



## Blue Mountains Draft Local Environmental Plan 2013

### Information Sheet 4

### Overview and key environmental issues

Use this document in conjunction with **Information Sheet 5:**

#### **SUBMISSION WRITING GUIDE AND SUMMARY OF KEY ENVIRONMENTAL ISSUES**

**Your written submission must be received by the Blue Mountains City Council before 5pm on Wednesday March 5<sup>th</sup> 2014.**

- Address your submission to: the General Manager, Blue Mountains City Council
- Quote reference number F08616 and mark your submission 'Blue Mountains Draft Local Environmental Plan 2013'

**Submissions can be lodged:**

- through the online [Submission Form](#)
- by downloading the [submission form](#) (at the end of Fact Sheet 8) and posting it
- by email to [submissiondlep2013@bmcc.nsw.gov.au](mailto:submissiondlep2013@bmcc.nsw.gov.au)
- by post to General Manager, Blue Mountains City Council, Locked Bag 1005, Katoomba, NSW 2780
- in person at the Katoomba or Springwood Council Administrative Offices

Be aware that your submission will be uploaded on to the Council's website for public viewing but you can request that your name and address be withheld.

#### **The Blue Mountains Conservation Society's overall assessment of the Blue Mountains DLEP 2013**

Over many decades the Blue Mountains City Council, supported by its residents, has carefully planned for future development that will cause as little impact as possible on the Blue Mountains environment and World Heritage National Parks. Local Environmental Plans (LEPs) that set out how and where development can occur have provided the planning and development controls needed to protect the Blue Mountains environment.

A new proposed Local Environmental Plan for the Blue Mountains, the Draft Local Environmental Plan 2013, is currently on exhibition. The Blue Mountains Conservation Society has undertaken a provisional review of the Draft and is overall supportive of Council's approach which generally retains the environmental protection provisions of the previous LEPs. However, the Society has some concerns which are summarised in the key points below, with recommendations for amendments.

The NSW Department of Planning and Infrastructure has been reluctant to support many of the provisions protecting the Blue Mountains environment, therefore the stronger the support for the draft LEP 2013, the more likely it will be approved in its current form (ideally, with the Society's amendments). The Blue Mountains Conservation Society strongly encourages all Blue Mountains residents to write a submission in support of the draft LEP 2013, and of the Society's amendments.

**This document provides a summary of key points and the Society's recommendations followed by a more detailed response to the draft LEP. Residents may wish to use these key points in their submission.**

## SUMMARY OF KEY POINTS AND RECOMMENDATIONS

The Blue Mountains Conservation Society recommends that you say in your submission “I strongly support the DLEP 2013 which I believe will protect the Blue Mountains environment because of the local provisions added to the Standard LEP template. However, I specifically recommend the following”:

- support for the Aims of the Plan but that certain Aims should be given the highest priority, in this order:
  1. Aim (b) To provide a clear framework for the development of land that is consistent with and promotes the principles and practices of ecologically sustainable development;
  2. Aim (d) To conserve and enhance, for current and future generations, the ecological integrity, environmental heritage and environmental significance of the Blue Mountains;
  3. Aim (f) To preserve and enhance watercourses, riparian habitats, wetlands and water quality within the Blue Mountains, the Hawkesbury-Nepean River catchment and Sydney’s drinking water catchments.
- that Clause 1.2(2)(a) of the Aims should include the definition, principles and practices of Ecologically Sustainable Development from LEP 2005.
- support for the Clause 1.2A and 2.3A requirement that development ‘complies with’ the Aims and zone objectives of the plan.
- support for the proposed choice of land use zones, for zone objectives, and for the land uses that Council proposes be permitted or prohibited in those zones.
- support for the inclusion of new zone R6 Residential Character Conservation as the appropriate replacement for the LEP 2005 Living Conservation zone, but with an amended objective to protect nearby bushland areas from the impact of invasive species.
- that Clause 3.3 should include additional areas that should be excluded from exempt and complying development. These additional areas are the ‘environmentally constrained lands’ defined in the Dictionary.
- that a 40 ha minimum lot size be applied to all E2 zoned areas on private property and that the largest minimum lot size possible be applied to all crown lands and reserves to provide a consistent, clear and more protective overlay to these highly environmentally sensitive areas.
- support for Clauses 4.1D ‘Subdivision in the recreation zones for a public purpose’ and 4.1E ‘Subdivision of land in Environmental Protection zones’. These clauses retain current limits to subdivision on environmentally sensitive land.
- support for Clauses 4.1F ‘Cluster Housing within certain environmental protection zones’ and 4.1G ‘Lot consolidation within certain environmental protection zones’. These clauses retain current provisions limiting the impact of housing development in environmentally sensitive areas.
- support for Clauses 4.3A ‘Flexibility in the height of buildings’ and 4.4A ‘Site coverage’. These clauses help ensure that development in the Blue Mountains does not concrete over entire sites or take development above the tree line in visually sensitive areas.
- support for Council’s added subclauses (8)(d), (8)(e), (8)(f) to Clause 4.6 ‘Exceptions to development standards’. These subclauses stop development standards (e.g. building height and setback) being varied in E3 and E4 land use zones, and control the development of major supermarkets and drive-through fast food outlets in the Blue Mountains.
- support for Clause 5.9 ‘Preservation of trees or vegetation’ and subclause (9) under it because it prevents the clearing of trees and native vegetation in environmental zones that would otherwise be permitted through exemptions for rural activities under the Native Vegetation Act 2003.
- that mapping of Protected Areas be applied to all land covered by the draft plan, including lands zoned for environmental protection (E2).
- support for the Part 6 Local Provisions but with the amendments to Clauses recommended by the Blue Mountains Conservation Society (see detail following).
- support for Schedule 6 Significant Vegetation Communities to be included in the new LEP.
- support for the inclusion of ‘environmentally constrained land’, ‘notional development area’, ‘rare species of flora’ and ‘Scenic and Landscape Values Map’ in the DLEP 2013 Dictionary, and for the addition of a definition of ‘invasive species’ ‘with a reference to Schedule F2 “Weeds List” in the Better Living Development Control Plan.

## ANALYSIS OF THE DRAFT LEP 2013 WRITTEN INSTRUMENT

### **Part 1 Preliminary**

#### **1.2 Aims of Plan**

The Blue Mountains Conservation Society supports the aims of the Plan but recommends that they be prioritised to provide greater legal certainty.

***Recommendation:*** *that certain Aims should be given the highest priority, in this order:*

1. Aim (b) *To provide a clear framework for the development of land that is consistent with and promotes the principles and practices of ecologically sustainable development;*
2. Aim (d) *To conserve and enhance, for current and future generations, the ecological integrity, environmental heritage and environmental significance of the Blue Mountains;*
3. Aim (f) *To preserve and enhance watercourses, riparian habitats, wetlands and water quality within the Blue Mountains, the Hawkesbury-Nepean River catchment and Sydney's drinking water catchments.*

#### **1.2(2)(a) 'Ecologically Sustainable Development'**

'Ecologically sustainable development' (ESD) was a central planning principle of LEP 2005. This was based on international agreements made by Australia arising from the 1992 Rio Earth Summit. ESD principles are currently referenced in NSW legislation.

The definition, principles and practices of ESD have not been retained in the DLEP 2103. Instead the DLEP refers to the weaker definition of 'sustainable development' as proposed by the NSW Government under its new draft planning legislation. It is imperative that the definition, principles and practices of ESD in LEP 2005 be retained in DLEP 2013.

***Recommendation:*** *Clause 1.2(2)(a) should include the definition, principles