the primary residence,

### 6.1.8 Accessibility

ΝΙ/Δ

#### 6.1.9 Reflective Materials

Galvanised steel will soften and grey and looser reflectivity quite quickly and create a heritage character.

## 6.2.1 Usable Open Space

42m2 of space provided

### 6.2.2 Carparking

2 x carparks provided in garage

Carparking complies with AS2890.1

## 6.2.3 Landscaping

Site and development has existing landscaping

# 6.2.5 Dual Occupancy Housing, Multi Dwelling Housing and Secondary Dwellings

Granny flat complies with site and area requirements.

# 6.3.1 Topography

Site area is level and flat, minimal changes to topography required.

# 6.3.2 Solar Access

Development is single storey.

Development will not overshadow surrounding properties

Development will not overshadow surrounding private open spaces.

# 6.3.3 Visual Privacy

No issues as no surrounding residential homes

The fences and building offer privacy to the main private open areas.

Private open areas located between existing and proposed buildings on site which offers privacy.

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	6.3.4 Acoustic Privacy	
	No major acoustic issues.	
	Windows are well sized and positioned to reduce acoustic issues.	
	Private open spaces well positioned also to reduce issues.	
	6.4.1 Energy	
	Basix certificate provided.	
	6.4.2 Stormwater	
	New downpipes connected to 3000l rainwater tank. Overflow directed to Ogilvie Street stormwater system	
SECTION 07 - VILLAGE	7.2 Assessment Process	6.2.5 Dual
ZONES	The proposed development does not adversely affect the Denman character.	Occupancy Housing, Mu Dwelling Ho
	The proposed new dwelling is in keeping with the pattern of development on Ogilvie Street and is consistent in form, bulk, scale, height.	and Secondar Dwellings
	7.3 Residential Development	
	Development complies with Section 06 of the DCP	
	7.4.3 Vehicle Parking	
	Carparking complies with Section 16 of the DCP. 2 x new carparks provided in double garage.	
	7.4.5 Waste Water	
	Granny flat to be connected to the council sewer system.	
	7.4.6 Form, Massing	
	Proposed granny flat is of height, bulk and scale to surrounding residential homes and properties.	
	7.4.7 Access	
	Good access for vehicles and pedestrians provided.	
	7.4.8 Setbacks	
	Setbacks are consistent with DCP and do not adversely affect surrounding properties.	

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SECTION 15 – HERITAGE CONSERVATION	There is minimal impact the Denman Heritage conservation area from the proposed development.	YES
	The proposed development is located 24m from the Ogilvie Street frontage	
	The proposed development is located to the rear of the existing property and behind the existing house.	
	The proposed new development is designed a simple modern heritage building which will integrate and complement the surrounding context.	
	The proposed building is clad in galvanised steel and uses hip and gable roof elements to provide a outbuilding style appearance.	
	The proposed new building is modern and traditional. Through its simplicity it creates a simple heritage connection without mimicking heritage detailing's and aesthetics.	
	The proposed development is in keeping with the surrounding context and urban pattern. It is in keeping with the Denman heritage character statement.	
Section 16 - CARPARKING	Double garage provided.	YES
	2 x new carparks provided.	
	Carparking complies with As2890.1	
Section 24 – WASTE MANAGENENT	The proposed development will create minimal building waste.	YES
	Council waste services to be utilised.	
	Waste management plan provided.	
Section 25 –	New downpipes will connect to new 3000l rainwater tank.	YES
STORMWATER MANAGEMENT	Overflow to connect to Ogilvie Street Kerb	

#### **CONCLUSION**

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

The proposed new Granny Flat and Garage provide additional accommodation and vehicle parking for the existing residents on site.

The proposal is of a height / bulk / scale / aesthetic to many surrounding properties in the surrounding context.

The proposal complies with the Muswellbrook DCP and LEP requirements.

The proposal is in keeping with the Denman Character Statement and positively contributes to the local context.

We therefore suggest that the proposal should be approved

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# PROPOSED NEW GRANNY FLAT AND GARAGE

11 OGILVIE STREET DENMAN NSW 2328 LOT 01 DP306325

# **STAGE: FOR APPROVAL**

DRAWING SCHEDULE							
Sheet Number	Sheet Name						
A000	COVERPAGE						
A001	SITE ANALYSIS PLAN						
A002	WASTE MANAGEMENT PLAN						
A003	EARTHWORKS AND SEDIMENT CONTROL PLAN						
A100	SITE PLAN						
A101	FLOOR PLAN & ROOF PLAN						
A300	EXTERNAL ELEVATIONS						
A301	EXTERNAL ELEVATIONS						
A400	SECTIONS						
A500	3DS						
A600	BASIX 01						
A601	BASIX 02						
A700	WINDOW AND DOOR SCHEDULE						
A800	NOTIFICATION PLAN						









# Property Report 11 OGILVIE STREET DENMAN 2328



#### **Property Details**

Address: 11 OGILVIE STREET DENMAN 2328 Lot/Section 1/-/DP306325

/Plan No:
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:

Land Reservation Acquisition NA
Foreshore Building Line NA

#### Detailed planning information

#### State Environmental Planning Policies which apply to this property

Local

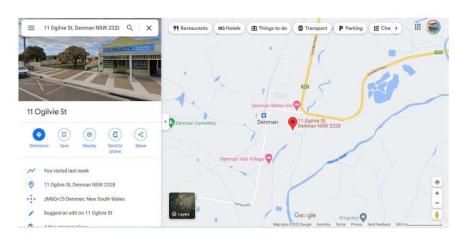
State Environmental Planning Policies can specify planning controls for certain areas and/or types of development. They can also identify the development assessment system that applies and the type of environmental assessment that is required.

This report provides general information only and does not replace a Section 10.7 Certificate (formerly Section 149)

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#### **LOCATION MAP 01**



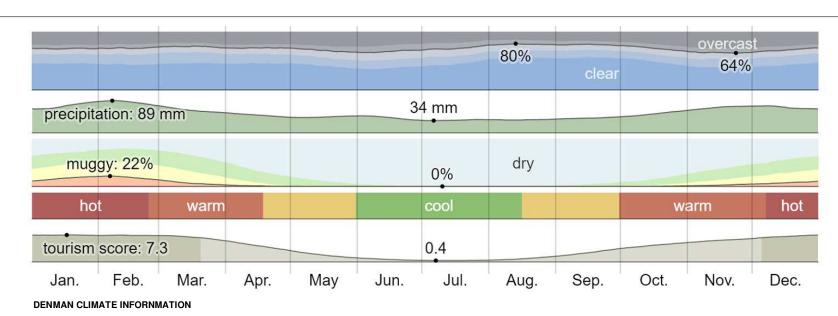
LOCATION MAP 02

### **BASIX OR ENERGY CERTIFICATE**

#### PLANNING CERTIFICATE

#### REV: 3 DATE: 04.07.2023 CLIENT: KYLE THRIFT SHEET TITLE: COVERPAGE PLAY DESIGN STUDIO LETS GET STARTED!! ISSUED BY: HW ISSUED TO: CLIENT 11 OGILVIE STREET DENMAN NSW 2328 SHEET NUMBER: A000 DESCRIPTION OF CHANGES LOT 01 DP306325 JOB NUMBER: 2023001 PHONE: 1300 411 030 FOR APPROVALS DESIGNING ACROSS NEW SOUTH WALES DRAWN: PLAY DESIGN STUDIO DATE DRAWN: JAN 2023 EMAIL: info@playdesignsutdio.com.au CHECKED: PLAY SCALE: ISSUE: 3 WEB: www.playdesignstudio.com.au

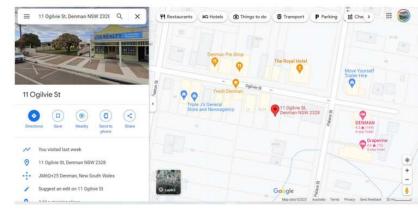








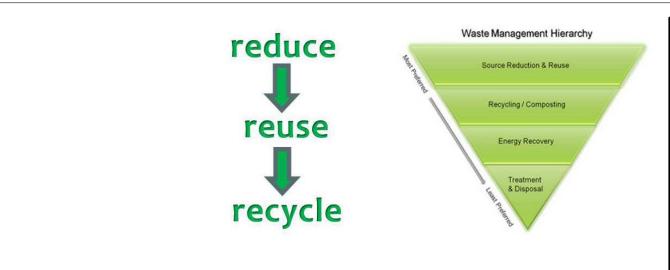
#### SITE DETAILS 11 OGILVIE STREET DENMAN NSW 2328 LOT 01 DP306325 **BUSHFIRE ATTACK LEVEL =** MUSWELLBROOK COUNCIL AREA RU5 VILLAGE ZONING 600M2 EXISTING HOUSE EXISTING CARPORT GRANNY FLAT GARAGE AREA DECK AREA =65M2 =24m2 =60m2 =52m2 =15m2 PROPOSED FLOOR AREA'S ROOF AREA ENTER ROOF AREA =140m2 ALL LIVING AREA MINUS LAUNDRY AND BATHROOM (DONT INCLUDE GARAGE) =52.3m2 CONDITIONED FLOOR SPACE BATHROOM AND LAUNDRY UN CONDITIONED FLOOR SPACE LANDSCAPE AREA ENTER LANDSCAPE AREA HARD LANDSCAPE AREA AREA INCLUDES DRIVEWAYS AND FOOTPATHS =94m2 PROPOSED SITE COVERAGE BUILDING FOOTPRINT + DRIVEWAY+FOOTPATHS-DECKS =310m2 or 51.66% PROPOSED FSR FLOOR SPACE RATIO - TOTAL LIVING AREA DIVIDED BY SITE AREA 125M2 OR 0.28 to 1 LIVING/SITEX100 MAX 4.61m TO RIDGE (TYPICALLY 8.5M FOR RESIDENTIAL) MAX. BUILDING HEIGHT H CLASS (CHECK GEOTECH REPORT) SOIL CLASSIFICATION 2 (CHECK WINDSPEED) WIND SPEED TERRAIN CATEGORY N2 (CHECK SLOPE TERRAIN CATEGORY) REGION SHIELDING PARTIAL (IS SITE PROTECTED BY TREES/SLOPE/BUILDINGS)



#### LOCATION PLAN

REV: 3	DATE: 04.07.2023	CLIENT:	KYLE THRIFT	SHEET TITLE: SITE ANALY	YSIS PLAN	DI AV DESIGN STUDIO	
ISSUED BY: HW	ISSUED TO: CLIENT	ADDRESS:	11 OGILVIE STREET DENMAN NSW 2328	SHEET NUMBER: A001		LETS GET STARTED!!	
DESCRIPTION OF CHANGES			LOT 01 DP306325				
				JOB NUMBER: 2023001		PHONE: 1300 411 030	
FOR APPROVALS	FOR APPROVALS		PLAY DESIGN STUDIO	DATE DRAWN: JAN 2023		DESIGNING ACROSS NEW SOUTH WALES	
				2011 = 1 100	100115 0	EMAIL: info@playdesignsutdio.com.au	
		CHECKED:	PLAY	SCALE: 1:100	ISSUE: 3	WEB: www.playdesignstudio.com.au	
		•			·		





#### **WASTE MANAGEMENT STRATEGY**

mise the production of waste materials in the construction

- Assessing and taking into consideration the resultant waste from different design and construction
- · Purchasing materials that will result in less waste, which have minimal packaging, are pre-cut or
- fabricated. · Not over ordering products and materials

Ensure that where ever possible, materials are reused either on site

- Ensure that where ever possible, materials are reused either on site or offsite
   Identify all waste products that can be reused
   Put systems in place to separate and store reusable items
   Identify the potential applications for reuse both onsite and offsite and facilitate reuse

- Identify all recyclable waste products to be produced on site

   Provide systems for separating and stockpiling of recyclables

   Provide clear signage to ensure recyclable materials are
- Process the material for recycling either onsite or offsite Note: In some cases it may be more economical to send the unsorted waste to specialised waste contractors who will separate and recycle materials at an offsite location.

Waste products which cannot be reused or recycled will be removed and disposed of. The following will need to be considered:

Ensure the chosen waste disposal contractor complies with OEH

STREE

OGIVILIE

requirements
• Implement regular collection of bins

# **WASTE MANAGEMENT PLAN NOTES**

GENERAL WASTE

ALL GENERAL WASTE TO BE STORED IN A SECURE BIN AREA ON SITE . WASTE TO COVERED AND SECURED AS NOT TO ALLOW WASTE TO BLOW OUT OF BIN AND STOP ANIMALS SCAVAGING WASTE BIN TO BE BEHIND SECURE FENCE OR TEMPORARY CONSTRUCTION FENCE. BIN TO BE LOCATED IN EASILY ACCESSIBLE LOCATION FOR WASTE COLLECTION TRUCK OR CONTRACTOR TO ACCESS

#### RECYCABLE WASTE

ALL RECYCLABLE REUSEABLE MATERIALS INLCUDING
- EXCESS FRAMING TIMBER LENGTHS
- CLADDING SHEETS
- FLASHINGS
- WINDOWS AND DOORS
- DOOR DEFER.

ROOF SHEETS FITTINGS AND HARDWARE

TO BE TAKEN BY BUILDER TO BE REUSED ON OTHER PROJECTS OR STORED AT THE BUILDERS WORKSHOP FOR FUTURE USE

ADDITIONAL RECYCABLE OR REUSEABLE WASTE TO BE STORED ON SITE IF OWNER/BUILDER AGREE TO THE MATTER

#### STOCK PILES

ALL STOCKPILES TO BE LOCATED SECURELY BEHIND THE BUILDING LINE OR SITE FENCING. ALL LOOSE STOCKPILES TO BE SECURELY COVERED IF REQUIRED TO PREVENT DUST AND MATERIAL LEAVING SITE

STOCKPILES TO BE LOCATED IN ACCESSIBLE LOCATION FOR EASE OF DELIVERY AND COLLECTION

ALL HAZARDARDOUS MATERIAL TO BE REMOVED FROM SITE BY A FULLY QUALIFIED PERSON/COMPANY ACCORDING TO ALL RELEVANT AUSTRALIAN STANDARDS, BCA REQUIREMENTS AND LOCAL AUTHORITY REQUIREMENTS.

HAZARDARDOUS WASTE TO BE REMOVED ACCORDING TO ANY RELEVANT HAZARDARDOUS WASTE REPORT

IF ANY UNKNOWN HAZARDARDOUS WASTE IS FOUND ON SITE ALL WORK MUST STOP IMMEDIATELY AND BUILDER NOTIFIED - AWAIT INSTRUCTION

AN ONSITE TOILET IS TO BE PROVIDED . TOILET LOCATED IN A SECURE LOCATION BEHIND THE BUILDING LINE.

TOILET TO BE MAINTAINED IN HYGENIC MANNER BY ALL PERSONS USING IT

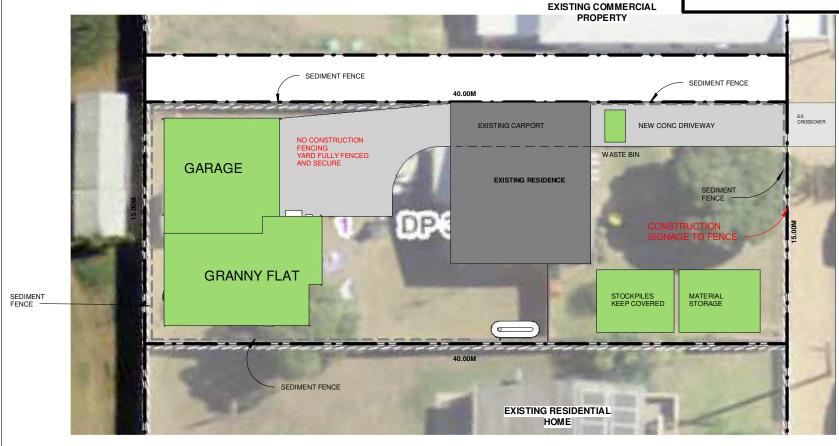
ADVISE BUILDER OF ANY ISSUES

SECURE SITE FENCING TO BE PROVIDED ON SITE AND MAINTAINED IN A SAFE AND SECURE MANNER.

ALL RELEVANT SAFETY SIGNAGE TO BE PLACED ON FENCE AT ENTRY

ALL RELEVANT CONTACT NUMBERS AND APPROVALS TO BE LOCATED ON FRONT OF SITE FENCING

LOCAKBLE AND SECURE ENTRY GATE TO BE PROVIDED ON SITE



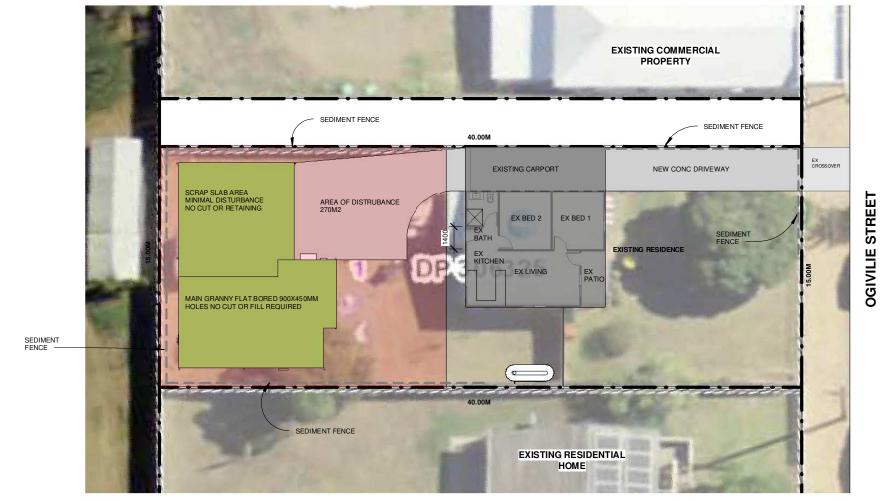
REV: 3 DATE: 04.07.2023 CLIENT: KYLE THRIFT SHEET TITLE: WASTE MANAGEMENT PLAN PLAY DESIGN STUDIO LETS GET STARTEDII ISSUED BY: HW ISSUED TO: CLIENT 11 OGILVIE STREET DENMAN NSW 2328 SHEET NUMBER: A002 DESCRIPTION OF CHANGES LOT 01 DP306325 JOB NUMBER: 2023001 PHONE: 1300 411 030 FOR APPROVALS DESIGNING ACROSS NEW SOUTH WALES DRAWN: PLAY DESIGN STUDIO DATE DRAWN: JAN 2023 EMAIL: info@playdesignsutdio.com.au CHECKED: PLAY SCALE: As indicated ISSUE: 3 WEB: www.playdesignstudio.com.au



# FOR APPROVALS

NORTH





#### EARTHWORKS PLAN A003 1:200

#### DATE: 04.07.2023 REV: 3 CLIENT: KYLE THRIFT SHEET TITLE: EARTHWORKS AND SEDIMENT CONTROL PLAN ISSUED BY: HW ISSUED TO: CLIENT 11 OGILVIE STREET DENMAN NSW 2328 SHEET NUMBER: A003 DESCRIPTION OF CHANGES LOT 01 DP306325 JOB NUMBER: 2023001 PHONE: 1300 411 030 FOR APPROVALS DESIGNING ACROSS NEW SOUTH WALES DRAWN: PLAY DESIGN STUDIO DATE DRAWN: JAN 2023 EMAIL: info@playdesignsutdio.com.au CHECKED: PLAY SCALE: As indicated ISSUE: 3 WEB: www.playdesignstudio.com.au

#### **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

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

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 LEADINING HAND AFTER CONFIRMATION OF SERVICES AND ANY ADDITIONAL REQUIREMENTS

- EARTHWORKS ARE NOT TO EFFECT THE AMNENITY OF THE SURROUNDING PROPERTIES PUBLIC/PRIVATE LAND

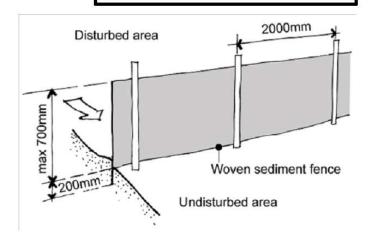
- ALL EXCAVATION AREAS TO BE FENCED AND SECURED AS REQUIRED BY LOCAL GOVERNMENT REQUIREMENTS

- ALL LOOSE STOCKPILES TO BE COVERED IF REQUIRED DO TO WEATHER AND WIND ISSUES

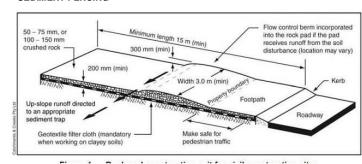
LANDSCAPE FALLS

#### 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



#### SEDIMENT FENCING

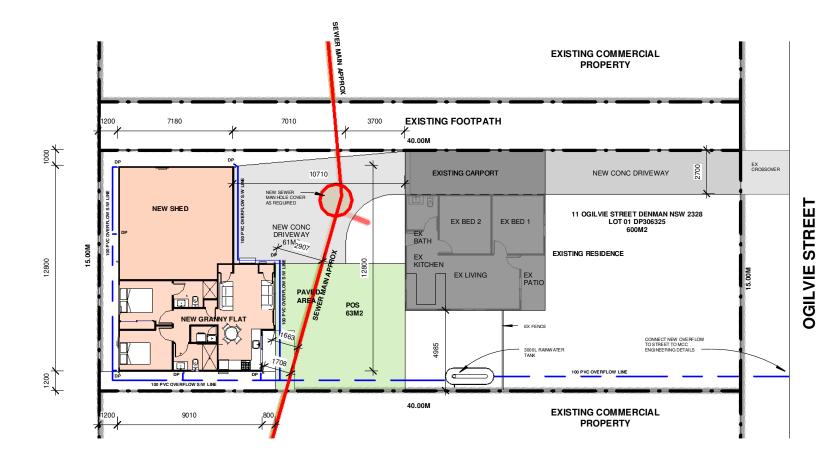


### STABLISED SITE ENTRY DETAIL

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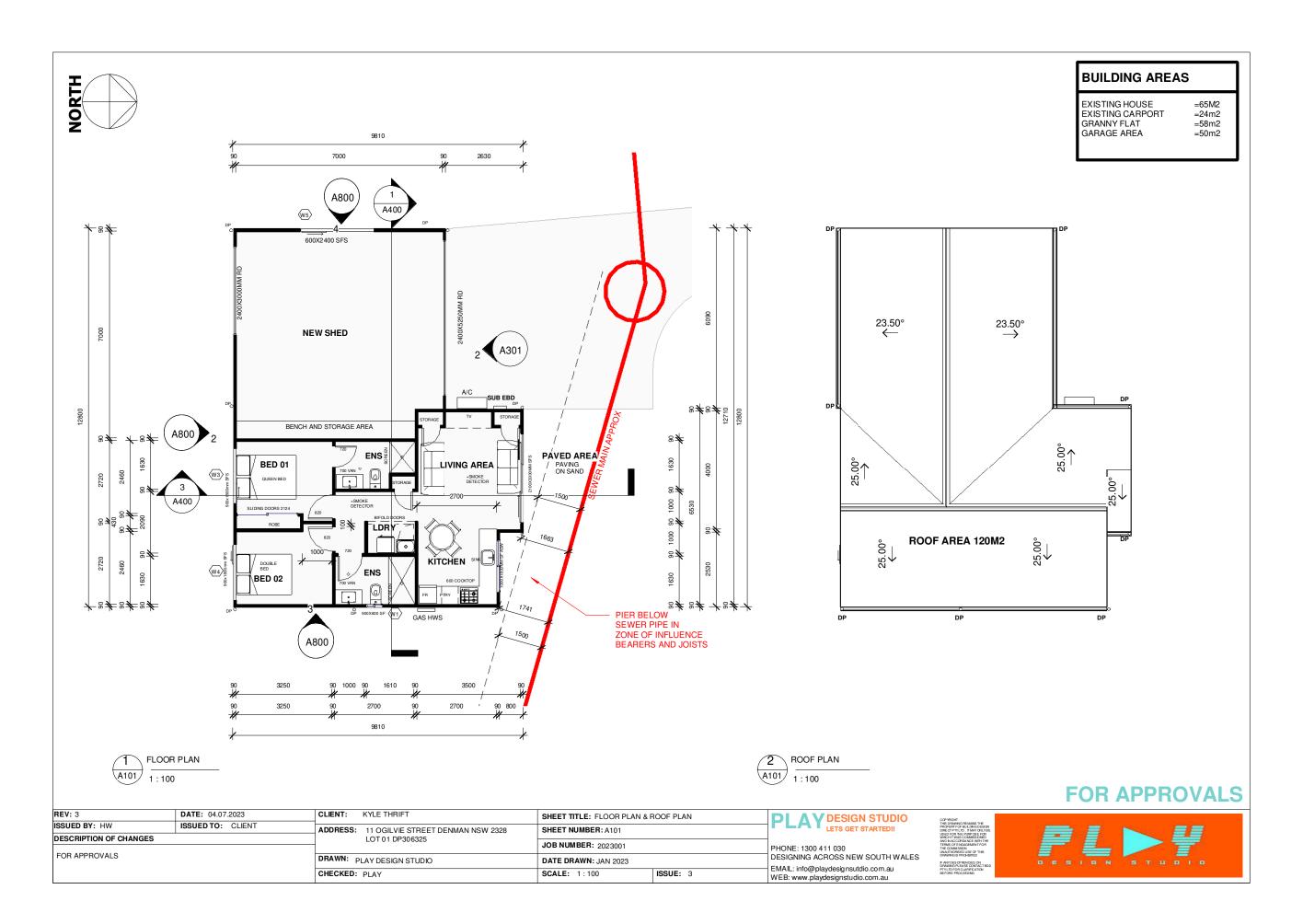
SITE PLAN & STORMWATER

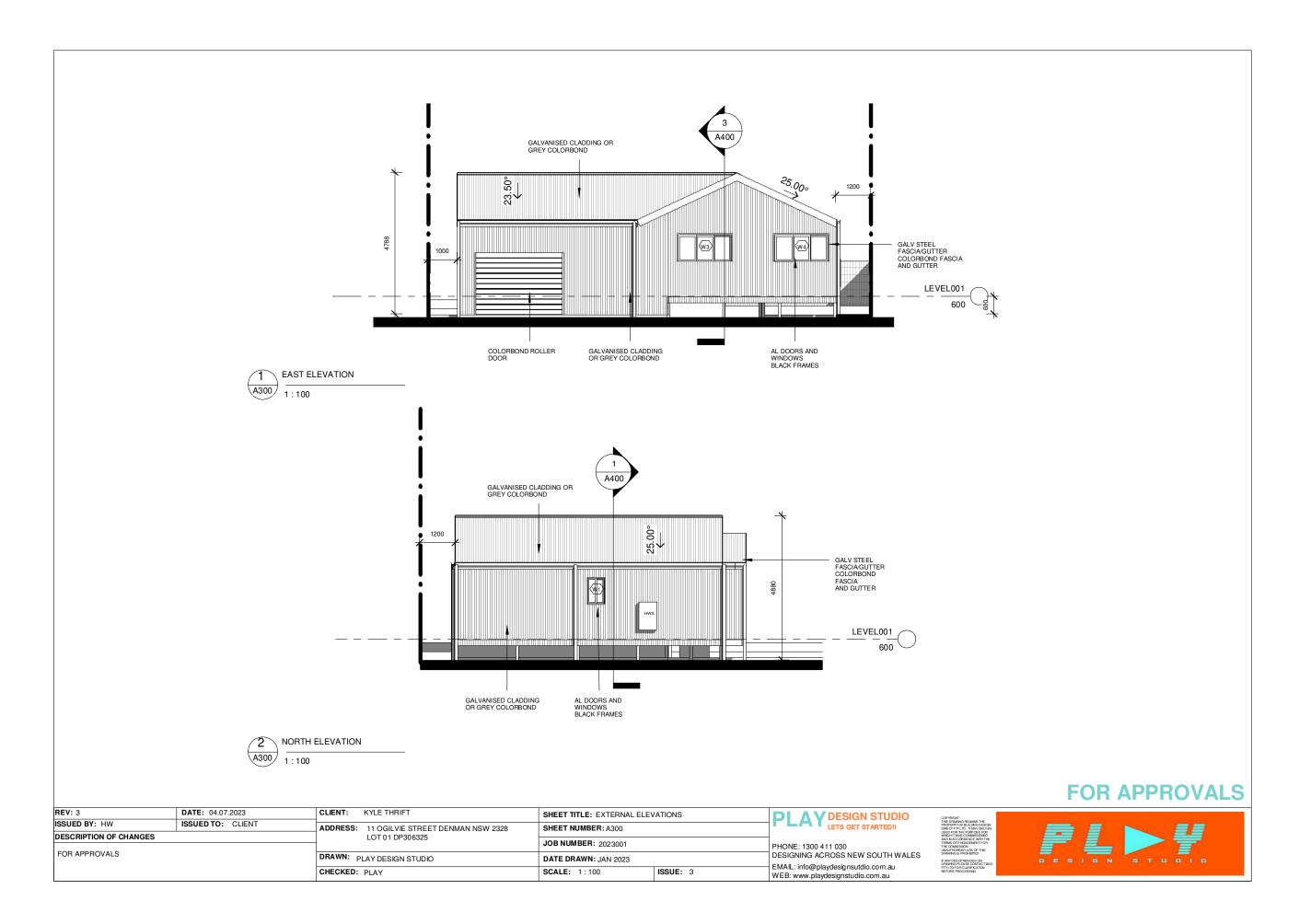
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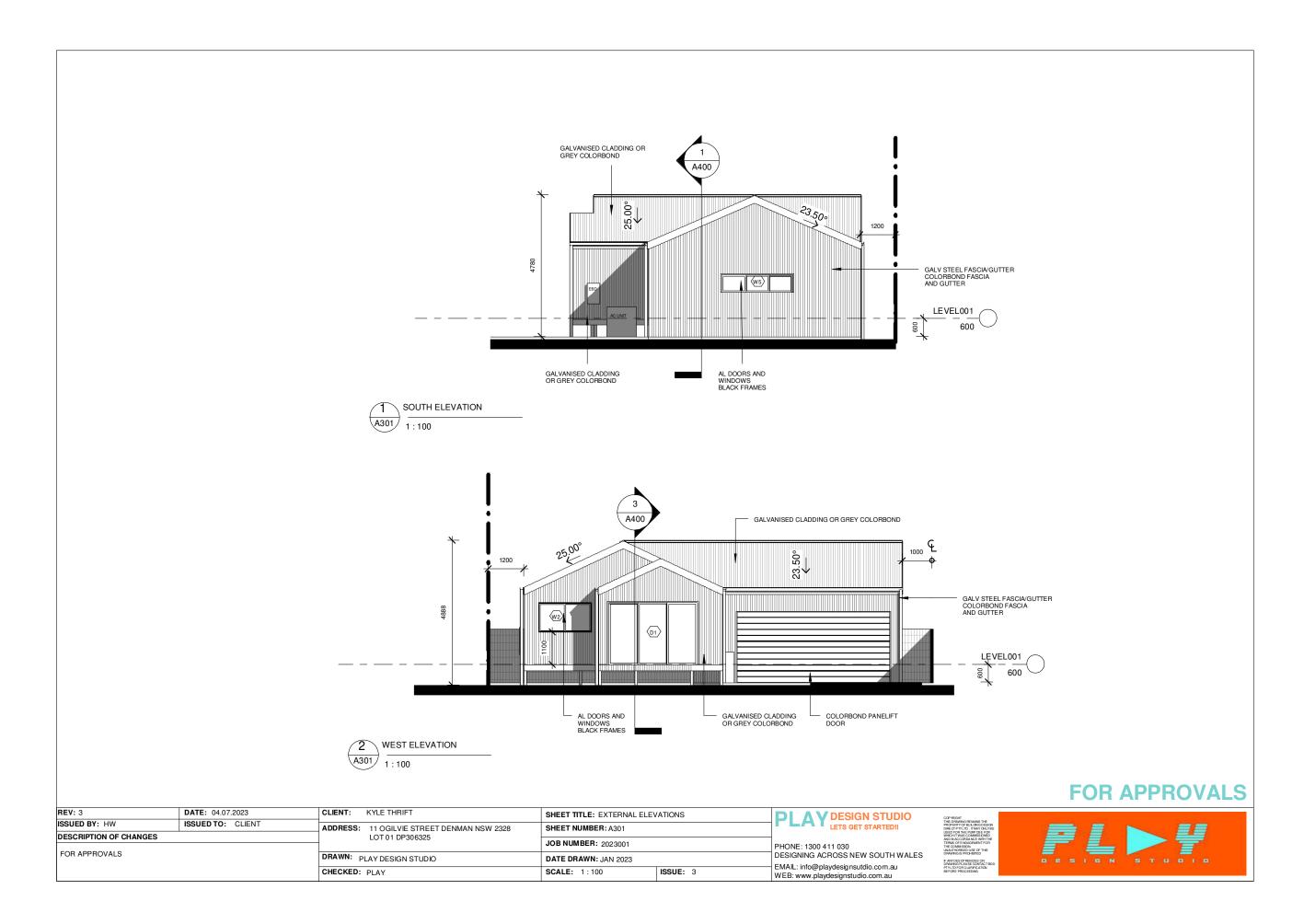
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REV: 3	DATE: 04.07.2023	CLIENT:	KYLE THRIFT	SHEET TITLE: SITE PLAN		DI AV DESIGN STUDIO

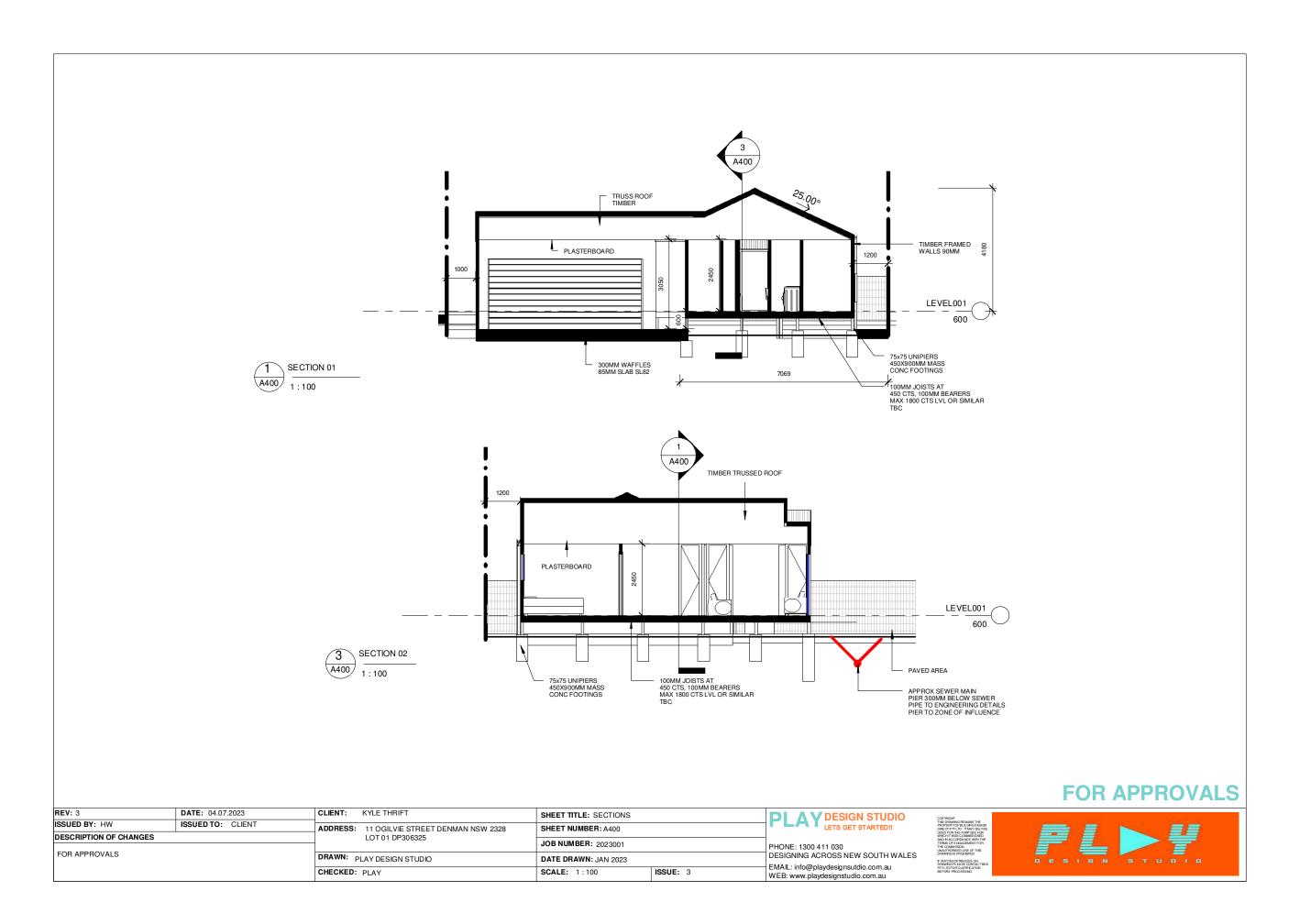
















Building Sustainability Index www.basix.nsw.gov.au

### Single Dwelling

Certificate number: 1390072S

This certificate confirms that the proposed development will meet the NSW government's requirements for sustainability, if it is built in accordance with the commitments set out below. Terms used in this certificate, or in the commitments, have the meaning given by the document entitled "BASIX Definitions" dated 10/09/2020 published by the Department. This document is available at www.basix.nsw.gov.au

Secretary
Date of issue: Tuesday, 02 May 2023
To be valid, this certificate must be lodged within 3 months of the date of issue.



Project summary					
Project name	11 OGILVIE STREI	ET			
Street address	11 OGILVIE Street	DENMAN 2328			
Local Government Area	Muswellbrook Shire	Council			
Plan type and plan number	deposited 306325				
Lot no.	1				
Section no.					
Project type	separate dwelling house - secondary dwelling				
No. of bedrooms	2				
Project score					
Water	<b>✓</b> 42	Target 40			
Thermal Comfort	✓ Pass	Target Pass			
Energy	<b>✓</b> 44	Target 40			

Certificate Prepared by	
Name / Company Name: Play Design Studio	
ABN (if applicable): 91135261237	

BASIX Planning, Industry & Environment www.basix.nsw.gov.au Version: 3.0 / DARWINIA\_3\_20\_0 Certificate No.: 1390072S Tuesday, 02 May 2023 page 1



#### Description of project Project address 11 OGILVIE STREET Local Government Area Muswellbrook Shire Council Climate zone Plan type and plan number Area adjusted cooling load (MJ/m².year) Deposited Plan 306325 Ceiling fan in at least one bedroom Ceiling fan in at least one living room or other conditioned area separate dwelling house - secondary dwelling Project score ✓ 42 Target 40 Site details Thermal Comfort ✓ Pass Target Pass Site area (m²) Roof area (m²) Energy **✓** 44 Target 40 Conditioned floor area (m2) Unconditioned floor area (m2) Roof area (m2) of the existing dwelling No. of bedrooms in the existing dwelling 2 Planning, Industry & Environment www.basix.nsw.gov.au Version: 3.0 / DARWINIA\_3\_20\_0

Ther	mal Comfort Commitments		Show on DA plans	Show on CC/CDC plans & specs	Certifier check
Gene	eral features				
The d	welling must not have more than 2 storeys.		_	-	
The co	onditioned floor area of the dwelling must not exceed 3	300 square metres.	~	~	-
The di	welling must not contain open mezzanine area exceed	ling 25 square metres.	-	~	-
The d	welling must not contain third level habitable attic room	i.	V	~	~
Floor	r, walls and ceiling/roof		'		
The ap		oof of the dwelling in accordance with the specifications listed in the t	able	~	~
Const	truction	Additional insulation required (R-Value) Of	her specifications		•
floor -	suspended floor above open subfloor, framed	1.3 (or 2 including construction) (down)			
extern clad)	al wall - framed (weatherboard, fibre cement, metal	2.20 (or 2.60 including construction)			
interna	al wall shared with garage - plasterboard	nil			
ceiling	and roof - flat ceiling / pitched roof	ceiling: 3.45 (up), roof: foil backed blanket (55 mm) un	ventilated; medium (	solar absorptance 0.475	5-0.70)
Note	Insulation specified in this Certificate must be install	alled in accordance with Part 3.12.1.1 of the Building Code of Australia	le:		
Note		ed with due consideration of condensation and associated interaction		ng materials.	

REV: 3	DATE: 04.07.2023	CLIENT: KYLE THRIFT	SHEET TITLE: BASIX 01		DI A V DESIGN STUDIO	COPYRIGHT		
ISSUED BY: HW	ISSUED TO: CLIENT	ADDRESS: 11 OGILVIE STREET DENMAN NSW 2328	SHEET NUMBER: A600		LETS GET STARTEDII	COPYRIGHT THIS DRAWING REMAINS THE PROPERTY OF BUILDING DESIGN DIPECT PTYLTD . IT MAY ONLY BE		_ ==
DESCRIPTION OF CHANGES		LOT 01 DP306325	JOB NUMBER: 2023001		_	USED FOR THE PURPOSE FOR WHICH IT WAS COMMISSIONED AND IN ACCORDANCE WITH THE TERMS OF ENGAGEMENT FOR		
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		CHECKED: PLAY	SCALE:	ISSUE: 3	WEB: www.playdesignstudio.com.au	BEFORE PROCEEDING		

Thermal Comfort Commitments	Show on DA plans	Show on CC/CDC plans & specs	Certifier check
Windows, glazed doors and skylights			
The applicant must install the windows, glazed doors and shading devices described in the table below, in accordance with the specifications listed in the table. Relevant overshadowing specifications must be satisfied for each window and glazed door.	~	~	~
The dwelling may have 1 skylight (<0.7 square metres) which is not listed in the table.	-	~	-
The following requirements must also be satisfied in relation to each window and glazed door:		V	
For the following glass and frame types, the certifier check can be performed by visual inspection.		111	~
- Aluminium single clear			
- Aluminium double (air) clear			
- Timber/uPVC/fibreglass single clear			
- Timber/uPVC/fibreglass double (air) clear			

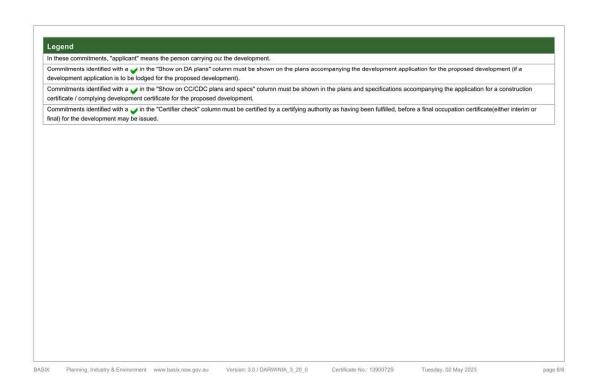
Window/glazed door no.	Maximum height (mm)	Maximum width (mm)	Туре	Shading Device (Dimension within 10%)	Overshadowing
North facing					
D1	2100	3600	aluminium, single, clear	verandah 3000 mm, 2400 mm above base of window or glazed door	not overshadowed
East facing					
W1	600	2400	aluminium, single, clear	none	not overshadowed
W2	900	600	aluminium, single, clear	none	not overshadowed
South facing					
W3	900	1800	aluminium, single, clear	none	not overshadowed
W4	900	1800	aluminium, single, clear	none	not overshadowed
West facing					
W5	600	2400	aluminium, single, clear	none	not overshadowed

BASIX Planning, Industry & Environment www.basix.nsw.gov.au Version: 3.0 / DARWINIA\_3\_20\_0 Certificate No.: 1390072S

Energy Commitments	Show on DA plans	Show on CC/CDC plans & specs	Certifier check
at least 1 of the living / dining rooms; dedicated		V	~
the kitchen; dedicated		V	-
all bathrooms/toilets; dedicated			
the laundry; dedicated			-
all hallways; dedicated		_	-
Natural lighting			
The applicant must install a window and/or skylight in the kitchen of the dwelling for natural lighting.		~	
The applicant must install a window and/or skylight in 1 bathroom(s)/toilet(s) in the development for natural lighting.	V	~	~
Other			
The applicant must construct each refrigerator space in the development so that it is "well ventilated", as defined in the BASIX definitions.		~	
The applicant must install a fixed outdoor clothes drying line as part of the development.		~	

BASIX Planning, Industry & Environment www.basix.nsw.gov.au Version: 3.0 / DARWINIA\_3\_20\_0 Certificate No.: 1390072S Tuesday, 02 May 2023

Energy Commitments	Show on DA plans	Show on CC/CDC plans & specs	Certific
Hot water			
The applicant must install the following hot water system in the development, or a system with a higher energy rating: gas instantaneous with a performance of 5 stars.		~	~
Cooling system			
The applicant must install the following cooling system, or a system with a higher energy rating, in at least 1 living area: 1-phase airconditioning; Energy rating: 6 star (cold zone)		~	V
The applicant must install the following cooling system, or a system with a higher energy rating, in at least 1 bedroom: 1-phase airconditioning; Energy rating: 6 star (cold zone)		V	-
The cooling system must provide for day/night zoning between living areas and bedrooms.		V	~
Heating system			
The applicant must install the following heating system, or a system with a higher energy rating, in at least 1 living area: 1-phase airconditioning; Energy rating: 6 star (cold zone)		~	-
The applicant must install the following heating system, or a system with a higher energy rating, in at least 1 bedroom: 1-phase airconditioning; Energy rating: 6 star (cold zone)		V	
The heating system must provide for day/night zoning between living areas and bedrooms.		V	-
Ventilation			
The applicant must install the following exhaust systems in the development:			
At least 1 Bathroom: individual fan, ducted to façade or roof; Operation control: manual switch on/off		<b>✓</b>	~
Kitchen: individual fan, ducted to façade or roof; Operation control: manual switch on/off		~	~
Laundry: individual fan, ducted to façade or roof; Operation control: manual switch on/off		<b>✓</b>	-
Artificial lighting			
The applicant must ensure that the "primary type of artificial lighting" is fluorescent or light emitting diode (LED) lighting in each of the following rooms, and where the word "dedicated" appears, the fittings for those lights must only be capable of accepting fluorescent or light emitting diode (LED) lamps.			
at least 2 of the bedrooms / study; dedicated		52	



# **FOR APPROVALS**

REV: 3	<b>DATE:</b> 04.07.2023	CLIENT:	KYLE THRIFT	SHEET TITLE: BASIX 02		DI A V DESIGN STUDIO		
SSUED BY: HW	ISSUED TO: CLIENT	ADDRESS: 11 OGILVIE STREET DENMAN NSW 2328		SHEET NUMBER: A601		LETS GET STARTEDII		
DESCRIPTION OF CHANGES		LOT 01 DP306325				_		
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	WINDOW AND DOOR SCHEDULE											
WIN NO.	Window Location	WINDOW SIZE	Orientation	WINDOW AREA	GLAZING TYPE	Shading Type and Size	Shade height above window	Overshadowing	Frame Material	Frame Colour	Reveal Detailss	COMMENTS
D1	GRANNY LIVING	2100X3000 FIXED SLIDING FIXED	NORTH	6.3	CLEAR	NO	<b>0</b> NO		ALUMINIUM	BLACK	I	
W1		900X600 SLIDE/FIXED	EAST	0.54	CLEAR	NO	0 NO		ALUMINIUM	BLACK		
W2	GRANNY LIVING	1000X1800MM SF ASW	NORTH	1.8	CLEAR	NO	0 NO		ALUMINIUM	BLACK		
W3	GRANNY BED	900x1800mm SFS	SOUTH	1.62	CLEAR	NO	0 NO		ALUMINIUM	BLACK		
W4	GRANNY BED	900x1800mm SFS	SOUTH	1.62	CLEAR	NO	0 NO		ALUMINIUM	BLACK		
W5	DOUBLE GARAE	600X2400 SLIDE/FIXED/SLIDE	WEST	1.44	CLEAR	NO	0 NO		ALUMINIUM	BLACK		
W6		1215										
W7		1215										
W8		1215										
W9		1215										
W10		1215										

# FOR APPROVALS

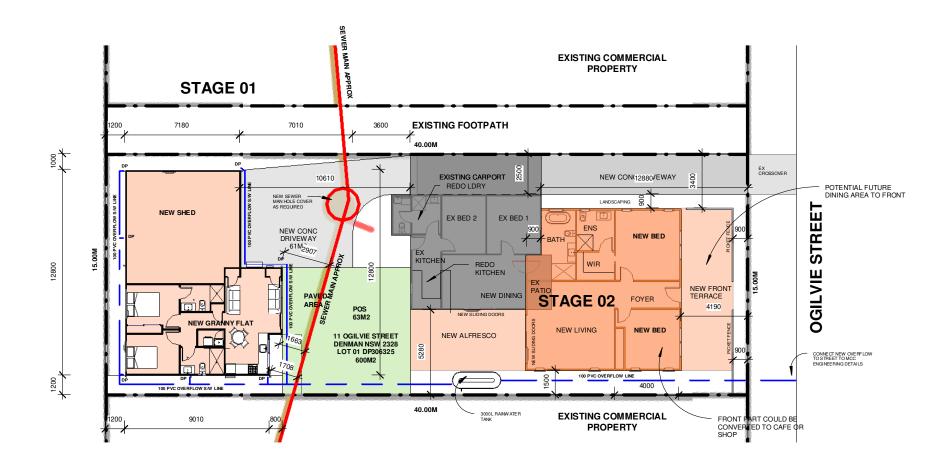
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SITE PLAN & STORMWATER

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#### Preparation of Development Control Plan for 9036 New England 11.1.2. **Highway Muswellbrook**

1. 9036 NEH Urban Release Area DCP (AUGUST 2023) **Attachments:** 

[11.1.2.1 - 31 pages]

Responsible Officer: Sharon Pope - Director - Planning & Environment

**Author:** Hamish McTaggart (Development Co-Ordinator)

Community Plan Issue: 3 - Environmental Sustainability

Community Plan Goal: An environmentally sensitive and sustainable community

1.2.3 - Review the Local Environmental Plan and

Community Plan Strategy:

Development Control Plan to improve investment

certainty for industry.

Not applicable

#### **PURPOSE**

In November 2022, Council received a development application for a 68-lot subdivision and childcare centre at 9036 New England Hwy, Muswellbrook (Lot 1 DP 1203294) - DA 2022/132.

The subject land is within a nominated Urban Release area under the provisions of the Muswellbrook Local Environmental Plan (LEP) 2009. Clause 6.3 of The Muswellbrook LEP 2009 requires a Development Control Plan to be in place for land within an urban release area to grant development consent for a development application involving the subdivision of the land concerned.

A Development Control Plan Chapter has been prepared in relation to 9036 New England Highway and that Development Control Plan publicly notified in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

The purpose of this report is to provide Council with information on the new Development Control Plan Chapter and seek a resolution to adopt it as part of the Muswellbrook Development Control Plan.

#### OFFICER'S RECOMMENDATION

Council ADOPTS the Draft Development Control Plan Chapter for 9036 New	<b>England</b>
Highway, Muswellbrook.	-

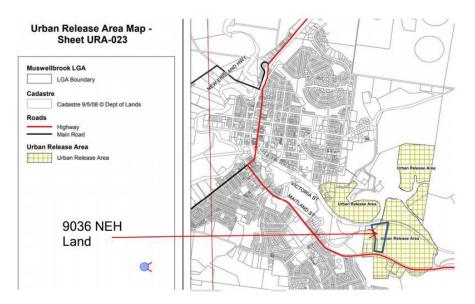
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Moved:	Seconded:



### **REPORT**

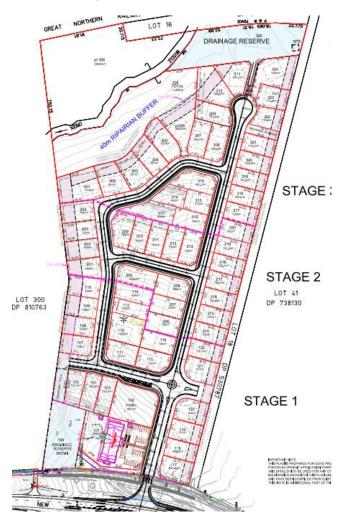
Council has received a development application involving the subdivision of Lot 1 DP 1203294 (9036 New England Highway) into sixty-eight (68) Lots and the construction of a childcare centre.

The figure below identifies the location of the subject site.









Council Officers have utilised the NSW Department of Planning and Environment (DPE) Regional Housing Squad to assist in the assessment of the development application. NSW DPE have been involved in the preparation of the Development Control Plan as part of the DA Assessment.

The land subject to this development application is located within an 'Urban Release Area' under the Muswellbrook LEP 2009. Clause 6.3 of the Muswellbrook LEP 2009 includes a requirement for a Development Control Plan to be in place for land located within an 'Urban Release Area' prior to granting development consent for the subdivision of the land concerned.

A Draft Development Control Plan Chapter has been prepared in relation to the land affected by DA 2022/132 in collaboration with the proponent, DPE – Regional Housing Squad, and Council Officers. The Draft DCP is included as an attachment to this report. All other chapters of the DCP will also remain relevant to the site (e.g., management of stormwater and subdivision road standards).

The Draft Development Control Plan Chapter does not supersede the provisions of Council's existing Residential Development Control Plan Chapter. It instead provides further detail specific to future development at this site.



The Draft Development Control Plan is informed by the Development Application related to the proposed subdivision of the land and seeks to reinforce measures that will be relevant to the future development of the site identified through, or in response to, the DA 2022/132 subdivision application.

Provisions included in the Draft Development Control Plan include:

- Staging of subdivision of the site.
- Servicing provisions relevant to the development of the land.
- Transport and connectivity.
- Landscaping.
- Requirements related to recreation areas.
- Stormwater management.
- Site specific considerations related to bushfire, flooding, flora and fauna, Aboriginal heritage, and noise and vibration.
- Residential provisions.

Council Officers have completed the public notification of the Draft Development Control Plan in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and Council's Community Participation Plan. No submissions were received in relation to the Development Control Plan.

#### **COUNCIL DEFERRAL**

The Draft Development Control Plan (DCP) was reported to the 22 August 2023 Ordinary Council Meeting, where the item was deferred.

A Briefing Session has subsequently been held with Councillors in relation to the Draft Development Control Plan chapter and development application.

DA 2022/132 for subdivision of the site and approval of a childcare centre is also being reported to this Council Meeting for determination. The Council Report related to DA 2022/132 provides further detailed information regarding the assessment of the proposed development against existing controls and matters discussed at the Councillor Briefing.

A minor amendment has been made to the Draft DCP chapter since the August Council Meeting. This minor amendment has updated the Lot arrangement in the draft DCP to reflect the current lot arrangement proposed for DA 2022/132.

It remains the recommendation of Council Officers that the Draft Development Control Plan Chapter is adopted.

#### **OPTIONS**

#### Council may:

- 1. Adopt the Draft Development Control Plan Chapter provided in attachment 1.
- 2. Adopt the Draft Development Control Plan Chapter provided in attachment 1, subject to any alterations the Council considers appropriate.
- 3. Decide not to proceed with the Draft Development Control Plan Chapter and provide reasons for the decision.

#### CONCLUSION

It is recommended that Council adopts the Draft Development Control Plan Chapter – 9036 NEH, to provide guidance for future development at 9036 New England Highway, Muswellbrook.

### 9036 NEH

### Urban Release Area

#### **OVERVIEW**

The 9036 NEH Urban Release Area is located on the outskirts of Muswellbrook on the New England Highway. The land is within a defined Urban Release Area as shown on figure 1 and represents approximately 10% of the area.

The subject land (9036 New England Highway – lot 1 DP 1203294) is situated approximately 3 kilometers from the Muswellbrook Central Business District. The area of the subject land is approximately 10ha and is bounded by the New England Highway to the south and bisected at the rear (north) of the land by Muscle Creek. Appendix 1 confirms the extent of adjoining and nearly land which has also been identified as an urban release area, however, the vast majority of the land (other than that to the south of the New England Highway) has not been developed to date.

The subject site is irregular in shape with a frontage of approximately 160 metres to the NEH and 240 metres to Northern boundary. The land is predominately cleared with a scattering of trees remaining across the site.

Through the implementation of the 9036 NEH Urban Release Area DCP, Muswellbrook Shire Council wishes to establish controls and guidelines to facilitate successful residential development that is of a high quality and considers the constraints of the area. It is envisaged that the DCP will ensure residential development is of a high quality which complements, yet differentiates the locality from other established residential areas, and which will have minimal adverse impacts on the natural environment.

Specific development controls are included to ensure that the development has regard for sustainable environmental management principals.

#### INTRODUCTION

#### **Application**

This section applies to that land within the Urban Release Area Map, outlined with a thick blue line and identified in figure 1 above.

# Relationship to other plans and chapters of the Development Control Plan This Section supplements the provisions of the Muswellbrook Local Environmental Plan 2009, and the other chapters of the Muswellbrook Development Control Plan.

For many developments, this Chapter will provide an overview and/or supplementary controls, with most of the controls applying to the development being contained in other chapters of the Muswellbrook Development Control Plan.

Where there is an inconsistency between provisions of this Chapter and those of other Chapters of the Muswellbrook Development Control Plan, this Chapter prevails.

9036 NEH DEVELOPMENT CONTROL PLAN

A range of other Council plans, policies and strategies also apply to the Release Area, as may a range of State Government plans, policies and strategies.

Council officers should be consulted if there is doubt as to the applicability of a specific policy, plan, strategy or provision to the Release Area.

Development proponents are advised to seek professional advice regarding the requirements that may apply to their proposal.

Note: all figures in this Section are conceptual and schematic in nature.

#### **Purpose**

The purpose of this Chapter is to provide detailed controls to guide development in the Muswellbrook Urban Release Area

#### **Objectives**

The objectives of this DCP are to ensure that:

- site layout and building design responds to the characteristics, opportunities and constraints of the site and its context.
- the design of new buildings reflects and reinforces, or is complementary to, the character of the locality.
- the character and pattern of existing setbacks and building orientation within residential streets is reinforced.
- site facilities are unobtrusive, integrated into the proposal, provide for needs of residents and reduce the impact of development on the environment.
- the design and provision of public utilities, including sewerage, water, electricity, street lighting and telephone conform to the cost-effective performance measures of the relevant servicing authority.
- ancillary buildings do not dominate the streetscape.

#### **Development Requirements**

All development applications shall demonstrate consistency with the following requirements.

#### 1 Staging Plan

All development applications for subdivisions shall include a staging plan, where the development is intended to be released sequentially. Appendix 2 provides the likely staging layout for the locality – however this may be altered subject to staging being sequential and providing for connectivity to adjacent urban release area land.

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#### **Objectives**

- a) To ensure that development of the land is efficient and cost effective.
- b) To facilitate the logical expansion of urban infrastructure.
- c) To ensure residents have access to urban infrastructure and services
- To provide a mechanism for flexibility in the staging of development where this is justified, and the timing impacts are mitigated.

#### **Controls**

- (i) The development of land is to be generally consistent with the Staging Plan shown in Appendix 2.
- (ii) Each Stage may be subdivided into substages. The substages should be identified in a report to accompany the development application for subdivision, together with a description of the substages and the impact of the substage sequence on the provision of infrastructure.
- (iii) Development of land inconsistent with the Staging Plan can occur if the proposed sequence is justified by a supporting study, to the satisfaction of the consent authority. The supporting study must be lodged prior to or with the relevant development application.
- (iv) At a minimum, the issues to be addressed in a supporting study to vary the staging sequence include:
  - Impacts on the availability of urban services and infrastructure including open space; pedestrians, cyclists and residents.
  - Impacts on the development of other land/development stages.
  - Servicing strategy.
  - Cost impacts on other parties, including servicing authorities.

Note: If the timing of development is inconsistent with the Staging Plan there may be implications for the quantum or timing of infrastructure works or contributions required as a result of that development, so as to ensure other stages are not disadvantaged or to ensure that residents have sufficient access to urban services and infrastructure.

- (v) All land in 9036 New England Highway is to be serviced by reticulated water and sewerage services unless a servicing study and strategy is undertaken which justifies an alternative means of providing such services. The servicing strategy must be to the satisfaction of the consent authority prior to the granting of development consent. Refer to Appendix 3 for indicative service strategy,
- (vi) Any offsite easements and infrastructure required to enable runoff from any Stage of the Urban Release Area is to be conveyed to waterways in a managed fashion and, is to be registered and the infrastructure connected prior to the registration of the lots within r that Stage.

#### 2 Servicing Strategy

Appendix 3 shows the conceptual servicing strategy for 9036 NEH. In general, water supply will be initially available from the southwestern corner of the release area, and the sewer will drain to the southwestern corner.

### Objectives:

- a) To ensure services are available in a cost-effective manner.
- b) To minimise the life cycle costs of the provision and operation of service

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infrastructure.

c) To connect all lots to reticulated services.

#### Controls:

- Consent will not be granted for the subdivision of land unless a Servicing Strategy has been lodged to the satisfaction of Muswellbrook Shire Council.
- (ii) The required Servicing Strategy should address:
  - The provision of hydraulic, telecommunication and electricity services.
  - Proposed utilities networks and their relationship to adjacent properties, including links to adjacent properties.
  - Capacities of the utility services and the impact of the proposed development on remaining service capacity.
  - Options for utility service provision and a preferred option.
  - Implications of the servicing options for other landowners in the release area.
  - Proposed cost sharing arrangements with other landowners for any shared utility infrastructure including facility upgrades.
  - Details of consultations with servicing authorities in the preparation of the Servicing Strategy.
- (iii) Development will be required to pay for the upgrade of lead in and other major infrastructure, such as carrier mains, pumping stations, reservoirs and treatment plants.
- (iv) Variations from the Council's Servicing Strategy may only occur if justified by a supporting study to the satisfaction of Muswellbrook Shire Council. At a minimum, the supporting study must address the environmental, capital and operational costs and implications of the variation including the implications for other development stages.
- (v) The provision of easements may need to occur if required by Muswellbrook Shire Council. Easements will be required to be negotiated between adjoining landowners. Prospective developers should contact Council regarding Council's interest in being involved in specific negotiations.

#### 3 Transport

#### **Objectives**

- To ensure residents have access to safe convenient vehicular, pedestrian and bicycle networks.
- b) To maximise vehicular, cyclist and pedestrian connectivity within the release area and to other parts of Muswellbrook.
- c) To provide for safe and convenient pedestrian and bicycle movement throughout the release area and to important destinations in Muswellbrook.
- d) To encourage low vehicle speeds throughout the Release Area.
- e) To ensure that the impact of development on transport infrastructure outside of the Urban Release area is considered.

### Controls

a) Consent will not be granted for the subdivision of land unless a Traffic Impact Assessment (TIA) has been lodged to the satisfaction Muswellbrook Shire Council. The TIA should address such matters as traffic volumes, triggers for the provision of infrastructure and upgrades, an assessment of the impact of the development on the road system internal and external to the site and Urban Release Area,

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pedestrian and cyclist networks, identification of road upgrades, intersection upgrades and the cumulative impact of development on the road network, at a minimum.

- The road, cycle and pedestrian network is to be generally consistent with the concept plan shown in Appendix 4. – Road Hierarchy.
- The positioning and design of movement networks must give priority to: facilitating efficient walking, cycling and public transport networks and;
- retaining and complementing natural topography, such as views and drainage.
- Alternative access points other than those identified in Figure 6 are to be supported by a traffic study to the satisfaction of Muswellbrook Shire Council.
- c) The preferred location of roundabouts is shown in Appendix 4. Road Hierarchy. Any change to the preferred location of roundabouts or other road infrastructure is to be addressed in a traffic study to accompany the development application for subdivision, and is to be to the satisfaction of Muswellbrook Shire Council.
- d)

#### Road and Intersection Design

The road layout must be consistent with the Indicative Layout Plan illustrated in Appendix 4 – Road Hierarchy. Typical Road section as shown in figure 1 Development applications for subdivisions must ensure that road networks connect to other development areas in a logical hierarchy of street function, where applicable.

The following conditions shall apply to development of the land:

- A 2m wide footpath shall be provided to the New England Rd frontage of stage 1 as shown in figure 1.
- A 1.5m wide off-road footpath must be constructed within each stage shown in figure 1.
- A roundabout shall be provided with stage 1 construction, as shown in Appendix 4. – Road Hierarchy.
- The intersection with the New England Highway shall be constructed in accordance with TfNSW guidelines with relevant approvals obtained for such work.
- All roads and footpaths shall be constructed in accordance with Council requirements.
- The internal road design shall be in accordance with Appendix 4. Road Hierarchy.

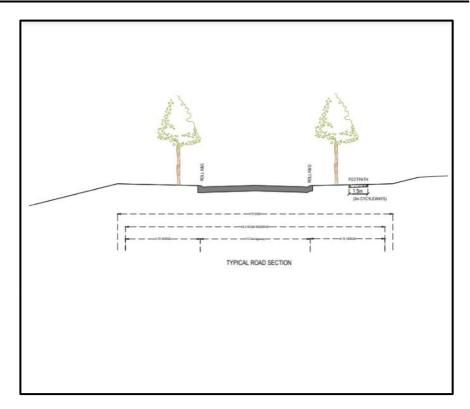


Figure 1 Typical Road Section

#### **Movement Hierarchy**

Suitable transport access and connectivity within the site and to adjoining areas shall be maintained at all times for motor vehicles, pedestrians and cyclists.

#### 4 Overall Landscaping Strategy

A landscape plan shall be submitted with development applications for subdivision. The landscape plan shall identify all trees that are to be retained.

#### **Objectives**

- a) Existing native vegetation is to be retained where possible.
- b) The scenic quality and local character of the area is maintained.
- c) Vegetation links are to be maintained along Muscle Creek.

#### Controls

(i) Consent shall not be granted for the subdivision of land unless a landscape plan has been lodged to the satisfaction of Muswellbrook Shire Council. A preliminary landscaping plan is shown at Appendix 5. A concept plan may be acceptable at the development application stage and a detailed plan at the construction certificate stage (this should be confirmed with Muswellbrook Shire Council prior to lodgment of a development application for subdivision). At a minimum the landscape plan is to contain details of the proposed landscaping of the public domain, including streets and open space. This landscape plan must be

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to Muswellbrook Shire Council's satisfaction prior to the granting of development consent.

- (ii) Street trees are to be planted to:
  - Soften the streetscape.
  - Act as traffic calming measures through perceived narrowing the road.
  - Provide shade to footpaths and roads.
  - Generally in accordance with Appendix 5.
  - The main watercourse drainage reserve is to retain existing native vegetation and / or be landscaped as a riparian area, with native vegetation.
  - Landscaping should enhance the retained vegetation where relevant. Any future landscaping should aim to utilise locally occurring species.
  - Landscaping plan shall identify any trees which are to be retained (refer Appendix 9)

#### Boundary fencing

Boundary fencing within the precinct shall be:

- Side boundaries limited to maximum 1.8m high colorbond or 1.8m timber lapped and capped.
- Front boundaries open fencing of maximum height 1m
- Acoustic Fencing for lots specified in Appendix 9 to mitigate noise from the New England Highway and / or the Early Learning Centre shall be 1.8m timber lapped and capped.

#### 5 Passive and Active Recreational Areas

#### **Objectives**

- a) Open Space is to be provided for a variety of recreational, aesthetic, and environmental purposes.
- b) Open space should be easily maintained.
- c) Open space should provide informal and formal settings.

### Controls

- i. Open space is to be provided generally in accordance with Appendix 12
- ii. A local park with an area of not less than 0.2ha with various facilities, including a playground should be provided, as shown in Appendix 12 or other location approved by the consent authority.
- iii. Open space areas are to be linked by pedestrian and cycle paths, where practical, to provide an accessible network of open space.
- iv. Where possible, roads or laneways/share ways are to border open space areas in order to provide passive surveillance and access.
- v. The open space (including drainage reserves) / recreations areas shall be dedicated to Council.

#### 6 Stormwater and Water Quality Management Controls

Stormwater and water quality management control shall comply with the requirements of AusSpec and Council DCP Section 25 – Stormwater Management. Drainage reserves including drainage paths shall generally be in accordance with Appendix 6, unless otherwise approved by Muswellbrook Shire Council

9036 NEH DEVELOPMENT CONTROL PLAN

#### **Objectives**

- The water balance of 9036 NEH locality is to be as close as possible to natural conditions.
- b) Water management should seek to provide an effective treatment train in the context of minimising Council's long term maintenance requirements. The treatment train should consider source controls, water quality, water volume, on and off-site detention, instream treatment measures, salinity management and the implications for receiving areas.
- Runoff generated by more intense rainfall causes no downstream property damage or risk to public safety and to mimic the existing flow regime as near as possible.
- Any easements required over adjoining land, are to be negotiated between adjoining landowners prior to approval of development construction certificate.

#### Controls

- Consent will not be granted for the subdivision of land unless a Water Management (stormwater) Strategy has been lodged to the satisfaction of the Muswellbrook Shire Council y prior to issue of the construction certificate
- (ii) Water management strategies are to be generally consistent with the Drainage Reserves and Flow Paths shown at Appendix 6
- (iii) The quality and quantity of runoff of each stage of development is to be equivalent to the predevelopment state. Council will define each stage for the purposes of this Control.
- (iv) Development of land inconsistent with the Water Management Strategy can occur if the proposed measures are justified by a supporting study, to the satisfaction of the Muswellbrook Shire Council. The supporting study must be lodged prior to or with the relevant development application.
- (v) The supporting study is to include (but not limited to):
  - Hydrological and flood analysis of the proposed strategy
  - Impact on the overall Water Management Concept Plan
  - Impact on other future urban development in proximity.
  - Cost impact on Council (recurrent) and other future urban development (capital)
  - Impact on upstream and downstream land and buildings
  - Environmental impact.
- (vi) Stormwater strategy and design is to consider the context of the site along with upstream and downstream impacts.
- (vii) Water management strategies should aim to achieve a:
  - · Reduction of erosion.
  - Reduction of flow velocity.
  - Reduction of runoff volume through at source controls and water quality treatment.
  - Provision of drainage easements if required.
- (viii) Development is to comply with the provisions of Section 25 (Stormwater Management) of the Muswellbrook Development Control Plan.

#### 7 Amelioration of Natural and Environmental Hazards

#### 7.1 Bushfire

Future development shall be assessed in accordance with the NSW Rural Fire Service's 'Planning for Bush Fire Protection Guidelines' 2019

#### Objective

- Ensure that all dwellings are constructed to the appropriate BAL rating.
- Asset protection zones areas to be maintained.
- No dwellings are to be erected within those areas nominated as BAL FZ or BAL40 (refer to Appendix 7)

#### Controls

- Applications for dwellings are to be accompanied by appropriate Bushfire Assessments prepared in accordance with 'Planning for Bush Fire Protection Guidelines' 2019
- All dwellings are to be constructed to achieve the relevant BAL level determined for the allotment.
- Restrictions on use of land under s88b of the Conveyancing Act, 1919 shall be
  placed on those allotments which have been identified as having BAL 40 or
  BAL FZ exposure. Such restrictions shall prohibit construction of any habitable
  buildings within any part of the lots so identified.

### 7.2 Flooding

The land is affected by the 1:100 year flood levels however such levels are contained within the banks of Muscle Creek as shown on Appendix 8. The development of the land will not be impacted by flooding. will not impact on future residential development.

Future development must still however consider any relevant controls for subdivision in flood affected areas outlined in Section 13 – Floodplain Management of the Muswellbrook DCP 2009.

#### 7.3 Flora & Fauna

#### **Objective**

- Future subdivision of the land does not have adverse impacts on either flora or fauna associated with the land.
- Trees identified as being retained shall be adequately protected.

#### Controls

- Trees identified in Appendix 9 shall be retained during the subdivision development and subsequent occupation of the land.
- If appropriate, Restrictions on use of land shall be placed on the relevant allotments ensuring protection of the nominated trees.
- Appendix 9 shows trees to be retained in accordance with the Ecological Assessment Report
- A Vegetation Management Plan (VMP) in respect of drainage reserves, public park, riparian area and road reserves between the New England Highway for the life of the development shall, if required be prepared and approved by Muswellbrook Shire Council.

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#### 7.5 Environmental Hazards

There are no known environmental hazards which need to be considered in the development of the subject land.

#### 7.6 Aboriginal Heritage

If any Aboriginal objects are identified during earthworks, work must immediately cease in the area and the Office of Environment and Heritage (OEH) must be notified immediately.

If suspected human remains are identified during the works, works must immediately cease. The area must be secured and the NSW Police and OEH notified immediately.

A Construction Management Plan shall be prepared for approval prior to commencement of any site works under an approved Construction Certificate, that includes the recommendation of the Aboriginal Cultural Heritage Due Diligence Assessment Report prepared by Insite Heritage.

#### 7.7 Noise and Vibration

Appendix 11 nominates the various acoustic zones with the development area. Consideration has been given to impact of the following on future residential construction:

- Road traffic noise on residences and the Early Learning Centre
- Future operation of the Early Learning Centre including site activities, mechanical plant operation, children drop off etc.

#### **Objective**

- to ensure appropriate noise mitigations are incorporated into dwelling design, where identified.
- to ensure that appropriate noise mitigations are incorporated into boundary fencing, where identified.

#### **Controls**

 construction of dwellings and provision of acoustic fencing shall comply with the relevant nominated acoustic zones shown in Appendix 8 and Noise Control Recommendations in Appendix 10.

#### 8 Significant Development Sites

There are no specific requirements in this regard.

#### 9 Residential Densities / Design

There are no specific requirements in respect of residential density – the Muswellbrook LEP applies in this regard.

#### Objectives

- Residential design and construction shall reflect / be consistent with expectations of a new residential area.
- Construction of dwellings shall incorporate any bushfire and acoustic considerations (refer to Appendices 7, 10 & 11)

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#### **Controls**

Residential design is to comply with the following:

- New dwellings shall include at least one garage under the roof line.
- No secondhand materials are to be used in the construction of dwellings or outbuildings.
- Outbuildings shall
  - be constructed in compatible materials with the locality / residence on the subject land.
  - Only be constructed in conjunction with a new dwelling or after the dwelling has been occupied.
  - o Be of an appropriate size and height for a residential setting
- Bushfire Attack Level and /or acoustic requirements shall be included in plans for residential development.

### 10 Neighbourhood Commercial and Retail Uses

There are no requirements for this Precinct.

Further development in this regard shall be subject to Muswellbrook LEP and DCP requirements.

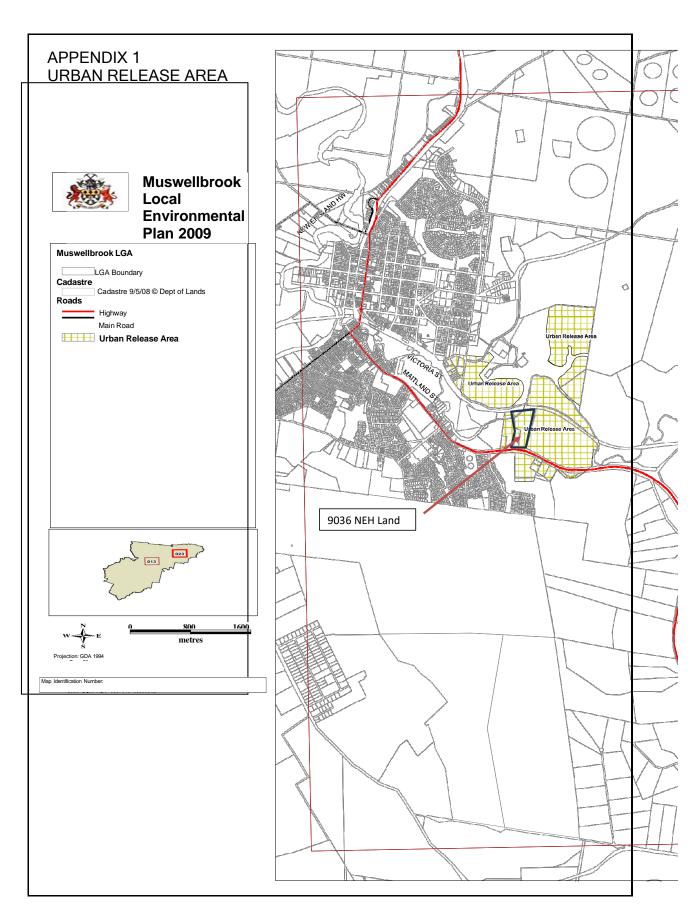
#### 11 Voluntary Planning Agreement

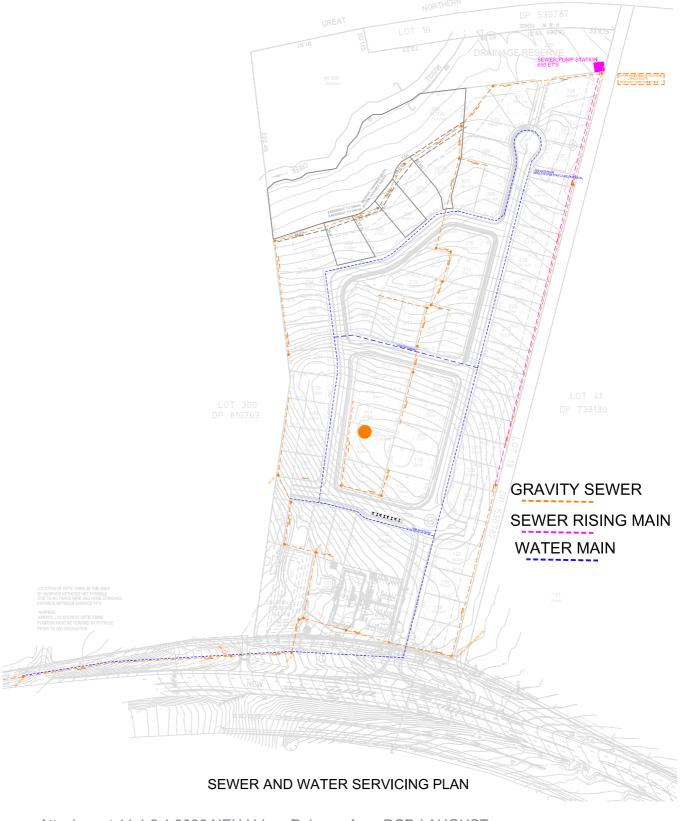
Any future development must have regard to any Planning Agreement applying to the land, if applicable.

9036 NEH DEVELOPMENT CONTROL PLAN

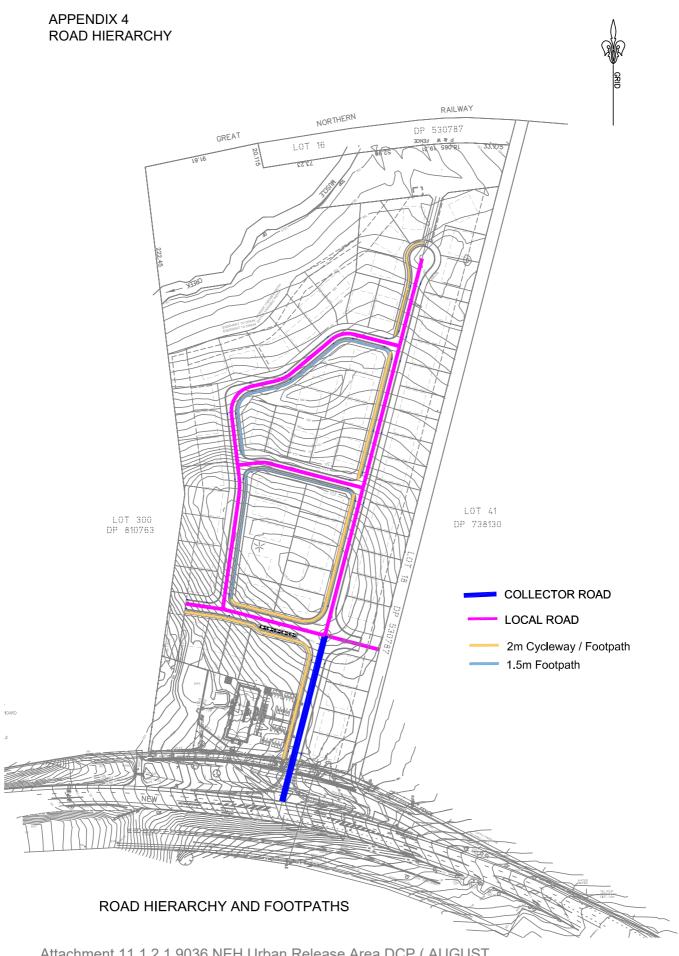
# **Appendices**

- 1 Urban Release Area
- 2 Stages
- 3 Services
- 4 Road Hierarchy
- 5 Landscape
- 6 Drainage
- 7 BAL Maps
- 8 Flood
- 9 Trees to be Retained.
- 10 Acoustic Zones
- 11 Acoustic Zones Construction
- 12 Open Space, Recreation





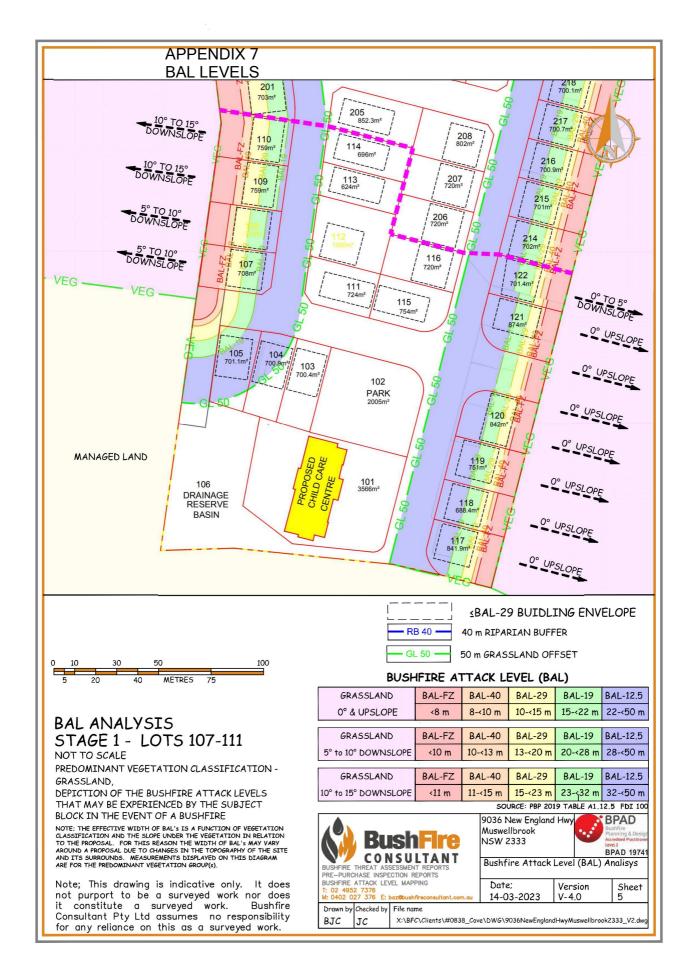
RAILWAY

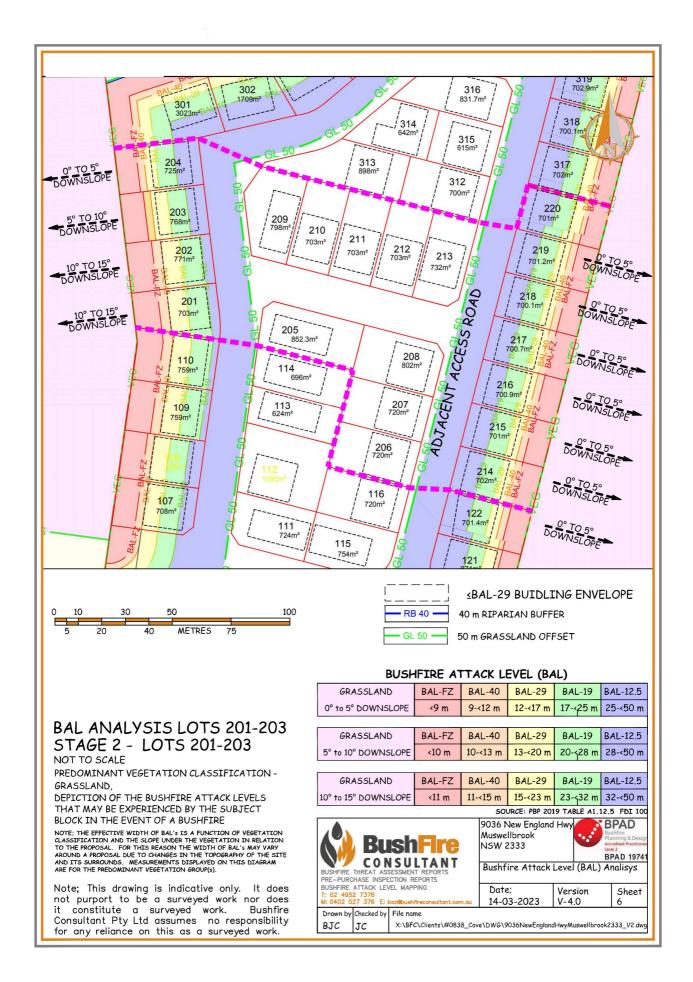


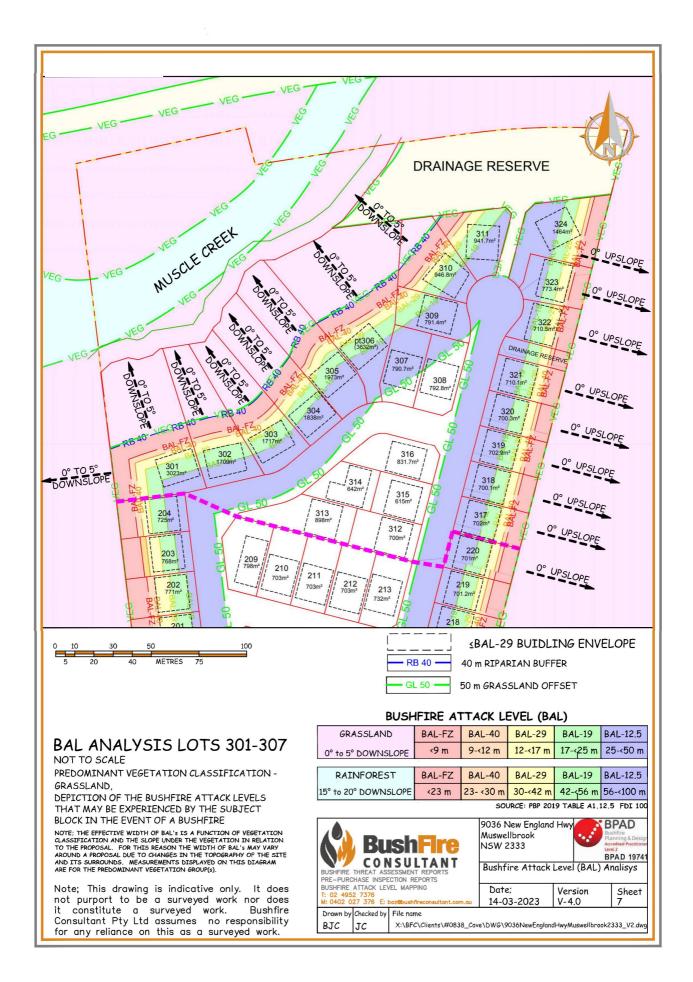


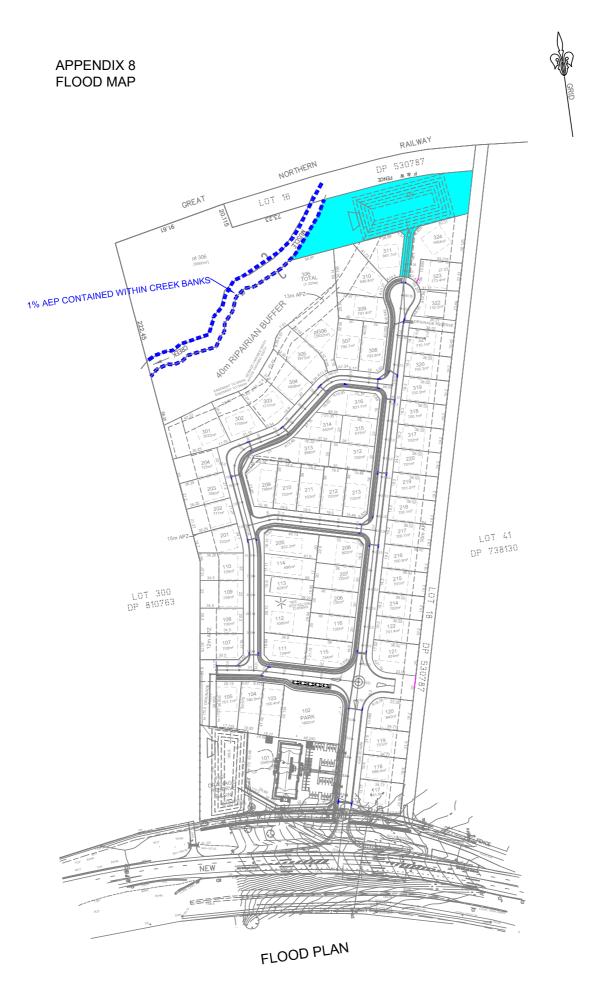
Attachment 11.1.2.1 9036 NEH Urban Release Area DCP ( AUGUST 2023)

# **APPENDIX 6 DRAINAGE** RAILWAY NORTHERN DP 530787 GREAT 1% AEP CONTAINED WITHIN CREEK BANKS LOT 41 LOT 300 DP 810763 DP 738130 DRAINAGE RESERVES AND FLOW PATHS





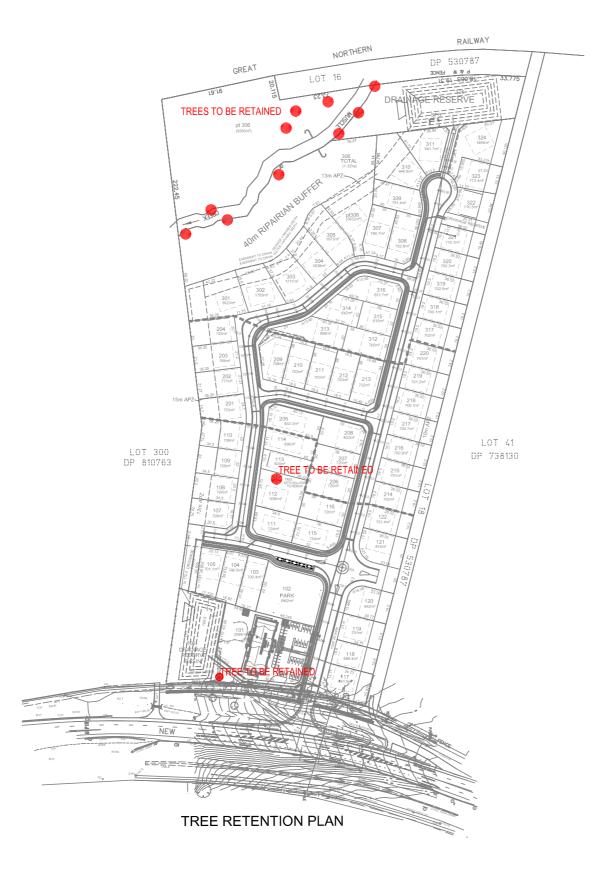




Attachment 11.1.2.1 9036 NEH Urban Release Area DCP ( AUGUST 2023)

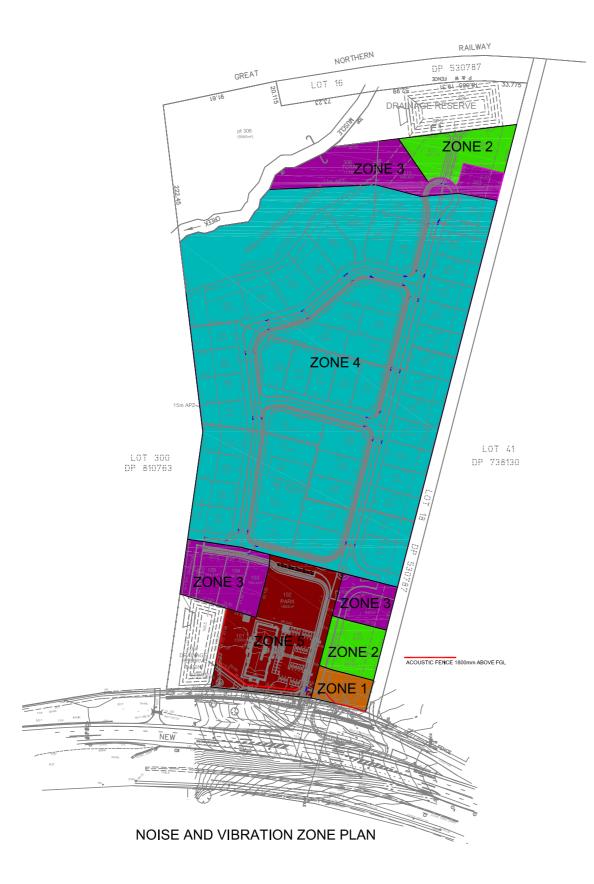
### APPENDIX 9 TREES TO BE RETAINED





#### APPENDIX 10 ACCOUSTIC ZONES





#### APPENDIX 11 ACOUSTIC ZONES CONSTRUCTION

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#### 6 RECOMMENDED NOISE CONTROL

#### 6.1 Acoustic Fences

Acoustic fences 1800mm above ground level will be required on boundaries between the New England Highway and Lot 118 and the proposed ELC. Acoustic fences 1800mm in height will also be required between the ELC and adjoining residences to the west (see Appendix B for fence locations). An acoustic fence is one which is impervious from the ground to the recommended height, and is typically constructed from lapped and capped timber, Colorbond, Hebel Powerpanel, etc. No significant gaps should remain in the fence to allow the passage of sound below the recommended height. Other options are available if desired, providing the fence is impervious and of equivalent or greater surface mass than the above construction options.

#### 6.2 Zone 1

The glazing systems sighted in the following Tables are presented as a guide for the supplier:

**Glazing Systems**: Type A: Standard glazing. No acoustic requirement.

Type B: Single-glaze 5-8mm clear float glass.

Type C: Single glaze laminated or Vlam Hush glass.

Note: The typical glazing shown in the following Table should be used as a guide only. The supplier of the window/door must be able to provide evidence that the complete system will achieve the specified Rw performance, i.e. do not simply install our recommended glass in a standard window frame.

Table 15: Recommended Construction - Zone 1

Element	Facade	Room	Required Rw Must achieve	Typical Construction  Not for Specification
			for Compliance	
		Grou	nd Floor	
Windows	South	Liv/Din/Bed	30	Type C
/SI. Doors		Kitchen	28	Type B
		Bath/WC/Lndry	26	Type B
	East/West	Liv/Din/Bed	28	Type B
		Kitchen	26	Type B
		Bath/WC/Lndry	24	Type B
	North	Liv/Din/Bed	24	Type B
		Kitchen	•	No acoustic requirement
		Bath/WC/Lndry	=	No acoustic requirement
		Firs	st Floor	
Windows	South	Liv/Din/Bed	33	Type C
/SI. Doors		Kitchen	31	Type C
		Bath/WC/Lndry	28	Type B
	East/West	Liv/Din/Bed	31	Type C
		Kitchen	29	Type B or C
		Bath/WC/Lndry	26	Type B
	North	Liv/Din/Bed	27	Type B
		Kitchen	24	Type B
		Bath/WC/Lndry	=	No acoustic requirement
External	South	All		See Note 1
Doors	East/West			
Roof		All		See Note 2
Walls		All		See Note 3

REVERB ACOUSTICS

October 2022

Document Ref: 22-2809-R1 Commercial in Confidence

MM Hyndes Bailey & Co Noise Impact Assessment Residence Subdivision & Child Care, Muswellbrook

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**Note 1:** All external swinging doors, i.e. ground and first floor, are to be 30-40mm solid core with the vertical sides and top of the door frames fitting neatly to provide close contact when doors are closed. Proprietary acoustic seals are to be fitted at the perimeter of doors, i.e. Raven Rp10 or Lorient/Kilargo equivalent. All glazed sections must be minimum 6mm safety glass.

**Note 2:** Roof construction should consist of sisalation or wire mesh laid down on roof trusses. This is to be completely covered with a 30-40mm foil faced building blanket or similar (in situations where trusses are at centres close enough to avoid excessive sagging of the blanket, the sisalation/wire mesh may be omitted), followed by Colorbond roof sheets. If Terra Cotta or concrete roof tiles are preferred, the building blanket may be omitted. All upper level ceilings are to consist of an impervious ceiling of 1 sheet taped and set 13mm Fire Rated plasterboard. To further assist in low frequency attenuation, all ceiling voids should contain a layer of fibreglass or rockwool insulation. The insulation is to be installed in addition to, not in lieu of the building blanket

Specialised acoustic insulation is preferred, however dense thermal insulation (eg, R3 batts) will suffice and is much less expensive (\$15/m² for Rockwool and \$6/m² for R3 batts). Generally, Councils now require new dwellings to achieve an adequate energy rating, which will usually only be achieved if thermal insulation is installed in the ceiling void, therefore, builders would be obliged to install insulation in any case.

**Note 3:** We strongly recommend brick veneer or cavity-brick construction. These high-mass building elements will provide attenuation of the lower frequencies, typically around 125 to 500Hz, typically generated by road traffic. All internal lining for brick veneer to be minimum 1 sheet 13mm plasterboard. All lightweight cladding on the south, east and west facades (i.e. vinyl weatherboards, Colorbond, Weathertex, etc) is to be backed with either 6mm fibre cement sheeting (Villaboard, Hardiflex) or 10mm construction plywood. If upper level lightweight construction is preferred (i.e. Hebel Powerpanel, weatherboard, etc) modification to the south, east and west facades will be required consisting of cavity infill of R2/S2 insulation, together with internal lining 1 sheet 13mm fire rated plasterboard.

REVERB ACOUSTICS

October 2022

Document Ref: 22-2809-R1 Commercial in Confidence

#### 6.3 Zone 2

Table 16: Recommended Construction - Zone 2

Element	Facade	Room	Required Rw Must achieve for Compliance	Typical Construction Not for Specification
		Grou	ınd Floor	
Windows	South	Liv/Din/Bed	28	Type B
/SI. Doors		Kitchen	26	Type B
		Bath/WC/Lndry	24	Type B
	East/West	Liv/Din/Bed	26	Type B
		Kitchen	24	Type B
		Bath/WC/Lndry	-	No acoustic requirement
	North	Liv/Din/Bed	-	No acoustic requirement
		Kitchen	-	No acoustic requirement
		Bath/WC/Lndry	-	No acoustic requirement
		Fire	st Floor	
Windows	South	Liv/Din/Bed	31	Type C
/SI. Doors		Kitchen	29	Type B or C
		Bath/WC/Lndry	26	Type B
	East/West	Liv/Din/Bed	29	Type B or C
		Kitchen	27	Type B
		Bath/WC/Lndry	24	Type B
	North	Liv/Din/Bed	25	Type B
		Kitchen	-	No acoustic requirement
		Bath/WC/Lndry	-	No acoustic requirement
External	South	All		See Note 1
Doors	East/West			
Roof		All		See Note 2
Walls		All		See Note 3

**Note 1:** All external swinging doors, i.e. ground and first floor, are to be 30-40mm solid core with the vertical sides and top of the door frames fitting neatly to provide close contact when doors are closed. All glazed sections must be minimum 5-6mm safety glass.

**Note 2:** Roof construction should consist of sisalation or wire mesh laid down on roof trusses. This is to be completely covered with a 30-40mm foil faced building blanket or similar (in situations where trusses are at centres close enough to avoid excessive sagging of the blanket, the sisalation/wire mesh may be omitted) followed by Colorbond roof sheets. If Terra Cotta or concrete roof tiles are preferred, the building blanket may be omitted. All upper level ceilings are to consist of an impervious ceiling of 1 sheet taped and set 13mm plasterboard. To further assist in low frequency attenuation, all ceiling voids should contain a layer of fibreglass or rockwool insulation. The insulation is to be installed in addition to, not in lieu of the building blanket. Specialised acoustic insulation is preferred, however dense thermal insulation (eg, R3 batts) will suffice.

**Note 3:** We strongly recommend brick veneer or cavity-brick construction. These high-mass building elements will provide attenuation of the lower frequencies, typically around 125 to 500Hz, typically generated by road traffic. All internal lining for brick veneer to be minimum 1 sheet 13mm plasterboard. If upper level lightweight construction is preferred (i.e. Hebel Powerpanel, weatherboard, etc) modification to the south, east and west facades will be required consisting of cavity infill of R2/S2 insulation, together with internal lining 1 sheet 13mm plasterboard.

REVERB ACOUSTICS

October 2022

Document Ref: 22-2809-R1

Commercial in Confidence

#### 6.4 Zone 3

Table 17: Recommended Construction - Zone 3

Element	Facade	Room	Required Rw Must achieve for Compliance	Typical Construction Not for Specification
		Grou	ınd Floor	
Windows	South	Liv/Din/Bed	26	Туре В
/SI. Doors		Kitchen	24	Type B
		Bath/WC/Lndry	•	No acoustic requirement
	East/West	Liv/Din/Bed	24	Type B
		Kitchen	-	No acoustic requirement
		Bath/WC/Lndry	-	No acoustic requirement
	North	Liv/Din/Bed	-	No acoustic requirement
		Kitchen	-	No acoustic requirement
		Bath/WC/Lndry	-	No acoustic requirement
		Firs	st Floor	
Windows	South	Liv/Din/Bed	29	Type B or C
/SI. Doors		Kitchen	24	Type B
		Bath/WC/Lndry	24	Type B
	East/West	Liv/Din/Bed	27	Туре В
		Kitchen	25	Type B
		Bath/WC/Lndry	-	No acoustic requirement
	North	Liv/Din/Bed	-	No acoustic requirement
		Kitchen	-	No acoustic requirement
		Bath/WC/Lndry	-	No acoustic requirement
External	South	All		See Note 1
Doors	East/West			
Roof		All		See Note 2
Walls		All		See Note 3

**Note 1:** All external swinging doors, i.e. ground and first floor, are to be 30-40mm solid core with the vertical sides and top of the door frames fitting neatly to provide close contact when doors are closed. All glazed sections must be minimum 5mm safety glass.

**Note 2:** Roof construction should consist of sisalation or wire mesh laid down on roof trusses. This is to be completely covered with a 30-40mm foil faced building blanket or similar (in situations where trusses are at centres close enough to avoid excessive sagging of the blanket, the sisalation/wire mesh may be omitted) followed by Colorbond roof sheets. If Terra Cotta or concrete roof tiles are preferred, the building blanket may be omitted. All upper level ceilings are to consist of an impervious ceiling of 1 sheet taped and set 10-13mm plasterboard. To further assist in low frequency attenuation, all ceiling voids should contain a layer of fibreglass or rockwool insulation. The insulation is to be installed in addition to, not in lieu of the building blanket. Specialised acoustic insulation is preferred, however dense thermal insulation (eg, R3 batts) will suffice.

**Note 3:** We strongly recommend brick veneer or cavity-brick construction. These high-mass building elements will provide attenuation of the lower frequencies, typically around 125 to 500Hz, typically generated by road traffic. All internal lining for brick veneer to be minimum 1 sheet 13mm plasterboard. If upper level lightweight construction is preferred (i.e. Hebel Powerpanel, weatherboard, etc) modification to the south, east and west facades will be required consisting of cavity infill of R2/S2 insulation, together with internal lining 1 sheet 10-13mm plasterboard.

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#### 6.5 Zone 4

NO ACOUSTIC REQUIREMENT.

#### 6.6 Zone 5 - ELC

- 6.6.1 Proposed operating hours of 7am to 7pm are acceptable.
- **6.6.2** Acoustic barriers minimum 1800mm above FGL are to be erected at the locations shown in Appendix B. Also see Section 6.1.
- 6.6.3 Recommended construction ELC:

Table 18: Recommended Construction - Zone 5

Element	Facade	Room	Required Rw Must achieve for Compliance	Typical Construction Not for Specification
Windows	West	All Play Rooms	26	Type B
/SI. Doors		Cot Room	24	Type B
		All Amenities	•	No acoustic requirement
	North	All		No acoustic requirement
Windows	East	Play Room 4	26	Type B
/SI. Doors		Entry/Reception	24	Type B
		All Staff	28	Type B
		Play Room 1	26	Type B
	South	Play Room 1	29	Type B or C
External	South	All		See Note 1
Doors	East/West			
Roof		All		See Note 2
Walls		All	_	See Note 3

**Note 1:** All external swinging doors are to be 30-40mm solid core with the vertical sides and top of the door frames fitting neatly to provide close contact when doors are closed. All glazed sections must be minimum 5mm safety glass.

**Note 2:** Roof construction should consist of sisalation or wire mesh laid down on roof trusses. This is to be completely covered with a 30-40mm foil faced building blanket or similar (in situations where trusses are at centres close enough to avoid excessive sagging of the blanket, the sisalation/wire mesh may be omitted) followed by Colorbond roof sheets. If Terra Cotta or concrete roof tiles are preferred, the building blanket may be omitted. All ceilings are to consist of an impervious ceiling of 1 sheet taped and set 10-13mm plasterboard. To further assist in low frequency attenuation, all ceiling voids should contain a layer of fibreglass or rockwool insulation. The insulation is to be installed in addition to, not in lieu of the building blanket. Specialised acoustic insulation is preferred, however dense thermal insulation (eg, R3 batts) will suffice.

**Note 3:** We strongly recommend brick veneer or cavity-brick construction. These high-mass building elements will provide attenuation of the lower frequencies, typically around 125 to 500Hz, typically generated by road traffic. All internal lining for brick veneer to be minimum 1 sheet 13mm plasterboard. If lightweight construction is preferred (i.e. Hebel Powerpanel, weatherboard, etc) modification to the south, east and west facades will be required consisting of cavity infill of R2/S2 insulation, together with internal lining 1 sheet 10-13mm plasterboard.

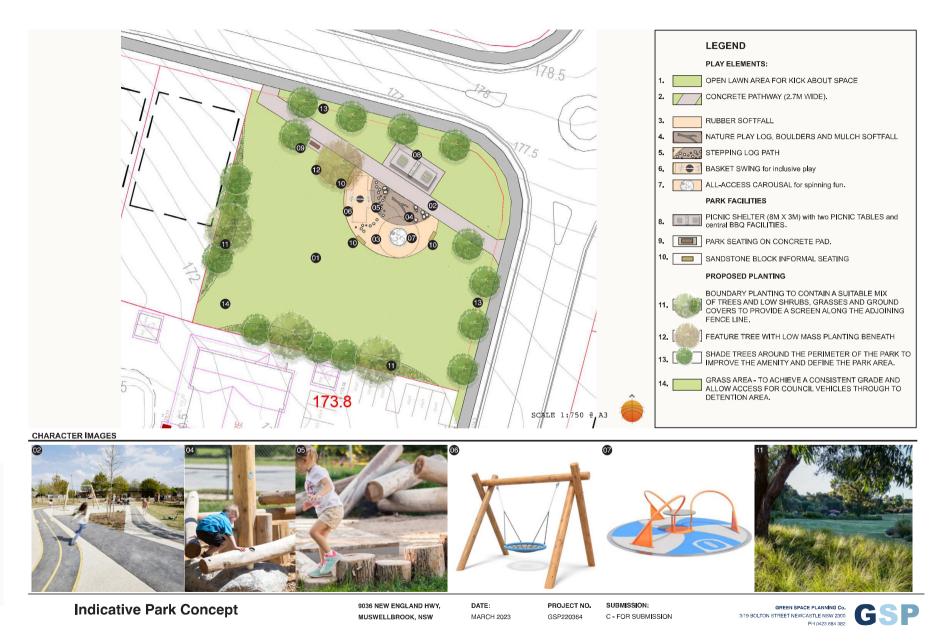
	REVERB ACOUSTICS
October 2022	 NEVERB ACCOUNTES

Commercial in Confidence

Attachment 11.1.2.1 9036 NEH Urban Release Area DCP ( AUGUST 2023)

Document Ref: 22-2809-R1







**Attachments:** 

#### 11.1.3. Finalisation of Dartbrook Mine Planning Agreement

1. Dartbrook Mine - Exhibited Planning Agreement

[11.1.3.1 - 17 pages]

2. Dartbrook Mine Planning Agreement \_ Explanatory

Note [11.1.3.2 - 3 pages]

Responsible Officer: Sharon Pope - Director - Planning & Environment

Author: Sharon Pope (Director - Planning & Environment)

Community Plan Issue: 6 - Community Leadership

Community Plan Goal:

Collaborative and responsive leadership that meets the

expectations and anticipates the needs of the community.

6.2.1 - Maintain a strong focus on financial discipline to

enable Council to properly respond to the needs of

the communities it serves.

Not applicable

#### **PURPOSE**

The Dartbrook Mine extension of timeframe to mine coal has been approved by the Independent Planning Commission subject to conditions. One of these conditions requires a Planning Agreement to be made with Muswellbrook Shire Council.

A Draft Planning Agreement was publicly notified from 1 March 2023 to 29 March 2023. No submissions were received.

The purpose of this report is to seek Council's agreement to finalise the Planning Agreement attached to this report.

#### OFFICER'S RECOMMENDATION

Community Plan Strategy:

Council RESOLVES to finalise the Planning Agreement in Attachment A by delegating the General Manager authority to sign the Agreement.

Massadi	Canadad.
Moved:	Seconded:



#### **BACKGROUND**

AQC Dartbrook Management P/L and Muswellbrook Shire Council commenced discussions about a Planning Agreement in November 2018 for Dartbrook Mine.

In March 2022 the Land and Environment Court granted consent to State Significant Development DA 231-07-2000 Modification 7 (SSD Mod 7). SSD Mod 7 contained in Appendix 5 general terms of Dartbrook's planning agreement offer to Council.

SSD Mod 7 sought approval for Dartbrook to undertaking mining of the Kayuga Seam using the first workings board and pillar method as an alternative to the approved longwall mining within the Kayuga Seam.

At the Council meeting of 22 November 2022, Council resolved to publicly notify the draft Planning Agreement in accordance with the requirements of the Environemtal Planning and Assessment Act 1979.

#### **CONSULTATION**

The draft Planning Agreement was publicly notified from 1 March 2023 to 29 March 2023 on Council's website and publicised via social media posts. No submissions were received.

The draft Planning Agreement has been prepared with the involvement of:

The General Manager

Manager Roads Drainage and Technical Services

Council's Corporate Lawyer

**Director Environment and Planning** 

**Acting Chief Financial Officer** 

#### **REPORT**

The Planning Agreement is consistent with planning agreements in place for other mines in the Shire.

The draft Planning Agreement was publicly notified from 1 March 2023 to 29 March 2023. No submissions were received.

As no submissions were received the Planning Agreement is now proposed for finalisation with no changes following exhibition.

#### **OPTIONS**

The two options are:

#### Option 1.

Council resolves to agree to the finalisation of the Planning Agreement by delegating the General Manager authority to sign the Agreement. This is the preferred option as it formally sets in place activities and payments previously negotiated with AQC and will allow staff to request that payments commence.

#### Option 2.

Council resolves to make further changes to the Planning Agreement before re-notifying the Agreement for community feedback. This is not the preferred option, as the Planning Agreement is a voluntary agreement, with the terms currently included having previously been agreed between Council and AQC. The condition of consent gives AQC the right to approach the Secretary for Planning to intervene if Council does not finalise the Planning Agreement.



#### CONCLUSION

The Planning Agreement was publicly notified in accordance with legislated requirements. It is recommended that the Agreement be finalised to enable staff to request AQC to commence making payments in accordance with the Agreement.

#### **FINANCIAL IMPLICATIONS**

Payments made to Council will fund a range of activities intended to diversify the local economy by attracting new employment opportunities and improving liveability of Muswellbrook, Denman, Sandy Hollow and surrounding rural areas.

#### STATUTORY IMPLICATIONS

Preparation of a Planning Agreement meets the terms of the conditions of consent for the mine

Preparation and notification of the Planning Agreement has followed the process identified in the Environmental Planning and Assessment Act 1979 and supporting Regulations.

### **Planning Agreement**

Muswellbrook Shire Council ABN 86 864 180 944

AND

AQC Dartbrook Management Pty Ltd ABN 62 007 377 577

#### **Planning Agreement**

Date	
Parties	
	MUSWELLBROOK SHIRE COUNCIL ABN 86 864 180 944 of Campbell's Corner, 60-82 Bridge Street, Muswellbrook, NSW 2333
	AND (Council)
	AQC DARTBROOK MANAGEMENT PTY LTD ABN 62 007 377 577 of 6 Stair St Kayuga 2333
	(Dartbrook)
Background	
Α.	Dartbrook operates the Dartbrook Coal Mine, which is located north of the township of Muswellbrook in the Upper Hunter Valley in New South Wales.
В.	On 11 March 2022, Dartbrook was granted Modification 7 of Development Consent DA231-07-2000 for the Dartbrook Coal Mine.
C.	Condition 11.4(a) of the Dartbrook Extension Consent requires Dartbrook to enter into a Planning Agreement with Council in accordance with the terms of Dartbrook's offer for Contributions as set out in Schedule 2 of this Agreement.
D.	Dartbrook has offered to enter into a Planning Agreement on the terms of this Agreement to make Contributions for the purposes of satisfying Condition 11.4(a) of the Dartbrook Extension Consent.
E.	This Agreement is entered into pursuant to an arrangement under Division 7.1 of Part 7 of the Act.

#### **Operative Provisions**

#### 1 Definitions

In this Agreement, unless the context indicates a contrary intention:

Act means the Environmental Planning and Assessment Act 1979 (NSW);

**Approval** means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this Agreement;

**Authority** means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person;

**Business Day** means a day on which banks are open for general banking business in NSW, excluding Saturdays, Sundays and public holidays;

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**Claim** means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this Agreement;

**Contributions** means a contribution made by Dartbrook under this Agreement, pursuant to Schedule 2:

**CPI** means the All Group Consumer Price Index for Sydney as published by the Australian Bureau of Statistics;

**Dartbrook Coal Mine** means the coal mine operated by Dartbrook pursuant to the original Dartbrook Consent;

**Dartbrook Consent** means Development Consent DA231-07-2000 for the Dartbrook Coal Mine which was granted by the Minister for Urban Affairs and Planning on 28 August 2001 as modified:

**Dartbrook Extension Consent** means the Development Consent granted in response to Development Application DA231-07-2000-Mod-7;

**Development** means the development approved pursuant to the Dartbrook Extension Consent;

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

Dispute means any dispute between the parties in connection with this Agreement;

**End of Mining Operations** means when Dartbrook ceases extracting, processing and transporting coal from the Dartbrook Coal Mine and all associated mine rehabilitation has been completed;

GST Law means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Land means the land upon which the Development is situated being the land comprised in Appendix 1 of the Dartbrook Extension Consent;

#### Law means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

**Notice** means a written notice, consent, approval, direction, order, information, application, request or other communication;

Public Road has the same meaning as in the Roads Act.

**Quarterly Instalment** means with respect to each Contribution amount payable under this Agreement, payments to be made on each 1 March, 1 June, 1 September and 1 December each year, equal to one quarter of the total Contribution amount payable, with appropriate adjustments made for CPI.

Roads Act means the Roads Act 1993 (NSW).

Tax Invoice has the same meaning as in the GST Law.

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#### 2 Interpretation

In this Agreement, unless the context indicates a contrary intention:

- (documents) a reference to this Agreement or another document includes any document which varies, supplements, replaces, assigns or novates this Agreement or that other document:
- (b) (references) a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this Agreement;
- (c) (headings) clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this Agreement;
- (d) (person) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) (party) a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) (president, CEO or managing director) the president, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) (requirements) a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (including) including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) (corresponding meanings) a word that is derived from a defined word has a corresponding meaning;
- (j) (singular) the singular includes the plural and vice-versa;
- (k) (gender) words importing one gender include all other genders;
- (parts) a reference to one or more things includes each part and all parts of that thing
  or group of things but nothing in this clause implies that part performance of an obligation
  constitutes performance of that obligation;
- (m) (rules of construction) neither this Agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) (legislation) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) (time and date) a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in, Australia, even if the obligation is to be performed elsewhere;
- (p) (joint and several) an agreement, representation, covenant, right or obligation:
  - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
  - (ii) on the part of two or more persons binds them jointly and severally;

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- (q) (writing) a reference to a notice, consent, request, approval or other communication under this Agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (replacement bodies) a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (s) (Australian currency) a reference to dollars or \$ is to Australian currency;
- (t) (month) a reference to a month is a reference to a calendar month; and
- (u) (year) a reference to a year is a reference to twelve consecutive calendar months.

#### 3 Planning Agreement under the Act

- (a) The parties agree that this Agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 1 of this Agreement summarises the requirements for planning agreements under s 7.4 of the Act and the way this Agreement addresses those requirements.

#### 4 Application of this Agreement

This Agreement applies to the Land.

#### 5 Operation of this Agreement

- (a) This Agreement commences on and from the date it is executed.
- (b) On and from the date of termination of ·this Agreement in accordance with clause 9, this Agreement will cease to have effect and the Council will immediately return to Dartbrook any title documentation or other security it holds under this Agreement.

#### 6 Application of s 7.11, s 7.12 and s 7.24 of the Act

- (a) This agreement does not exclude the application of section 7.11 of the Act to the Development.
- (b) This agreement does not exclude the application of section 7.12 of the Act to the Development.
- (c) This agreement does not exclude the application of section 7.24 of the Act to the Development.
- (d) This Agreement does not prevent the parties from entering into other planning agreements within the meaning of Section 7.4 of the Act in relation to the Development.
- (e) The benefits under this Agreement are not to be taken into consideration in determining a development contribution under sections 7.11, 7.12 or 7.24 of the Act.

#### 7 Contributions to be made under this Agreement

#### 7.1 Contributions

(a) Dartbrook must make Contributions to Council in accordance with Schedule 2 of this Agreement and any other relevant provision of this Agreement to the satisfaction of

Page 5 of 17

Council

- (b) Council will apply each Contribution made by Dartbrook under this Agreement:
  - (i) for the benefit of the public; and
  - (ii) otherwise in accordance with this Agreement.
- (c) Council, upon written request, will on an annual basis provide Dartbrook Mine a report on how the contributions have been invested.

#### 7.2 Monetary Contributions

- (a) The parties agree that all monetary Contributions are to commence on 11 March 2022 and will be paid annually by way of Quarterly Installments.
- (b) Monetary Contributions paid in accordance with Schedule 2 must be paid by electronic transfer into a bank account, the details of which are to be provided by Council to Dartbrook.
- (c) A monetary Contribution is made for the purposes of this Agreement when Council receives the full amount of the contribution payable under this Agreement in cash or by unendorsed bank cheque or by deposit by means of electronic funds transfer of cleared funds into the bank account nominated by Council.

#### 7.3 Apprentices

As stated in Schedule 2, Dartbrook will use its best endeavours to engage, at a minimum, 2 apprentices, at any one time, sourced from residents within the Muswellbrook Shire local government area from the date of this Agreement until the End of Mining Operations.

#### 7.4 Adjustment for CPI

The amount of the Contributions in column 3 of the table in Schedule 2 are subject to adjustment for changes in CPI as follows:

 $DCP = \underbrace{DC \times A}_{B}$ 

where:

DCP = the actual Contribution payment amount payable at the time the

particular payment is made;

DC = the particular Contribution payment amount required to be paid as per

column 3 of the table in Schedule 2;

A = the most recent CPI published by the Australian Bureau of Statistics

prior to the date the payment is due to be made; and

B = the most recent CPI published by the Australian Bureau of Statistics

prior to the date of this Agreement.

If after the formula in clause 7.4 is applied the Contribution amount will be less than the particular Contribution payment amount required to be paid as per column 3 of the table in Schedule 2, the Contribution will not be adjusted.

#### 8 Registration of this Agreement

#### 8.1 Dartbrook interest

Dartbrook represents and warrants to Council that as at the date of this Agreement it has obtained the consent of each person who has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW) to enable registration of this Agreement pursuant to clause 8.2.

#### 8.2 Registration of this Agreement

(a) Dartbrook agrees to procure the registration of this Agreement under the Real Property Act 1900 (NSW) on the relevant titles to the Land in accordance with section 7.6 of the

Page 6 of 17

Act.

- (b) Dartbrook, at its own expense, will within 3 months after the date of this Agreement, take all practical steps, and otherwise do anything that Council reasonably requires to procure the registration of this Agreement on the titles to the Land under the *Real Property Act* 1900 (NSW).
- (c) Dartbrook acknowledges and agrees that Council may lodge and maintain a caveat against the title to the Land reflecting its rights under this Agreement provided that any caveat lodged by Council will be removed contemporaneously with registration of this Agreement against the title to the Land.

#### 8.3 Removal of Agreement

When requested to do so after termination of this Agreement, Council will, at Dartbrook's expense, promptly execute such documents and take such steps as may reasonably be required to remove notification of registration of this Agreement from the title to the Land.

#### 9 Termination

- (a) This Agreement terminates on:
  - (i) the date on which a Court of competent jurisdiction declares that either the Dartbrook Consent or the Dartbrook Extension Consent (if applicable) is invalid;
  - (ii) the date of End of Mining Operations; or
  - (iii) at such time it is mutually agreed between the parties in writing.

#### 10 Review of this Agreement

- (a) This Agreement may be reviewed or modified by agreement of the parties provided that no review will be undertaken within the 3 years following the date of this Agreement.
- (b) No review or modification of this Agreement will be of any force or effect unless it is in writing and signed by the parties to this Agreement.
- (c) A party is not in breach of this Agreement if it does not agree to an amendment to this Agreement requested by a party in, or as a consequence of, a review.

#### 11 Dispute Resolution

#### 11.1 General

This clause applies to any Dispute arising in connection with this Agreement.

#### 11.2 Notice of Dispute

The party wishing to commence the dispute resolution process must give written notice (Notice of Dispute) to the other party of:

- (a) the nature of the Dispute;
- (b) the alleged basis of the Dispute; and
- (c) the position which the party issuing the Notice of Dispute believes is correct.

#### 11.3 Representatives of parties to meet

- (a) The representatives of the parties must promptly (and in any event within 20 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified Dispute.
- (b) The parties may, without limitation:

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- (i) resolve the Dispute during the course of that meeting,
- (ii) agree that further material or expert determination in accordance with clause 11.6 about a particular issue or consideration is needed to effectively resolve the Dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
- (iii) agree that the parties are unlikely to resolve the Dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant Dispute.

#### 11.4 Further Notice if not settled

If the Dispute is not resolved within 20 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the Dispute (Determination Notice) by mediation under clause 11.5 or by expert determination under clause 11.6.

#### 11.5 Mediation

If a party gives a Determination Notice calling for the Dispute to be mediated:

- the parties must agree to the terms of reference of the mediation within 10 Business
  Days of the receipt of the Determination Notice (the terms shall include a requirement
  that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW
  Chapter) apply);
- (b) the mediator will be agreed between the parties, or failing agreement within 10 Business Days of receipt of the Determination Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) the mediator appointed pursuant to this clause 11.5 must:
  - (i) have reasonable qualifications and practical experience in the area of the Dispute;
     and
  - (ii) have no interest or duty which conflicts or may conflict with his or her function as a mediator, he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) the mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties:
- the parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation;
- (f) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a Dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) in relation to costs and expenses:
  - (i) each party will bear its own professional and expert costs incurred in connection with the mediation; and
  - (ii) the costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

#### 11.6 Expert determination

If the Dispute is not resolved under clause 11.3 or clause 11.5, or the parties otherwise agree that the Dispute may be resolved by expert determination, the parties may refer the Dispute to an expert, in which event:

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- (a) the Dispute must be determined by an independent expert in the relevant field:
  - (i) agreed upon and appointed jointly by the parties; and
  - (ii) in the event that no agreement is reached, or no appointment is made within 10 Business Days of the agreement, to refer the Dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) the expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause:
- (c) the determination of the Dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) any determination made by an expert pursuant to this clause is final and binding upon the parties unless:
  - within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and intends to commence litigation; or
  - (ii) the determination is in respect of, or relates to, termination or purported termination of this Agreement by a party, in which event the expert is deemed to be giving a nonbinding appraisal.

#### 11.7 No suspension of contractual obligations

Subject to any interlocutory order, the referral to or undertaking of a Dispute resolution process under this clause 11 does not suspend the parties' obligations under this Agreement.

#### 12 Enforcement

#### 12.1 Default

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this Agreement, it may give notice in writing to the other party (Default Notice) giving all particulars of the matters in respect of which it considers the default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 30 days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may, if the Default Notice relates to a Dispute, refer the Dispute to dispute resolution under clause 11 of this Agreement.

#### 12.2 General enforcement

- (a) Without limiting any other remedies available to the parties, this Agreement may be enforced by a party in any Court of competent jurisdiction.
- (b) For the avoidance of doubt, nothing in this Agreement prevents:
  - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; or

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(ii) the Council from exercising any function under the Act or any other Law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

#### 13 Assignment

- (a) Dartbrook must not assign or deal with any right under this Agreement without the prior written consent of Council and any proposed assignment or dealing must not take effect until this Agreement has been registered against the title to the Land.
- (b) Council may withhold its consent to any proposed assignment by Dartbrook unless it is satisfied on reasonable grounds that the proposed assignee has sufficient financial and technical resources to enable it to comply with Dartbrook's obligations under this Agreement.
- (c) Any change of ownership or control (as defined in section 50AA of the *Corporations Act* 2001 (Cth)) of a party (excluding Council) shall be deemed to be an assignment of this Agreement for the purposes of this clause.
- (d) Any purported dealing in breach of this clause is of no effect.

#### 14 Approvals and consents

Except as otherwise set out in this Agreement, and subject to any Law, a party may give or withhold an Approval or consent to be given under this Agreement in that party's absolute discretion and subject to any conditions determined by that party. A party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

#### 15 Council's position

#### 15.1 Agreement does not fetter Discretion

This Agreement is not intended to operate to fetter, in any manner the:

- (a) power of Council to make any Law; or
- (b) exercise by Council of any statutory power or discretion

(all referred to in this Agreement as a "Discretion").

#### 15.2 Severance of provisions

- (a) No provision of this Agreement is intended to, or does, constitute any unlawful fetter on any exercise of any Discretion. If, contrary to the operation of this clause, any provision of this Agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:
  - (i) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 15 is substantially satisfied; and
  - (ii) in the event that clause 15.2(a)(i) cannot be achieved without giving rise to a fetter on a Discretion, the relevant provision is to be severed and the remainder of this Agreement has full force and effect.

#### 16 Notices

#### 16.1 Notices

- (a) Any Notice that must or may be given or made to a party to this Agreement is only given or made if it is in writing and sent in one or more of the following ways:
  - (i) delivered or posted to that party at its address set out below;

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- (ii) faxed to that party at its fax number set out below; or
- (iii) emailed to that party at its email address set out below

#### Council

Attention	The General Manager
Address	PO Box 122, Muswellbrook, NSW, 2333
Email	council@muswellbrook.nsw.gov.au; and gm@muswellbrook.nsw.gov.au

#### **Dartbrook**

Attention	Jeff Beatty
Address	Dartbrook Mine 6 Stair Street Kayuga NSW 2333
Email	jeff.beatty@tetraresources.com.au

- (b) If a party gives the other party 3 Business Days notice of a change of its address, number or email, any Notice is only given or made by that party if it is delivered, posted or emailed to the latest address or email.
- (c) Any Notice is to be treated as given or made at the following time if it is:
  - (i) delivered, when it is left at the relevant address;
  - (ii) sent by post, 5 Business Days after it is posted.
- (d) If any Notice is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

#### 16.2 Notices sent by email

- (a) A party may serve a Notice by email if the Notice:
  - (i) includes a signature block specifying:
    - a. the name of the person sending the Notice; and
    - b. the sender's position within the relevant party;
  - (ii) states in the body of the message or the subject field that it is sent as a Notice under this Agreement;
  - (iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this Agreement; and
  - (iv) is sent to the email address specified in clause 16.1(a) or the email address last notified by the intended recipient to the sender.
- (b) The recipient of a Notice served under this clause 16.2 must:
  - (i) promptly acknowledge receipt of the Notice; and
  - (ii) keep an electronic copy of the Notice.
- (c) Failure to comply with clause 16.2 does not invalidate service of a Notice under this clause.

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#### 16.3 Receipt of Notices sent by email

- (a) A Notice sent under clause 16.2 is taken to be given or made:
  - (i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above:
  - (ii) when the Notice enters an information system controlled by the recipient; or
  - (iii) when the Notice is first opened or read by the recipient, whichever occurs first.
- (b) If under clause 16.3 a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 5pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

#### 17 Interest to accrue

#### 17.1 Interest

- (a) Dartbrook agrees to pay interest on any amount under this Agreement which is not paid on the due date for payment. Interest accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365 days.
- (b) Dartbrook agrees to pay interest under this clause on demand from Council.

#### 17.2 Rate of interest

The rate of interest applying to each daily balance is the maximum rate permitted to accrue on unpaid rates by Section 566(3) of the *Local Government Act* 1993 (NSW).

#### 18 General

#### 18.1. Relationship of the Parties

- (a) Nothing in this Agreement constitutes a partnership between the parties, nor does it constitute one party to be the agent of the other.
- (b) A party cannot in any way or for any purpose bind another party or contract in the name of another party.

#### 18.2. Entire Agreement

This Agreement constitutes the entire agreement of the parties in relation to its subject matter and supersedes all prior agreements, understandings and negotiations between the parties. Subject to any contrary requirement of any Law, no other covenants or provisions are implied or arise between the parties by way of collateral or other agreement. The existence of any such implication or collateral or other agreement is expressly negative to the extent permitted by Law.

#### 18.3. Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of or seeks to rely on this Agreement or any part of it.

#### 18.4. Confidentiality

The parties agree that the terms of this Agreement are not confidential and this Agreement may be treated as a public document and exhibited or reported without restriction by any party.

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#### 18.5. Governing Law and Jurisdiction

- (a) The laws applicable in New South Wales govern this Agreement.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the New South Wales Courts and Courts competent to hear appeals from those Courts.

#### 18.6. Counterparts

This Agreement may be executed in any number of counterparts and all such counterparts taken together will constitute the same instrument. A party can execute this Agreement by signing any counterpart. Counterparts can be exchanged electronically by way of email.

#### 18.7. Costs

- (a) Dartbrook must pay to Council the Council's reasonable costs (exclusive of GST) and disbursements in connection with the negotiation, preparation, execution, registration and release and discharge of this Agreement and any other document relating to this Agreement, and for all advertising and associated costs, within 7 days of a written demand by Council for such payment.
- (b) Dartbrook must also pay to Council the Council's reasonable costs of enforcing this Agreement within 7 days of a written demand by Council for such payment.

#### 18.8. Further assurances

Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

#### 18.9. Representation and warranties

The parties represent and warrant that they have the power and authority to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any Law.

#### 18.10. Severability

Subject to clause 15, this Agreement must, so far as possible, be interpreted or construed so as not to be invalid, illegal or unenforceable in any respect but if any provision on its true interpretation or construction is held to be illegal, invalid or unenforceable:

- (a) that provision will, so far as possible, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation of a partial character; or
- (b) if the provision or part of it cannot effectively be read down, that provision or part of it will be deemed to be void and severable and the remaining provisions of this Agreement will not in any way be affected or impaired and will continue notwithstanding that illegality, invalidity or unenforceability.

#### 18.11. Waiver

- (a) A right or remedy created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- (b) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other

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Planning	Agreement
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obligation or breach or as an implied wavier of that obligation or breach in relation to any other occasion.

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# Schedule 1 Summary of requirements (Section 7.4)

Subject and subsection of the Act	Planning Agreement
Planning instrument and/or Development Application	The Dartbrook Extension Consent approved on 11 March 2022
Section 7.4(1)	
Description of the land to which the planning Agreement applies	See the definition of Land in clause 1.
Section 7.4(3)(a)	
The scope, timing and manner of delivery of contribution required by the Planning Agreement Section 7.4(3)(b)	See clause 7.
Applicability of section 7.11 of the Act Section 7.4(3)(d)	Not excluded. See clause 6.
Applicability of section 7.12 of the Act Section 7.4(3)(d)	Not excluded. See clause 6.
Applicability of section 7.24 of the Act Section 7.4(3)(d)	Not excluded. See clause 6.
Mechanism for dispute resolution Section 7.4(3)(f)	See clause 11.
Enforcement of the Planning Agreement	See clause 12.
Section 7.4(3)(g)	
Registration of the Planning Agreement	To be registered against the Land.
Section 7.4(3)(g)	See clause 8.
No obligation to grant consent or exercise functions Section 7.4(9)	See clauses 14 and 15.

## Schedule 2 Contributions

Description of	Purpose of Contribution	Initial Contribution	Funding Timeframe
Contribution Column 1	Column 2	Column 3	Column 4
Dartbrook community contribution	Funding for the provision of public infrastructure and services within the Muswellbrook Shire local government area.	\$450,000 per year plus CPI calculated in accordance with clause 7.4.	Dartbrook must pay an annual financial contribution of \$450,000, plus CPI, paid in Quarterly Instalments commencing 11 March 2022.
Contribution of funding toward an environmental officer	Funding toward an environmental officer, who will be responsible for environmental matters associated with development in the Muswellbrook Shire local government area.	\$20,000 per year plus CPI calculated in accordance with clause 7.4	Dartbrook must pay an annual financial contribution of \$20,000, plus CPI, paid in Quarterly Instalments commencing 11 March 2022.
Training of apprentices	To assist in building a skilled labour force in the Muswellbrook Shire local government area.	Use best endeavours to engage 2 apprentices, at any one time, sourced from residents within the Muswellbrook Shire local government area.	
Contribution to road maintenance relevant to the Dartbrook Extension Consent's traffic contribution.	Funding towards road maintenance relevant to the Dartbrook Extension Consent's traffic contribution.	\$10,000 per year plus CPI calculated in accordance with clause 7.4.	Dartbrook must pay an annual financial contribution of \$10,000, plus CPI, paid in Quarterly Instalments commencing on the date of this Agreement.

Name of Director/Secretary (Print)

Name of Director (Print)

## Planning Agreement Explanatory Note

Environmental Planning and Assessment Regulation 2021 (Clause 205)

## 1 Summary

The purpose of this Explanatory Note is to provide a summary to support the notification of the proposed planning agreement between the parties listed in section 2 of this Explanatory Note, in relation to the subject land described in section 3 of this Explanatory Note (**Planning Agreement**), in accordance with section 7.4 of the *Environmental Planning and Assessment Act 1979* (NSW) (**EPA Act**).

This Explanatory Note has been prepared jointly by the parties as required by clause 205 of the *Environmental Planning and Assessment Regulation 2021* (NSW).

In this Explanatory Note, unless context indicates a contrary intention, capitalised terms are to be defined in accordance with the Planning Agreement.

#### 2 Parties

The parties to the Planning Agreement are:

- (1) Muswellbrook Shire Council ABN 86 864 180 944 (Council); and
- (2) AQC Dartbrook Management Pty Ltd ABN 62 007 377 577 (Dartbrook).

## 3 Descriptions of Subject Land

The Land to which the Planning Agreement relates is as follows:

The land upon which the Development is situated being the land comprised in Appendix 1 of the Dartbrook Extension Consent

## 4 Introduction and Background

- (1) On 11 March 2022, Dartbrook was granted Modification 7 of Development Consent DA231-07-2000 for the Dartbrook Coal Mine.
- (2) The Development Consent permits mining operations to be carried out on the Land until 5 December 2027. Under the Development Consent, the Applicant is required to decommission and rehabilitate the site and carry out other requirements in relation to mining operations. Consequently, the Development Consent will continue to apply in all respects other than to permit the carrying out of mining operations until the rehabilitation of the site and other requirements have been carried out to the required standard.
- (3) Condition 11.4(a) of the Dartbrook Extension Consent requires Dartbrook to enter into a Planning Agreement with Council in accordance with the terms of Dartbrook's offer for Contributions as set out in Schedule 2 of this Agreement.
- (4) Dartbrook has offered to enter into a Planning Agreement on the terms of this Agreement to make Contributions for the purposes of satisfying Condition 11.4(a) of the Dartbrook Extension Consent.
- (5) The Parties have formalised the terms of Dartbrook's offer to provide the Contributions by entering into this Agreement in accordance with section 7.4 of the EPA Act.

## 5 Summary of Objectives, Nature and Effect of the Planning Agreement

- (1) The Planning Agreement relates to the provision of financial Contributions to support the increased demands for facilities arising from the development of the Land.
- (2) The objective of the Planning Agreement is to satisfy Condition 11.4(a) of the Dartbrook Extension Consent requires Dartbrook to enter into a Planning Agreement with Council in accordance with the terms of Dartbrook's offer for Contributions as set out below.
- (3) Dartbrook has offered to provide the following Contributions in accordance with the Planning Agreement:

Description of Contribution Column 1	Purpose of Contribution Column 2	Initial Contribution Column 3	Funding Timeframe Column 4
Dartbrook community contribution	Funding for the provision of public infrastructure and services within the Muswellbrook Shire local government area.	\$450,000 per year plus CPI calculated in accordance with clause 7.4.	Dartbrook must pay an annual financial contribution of \$450,000, plus CPI, paid in Quarterly Instalments commencing 11 March 2022.
Contribution of funding toward an environmental officer	Funding toward an environmental officer, who will be responsible for environmental matters associated with development in the Muswellbrook Shire local government area.	\$20,000 per year plus CPI calculated in accordance with clause 7.4	Dartbrook must pay an annual financial contribution of \$20,000, plus CPI, paid in Quarterly Instalments commencing 11 March 2022.
Training of apprentices	To assist in building a skilled labour force in the Muswellbrook Shire local government area.	Use best endeavours to engage 2 apprentices, at any one time, sourced from residents within the Muswellbrook Shire local government area.	
Contribution to road maintenance relevant to the Dartbrook Extension Consent's traffic contribution.	Funding towards road maintenance relevant to the Dartbrook Extension Consent's traffic contribution.	\$10,000 per year plus CPI calculated in accordance with clause 7.4.	Dartbrook must pay an annual financial contribution of \$10,000, plus CPI, paid in Quarterly Instalments commencing on the date of this Agreement.

## 6 Assessment of the Merits of the Planning Agreement

## 6.1 Promotion of the public interest

The Planning Agreement promotes the public interest by ensuring that an appropriate contribution is made towards the provision of public infrastructure and services within the Muswellbrook Shire local government area, contribution of funding towards an environmental officer who will be responsible for environmental matters related to the Development, and contribution of funding to road maintenance relevant to the Development.

### 6.2 Promotion of Council's charter

The Planning Agreement promotes the following principles of the Council's charter:

- Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way; and
- Councils should work with others to secure appropriate services for local community needs.

The Planning Agreement promotes these principles by requiring Dartbrook to make monetary contributions towards the provision of public infrastructure and services within the Muswellbrook Shire local government area, contribution of funding towards an environmental officer who will be responsible for environmental matters related to the Development, and contribution of funding to road maintenance relevant to the Development and which in turn facilitates Council to meet current and future local community needs.

## 6.3 The planning purposes served by the Planning Agreement

The Planning Agreement provides a reasonable means of achieving and securing outcomes envisaged by the LEP and the DCP through the provision of Affordable Housing consistent with cl 6.8 of the LEP and by identifying the works, method of payment and timing to ensure the public benefits secured by the Planning Agreement meet the increased demand for public facilities resulting from the Development.

## 6.4 Capital works program

The Planning Agreement relates to Council's Capital Works Program through providing funds to be used for the maintenance and improvement for road infrastructure.

### 6.5 Compliance matters

The Planning Agreement specifies the timing for the provision of Contributions.

There is no requirement that Dartbrook must satisfy prior to issuance of any construction certificate, occupation certificate or subdivision certificate by the relevant authority.



Attachments:

#### 11.1.4. Finalisation of AGL Liddell Planning Agreement

1. AGL Liddell Planning Agreement - Sept 2023 [11.1.4.1

- 24 pages]

2. AG L- Planning- Agreement- Explanatory- Note

[11.1.4.2 - 1 page]

Responsible Officer: Sharon Pope - Director - Planning & Environment

**Author:** Sharon Pope (Director - Planning & Environment)

Community Plan Issue: 6 - Community Leadership

Collaborative and responsive leadership that meets the Community Plan Goal:

expectations and anticipates the needs of the community.

6.2.1 - Maintain a strong focus on financial discipline to enable Council to properly respond to the needs of

the communities it serves

Not applicable

## **PURPOSE**

Community Plan Strategy:

Liddell Power Station closed on 28 April 2023. In the lead up to closure, Council raised concerns about the economic and social impact the closure would have on Muswellbrook Shire.

On 8 September 2021, Council and AGL signed a Memorandum of Understanding (MOU) regarding actions AGL would take to minimise adverse effects of closure. This included a requirement for the preparation of a Planning Agreement.

A draft Planning Agreement was publicly notified from 17 July 2023 to 14 August 2023. No submissions were received.

The purpose of this report is to obtain Council's agreement to finalise the Planning Agreement attached to this report.

## OFFICER'S RECOMMENDATION

Council RESOLVES to finalise the Planning Agreement in Attachment A by delegating the General Manager authority to sign the Agreement.

Moved:	Seconded:
Movea:	_Seconded:

#### **BACKGROUND**

AGL and Council signed a Memorandum of Understanding (MOU) on 8 Sept 2021 agreeing, amongst other things, that a Planning Agreement between Council and AGL was the best mechanism for ensuring contributions are made toward projects that are intended to minimise the social and economic impacts of the closure of Liddell Power Station.

The Planning Agreement has been prepared to satisfy the requirements set out in the MOU.



#### CONSULTATION

The Planning Agreement was publicly notified for a period of 28 days from 17 July 2023 to 14 August 2023. No submissions were received.

The draft Planning Agreement has been prepared with the involvement of:

The General Manager

Council's Corporate Lawyer

Director Environment and Planning

**Director Community and Economy** 

**Acting Chief Financial Officer** 

## **REPORT**

At the 27 June 2023 Ordinary Council Meeting, Council resolved to publicly notify the draft Planning Agreement for community feedback. An explanatory statement for the Planning Agreement is provided in Attachment B.

The draft Planning Agreement was notified, and no submissions were received.

The Planning Agreement is now proposed for finalisation with no changes since exhibition.

### **OPTIONS**

The two options are:

## Option 1.

Council resolves to agree to the finalisation of the Planning Agreement by delegating the General Manager authority to sign the Agreement. This is the preferred option as it formally sets in place activities and payments to reduce the impacts of the closure of Liddell Power Station on the social and economic health of the local community.

## Option 2.

Council resolves to make further changes to the Planning Agreement before re-notifying the Agreement for community feedback. This is not the preferred option, as the Planning Agreement is a voluntary agreement, with the current terms having previously been agreed between Council and AGL.

## CONCLUSION

A Planning Agreement has been prepared in accordance with an MOU AGL and Council signed on 8 September 2021. No changes are proposed to the Planning Agreement since exhibition, and it may now be finalised.

### **SOCIAL IMPLICATIONS**

The aim of the Planning Agreement is to reduce the social impacts arising from the closure of Liddell Power Station.

### FINANCIAL IMPLICATIONS

Payments made to Council will fund a range of activities intended to diversify the local economy by attracting a range of new employment opportunities and improving liveability of Muswellbrook, Denman, Sandy Hollow, and surrounding rural areas.



## **STATUTORY IMPLICATIONS**

The Environmental Planning and Assessment Act 1979 and supporting Regulations set out the process for finalising a Planning Agreement. The report proposes that the process be followed.

## **Planning Agreement**

Muswellbrook Shire Council ABN 86 864 180 944

AND

AGL Macquarie Pty Ltd ACN 167 859 494

## **Planning Agreement**

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### **Parties**

MUSWELLBROOK SHIRE COUNCIL ABN 86 864 180 944 of Campbell's Corner, 60-82 Bridge Street, Muswellbrook, NSW 2333

(Council)

**AND** 

**AGL MACQUARIE PTY LTD ACN 167 859 494** of Level 24, 200 George Street, Sydney, NSW 2000

(AGL)

## **Background**

B.

C.

D.

E.

F.

A. AGL owns the Land upon which the Liddell Power Station is located.

AGL has made application for and has been issued with a Planning Secretary's Environmental Assessment Requirements (SEARS) by NSW Department of Planning and Environment for a proposed State Significant Development Application being Application Number SSD-24937520 (SSDA). The proposed SSDA will seek approval for some of the physical aspects of the Liddell Closure including demolition of the Liddell Power Station site.

The parties are concerned about the socio-economic impacts of the prospective Liddell Closure on the community.

Council and AGL are parties to the Memorandum of Understanding on Provision for Socio-Economic Impacts of Closure of Liddell Power Station executed 8 September 2021 (MOU).

Consistent with its obligations under the MOU, AGL has made an offer in connection with the Liddell Closure to enter into this Agreement to make Contributions for public purposes associated with the Liddell Closure.

Council has no current plans to raise any Special Rate in connection to the Liddell Closure or the Development against the Land.

This Agreement is entered into under Division 7.1 of Part 7 of the Act.

## **Operative Provisions**

### 1 Definitions

In this Agreement, unless the context indicates a contrary intention:

Act means the Environmental Planning and Assessment Act 1979 (NSW);

**Approval** means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this Agreement;

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**Authority** means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person;

**Business Day** means a day on which banks are open for general banking business in NSW, excluding Saturdays, Sundays and public holidays;

**Claim** means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this Agreement;

**Contributions** means a contribution made by AGL under this Agreement, pursuant to Schedule 2;

**Development** means the development approved pursuant to Development Application SSD-24937520, but excludes any Modification to Development Application SSD-24937520 that is not materially consistent with the Liddell Closure or Development Application SSD-24937520, unless mutually agreed between the parties in writing;

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

Dispute means any dispute between the parties in connection with this Agreement;

**Investment Committee** means the committee established in accordance with Schedule 3 of this Agreement;

Land means the land owned by AGL as at the date of this Agreement upon which the Liddell Power Station is situated being the land and improvements comprised in the following titles:

Lot 2 DP774681	Lot 11 DP247944
Lot 19 DP247944	Lot 18 DP247944
Lot 19 DP752486	Lot 18 DP752486
Lot 2 DP966589	Lot 2 DP1022827
Lot 116 DP752486	Lot 162 DP752486
Lot 163 DP752486	Lot 601 DP1019325
Lot 2 DP1095515	Lot 1 DP1095515
Lot 2 DP1193252	Lot 4 DP1193430

## Law means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

**Liddell Closure** means the closure, decommissioning and demolition of the Liddell Power Station and includes any required associated decontamination and rehabilitation of the Land being completed;

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**Liddell Power Station** means the power station located on the Land which is operated by AGL as part of the integrated power generation complex located between the Muswellbrook and Singleton local government areas;

Modification has the same meaning as in the Act.

**MOU** means the Memorandum of Understanding on Provision for Socio-Economic Impacts of Closure for Liddell Power Station between AGL and Council, executed 8 September 2021;

**Notice** means a written notice, consent, approval, direction, order, information, application, request or other communication;

**SEIA** means the Socio-Economic Impact Assessment and report funded by AGL and prepared by AECOM pursuant to clause 3.2 of the MOU;

Special Rate has the same meaning as in the Local Government Act 1993 (NSW); and

**Upper Hunter Region** means the Muswellbrook Shire local government area, the Singleton local government area and the Upper Hunter local government area.

## 2 Interpretation

In this Agreement, unless the context indicates a contrary intention:

- (documents) a reference to this Agreement or another document includes any document which varies, supplements, replaces, assigns or novates this Agreement or that other document:
- (b) (references) a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this Agreement;
- (c) (headings) clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this Agreement;
- (d) (person) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) (party) a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) (president, CEO or managing director) the president, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) (requirements) a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (including) including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) (corresponding meanings) a word that is derived from a defined word has a corresponding meaning;
- (j) (singular) the singular includes the plural and vice-versa;
- (k) (gender) words importing one gender include all other genders;

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- (parts) a reference to one or more things includes each part and all parts of that thing
  or group of things but nothing in this clause implies that part performance of an
  obligation constitutes performance of that obligation;
- (m) (rules of construction) neither this Agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) (legislation) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it:
- (o) (time and date) a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in, Australia, even if the obligation is to be performed elsewhere;
- (p) (joint and several) an agreement, representation, covenant, right or obligation:
  - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
  - (ii) on the part of two or more persons binds them jointly and severally;
- (q) (writing) a reference to a notice, consent, request, approval or other communication under this Agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) (replacement bodies) a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (s) (Australian currency) a reference to dollars or \$ is to Australian currency;
- (t) (month) a reference to a month is a reference to a calendar month; and
- (u) (year) a reference to a year is a reference to twelve consecutive calendar months.

## 3 Planning Agreement under the Act

- (a) The parties agree that this Agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 1 of this Agreement summarises the requirements for planning agreements under s 7.4 of the Act and the way this Agreement addresses those requirements.

## 4 Application of this Agreement

This Agreement applies to the Land.

## 5 Operation of this Agreement

- (a) This Agreement commences on and from the date it is executed.
- (b) On and from the date of termination of this Agreement in accordance with clause 9, this Agreement will cease to have effect and the Council will immediately return to AGL any title documentation or other security it holds under this Agreement.

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## 6 Application of s 7.11, s 7.12 and s 7.24 of the Act

- (a) This agreement does not exclude the application of section 7.11 of the Act to the Development.
- (b) This agreement does not exclude the application of section 7.12 of the Act to the Development.
- (c) This agreement does not exclude the application of section 7.24 of the Act to the Development.
- (d) The benefits under this Agreement and the MOU are to be taken into consideration in determining development contributions under section 7.11 of the Act relating to the Development and the Liddell Closure. If required, Council agrees to make a submission to the Department of Planning and Environment confirming the agreement reached between the parties in respect of this clause 6(d).

## 7 Contributions to be made under this Agreement

### 7.1 Contributions

- (a) AGL must make Contributions to Council in accordance with Schedule 2 of this Agreement.
- (b) Council will apply each Contribution made by AGL under this Agreement:
  - (i) in accordance with Schedule 3;
  - (ii) for the benefit of the public of the Upper Hunter Region; and
  - (iii) otherwise in accordance with this Agreement.

### 7.2 Monetary Contributions

- (a) Monetary Contributions paid in accordance with Schedule 2 must be paid by electronic transfer into a bank account, the details of which are to be provided by Council to AGI
- (b) A monetary Contribution is made for the purposes of this Agreement when Council receives the full amount of the contribution payable under this Agreement in cash or by unendorsed bank cheque or by deposit by means of electronic funds transfer of cleared funds into the bank account nominated by Council.

#### 7.3 Adjustment for CPI

(a) The amount of the Contributions in Schedule 2 are subject to adjustment for changes in CPI as follows:

$$DCP = \frac{DC \times A}{B}$$
where:

DCP = the actual Contribution payment amount payable at the time the particular payment is made;

DC = the particular Contribution payment amount required to be paid as per Schedule 2;

A = the most recent CPI published by the Australian Bureau of Statistics prior to the date the payment is due to be made; and

B = the most recent CPI published by the Australian Bureau of Statistics prior to the date of the MOU.

(b) If after the formula in clause 7.3(a) is applied the Contribution amount will be less than \$500,000, the Contribution will not be adjusted.

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#### 7.4 Previous Contributions

- (a) The parties acknowledge that, to date, under the MOU, AGL as a sign of AGL's commitment to contributing to the mitigation of the socio-economic impacts of the Liddell Closure has paid the following amount to Council:
  - (i) \$1.35million, paid to Council on 27 November 2021.
- (b) The parties acknowledge that, to date, under the MOU, AGL has funded the cost of the SEIA up to a total cost of between \$180,000 and \$200,000.
- (c) The parties agree and acknowledge that the contributions made by AGL pursuant to the MOU serve a public benefit and have been made in addition to the Contributions and Continuing Contributions, as outlined in Annexure A, anticipated by this Agreement.

## 7.5 Continuing Contributions

- (a) The parties acknowledge that AGL is currently making and has agreed to make a number of financial and other contributions to the community, in addition and separate to the Contributions provided by AGL pursuant to clause 7.1(a), to ameliorate the socio-economic impacts of the Liddell Closure.
- (b) The additional and separate financial and other contributions provided by AGL are identified in Annexure A to this Agreement.
- (c) AGL will use reasonable endeavours to provide and/or satisfy the contributions identified in Annexure A.
- (d) AGL will provide an annual report to the Investment Committee containing information not limited to:
  - (i) the status of AGL providing or satisfying each of the contributions identified in Annexure A;
  - (ii) any additional contributions or actions that AGL has undertaken to alleviate the socio-economic impacts of the Liddell Closure; and
  - (iii) objectives and goal relevant to satisfying the contributions in Annexure A in the proceeding 12 months.

## 8 Registration of this Agreement

## 8.1 AGL interest

AGL represents and warrants to Council that:

- (a) as at the date of this Agreement it is the registered proprietor of the Land; and
- (b) it has obtained the consent of each person who has an estate or interest in the Land registered under the Real Property Act 1900 (NSW) to enable registration of this Agreement pursuant to clause 8.2.

## 8.2 Registration of this Agreement

- (a) AGL agrees to procure the registration of this Agreement under the Real Property Act 1900 (NSW) on the relevant titles to the Land in accordance with section 7.6 of the Act.
- (b) AGL, at its own expense, will within 3 months after the date of this Agreement, take all practical steps, and otherwise do anything that Council reasonably requires to procure the registration of this Agreement on the titles to the Land under the *Real Property Act* 1900 (NSW).
- (c) AGL acknowledges and agrees that Council may lodge and maintain a caveat against the title to the Land reflecting its rights under this Agreement provided that any caveat lodged by Council will be removed contemporaneously with registration of this

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Agreement against the title to the Land.

### 8.3 Removal of Agreement

When requested to do so after termination of this Agreement, Council will promptly execute such documents and take such steps as may reasonably be required to remove notification of registration of this Agreement from the title to the Land. AGL will reimburse Council for its reasonable costs and disbursements in complying with this clause 8.3

### 9 Termination

- (a) This Agreement terminates on the declaration by a Court of competent jurisdiction that Development Consent SSD- 24937520 is invalid.
- (b) This Agreement terminates on the date 7 years after the date of closure of the Liddell Power Station ( 28 April 2023) provided that AGL has provided all of the Contributions required under this Agreement up until that date.
- (c) AGL's obligations under clauses 7.5 and 8.3 continue in effect until fully complied with regardless of any termination of this Agreement.
- (d) This Agreement terminates at such other time as mutually agreed between the parties in writing.

## 10 Review of this Agreement

- (a) This Agreement may be reviewed or modified by agreement of the parties provided that no review will be undertaken within the 3 years following the date of this Agreement.
- (b) No review or modification of this Agreement will be of any force or effect unless it is in writing and signed by the parties to this Agreement.
- (c) A party is not in breach of this Agreement if it does not agree to an amendment to this Agreement requested by a party in, or as a consequence of, a review.

## 11 Dispute Resolution

## 11.1 General

This clause applies to any Dispute arising in connection with this Agreement.

## 11.2 Notice of Dispute

The party wishing to commence the dispute resolution process must give written notice (Notice of Dispute) to the other party of:

- (a) the nature of the Dispute;
- (b) the alleged basis of the Dispute; and
- (c) the position which the party issuing the Notice of Dispute believes is correct.

#### 11.3 Representatives of parties to meet

- (a) The representatives of the parties must promptly (and in any event within 20 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified Dispute.
- (b) The parties may, without limitation:
  - (i) resolve the Dispute during the course of that meeting,

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- (ii) agree that further material or expert determination in accordance with clause 11.6
  about a particular issue or consideration is needed to effectively resolve the
  Dispute (in which event the parties will, in good faith, agree to a timetable for
  resolution); or
- (iii) agree that the parties are unlikely to resolve the Dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant Dispute.

## 11.4 Further Notice if not settled

If the Dispute is not resolved within 20 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the Dispute (Determination Notice) by mediation under clause 11.5 or by expert determination under clause 11.6.

#### 11.5 Mediation

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) the parties must agree to the terms of reference of the mediation within 10 Business
  Days of the receipt of the Determination Notice (the terms shall include a requirement
  that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW
  Chapter) apply);
- (b) the mediator will be agreed between the parties, or failing agreement within 10 Business Days of receipt of the Determination Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) the mediator appointed pursuant to this clause 11.5 must:
  - (i) have reasonable qualifications and practical experience in the area of the Dispute;
     and
  - (ii) have no interest or duty which conflicts or may conflict with his or her function as a mediator, he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) the mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties:
- the parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation;
- (f) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a Dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) in relation to costs and expenses:
  - (i) each party will bear its own professional and expert costs incurred in connection with the mediation; and
  - (ii) the costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

#### 11.6 Expert determination

If the Dispute is not resolved under clause 11.3 or clause 11.5, or the parties otherwise

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agree that the Dispute may be resolved by expert determination, the parties may refer the Dispute to an expert, in which event:

- (a) the Dispute must be determined by an independent expert in the relevant field:
  - (i) agreed upon and appointed jointly by the parties; and
  - (ii) in the event that no agreement is reached, or no appointment is made within 10 Business Days of the agreement, to refer the Dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales:
- (b) the expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) the determination of the Dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) any determination made by an expert pursuant to this clause is final and binding upon the parties unless:
  - (i) within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and intends to commence litigation; or
  - (ii) the determination is in respect of, or relates to, termination or purported termination of this Agreement by a party, in which event the expert is deemed to be giving a non-binding appraisal.

#### 11.7 No suspension of contractual obligations

Subject to any interlocutory order, the referral to or undertaking of a Dispute resolution process under this clause 11 does not suspend the parties' obligations under this Agreement.

## 12 Enforcement

#### 12.1 Default

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this Agreement, it may give notice in writing to the other party (Default Notice) giving all particulars of the matters in respect of which it considers Default has occurred and by such notice require the Default to be remedied within a reasonable time not being less than 30 days.
- (b) In determining a reasonable time, regard must be had to both the nature of the Default and the action required to remedy it and whether or not the continuation of the Default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may if the Default Notice relates to a Dispute refer the Dispute to dispute resolution under clause 11 of this Agreement.

#### 12.2 General enforcement

- (a) Without limiting any other remedies available to the parties, this Agreement may be enforced by a party in any Court of competent jurisdiction.
- (b) For the avoidance of doubt, nothing in this Agreements prevents:

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- (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; or
- (ii) the Council from exercising any function under the Act or any other Act or Law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

## 13 Assignment

AGL must not assign or deal with any right under this Agreement until this Agreement has been registered against the title to the land.

## 14 Approvals and consents

Except as otherwise set out in this Agreement, and subject to any Law, a party may give or withhold an Approval or consent to be given under this Agreement in that party's absolute discretion and subject to any conditions determined by that party. A party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

## 15 Council's position

#### 15.1 Agreement does not fetter Discretion

This Agreement is not intended to operate to fetter, in any manner the:

- (a) power of Council to make any Law; or
- (b) exercise by Council of any statutory power or discretion including, but not limited to, any statutory power or discretion of the Council relating to the Liddell Closure or any application for development consent (all referred to in this Agreement as a "Discretion").

## 15.2 Severance of provisions

- (a) No provision of this Agreement is intended to, or does, constitute any unlawful fetter on any exercise of any Discretion. If, contrary to the operation of this clause, any provision of this Agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:
  - (i) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 15 is substantially satisfied; and
  - (ii) in the event that clause 15.2(a)(i) cannot be achieved without giving rise to a fetter on a Discretion, the relevant provision is to be severed and the remainder of this Agreement has full force and effect.

## 15.3 Exercise of discretion

Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a discretion, and if Council has in this Agreement contracted out of a provision or exercised a discretion under this Agreement, then to that extent this Agreement is not to be taken to be inconsistent with the Law.

#### 16 Notices

## 16.1 Notices

- (a) Any Notice that must or may be given or made to a party to this Agreement is only given or made if it is in writing and sent in one or more of the following ways:
  - (i) delivered or posted to that party at its address set out below;
  - (ii) faxed to that party at its fax number set out below; or

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(iii) emailed to that party at its email address set out below

#### Council

Attention	The General Manager
Address	PO Box 122, Muswellbrook, NSW, 2333
Email	records@muswellbrook.nsw.gov.au

#### **AGL**

Attention	Teagan Cronin
	Divisional Governance & Excellence Manager
Address	Private Mail Bag 2 Muswellbrook NSW 2333
Email	tcronin@agl.com.au

- (b) If a party gives the other party 3 Business Days' notice of a change of its address, number or email, any Notice is only given or made by that party if it is delivered, posted or emailed to the latest address or email.
- (c) Any Notice is to be treated as given or made at the following time if it is:
  - (i) delivered, when it is left at the relevant address;
  - (ii) sent by post, 5 Business Days after it is posted.
- (d) If any Notice is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

## 16.2 Notices sent by email

- (a) A party may serve a Notice by email if the Notice:
  - (i) includes a signature block specifying:
    - a. the name of the person sending the Notice; and
    - b. the sender's position within the relevant party;
  - (ii) states in the body of the message or the subject field that it is sent as a Notice under this Agreement;
  - (iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this Agreement; and
  - (iv) is sent to the email address specified in clause 16.1(a) or the email address last notified by the intended recipient to the sender.
- (b) The recipient of a Notice served under this clause 16.2 must:
  - (i) promptly acknowledge receipt of the Notice; and
  - (ii) keep an electronic copy of the Notice.
- (c) Failure to comply with clause 16.2 does not invalidate service of a Notice under this clause.

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## 16.3 Receipt of Notices sent by email

- (a) A Notice sent under clause 16.2 is taken to be given or made:
  - (i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above;
  - (ii) when the Notice enters an information system controlled by the recipient; or
  - (iii) when the Notice is first opened or read by the recipient, whichever occurs first.
- (b) If under clause 16.3 a Notice would be taken to-be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 5:00 pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

#### 17 Interest to accrue

#### 17.1 Interest

- (a) AGL agrees to pay interest on any amount under this Agreement which is not paid on the due date for payment. Interest accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365 days.
- (b) AGL agrees to pay interest under this clause on demand from Council.

### 17.2 Rate of interest

The rate of interest applying to each daily balance is the maximum rate permitted to accrue on unpaid rates by Section 566(3) of the *Local Government Act 1993* (NSW).

#### 18 General

### 18.1 Relationship of the Parties

- (a) Nothing in this Agreement constitutes a partnership between the parties, nor does it constitute one party to be the agent of the other.
- (b) A party cannot in any way or for any purpose bind another party or contract in the name of another party.

## 18.2 Entire Agreement

This Agreement constitutes the entire agreement of the parties in relation to its subject matter and, except for the MOU, supersedes all prior agreements, understandings and negotiations between the parties. Subject to any contrary requirement of any Law, no other covenants or provisions are implied or arise between the parties by way of collateral or other agreement. 'The existence of any such implication or collateral or other agreement is expressly negative to the extent permitted by Law.

#### 18.3 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of or seeks to rely on this Agreement or any part of it.

## 18.4 Confidentiality

The parties agree that the terms of this Agreement are not confidential and this Agreement may be treated as a public document and exhibited or reported without restriction by any party.

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#### 18.5 Governing Law and Jurisdiction

- (a) The laws applicable in New South Wales govern this Agreement.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the New South Wales Courts and Courts competent to hear appeals from those Courts.

#### 18.6 Counterparts

This Agreement may be executed in any number of counterparts and all such counterparts taken together will constitute the same instrument. A party can execute this Agreement by signing any counterpart. Counterparts can be exchanged electronically by way of email.

### 18.7 Costs

- (a) AGL must pay to Council the Council's reasonable costs (exclusive of GST) and disbursements in connection with the negotiation, preparation, execution, registration and release and discharge of this Agreement and any other document relating to this Agreement, and for all advertising and associated costs, within 7 days of a written demand by Council for such payment.
- (b) AGL must also pay to Council the Council's reasonable costs of enforcing this Agreement within 7 days of a written demand by Council for such payment.

#### 18.8 Further assurances

Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

#### 18.9 Representation and warranties

The parties represent and warrant that they have the power and authority to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any Law.

## 18.10 Severability

Subject to clause 15 this Agreement must, so far as possible, be interpreted or construed so as not to be invalid, illegal or unenforceable in any respect but if any provision on its true interpretation or construction is held to be illegal, invalid or unenforceable:

- (a) that provision will, so far as possible, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation of a partial character; or
- (b) if the provision or part of it cannot effectively be read down, that provision or part of it will be deemed to be void and severable and the remaining provisions of this Agreement will not in any way be affected or impaired and will continue notwithstanding that illegality, invalidity or unenforceability.

### **18.11 Waiver**

- (a) A right or remedy created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- (b) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any

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other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.



# Schedule 1 Summary of requirements (Section 7.4)

Subject and subsection of the Act	Planning Agreement
Planning instrument and/or Development Application Section 7.4(1)	AGL proposes to make a Development Application, being SSDA 24937520
Description of the land to which the planning Agreement applies Section 7.4(3)(a)	See the definition of Land in clause 1.
The scope, timing and manner of delivery of contribution required by the Planning Agreement Section 7.4(3)(b)	See clause 7.
Applicability of section 7.11 of the Act Section 7.4(3)(d)	Not excluded. See clause 6.
Applicability of section 7.12 of the Act Section 7.4(3)(d)	Not excluded. See clause 6.
Applicability of section 7.24 of the Act Section 7.4(3)(d)	Not excluded. See clause 6.
Mechanism for dispute resolution Section 7.4(3)(f)	See clause 11.
Enforcement of the Planning Agreement Section 7.4(3)(g)	See clause 12.
Registration of the Planning Agreement Section 7.4(3)(g)	To be registered against the Land. See clause 8.
Provisions for enforcement Section 7.4(3)(g)	See clause 12.
No obligation to grant consent or exercise functions Section 7.4(9)	See clause 15.

## Schedule 2 Contributions

AGL agrees to pay the following Contributions to Council:

- (a) \$500,000, subject to CPI indexation in accordance with clause 7.3 calculated from 1 July 2022, within 10 Business Days of receipt of an invoice from Council prior to 30 June 2023;
- (b) \$500,000, subject to CPI indexation in accordance with clause 7.3 calculated from 1 July 2022, within 10 Business Days of 30 June 2023;
- (c) \$500,000, subject to CPI indexation in accordance with clause 7.3 calculated from 1 July 2023, within 10 Business Days of 30 June 2024
- (d) \$500,000, subject to CPI indexation in accordance with clause 7.3 calculated from 1 July 2024, within 10 Business Days of 30 June 2025.



## Schedule 3 Investment Committee

## 1 Definitions

In this Schedule 3, unless the context indicates a contrary intention:

**Approved Funding Proposal** means a Funding Proposal recommended by the Investment Committee in accordance with clause 4.1 and approved by Council in accordance with clause 4.3;

**Community Representative** means an Investment Committee Member who is not a representative of AGL or Council in accordance with clause 2.1(b)(iii);

**Council Representative** means a Councillor or employee of Council and appointed by Council to be an Investment Committee Member in accordance with clause 2.1(b)(ii);

**Dealing** in relation to the Land, means without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land;

**Funding Proposal** means a proposal for Council to spend some or all of the Contribution paid by AGL and which satisfies the Funding Proposal Criteria;

**Funding Proposal Criteria** means the criteria set out in clause 7 and which a Funding Proposal must satisfy before it can be approved by the Investment Committee;

Investment Committee Member means a member of the Investment Committee;

**AGL Representative** means an employee of AGL and appointed by AGL to be an Investment Committee Member in accordance with clause 2.1(b)(i); and

**Recommended Funding Proposal** means a Funding Proposal recommended by the Investment Committee in accordance with clause 4.1.

Terms that are not defined in this Schedule but that are defined in clause 1 of the Agreement, will have the same meaning in this Schedule as the meaning given to the term in the Agreement, unless the context makes it clear that a definition is not intended to apply.

## 2 Investment Committee

## 2.1. Establishment and Membership

- (a) As soon as practicable after this Agreement is executed, Council must establish an Investment Committee which must consist of six Investment Committee Members.
- (b) The membership of the Investment Committee shall comprise:
  - (i) two Investment Committee Members appointed by AGL;
  - (ii) two Investment Committee Members appointed by Council;
  - (iii) one Community Representative appointed in accordance with clause 2.3; and
  - (iv) one representative from a government organisation or related entity with a demonstrated interest in the public benefit of the Upper Hunter Region.
- (c) An Investment Committee Member appointed by AGL or Council must act in the best interests of the party which appointed it.

## 2.2. Chairperson

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- (a) The chairperson for the Investment Committee must be a Council Representative.
- (b) The chairperson must be elected to the position of chairperson by a majority vote of the Investment Committee at the first meeting of the Investment Committee.
- (c) If the chairperson ceases to be an Investment Committee Member, then a new chairperson must be appointed by majority vote of the Investment Committee at the next Investment Committee meeting.
- (d) The chairperson will convene and chair the Investment Committee meetings.
- (e) The chairperson will determine the agenda items.

#### 2.3. Community Representative

- (a) As soon as practicable after this Agreement is executed, Council must place an advertisement in the Hunter River Times and on its website and social media platforms for any person interested in the position of Community Representative on the Investment Committee.
- (b) Any resident in the Muswellbrook local government area, who is not eligible for the position of Council Representative or AGL Representative, may make an application to Council to be appointed as the Community Representative on the Investment Committee.
- (c) The Community Representative must be elected by majority vote of the Investment Committee at the first meeting of the Investment Committee from the persons who made an application to Council for appointment.
- (d) The Community Representative is elected to the Investment Committee for a two year period.
- (e) After a Community Representative has held that position on the Investment Committee for a two year period Council must readvertise the position in accordance with clause 2.3 of this Schedule.
- (f) A Community Representative can be re-elected to the position of Community Representative on the Investment Committee if that person has applied again to be a Community Representative on the Investment Committee.
- (g) If a Community Representative is not elected due to a lack of interest by the community in the position of Community Representative on the Investment Committee then provided Council has advertised the position in accordance with clause 2.3(a) the Investment Committee may proceed with operating in accordance with this Schedule 3 with a quorum of at least one Council Representative and one AGL Representative.

#### 2.4. Alternative Investment Committee Member

AGL and Council may appoint an alternate Investment Committee Member who may exercise all powers of the Investment Committee member when attending in place of that Investment Committee Member.

## 2.5. Term of Investment Committee Member

AGL Representatives and Council Representatives are appointed to the Investment Committee for a four year period, provided that for the initial term, the appointments shall be until the next general election of Council.

## 2.6. Replacement of Investment Committee Members

- (a) If an Investment Committee Member ceases for any reason to be a member of the Investment Committee or resigns as a member of the Investment Committee:
  - (i) if the Investment Committee Member is an AGL Representative, AGL must as soon as practicable appoint a new AGL Representative;

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- (ii) if the Investment Committee Member is a Council Representative, Council must as soon as practicable appoint a new Council Representative; and
- (iii) if the Investment Committee Member is a Community Representative:
  - a. Council must, as soon as practicable, advertise in the Hunter River Times and on its website and social media platforms for any person interested in being appointed as the Community Representative on the Investment Committee; and
  - b. the remaining Investment Committee Members at the next meeting of the Investment Committee must appoint, by majority vote, a new Community Representative from the persons who made an application to Council for such appointment (in accordance with clause 2.3).
- (b) If an Investment Committee Member:
  - (i) dies or becomes bankrupt;
  - (ii) in the case of a Council Representative, ceases to be a Councillor or employee of Council, or
  - (iii) in the opinion of each of the other Investment Committee Members, consistently fails to perform his or her duties in relation to the Investment Committee,

that Investment Committee Member will cease to be a member of the Investment Committee with immediate effect.

## 2.7. Meetings of the Investment Committee

- (a) The Investment Committee will determine the frequency of its meetings.
- (b) Despite clause 2.7(a) above, the Investment Committee must meet at least twice per Year
- (c) Only the chairperson may call a meeting of the Investment Committee.
- (d) Any Investment Committee Member may request the chairperson to convene an extraordinary meeting of the Investment Committee to discuss any matter warranting urgent consideration. The chairperson will determine whether an extraordinary meeting is warranted.
- (e) At least two weeks' notice must be given to all members of any meeting of the Investment Committee (except extraordinary meetings where one week's notice can be given).
- (f) Council may determine the manner in which meetings of the Investment Committee are to be convened and conducted.
- (g) Council or AGL must provide facilities for Investment Committee meetings.

## 2.8. Proceedings of Investment Committee

- (a) The quorum for meetings of the Investment Committee is one AGL Representative and one Council Representative.
- (b) Meetings of the Investment Committee may be conducted by telephone or other electronic means provided all Investment Committee Members are able to be heard and communicate effectively.

## 2.9. Liability and Duties

If an Investment Committee Member acts in good faith (which does not preclude acting in the interests of or under the direction of the person appointing that Investment Committee

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Member), he or she is not responsible or liable in any manner to any other Investment Committee Member, Council or AGL for any loss or expense.

## 3 The Role of the Investment Committee

- (a) The role of the Investment Committee is to consider, and, if it sees fit, recommend to Council, Funding Proposals submitted to it for consideration by an Investment Committee Member.
- (b) The Investment Committee may not recommend a Funding Proposal unless it meets the Funding Proposal Criteria.
- (c) The Investment Committee will evaluate and provide feedback to AGL on the annual report provided in accordance with clause 7.5.
- (d) The Investment Committee will report to Council the annual report provided by AGL in accordance with clause 7.5.

## 4 Funding Proposals

## 4.1 Submitting funding Proposal for Consideration by Investment Committee

Any Investment Committee Member may submit a Funding Proposal to the Investment Committee for consideration, if the Funding Proposal:

- (a) satisfies the Funding Proposal Criteria; and
- (b) has been provided (by post or email) to all Investment Committee Members at least two weeks before the meeting at which the Funding Proposal is to be considered.

## 4.2 Consideration of Funding Proposal

- (a) All Funding proposals that satisfy clause 4.1 must be considered by the Investment Committee.
- (b) Council will provide the Investment Committee with a comprehensive report on all Funding Proposals.
- (c) A Funding Proposal will be recommended by the Investment Committee for funding if at least 75% of the Investment Committee vote in favour of the Funding Proposal.
- (d) An Investment Committee Member may declare themselves ineligible to vote on a matter where the Investment Committee Member considers that they have a material personal interest in the outcome of the matter and that this may result in a conflict of interest.
- (e) For the avoidance of doubt, where an Investment Committee Member is ineligible to vote at a meeting at which a decision is made, a vote of all remaining eligible Investment Committee Members will constitute a vote of the Investment Committee.
- (f) If a Funding Proposal is not approved by the Investment Committee, the Funding Proposal may be submitted for consideration at one subsequent Investment Committee meeting for further consideration.

#### 4.3 Approved Funding Proposal

- (a) Council may submit a Recommended Funding Proposal to the Muswellbrook Shire Council Councillors for resolution within the budget agreed by the Investment Committee and the timeframe as required by Council.
- (b) Council does not in any way guarantee the outcome of the Recommended Funding Proposal and the Investment Committee acknowledges that any Recommended Funding Proposal is advisory only and the Councillors are in no way restricted in their

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decision making.

- (c) The timeframe to implement an Approved Funding Proposal may vary depending on the nature and complexity of the Approved Funding Proposal.
- (d) Council must report to the Investment Committee at the next meeting of the Investment Committee as to the progress and status of all Recommended Funding Proposals, including the amount of available monetary Contributions and where funds have been allocated and spent.
- (e) If, at the termination of this Agreement there are funds that have not been allocated, the Investment Committee will continue to operate until all funds have been expended in accordance with clause 4.2 of this Agreement and which satisfies the Funding Proposal Criteria.

## 5 Funding Proposal Criteria

- (a) A Funding Proposal must be for a public purpose as defined by section 7.4(2) of the Act and support one or more of the following priorities:
  - (i) regional economic diversification;
  - (ii) new job creation, skills and training;
  - (iii) sustainability and innovation; or
  - (iv) research and development.
- (b) A Funding Proposal may include:
  - (i) the maintenance or fit out of infrastructure;
  - (ii) environmental conservation works;
  - (iii) research, training or education;
  - (iv) community welfare;
  - (v) community events.
- (c) A Funding Proposal submitted to the Investment Committee for consideration must:
  - (i) describe the proposed expenditure including:
    - a. an overview of its benefit to the Upper Hunter Region community;
    - b. the reasons why the Contributions paid by AGL should be spent on the Funding Proposal;
  - (ii) set out an indicative costing for the proposed expenditure including any ongoing costs.
- (d) A Funding Proposal must not be submitted to the Investment Committee for consideration which:
  - (i) seeks to finance endeavours solely for personal gain; or
  - (ii) is from a discriminatory and/or exclusive organisation.

Planning Agreement	
EXECUTED AS AN AGREEMENT:	
<b>EXECUTED</b> by <b>Muswellbrook Shire Council ABN</b> 86 864 180 944 by its authorised delegate pursuant to Section 377 of the <i>Local Government Act 1993 (NSW)</i> , in the presence of:	
Signature of Witness	General Manager
Name of Witness (Print)	Name of General Manager
<b>EXECUTED</b> by <b>AGL Macquarie Pty Ltd ACN 167 859 494</b> in accordance with Section 127 of the <i>Corporations Act 2001 (Cth)</i> :	
Signature of Director	Signature of Director/Secretary
Name of Director (Print)	Name of Director/Secretary (Print)

# Annexure A Continuing Contributions

The SEIA recommended a range of mitigations to offset potential impacts resulting from the closure of Liddell Power Station. AGL has developed a Community Support Framework to align with these mitigations and is committed to the continuation of such activities, as outlined below:

- Continue to engage stakeholders and the community, including but not limited to the continuation of engagement with the AGL Macquarie Community Dialogue Group, with post closure information including timing and future land use.
- · maintain existing investment in community activities;
- identify specific community investment opportunities related to mental health services in the Upper Hunter region;
- include local targets as part of demolition, remediation, and rehabilitation procurement strategy;
- · provide opportunities for local indigenous procurement;
- continue support for local business chambers and seek community investment in local business development programs;
- continue working with all levels of government, local business and other stakeholders to identify commercial and social development needs and opportunities;
- collaborate with local councils, First Nations Peoples, and other key local stakeholders to identify opportunities for recreational, sporting and other community assets; and
- continue to pursue commercial site redevelopment opportunities that leverage the local skills base, contribute to regional economic diversification and create local jobs.





#### AGL MACQUARIE PTY LTD PLANNING AGREEMENT EXPLANATORY NOTE

Liddell Power Station closed on 28 April 2023. In the lead up to closure, Council and AGL Macquarie Pty Ltd (AGL) signed a Memorandum of Understanding (MOU) that included a requirement for preparation of a Planning Agreement to address the economic and social impacts of closure on the Muswellbrook Shire and wider community.

The MOU was informed by a detailed Social and Economic Impact Assessment prepared by AGL to understand the likely impacts of the closure.

The draft Planning Agreement has been prepared that satisfies the requirements set out in the MOU. As such, AGL agrees to pay the following Contributions to Council:

- 1. \$500,000, subject to CPI indexation by June 2023;
- 2. \$500,000, subject to CPI indexation by 10 July 2023;
- 3. \$500,000, subject to CPI indexation by 10 July 2024; and
- 4. \$500,000, subject to CPI indexation by 10 July 2025.

Council is required to administer the Planning Agreement in accordance with the *Environmental Planning and Assessment Act 1979* (EP&A Act) and Regulations, in addition to any guidelines published by the Department of Planning and Environment.

Contributions will be used for any purpose that benefits the public or a section of the public, including but not limited to a purpose specified in section 7.4(2) of the EP&A Act which includes (but is not limited to):

- a) Fostering business and job creation;
- b) Education and training;
- c) Sports and recreation;
- d) Homelessness and mental health;
- e) Infrastructure; and
- f) Environmental Sustainability.

Of note, under the MOU, AGL as a sign of AGL's commitment to contributing to the mitigation of the socio-economic impacts of the Liddell Closure has paid a previous contribution of \$1.35 million to Council on 27 November 2021.

Muswellbrook Shire Council Page 1 of 1



Attachments:

## 11.1.5. PP 020 – Administrative Amendment – Removal of Heritage Item I112 (Muswellbrook Brickworks) - Post Exhibition Report

1. PP 020 – Draft Planning Proposal [11.1.5.1 - 22 pages]

2. PP 020 - Signed Gateway determination [11.1.5.2 - 2

pages]

3. PP 020 - Signed Gateway determination Report

[11.1.5.3 - 11 pages]

Responsible Officer: Sharon Pope - Director - Planning & Environment

Author: Tanya Jolly (Project Planner)

Community Plan Issue: 4 - Cultural Vitality

Community Plan Goal:

A culturally rich and diverse Community with strong identities,

history and sense of belonging.

Community Plan Strategy: 4.4.1 - Support the conservation and restoration of the

Shire's heritage items.

Not applicable

#### **PURPOSE**

Council has received a request to amend the Muswellbrook Local Environmental Plan (MLEP) 2009 in relation to the Heritage Listed Item I112 "Muswellbrook Brick Works", located on Lot 4 DP 1220491 (formerly Lot 101 in DP 578075). The request seeks to remove the item from Schedule 5 Part 1 Heritage Items in the Muswellbrook LEP 2009.

The purpose of this report is to advise Council of the outcome of the public exhibition of the Proposal and seek endorsement for the finalisation of amendment as required under the *Local Environmental Plan Making Guideline*.

## OFFICER'S RECOMMENDATION

Council, as a delegated Local Plan Making Authority, resolves to:

- 1. Endorse the Planning Proposal, as exhibited, and included in Attachment 1 to this report.
- 2. Make the Plan in accordance with section 3.36 of the *Environmental Planning and Assessment Act 1979*, consistent with the Gateway Determination.
- 3. Forward a copy of the Council resolution and the Planning Proposal, as exhibited, to the Parliamentary Counsel's Office and the Department of Planning and Environment to give effect to the Planning Proposal.

Moved:	Seconded:
	o o o o i i a o a i



#### **BACKGROUND**

The subject land is Lot 4 DP 1220491 and known as Coal Road, Muswellbrook. The site has historically been used as part of the mining operations carried out by Muswellbrook Coal Company.

The Muswellbrook Brick Works (hereafter referred to as 'the brickworks') commenced operations in 1957 and ceased operating in 1999. Consent for demolition of the brickworks was granted by Muswellbrook Shire Council in 2009 due to the structures presenting a hazard (Muswellbrook History Society, 2010, p.7). Demolition of the brickworks occurred in May 2012.

The applicant has provided a heritage assessment of the former brickworks site prepared by EMM. This assessment concludes that the site no longer contains historical heritage significance. The applicant has argued that retaining the brickworks heritage listing has no heritage conservation benefits and removal of the item from the LEP heritage schedule is recommended to ensure appropriate land use decisions can be made with respect to the land.

On 28 February 2023, Council endorsed the preparation of a Planning Proposal to amend MLEP 2009 to remove the item I112 Muswellbrook Brick Works from the Heritage Schedule and its relevant mapping.

On 8 June 2023, the DPE issued a Gateway Determination (Attachment 2 & 3) enabling the Planning Proposal to proceed to public exhibition of the plan making process subject to satisfying five (5) conditions, one of which was that the Planning Proposal be publicly notified for a minimum of 10 working days.

### **CONSULTATION**

The proposal was Notified:

- From 31 July 2023 to 25 August 2023 on the Planning Portal.
- On 11 August 2023 in the Hunter River Times newspaper.
- From 11 August 2023 to 25 August 2023 on Facebook and Council's Website.

No submissions were received during the exhibition period.

As required under the Gateway determination, the application was also referred to DPE Heritage. DPE Heritage reviewed the application and noted that, based on the information provided, there are no identified impacts on Aboriginal objects or places, or State Heritage Register items, or historic archaeology protected under the Heritage Act 1977.

## **REPORT**

The Proposal was prepared and submitted to the Department of Planning and Environment who reviewed the application and provided a gateway determination subject to five conditions.

Condition 1 of the Gateway Determination required that the Planning Proposal be placed on public exhibition for a minimum of 10 calendar days. This occurred and no submissions were received.

Condition 4 of the Gateway Determination stated that Council, as planning proposal authority, is authorised to exercise the functions of the local plan-making authority under section 3.36(2) of the Act subject to the following.

Condition 5 of the Gateway Determination states that the Planning Proposal must be reported to Council for a final recommendation within nine months from the date of the Gateway Determination (that is, by March 2024). The post exhibition report is being reported to the 26 September 2023 Ordinary Council meeting, and therefore satisfies this condition.



## **OPTIONS**

## Council may:

- Resolve to endorse the finalisation of the Planning Proposal to amend MLEP 2009 to remove the item I112 Muswellbrook Brick Works from the Heritage Schedule and its relevant mapping. This is the preferred option as there is no longer any item of Heritage significance on the site.
- 2. Reject the request and take no further action.

Where Council does not support a request to finalise the planning proposal, Council is required to notify the Proponent as soon as practicable in writing that the proposal is not supported.

## **CONCLUSION**

The Planning Proposal was publicly exhibited in accordance with the conditions of the Gateway Determination and Council's Community Participation Plan. No submissions were received during the exhibition. Given there are no outstanding submissions from public authorities, it is recommended that the Council as a Local Plan Making Authority resolve to make this change to the LEP.

## **FINANCIAL IMPLICATIONS**

The applicant has paid application fees in accordance with Council's 2022/2023 fees and charges.

## STATUTORY IMPLICATIONS

The requested amendment is an Administrative Amendment involving a change to the Heritage Schedule and the relevant Heritage Map under the LEP.

## **LEGAL IMPLICATIONS**

The Planning Proposal has been written in accordance with the Department of Planning and Environment's guidelines. Council will also request the Minister for Planning to delegate their planning powers under Section 3.22 of the Environmental Planning and Assessment Act 1979 and to Council in this instance.

## Planning Proposal – Administrative Amendment – Lot 4 DP 1220491, Muswellbrook

## PP-2023-1

Local Government Area:		Muswellbrook Shire Council (MSC)
Name of Draft LEP:		Muswellbrook Local Environment Plan 2009 - PP-2023-1
Subject Land:		Lot 4 DP 1220491, Muswellbrook.
Land Owner:		Muswellbrook Coal Company Pty Ltd.
Applicant:		Muswellbrook Coal Company Pty Ltd.
Folder Number:		PP 020
Date:		17 April 2023
Author:		Tanya Jolly & EMM Consulting Pty Limited
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 Map
	3	Current Land Zoning
	4	Minimum lot size
	5	Terrestrial Biodiversity
	6	Heritage Conservation
	7	Bushfire Prone Land
	8	Contaminated Land
	9	Mine Subsidence

Attachments:	No.	Details
	1	The Business Paper and Meeting Minutes of the 12 April 1977 Denman Ordinary Council Meeting.
	2	Evaluation criteria for the delegation of plan making functions.

#### Part 1 - OBJECTIVES OR INTENDED OUTCOMES

The objective of the Planning Proposal is to amend Muswellbrook Local Environmental Plan 2009 (MLEP 2009) to remove "Muswellbrook Brick Works (Item I112)" from Schedule 5 of the Muswellbrook Local Environmental Plan 2009.

#### Part 2 - EXPLANATION OF PROVISIONS

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

Amendment Applies to	Explanation of provision
Schedule 5 Environmental Heritage	To remove item I112 from the Schedule.
Heritage Map	To remove item I112 from the Map.

### Part 3 - JUSTIFICATION

### Section A - Need for the Planning Proposal

### 1. Is the planning proposal a result of an endorsed LSPS, strategic study or report?

This proposal is not a result of an endorsed LSPS, strategic study or report. This proposal is in response to a historic heritage assessment that concluded that Item I112 no longer contains historical heritage significance. Removal of the item from the LEP heritage schedule is, therefore, necessary to ensure appropriate land use decisions can be made with respect to the land.

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

The proposal is the only means of achieving the stated objectives. The only alternative is to retain the item within the heritage schedule and map, which would potentially have an adverse impact on land use decisions within the Muswellbrook Shire.

### Section B - Relationship to Strategic Planning Framework

3. Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?

### The Hunter Regional Plan 2041

This regional plan is a 20-year land use plan prepared under the *Environmental Planning and Assessment Act 1979 (EP&A Act)*. It applies to the local government areas (LGAs) of Cessnock, Dungog, Lake Macquarie, Maitland, MidCoast, Muswellbrook, Newcastle, Port Stephens, Singleton, and Upper Hunter. This regional plan sets the strategic land use framework for continued economic growth and diversification in one of Australia's most diverse and liveable regions.

Objective 6 under this Plan is to "Conserve heritage, landscapes, environmentally sensitive areas, waterways and drinking water catchments, with performance outcomes specifying that items, areas, objects and places of heritage significance are conserved."

The proposal is not inconsistent with the Hunter Regional Plan as the item of Heritage Significance no longer exists on the site as the building was demolished in May 2012 and Archival recording of the site was undertaken by Muswellbrook Shire Local & Family History Society Inc.

#### Muswellbrook Community Strategic Plan 2022-2032

The Muswellbrook Community Strategic Plan is an overview document that identifies the community's vision and goals for the future. It covers a minimum time frame of 10 years.

Goal 4 of the Muswellbrook Community Strategic Plan is to create a "culturally rich and diverse community with strong identities, history and sense of belonging", one of which is to "conserve the heritage and history of the Shire".

The removal of the Muswellbrook brickworks from Schedule 5 of the Muswellbrook LEP is considered a minor administrative amendment and not considered to be inconsistent with the goals set out in the Muswellbrook Community Strategic Plan as the subject site no longer contains historical heritage significance.

#### Muswellbrook Shire Council 2022-2023 Operational Plan

The Muswellbrook Shire Council 2022-2023 Operational Plan is a one-year plan that spells out the details of the Delivery Program, identifying the individual projects and activities that will be undertaken in a specific financial year to achieve the commitments made in the four-year Delivery Program.

Council's operational plan references the goals set out in the Community Strategic Plan but does not reference any specific actions that are relevant to the proposal.

#### Muswellbrook Shire 2022 - 2026 Delivery Program

Goal 4.1 of the Muswellbrook Shire 2022 – 2026 Delivery Program seeks to "Support the conservation and restoration of the Shire's heritage items". The measures proposed to enact this goal is:

- Funding allocation for heritage conservation and restoration is available, and;
- Local Heritage Grants and Council budget allocation
- 4. Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?

### Muswellbrook Local Strategic Planning Statement 2020 - 2040

The Muswellbrook Local Strategic Planning Statement (LSPS) is part of a hierarchy of strategic land use planning documents and is a mandated requirement of the NSW State Government under the Environmental Planning and Assessment Act 1979.

The Muswellbrook 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.

Planning Priority 14 under this plan is to ensure that "Aboriginal and Non- Aboriginal cultural heritage is protected and celebrated."

The Muswellbrook Brick works site no longer contains any items of heritage significance and therefore is not contrary to this planning priority.

# 5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?

### Muswellbrook Shire Council Heritage Strategy

The Muswellbrook Heritage Strategy has been prepared to set the future direction for heritage initiatives in Muswellbrook Shire. It is also prepared to meet the requirements of the NSW Office of Environment and Heritage in association with the Three-Year funding agreement to support local government heritage management in NSW.

The Strategy discusses a number of ways in which Council aims to retain, enhance, and protect the local Heritage of the locality, including the management of local Heritage in a positive manner.

The proposed removal of the Heritage Item assists in the management of the local Heritage, ensuring that Items that no longer contain Heritage significance, and cannot be restored are no longer registered in the Muswellbrook Local Environmental Plan.

# 6. Is the planning proposal consistent with applicable State Environmental Planning Policies?

The Planning Proposal is consistent with the following relevant State Environmental Planning Policies (SEPPs) outlined in Table 1 below.

Table 1: Assessment of the Planning Proposal against relevant SEPPs

SEPP	Relevance	Implications
SEPP (Biodiversity and Conservation) 2021	This SEPP provides planning controls for the conservation of Biodiversity in NSW.	The proposal does not involve any provisions which would be inconsistent with the SEPP.
SEPP (Building Sustainability Index: BASIX) 2004	This SEPP sets out provisions to regulate the energy efficiency of residential buildings to encourage sustainable residential development	The proposal does not involve any provisions which would be inconsistent with the SEPP.
SEPP (Exempt and Complying Development Codes) 2008	The SEPP provides exempt and complying development codes for types of development that are of minimal environmental impact that may be carried out without the need for development consent or in accordance with a complying development certificate.	This proposal would allow the applicability of this SEPP as land that contains heritage items are excluded from exempt and complying development codes. Therefore, removal of the I112 from the LEP heritage schedule would allow for more efficient use of land.

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SEPP (Housing) 2021	This SEPP aims to enable the development of diverse housing types by encouraging the development of housing that will meet the needs of more vulnerable members of the community.	The proposal does not involve any provisions which would be inconsistent with the SEPP.
SEPP (Industry and Employment) 2021	This SEPP provides provisions:  To promote economic development and the creation of employment in the Western Sydney Employment Area.  To regulate signage and advertisements.	The proposal does not involve any provisions which would be inconsistent with the SEPP.
SEPP No 65—Design Quality of Residential Apartment Development	This Policy provides provisions for development for the purpose of a residential flat building, shop top housing or mixed-use development with a residential accommodation component.	The proposal does not involve any provisions which would be inconsistent with the SEPP.
SEPP (Planning Systems) 2021	This policy aims to identify State Significant Development, regionally significant development, and critical state significant development.	The proposal does not involve any provisions which would be inconsistent with the SEPP.
SEPP (Primary Production) 2021	Aims of the SEPP include to facilitate the orderly economic use and development of lands for primary production.	The subject land is zoned RU1. The proposal will facilitate the orderly and economic use and development of the land for primary production.
SEPP (Resilience and Hazards) 2021	This SEPP sets out provisions for coastal management, hazardous and offensive development, and the remediation of land.	The proposal does not involve any provisions which would be inconsistent with the SEPP.
SEPP (Resources and Energy) 2021	This SEPP sets out provisions for Mining, petroleum production and extractive industries and Extractive industries in Sydney area.	The proposal does not involve any provisions which would be inconsistent with the SEPP.
SEPP (Transport and Infrastructure) 2021	This SEPP sets out provisions relating to Transport and Infrastructure.	The proposal does not involve any provisions which would be inconsistent with the SEPP.

## 7. 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 at Table 4 below.

Table 2: Consistency with applicable Ministerial Directions

Ministerial Direction	Objective/s	Consistency / Comment
Focus Area 1: Planning S	Systems	
1.1 Implementation of Regional Plans	The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions, and actions contained in Regional Plans.	This Planning Proposal is consistent with the Hunter Regional Plan
1.2 Development of Aboriginal Land Council land	The objective of this direction is to provide for the consideration of development delivery plans prepared under chapter 3 of the State Environmental Planning Policy (Planning Systems) 2021 when planning proposals are prepared by a planning proposal authority.	This proposal does not propose any changes in the land shown on the relevant Land application Map.
1.3 Approval and Referral Requirements	The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	This planning proposal is consistent with the objectives of this direction as the removal of a remnant heritage Item with no Heritage value will reduce the likelihood of complications resulting in reduced efficiency for future developments.
1.4 Site Specific Provisions	The objective of this direction is to discourage unnecessarily restrictive site-specific planning controls.	This planning proposal is consistent with the objectives of this direction as the removal of a remnant heritage Item with no Heritage value removes a restrictive planning control.
Focus area 1: Planning Sys		
The proposed development based directions.	t does not involve any changes releva	ant to any of the areas in the Place
Focus Area 2: Design and F	Place	
[This Focus Area was blank	when the Directions were made]	
Focus Area 3: Biodiversity a	and Conservation	
3.1 Conservation Zones	The objective of this direction is to protect and conserve environmentally sensitive areas.	This Planning proposal does not reduce the conservation standard for any environmentally sensitive areas.
3.2 Heritage Conservation	The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	This proposal relates to the removal of an item that no longer has any heritage significance and cannot be restored or conserved from the Muswellbrook LEP 2009.
3.3 Sydney Drinking Water Catchments	The objective of this direction is to provide for healthy catchments and protect water quality in the Sydney drinking water catchment	Not Relevant
3.4 Application of C2 and C3 Zones and	The objective of this direction is to ensure that a balanced and	Not Relevant

Environmental Overlays in Far North Coast LEPs	consistent approach is taken when applying conservation zones and overlays to land on the NSW Far North Coast.					
3.5 Recreation Vehicle Areas	The objective of this direction is to protect sensitive land or land with significant conservation values from adverse impacts from recreation vehicles.	This proposal relates to the removal of an item that no longer has any heritage significance and cannot be restored or conserved.				
3.6 Strategic Conservation Planning  The objective of this direction is to protect, conserve or enhance areas with high biodiversity value.  The proposal relates to a site has been identified as being ecologically sensitive land, however, this planning propodoes not involve any changes the environmental protection the area but rather, an administrative amendment relevant to heritage conserva						
3.7 Public Bushland	The objective of this direction is to protect bushland in urban areas, including rehabilitated areas, and ensure the ecological viability of the bushland.	The proposal is not expected to impact any bushland in urban areas.				
Focus Area 4: Resilience ar						
The proposed development	involves only an administrative amend ellbrook LEP 2009. This change is not					
Focus Area 5: Transport an	d Infrastructure					
6.1 Approval and Referral Requirements						
Focus Area 6: Housing	Focus Area 6: Housing					
Not Applicable						
Focus Area 7: Industry and Employment						
Not Applicable						
Focus Area 8: Resources and Energy						
The subject site has been used for mining operations by Muswellbrook Coal Company. The proposed amendment is not expected to have any impact on the future extraction of any resources.						
Focus Area 9: Primary Prod	luction					
Not Applicable	Not Applicable					

### Section C - Environmental, Social and Economic Impact

8. 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?

The proposed amendment is purely administrative and will not increase the likelihood that any critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal.

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

The subject site is bushfire prone, contaminated and affected by mine subsidence, however, this planning proposal only involves and administrative amendment and is not expected to have any change on the existing conditions and management of the site.

10. 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.

### Section D - State and Commonwealth Interests

11. Is there adequate public infrastructure for the planning proposal.

This Planning proposal only involves an administrative change to remove an item from the Muswellbrook LEP Heritage List as the item no longer exists and does not have any Heritage significance. There is no public infrastructure required for the proposal.

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

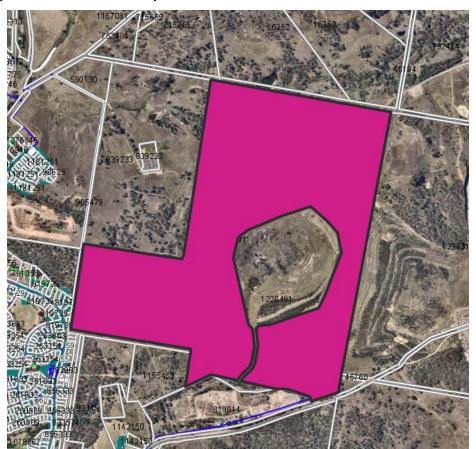
Determination not yet issued.

# Part 4 – MAPPING

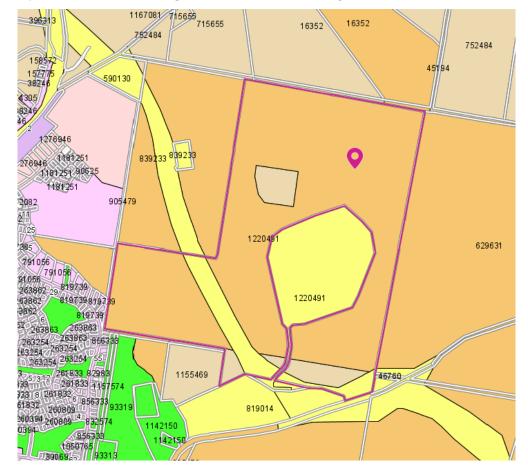
# Map 1 – Locality



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Map 2 - Site Identification Map



Map 3 - Current Land Zoning - C3 Environmental Management



Map 4 - Minimum Lot Size - 80ha

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Map 5 – Terrestrial Biodiversity



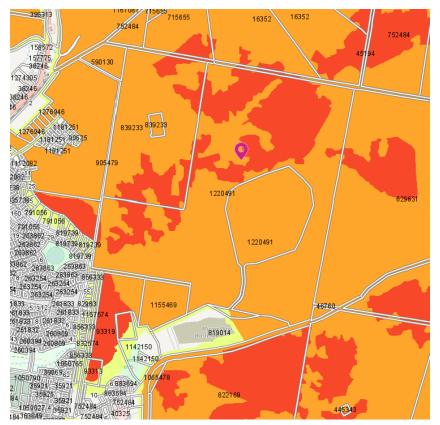
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Map 6 - Heritage Conservation Items

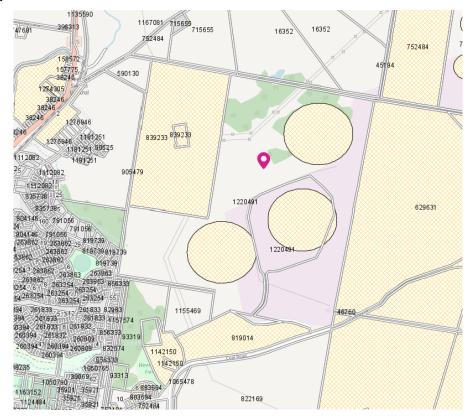
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Map 7 - Bushfire Prone Land



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Map 8 - Contaminated Land



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Map 9 - Mine Subsidence



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## 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)	28/08/2023
Anticipated timeframe for completion of required technical information	28/10/2023
Timeframe for government agency consultation (pre- exhibition)	28/10/2023
Public exhibition (commencement and completion dates)	Dependent on LEP amendment Option
Date of Public hearing (if required)	
Consideration of submissions	
Timeframe for government agency consultation (post exhibition if required)	
Post exhibition planning proposal consideration / preparation	
Submission to Department to finalise LEP	
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.

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Attachment A
Attachment A  The Business Paper and Meeting Minutes of the Ordinary Council Meeting on 28 February 2023.
The Business Fuper and Mosting Minutes of the Grantary Courter Mosting of 25 Fusionary 2525.

## Attachment B

Evaluation Criteria for the Issuing of an Authorisation

requirement has not been met, council is to atlach information to explain why the matter has not been addressed)  State planning proposal consistent with the Standard Instrument Order, 2006?  Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?  Are appropriate maps included to identify the location of the site and the intent of the amendment?  Does the planning proposal compatible with an endorsed regional or sub-regional planning strategy or a local strategy endorsed by the Secretary?  Does the planning proposal adequately address any consistency with all relevant State Penvironmental Planning Directions?  Is the planning proposal consistent with all relevant State  Environmental Planning Policies (SEPPs)?  Minor Mapping Error Amendments  Does the planning proposal seek to address a minor mapping perror 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 term and is it supported by a strategy/study endorsed by the Heritage Office?  Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?  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?  Reclassifications	(Note – where the matter is identified as relevant and the	Council response		Departm assessm	
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Heritage Significance and if so, have the views of the Heritage Office been obtained? Reclassifications	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			
s there an associated spot rezoning with the reclassification?	Reclassifications				
	Is there an associated spot rezoning with the reclassification?	N			

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If yes to the above, is the rezoning consistent with an endorsed Plan of management (POM) or strategy?		<b>√</b>	
Is the planning proposal proposed to rectify an anomaly in a classification?		<b>✓</b>	
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?		<b>√</b>	
Has council confirmed that there will be no change or extinguishment of interests and that the proposal does not require the Governor's approval?		<b>√</b>	
Has the council identified that it will exhibit the planning proposal in accordance with the Department's Practice Note regarding classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land?		<b>✓</b>	
Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?		<b>√</b>	
Spot Rezonings	<u> </u>		
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?		<b>√</b>	
Does the planning proposal create an exception to a mapped development standard?	Υ		
Section 3.22 matters	<u> </u>	<u> </u>	
Does the proposed instrument	Y		
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?			

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- 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).

#### Notes

- Where a council responds, 'yes' or can demonstrate that the matter is 'not relevant', I most cases, the
  planning proposal will routinely be delegated to council to finalise as a matter of local planning
  significance.
- Endorsed strategy means a regional strategy, or any other local strategic planning document that is endorsed by the Secretary of the Department.
- Matters that will routinely be delegated to a Council under administration are confirmed on the Department's website www.planning.nsw.gov.au/Plans-for-Your-Area/Local-Planning-and-Zoning



#### **Department of Planning and Environment**

## **Gateway Determination**

Planning proposal (Department Ref: PP-2022-4312): Removal of Heritage Item I112 (Muswellbrook Brickworks)

I, the Director, Central Coast and Hunter at the Department of Planning 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 and remove Item I112 should proceed subject to the following conditions:

- 1. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
  - the planning proposal is categorised as basic as described in the Local Environmental Plan Making Guideline (Department of Planning and Environment, 2022) and must be made publicly available for a minimum of 10 working 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 *Local Environmental Plan Making Guideline* (Department of Planning and Environment, 2022); and
  - exhibition must commence within 3 months following the date of the gateway determination.
- Consultation is required with Heritage NSW under section 3.34(2)(d) of the Act and/or to comply with the requirements of applicable directions of the Minister under section 9 of the Act.
  - Heritage NSW is to be provided with a copy of the planning proposal and any relevant supporting material via the NSW Planning Portal and given at least 30 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 Council as planning proposal authority planning proposal authority is authorised to exercise the functions of the local plan-making authority under section 3.36(2) of the Act subject to the following:
  - the planning proposal authority has satisfied all the conditions of the gateway determination:
  - (b) the planning proposal is consistent with applicable directions of the Minister under section 9.1 of the Act or the Secretary has agreed that any inconsistencies are justified; and
  - (c) there are no outstanding written objections from public authorities.

5. The LEP should be completed on or before 9 months from the Gateway determination date.

Dated 8 day of June 2023.

Dan Simpkins
Director, Central Coast and Hunter
Planning and Land Use Strategy
Department of Planning and Environment

**Delegate of the Minister for Planning and Public Spaces** 



IRF23/1223

# Gateway determination report – PP- 2022- 4312

Administrative Amendment – Removal of Heritage Item I112 (Muswellbrook Brickworks) – Coal Road Muswellbrook NSW

May 23



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Title: Gateway determination report - PP- 2022- 4312

Subtitle: Administrative Amendment – Removal of Heritage Item I112 (Muswellbrook Brickworks) – Coal Road Muswellbrook NSW

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# **Acknowledgment of Country**

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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## Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Council Report
Ordinary Council Meeting Minutes
Muswellbrook LEP Planning Proposal Brick Works

Appendix A – Historical Heritage Assessment

# 1 Planning proposal

## 1.1 Overview

### **Table 2 Planning proposal details**

LGA	Muswellbrook
PPA	Muswellbrook Council
NAME	Muswellbrook Brickworks
NUMBER	PP- 2022- 4312
LEP TO BE AMENDED	Muswellbrook Local Environmental Plan 2009 (MLEP 2009)
ADDRESS	Coal Road Muswellbrook NSW 2333
DESCRIPTION	Lot 4 DP 1220491
RECEIVED	17/05/2023
FILE NO.	IRF23/1223
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

# 1.2 Objectives of planning proposal

The planning proposal is to amend the local environmental plan to remove a local heritage item that no longer exists.

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal. The objectives of this planning proposal are clear and adequate.

# 1.3 Explanation of provisions

The planning proposal seeks to amend the *Muswellbrook Local Environmental Plan 2009* per the changes below:

**Table 3 Current and proposed controls** 

Control	Current	Proposed
Zone	RU1 Primary Production, C3 Environmental Management, SP2 Classified Road	No change to zoning

The planning proposal includes the following minor changes to the local environmental plan and Heritage Map:

- Schedule 5 Environmental Heritage remove item I112.
- Heritage Map remove item I112

The planning proposal contains an explanation of provisions that adequately explain how the objectives of the proposal will be achieved.

## 1.4 Site description and surrounding area

The former brickworks site is located on Lot 4 DP 1220491 (formerly Lot 101 in DP 578075) and forms part of the Muswellbrook Coal mine located outside the Muswellbrook township to the north. It contains some vegetated areas but is otherwise cleared.

The site is located on RU1 Primary Production, C3 Environmental Management zoned land, with land zoned SP2 Classified Road (future Muswellbrook bypass) passing through the centre of it.

The site is adjoined to the north by vacant blocks owned by Muswellbrook Coal Company zoned RU1 Primary Production and C3 Environmental Management zones. Land to the south is zoned SP2 Infrastructure (Waste Management) and contains the Muswellbrook Waste Management Facility.

The surrounding locality includes activities such as rural-residential areas, the Muswellbrook urban area, agricultural activities, a light industrial estate, and land formerly used for coal mining. Coal mining operations have now ceased and the Muswellbrook Coal Company is examining opportunities to diversify land uses on the site.

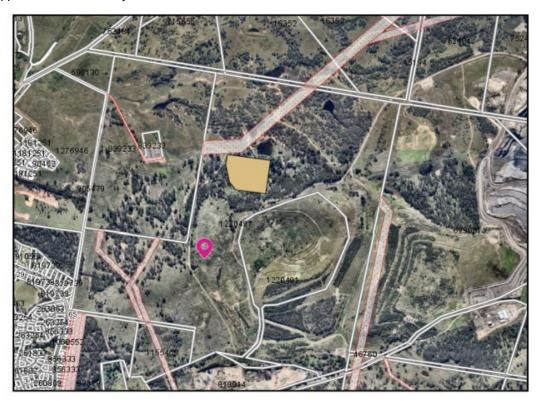


Figure 1 Site context (source: Council Report)



Figure 2: Site Locality Map (source: Near Maps)

# 1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the heritage map, which are suitable for community consultation.

The brickworks was located at Coal Road Muswellbrook within Lot 4 DP1220491. It is noted that Schedule 5 contains incorrect (outdated) location information with its location being Muswellbrook Common, Lot 101 DP 578075.

The proposal seeks to amend the Heritage Map to remove Item I112 identified in Figure 3.



Figure 3: Current Heritage map (Source: LEP Heritage map - 5650\_COM\_HER\_008\_080\_20150914)

# 2 Need for the planning proposal

The planning proposal is considered the best means to achieve the intended outcomes. The proposal is not the result of a specific strategic study or report.

Consent for demolition of brickworks was granted by Council in 2009 and demolition occurred in 2012. Council advises the site no longer has heritage significance and so should be removed from the local environmental plan.

# 3 Strategic assessment

# 3.1 Hunter Regional Plan 2041

The *Hunter Regional Plan 2041* (HRP 2041) acknowledges the importance of conserving heritage and the value that creates for communities and their economies. The plan promotes the adaptive re-use of heritage items to support investment (Objective 6).

Table 4 Hunter Regional Plan 2041 assessment

Hunter Regional Plan 2041 section	Justification
Strategy 1.1: Planning proposals for mine or power station sites identified as regionally significant growth areas will be supported by a place strategy which demonstrates how the proposal will:	The planning proposal seeks to regularise the local environmental plan for an item that has been demolished.  A place strategy is not warranted for the proposal.
<ul> <li>maximise employment generation or will attract visitors to the region</li> </ul>	
<ul> <li>make use of voids and/or site infrastructure such as rail loops, hard stand areas, power, water and road access</li> </ul>	
<ul> <li>support the growth of adjoining industrial areas or settlement areas</li> </ul>	
<ul> <li>enhance corridors within the landscape such as biodiversity corridors or disused infrastructure corridors</li> </ul>	
<ul> <li>complement areas with special amenity value such as critical industry clusters, open space, villages and residential areas</li> </ul>	
<ul> <li>have considered the existing and likely future uses of adjoining land and avoid land use conflict</li> </ul>	
<ul> <li>align with any specific guidance in the district planning priorities section of this plan.</li> </ul>	

# 3.2 Local Strategic Plans

The planning proposal states it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

Table 5 Local strategic planning assessment

Local Strategies	Justification
Muswellbrook Local Strategic Planning Statement 2020-	Muswellbrook LSPS 2020-2040 is a strategic land use document which identifies the key outcomes and actions council aims to achieve and sets out social, economic and environmental planning priorities for the future.
2040	The Planning proposal is consistent with the following priorities from the LSPS:
	<ul> <li>Planning Priority 14: Our Aboriginal and Non-Aboriginal cultural heritage is protected and celebrated</li> </ul>
	Council advises the site 'brickworks', no longer contains any items of heritage significance and is therefore not contradicting any of the priorities relating to heritage in the LSPS.
Muswellbrook Community	The Community Strategic Plan is an overview document that identifies the community's vision and goals for the future.
Strategic Plan 2022-2032	The Community Strategic Plan identifies a goal of achieving cultural vitality to ensure 'conservation of heritage and history of the Shire'. The planning proposal remains consistent with the plan, as it is considered a minor administrative amendment and will not have effect on heritage conservation.
Muswellbrook Shire Council Heritage Strategy	The item in the management of the local heritage ensuring that Items that can no longer contain heritage significance and cannot be restored are no longer registered in the Muswellbrook Local Environmental Plan.
	The strategy discusses a number of ways in which Council aims to retain, enhance and protect the local heritage of the locality, including the management of local heritage in a positive manner.

# 3.3 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Ministerial directions is discussed below:

**Table 6 9.1 Ministerial Direction assessment** 

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Yes	The planning proposal does not warrant a place strategy to be prepared consistent with strategy 1.1 of the regional plan. The inconsistency is minor.

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
3.2 Heritage Conservation	Consistency yet to be justified.	The planning proposal is supported by a heritage assessment which examined the site to determine whether the item retained heritage value. While the brickworks have been demolished, there is potential for subsurface relics to exist which may have heritage significance. An assessment of the likelihood of the potential for sub surface relics and their value was undertaken, concluding that any remaining sub surface evidence would not meet the threshold to be protected by the Heritage Act.  Advice from Heritage NSW needs to be sought following the Gateway determination.

# 3.4 State environmental planning policies (SEPPs)

Table 7 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Primary Production 2021	The aims of the SEPP include to facilitate the orderly economic use and development of lands for primary production.	Yes	The proposed site is zoned RU1 Primary Production. The planning proposal will facilitate the orderly and economic use and development of the land for primary production.

# 4 Site-specific assessment

## 4.1 Environmental

The planning proposal is a minor administrative amendment and does not involve works that will impact the local ecological amenity, character, and value of the land. The proposal is unlikely to have an impact on local flora and fauna or on any threatened species, populations, or ecosystems.

## 4.2 Social and economic

The planning proposal is a minor administrative amendment and does not involve works that will have any social or economic impacts. There are no anticipated social or economic effects.

## 4.3 Infrastructure

The planning proposal has no anticipated effects on local infrastructure as the planning proposal is an administrative amendment to the local environmental plan. The proposal does not require public infrastructure.

# 5 Consultation

## 5.1 Community

The planning proposal is categorised as basic in the *Local Environmental Plan Making Guideline* and an exhibition period of 10 working days is considered appropriate, and this forms part of the conditions of the Gateway determination.

# 5.2 Agencies

It is recommended Heritage NSW be consulted on the planning proposal and given 28 days to comment

# 6 Timeframe

No timeframe specified by Council, but the timeframe to complete finalise proposal will be based on benchmark timeframes nominated by Council (see below). These reflect the timeframes for a basic planning proposal under the *Local Environmental Plan Making Guideline* which should be completed within 140 working days.

Stage	Estimated timeframe
Consideration by council	1-2 months
Council decision	
Gateway determination	25 days
Pre-exhibition	20 days
Commencement and completion of public exhibition period	70 days
-Consideration of submissions	
Post-exhibition review and additional studies	
Submission to the Department for finalisation (where applicable)	25 days
Gazettal of LEP amendment	

# 7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

As the site is not owned by Council and the planning proposal is categorised as basic, the department recommends that Council be authorised to be the local plan-making authority for this proposal.

## 8 Recommendation

It is recommended the delegate of the Secretary:

 Note that the consistency with section 9.1 Direction 3.2 Heritage Conservation is unresolved and will require justification.

It is recommended the delegate of the Minister determine the planning proposal should proceed subject to the following conditions:

- 1. Consultation is required with Heritage NSW.
- 2. The planning proposal should be made available for community consultation for a minimum of 10 working days.
- 3. The planning proposal must be exhibited 3 months from the date of the Gateway determination.
- 4. The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination.
- 5. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.

Ben	Holmes

2/6/2023 Ben Holmes

Manager, Central Coast and Hunter

M			
	(Signature)	8/6/2023	(Date)

Dan Simpkins

Director, Central Coast and Hunter

Assessment officer

Rachel Murray

Planning Officer, Central Coast and Hunter

4927 3191



## 11.1.6. Watering and Maintenance of Seedlings Along Muscle Creek

Attachments: Nil

Responsible Officer: Sharon Pope - Director - Planning & Environment

Author: Michael Brady (Sustainability Officer - Waste)

Community Plan Issue: 3 - Environmental Sustainability

Community Plan Goal: An environmentally sensitive and sustainable community

Community Plan Strategy: 3.3.1 - Implement funded actions of the adopted Urban

Riparian Masterplan.

3.3.3.1 - Maintain rehabilitation works along Muscle Creek,

Karoola and Denman Wetlands, and

recommendations from any adopted Catchment

Management Plan.

### **PURPOSE**

To provide for Council's information a review of weed removal and plantings that have occurred along Muscle Creek since 2016.

### OFFICER'S RECOMMENDATION

Council NOTES the informat	ion contained in the report	
Moved:	Seconded:	

## **BACKGROUND**

The restoration and rehabilitation of Muscle Creek began in 2016, as Council developed and approved the Muswellbrook Urban Riparian Landcare Master Plan. This document outlines Council's plan and commitment to the rehabilitation of Muscle Creek. The main goal of Council's rehabilitation effort is to rejuvenate Muscle Creek's riparian zone from what has previously been 90% weed cover to an area dominated by native vegetation. The weeds being managed are highly invasive, and are generally escapees from domestic gardens, such as Privet, Maderia and Balloon Vine.

In 2016 to 2018 there was a full time dedicated Natural Areas Technical Officer within the Sustainability Unit. This position used Council funding and external grants to fund work along Muscle Creek and other areas. Since 2018, the Sustainability Officer – Waste has taken on the Muscle Creek rehabilitation project.

In November 2022, Council employed a Natural Areas Technical Officer working in the Property and Place team. This staff member completes on ground maintenance on level sites within natural areas including Muscle Creek, Tarinpa (Hunter Beach), areas of Karoola Park, and Denman's Hyde Park.

Over the 8 years of the project, approximately 12 000 native seedlings were planted, with a survival rate of over 60% (measured one year after planting). Weed control has led to a reduction in weed cover from 70% to less than 20%. From an industry perspective, this is considered to be very successful for revegetation activities.



### CONSULTATION

Natural Areas Technical Officer Director Property and Place

### **REPORT**

## Objectives of the Muscle Creek rehabilitation project

The objectives of the Muscle Creek rehabilitation work are:

Objective 1 – Restoration of 88 000m2 of Muscle Creek through measures such as the control and eradication of weeds, reducing stream bank erosion, and establishing native vegetation connectivity through native tree plantings.

Objective 2 – Increased awareness within the community about the environmental and social benefits of restoring native habitat. This includes providing information about the environmental assets of Muscle Creek to a wide range of community members.

Objective 3 – Providing opportunities for safe passive recreation by the community through the provision of suitable walking surfaces, seating, and places for people to meet.

Each discrete project is undertaken after preparation of a scope of works and a call for quotations from contractors. Activities are timed to maximise success, that is, in optimal weather conditions. At all stages of the project planning, implementation, monitoring, and evaluation, stakeholders and project partners are consulted, and their feedback is used to modify the project from the perspective of ensuring continual improvement.

### **Methods of Revegetation**

The methods chosen to complete on ground works are determined in the project planning phase. The methods consider potential for vandalism, drought conditions, and flooding. Periods of dry weather can generally be managed, however, depending on the severity of the event, flooding can cause considerable problems.

Revegetation approaches are different to ornamental plantings in Council parks. The philosophy is to enable native plants to dominate weeds over time, using minimal resources. It takes approximately 7 years before native seedlings mature sufficiently to dominate. Given Council began this work along Muscle Creek in 2016, evidence of the success of the programme is becoming progressively more visible.

Council only plants native species that may thrive in the local environment. Watering of the plantings is carried out until the plant can survive, and then reliance is placed on at least 30mm of rainfall occurring every month. If this rainfall does not occur, and plants are not yet established, extra watering will be provided if budget permits.

The table below shows monthly rainfall for July to October 2022 in millimetres (*Source: Bureau of Meteorology website*).

June 117.0	July 107.6	August 104.4	September 160.8

Planting methods depend on conditions, such as soil type, species, and the slope of the site. The ground is ripped before planting when the site is flat and the soil type is not clay, and where there are few existing plants. Holes are individually dug with an auger or water lancer when on slopes. Water saver crystals and fertiliser are applied at the time of planting.

Muscle Creek Landcare and other locals who have a long-time involvement in the project have expressed to Council their appreciation and celebrate its success.



# **2022 National Tree Day Plantings**

For the 2022 National Tree Day, Council planted 800 native seedlings and achieved 80% survival.

- Denman Hyde Park 60% survival. Some seedlings did not survive due to the environmental conditions being too wet when planting.
- Muscle Creek Golf Course 50% survival. Some seedlings did not survive due to the environmental conditions being too wet when planting, and some seedlings were covered with floodwater not long after planting.
- Muscle Creek between Olympic Park and Muscle Creek 80% survival.

# Monitoring and management of seedlings.

The scope of each rehabilitation project includes provision for the contractor to be paid to maintain and water plantings for a period of 6 to 8 weeks following planting, depending on weather conditions. If weather conditions are dry, an 8-week watering period will be requested.

After plantings, Council staff inspect sites each week for a minimum of twelve months.

If extra watering is required, a contactor is paid to provide an additional watering service. On average, it costs approximately \$500 to water 600 native seedlings on flat land.

Council's Natural Areas Officer will mulch 3 metres from each side of paths in high profile areas. Muscle Creek, Tarinpa (Hunter Beach), and Denman's Hyde Park have been prioritised to receive this service.

After the initial watering and maintenance period, inspections are undertaken less frequently as native plants become established. Staff continue to inspect sites on at least a monthly frequency.

# **Project Scope of Works**

The following is an example of a Scope of Works for a period of average rainfall. The rainfall prediction is determined using long term weather forecasts:

- After planting the Contractor will need to water all the plants according to the watering schedule below. Each plant should be watered with at least 3 litres of water (care must be taken to ensure that the roots of each plant receive 3 litres):
  - 3 days a week for the first fortnight. Including on the day they are planted.
  - 2 days a week for the following fortnight.
  - 1 day a week for the following fortnight.
- This watering schedule may be extended, for an additional payment during dry weather.
- A minimum of 80% of the plants must attain survival six (6) weeks after planting. If the survival rate falls below 80%, the Contractor will need to replace dead/stressed plants with suitable species and maintain them to ensure their survival after a further 6 weeks.

The following is an example of a Scope of Works for a period of drought conditions:

- The Contractor will need to water all the plants according to the watering schedule below:
  - 5 days a week for the first week.
  - 3 days a week for the following fortnight.
  - 2 days a week for the following fortnight.
  - 1 day a week for the following fortnight.



- This watering schedule may be extended, for an additional payment during dry weather.
- Mulch to a depth of 100mm needs to be spread on both sites within the area shown in blue on figures 1 and 2 above.
- Mulch should be close to each plant but should not touch plant stems.
- A minimum of 80% of the plants must attain survival eight (8) weeks after National Tree Day. If the survival rate falls below 80%, the Contractor will replace dead/stressed plants with suitable species and maintain them to ensure their survival after 8 weeks.

Discussion has taken place regarding the potential for Council staff do some of the watering. However, this requires staff time and funding to purchase equipment and training to work on slopes, and will result in an overall reduction of service.

Irrigation has been trialled in locations where a tap is available. However, this requires a considerable amount of maintenance, as animals and people damage the irrigation lines. This option will continue to be investigated.

Mulch is another method to improve survival. However, mulching on slopes on creek banks is not appropriate as flood waters erode the mulch. Council's Natural Areas Officer is currently in the process of mulching flat areas next to paths.

#### **Issues**

Drought – Long dry periods means that, although weeds don't grow as fast, there is a need to increase the amount of water applied to establish each seedling, and use water crystals and mulch where possible. Always using locally sourced native species means plants are better able to survive drought conditions, particularly when given assistance through dry periods.

Floods – Seedlings can sometimes survive flooding, but often cannot survive intense flooding. It is difficult to predict flood height, and given that plantings have most impact within the riparian zone, some loss of plants can be expected. More than any other issue, flooding has had the largest impact on seedling survival. Once the seedlings grow to an established level of maturity, they can usually survive flooding.

Poor quality soil – many areas along Muscle Creek have extremely poor soil. Some areas have previously been used to dump fill materials. This means water and nutrients do not hold in the soil. Coir logs, weed mats, irrigation, bowl shaped holes, and fertiliser are all used to increase success.

Vandalism – planting have been impacted by humans. Although most people respect and assist the work carried out by Council, some have hindered it. Some seedlings have been repeatedly walked or driven over, while some have been pulled out. Council staff try and leave areas for people to be able to access the Creek. Council staff replant and water seedlings as soon as possible following a vandalism event.

Steep slopes - many areas along Muscle Creek have steep slopes. This means water doesn't infiltrate as easily to plant roots. The practice to reduce water loss is to create a bowl at planting, and the use of coir logs along slopes. Slopes also mean preparation work is limited, as mulching and ripping cannot occur. Needing to have people working on slopes creates erosion. Safety is also an extremely important consideration. Some weeds need to be left on site to prevent erosion while native seedlings are established.

Animals – In some areas, particularly above Bell Street, rabbits, and kangaroos damage seedlings. In order to minimise this damage, tree guards and stakes are purchased and installed. Guards also protect against spray drift. It also appears birds such as magpies damage irrigation lines.



# **Budget**

The 2023-24 budget for tree management provided by the Sustainability Unit is \$31 907. This budget covers:

- undertake and maintain national tree day plantings in Muswellbrook and Denman. This covers weeding, seedlings, guards, stakes, weed mats, fertiliser, water crystals, etc.
- A 6-to-8-week watering and maintenance period.
- Seedlings for educational groups.
- Education of natural areas, such as signs.
- Weed control on Muscle Creek slopes throughout the year.
- Extra watering of seedlings during dry periods.

When planting is carried out as part of a Major Landcare Projects, or with grant funding, on average \$14 per seedling is required. This covers weeding, seedlings, guards, stakes, weed mats, fertiliser, water crystals, water, and a maintenance period.

# **Community Involvement**

A key to the project's success was gaining the support of the local community. This has been largely achieved by targeting existing groups of community members, including community, disability, cultural, environmental, and educational groups. Events are held to allow community members that want to take practical action to help the natural environment. Presentations on native bees, and signs about birds found along the creek, engage with a wider audience.

National Tree Day has occurred for 8 years supported by hundreds of volunteers, who have planted thousands of seedlings.

This project owes its success to the collaborations Council has formed with the Muswellbrook Golf Club, Muswellbrook Girl Guides, Muswellbrook South Public School, Muscle Creek Landcare, Martindale Creek Catchment Landcare, Warrior Disability Services, the Polly Farmer Foundation, The Hunter Sustainability Landcare TEAM, and the Hunter Region Bird Observers Club.

Regular bird watching walks occur along Muscle Creek. On average 6 to 8 residents join members of the Hunter Region Bird Observers Club, with 52 species recorded.

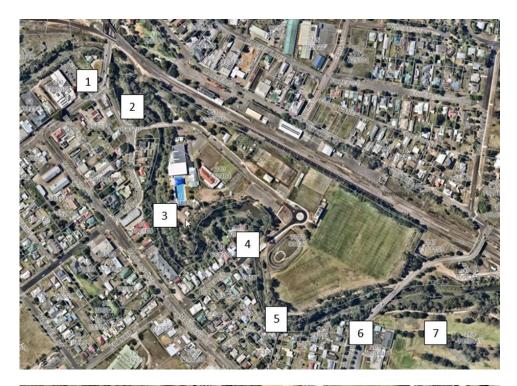
## **Future Dry Weather Conditions**

During periods of drought, fewer plants are planted, and species such as Lomandra and Dianella, that require less water, are selected for planting. Where possible, water crystals and mulch are also applied. Planting local species is considered to be the best approach to manage future climate conditions.

The Australian Bureau of Meteorology's prediction this year for the Hunter is for a hot, but not dry, summer.

# Location, survival, and dates of plantings

<u>Site 1.</u> The sites below Sydney Street have very poor soil and steep banks. Despite, this a good coverage of natives is now dominating. Plantings in 2017/2018, 2020/2021 (see photos below). This is considered to be a successful site

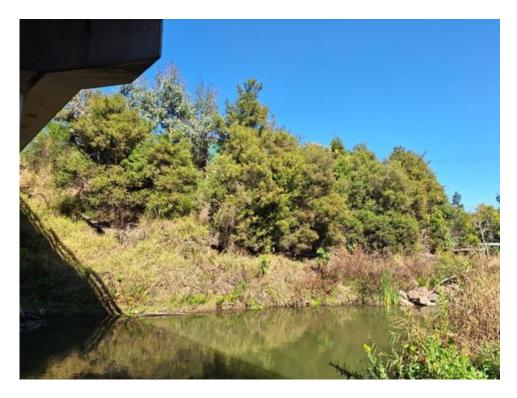


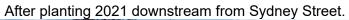






Before planting, after weeding, 2017 downstream from Sydney Street.





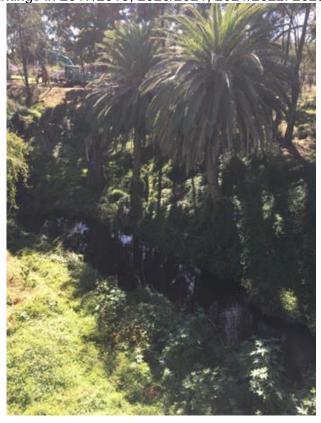


Before planting, after weeding, 2017 downstream from Sydney Street.



After planting 2021 downstream from Sydney Street.

<u>Site 2</u>. Mostly successful. The steep bank on the Haydon Street side of the creek is needing more natives. Some seedlings have struggled to survive in this area due to the very steep slope and poor soils, but are now beginning to establish. The rest of this area is now seeing natives dominate. Plantings in 2017/2018, 2020/2021, 2021/2022. 2023 (see photos below).





Before weeding 2016 downstream Wilkinson Ave.



After planting 2023 downstream Wilkinson Ave.



After planting 2023 downstream Wilkinson Ave.



After weeding 2017 downstream Wilkinson Ave.



After planting 2023 downstream Wilkinson Ave.



After weeding 2017 downstream Wilkinson Ave.



After planting 2023 downstream Wilkinson Ave.



After weeding 2017 downstream Wilkinson Ave.



After weeding 2017 downstream Wilkinson Ave.



After planting 2023 downstream Wilkinson Ave.



After planting 2023 downstream Wilkinson Ave.



After weeding upstream Sydney Street 2017.



After planting upstream Sydney Street 2023.



After weeding 2017 upstream Sydney Street.



After planting 2023 upstream Sydney Street.

<u>Site 3.</u> Council has not carried out any work in this area for 6 years due to not being able to disturb the colony of Flying Foxes, and the need for hard erosion control measures such as rock placement. A catchment management plan is currently being developed that will prioritise the actions needed.

Site 4. Mostly successful. The lower bank on Wilder Street side has been significantly impacted by flooding. The very steep bank on the Wilkinson Ave side has been mostly successful despite the steep bank and flooding. The plantings along Platypus Track and near the carpark have been successful. Plantings in 2017/2018, 2018/2019, 2020/2021, 2021/2022, 2023 (see photos below).



After weeding 2019 downstream Wilder St.



After planting 2023 downstream Wilder St.



After planting 2023 downstream Wilder St.



After planting 2023 downstream Wilder St.



After planting 2023 downstream Wilder St.



After planting 2023 downstream Wilder St.

<u>Site 5</u>. Approximately 50% survival. Both sides of the bank have extremely poor soil (mostly fill material) and the Maitland Road side is very steep. Have recently tried irrigation system and this seems to have helped establish some native plants. Lower banks heavily impacted by flooding in August/September 2022. Plantings in 2017/2018, 2021/2022 (see photos below).



After planting 2023 above Wilder Street.



After planting 2023 above Wilder Street.



After planting 2023 above Wilder Street.



After planting 2023 above Wilder Street.

<u>Site 6.</u> Recent plantings have been successful with on average 70% survival. This area has been worked on progressively as part of school's National Tree Day with some areas planted in 2022 with the remainder planted in August 2023. (see map and photos below)



The flat ground National Tree Day site has seen over 80% survival. A lack of water was not an issue in August 2022, as Muswellbrook experienced intense rainfall and flooding. Some seedlings at the golf course 2022 National Tree Day site did not survive as they were flooded. Plantings in 2017/2018, 2021/2022, 2023. 2023 National Tree Day site with over 80% survival. This area has experienced plants being pulled out by vandals. Council staff replant them. but may need to install new seedlings. Photo taken August 2023.

Some areas were planted in 2022 with gaps in left and planted in 2023.



2022 National Tree Day planting over 80% survival. Photo taken August 2023.





2022 NTD planting over 80% survival. Some grasses have browned off in winter but are still alive (see photo below). Photo taken August 2023.





2022 National Tree Day site plants were removed in front of rubber frog as this received heavy foot and vehicle traffic and will now be kept mulched as a turnaround area. Photo taken August 2023.





2022 National Tree Day. Over 80% survival. Photo taken August 2023.

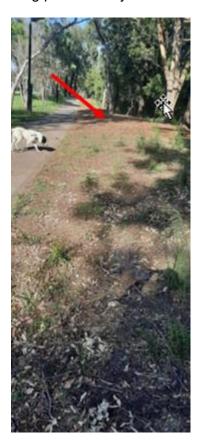


2022 National Tree Day site. Over 80% survival. Photo taken August 2022.





2023 National Tree Day site. Over 80% survival, although this area has experienced plants being pulled out by vandals. Photo taken August 2023.



2022 National Tree Day site in foreground. Yet to be planted site in the background, indicated by red arrow. This large, mulched area was planted for National Tree Day 2023 (see photo above). Photo taken August 2022.





2022 National Tree Day site with plantings in foreground and large mulched area in background. Photo taken 2022.



2022 National Tree Day site. Over 80% survival. Photo taken August 2023.



2023 National Tree Day site with over 80% survival. Photo taken August 2023.





2023 National Tree Day site with over 80% survival. Photo taken August 2023.



2023 National Tree Day site with over 80% survival. Photo taken August 2023.



2022 National Tree Day site with over 80% survival. Some seedlings were repeatedly run over. The gate has now been locked to reduce this happening. Photo taken August 2023.



2022 National Tree Day site about 50% survival. This part site was replanted in 2023. Photo taken August 2023.



Part of site before work began. Photo taken June 2022.



2023 National Tree Day site with over 80% survival, although this area has experienced plants being pulled out by vandals. Council staff replanted these seedlings, but some are not expected to survive. Photo taken August 2023.



Below Bell Street, Maitland Road side, before weeding. Photo taken 2017.



Below Bell Street, Maitland Road side, after planting. Photo taken 2023.

<u>Site 7</u>. Approximately 80% survival on both sides of the creek. The railway side has very poor soil and a steep slope. The golf course side has suffered from flooding and vandalism. When guards are removed, rabbits damage seedlings. But most of the National Tree Day 2022 plantings have done very well. Plantings in 2017/2018, 2020/2021, 2021/2022. 2023.



Above Bell St. Over 80% survival. Photo taken 2023.



Above Bell St. Over 80% survival. Photo taken 2023





# **OPTIONS**

The report is provided for the information of Council.



#### CONCLUSION

Since 2016, the Sustainability Unit, with support from other Council departments, contractors, and volunteers, have successfully revegetated much of Muscle Creek in the urban area of Muswellbrook. Staff have adapted management actions to deal with numerous issues.

Overall, in 2022 and 2023, 4000 native seedlings were planted, mostly on steep creek banks by local contractors. 800 native seedlings were planted by volunteers for National Tree Day on the sites downstream from Bell Street, with over 80% survival. A lack of water was not an issue in August 2022 as Muswellbrook experienced intense rainfall and flooding. About 50% of seedlings at the golf course 2022 Community National Tree Day site did not survive as they were flooded soon after planting.

The success of revegetation activities along Muscle Creek has involved many Council staff, local businesses, school students, residents, and volunteers.

#### SOCIAL IMPLICATIONS

Many community members and groups have contributed to this work.

## **POLICY IMPLICATIONS**

Environmental Sustainability Policy S32/1

Key Sustainability Principles

This Environmental Sustainability Policy will be pursued by Muswellbrook Shire Council through the following principles:

- 1. Operations that demonstrate sustainable environmental management.
- 2. Provide leadership and actions for achieving environmental sustainability.
- 3. Pursue ecologically sustainable land use and development.
- 4. Collaborate with the community and other stakeholder groups to protect and preserve the natural environment.
- 5. Support and regulate activities of others within its control to protect the environment.

## STATUTORY IMPLICATIONS

Muswellbrook Shire Council is committed to environmental sustainability and adherence to sections 7 and 8 of the Local Government Act that states:

s.8(1) to properly manage, develop, protect, restore, enhance, and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development.

#### **OPERATIONAL PLAN IMPLICATIONS**

Community Strategic Plan (CSP) Goal 3: An environmentally sensitive and sustainable community.

CSP Strategy 3.2: Improve native vegetation connectivity across the upper hunter region.

3.2.1 Support Landcare initiatives and advocate for programs to enhance native vegetation connectivity across the Shire and upper hunter Region.

CSP Strategy 3.3: Enhance our local rivers and creeks to improve environmental outcomes and access for recreation.



- 3.3.1 Implement funded actions of the adopted Urban Riparian Masterplan.
- 3.3.1.2 Maintain rehabilitation works along Muscle Creek, Karoola Wetlands, and Denman.

CSP Strategy 3.4: Support initiatives which reduce the community's impact on the environment.



# 11.1.7. Sustainability Grants

Attachments: Nil

Responsible Officer: Sharon Pope - Director - Planning & Environment

Author: Michael Brady (Sustainability Officer - Waste)

Community Plan Issue: 3 - Environmental Sustainability

**Community Plan Goal:** An environmentally sensitive and sustainable community

Community Plan Strategy: 3.4.1 - Continue Community Education Program on water,

waste and energy reduction.

3.4.1.1 - Assist Council, households and businesses to

manage waste effectively and use water and energy

efficiently.

#### **PURPOSE**

To gain Council approval for the Sustainable Education and Water Refill Station grants.

## OFFICER'S RECOMMENDATION

- 1. Council approves the following Sustainable Education grants:
  - a. Sandy Hollow Public School \$2427.43
  - b. Muswellbrook Preschool and Kindergarten \$1650
  - c. Muswellbrook South Public School \$2500
  - d. Denman Pony Club \$921.02
- 2. Council approves a water refill station grant for Muswellbrook Preschool and Kindergarten \$2500
- 3. Council approves the following Landcare Grant:

Lake Liddell Recreation Area Reserve Land Manager - \$800

Moved:	Seconded:

# **BACKGROUND**

In previous years Council has used funding from the NSW Government's Better Waste and Recycling Fund, paid from the waste levy, to provide grants to businesses, community and educational groups as part of the War on Waste program. However, the state government has recently replaced this program with a competitive grant process. Council did not receive any of this funding.

To continue to support groups in our community, the Sustainable Education and Water Refill Stations grant programs were developed with funding from Council's operational budget.

Grants are for any project with education on the topic of sustainability as the major objective. Funds can be used to purchase equipment, hire a bus, hire a consultant, or guest speaker etc.



Each organisation could apply for up to \$2500 ex GST per application. Joint applications between more than one organisation will be considered. For example, two organisations could apply for up to \$5 000 Ex GST.

The number of grants given in any funding period is subject to the total funding pool of \$10000 Ex GST.

Landcare Grants were made available from the Major Landcare Projects budget to Landcare, community, and educational groups within Muswellbrook Shire. Grants are intended to support community groups with grants of up to \$10,000 (dollar for dollar matched, in-kind contributions considered but not preferred) from a pool of \$30,000.

#### CONSULTATION

Executive Manager Planning and Environment.

Manager Waste Operations.

## **REPORT**

The grant applications closed 16 August 2023.

## Sustainable Education grants

Applications were invited from incorporated community groups, registered charities, childcare centres, and educational facilities with facilities in the Muswellbrook Shire Local Government Area.

Four applications were received.

Applications were assessed through consideration of:

- the level of awareness raising and education the initiative is likely to have. This can be measured by the number of people likely to be impacted by the project.
- the impact they are likely to have on the environment. E.g., the amount of waste reduction that is likely to occur due to the project. This can be measured by the weight of the waste likely to be diverted from landfill.
- The ongoing nature of the project.

# **Applications**

Organisation	Details	Funds Requested	Approve
Sandy Hollow Public School	Bee hive, vegie gardens and bins.	\$2427.43	Yes
Muswellbrook Preschool and Kindergarten	Bus trips to Hunter Beach	\$1650	Yes
Muswellbrook South Public School	Bus trip to Belltrees School. Supplies for garden.	\$2500	Yes
Denman Pony Club	Bins for container collection	\$921.02	Yes



# Water Refill Station Grants

Grant applications were invited from incorporated community groups, registered charities, childcare centres, and educational facilities with facilities in the Muswellbrook Shire Local Government Area.

Grants are for purchase of water refill stations for use by the applicant organisation.

Applications were assessed through consideration of:

- the level of awareness raising and education the initiative is likely to have. This can be measured by the number of people likely to be impacted by the project.
- the impact they are likely to have on the environment. E.g., the amount of waste reduction that is likely to occur due to the project. This can be measured by the weight of the waste (i.e. drink containers) likely to be diverted from landfill.
- The current number of water bottle refill stations at the applicant's property.

# **Applications**

Organisation	Details	Funds Requested	Approve
Muswellbrook Preschool and Kindergarten	1 water refill station	\$3554	Yes. \$2500 is this is the maximum amount

#### **Landcare Grants**

Grant applications were recently invited from incorporated community groups. The grant was promoted through emails to Landcare groups and on social media. Only one application was received, with many groups advising that were unable to submit an application this year.

Applications were assessed through consideration of:

- · the improvement the project will have on the environment; and/or
- the impact the project will have on increasing environmental awareness and educating the community about environmental issues.

## **Applications**

Organisation	Details	Funds Requested	Approve
Lake Liddell Recreation Area Reserve Land Manager	Plant 200 species as part of rehabilitation of the Hunter bioregion.	\$800	Yes - \$800

As this round of grant funding was targeted towards larger Landcare projects, another funding round will be undertaken to target educational groups. If funds remain after the second round, these funds will be combined with the previously approved Rural Landcare Project that is still to be determined.

#### **OPTIONS**

- 1. Approve grants as recommended in tables above.
- 2. Don't approve grants as recommended in tables above.



# **CONCLUSION**

Staff recommended Council approve grants as recommended.

## **SOCIAL IMPLICATIONS**

There are numerous positive social benefits linked to proposed grant funded projects.

## **FINANCIAL IMPLICATIONS**

Both grants are funded through Council's operational waste and water minimisation budgets.

# **POLICY IMPLICATIONS**

Not applicable.

# **STATUTORY IMPLICATIONS**

Not applicable.

## **LEGAL IMPLICATIONS**

Not applicable.

# **OPERATIONAL PLAN IMPLICATIONS**

3.4.1.1 Assist Council, households, and businesses to manage waste effectively and use water and energy efficiently

# **WASTE MANAGEMENT IMPLICATIONS**

These grant funded projects will help divert waste from landfill.

# **COMMUNITY CONSULTATION/MEDIA IMPLICATIONS**

Council's Communications staff will assist to promote the results of these grant funded projects.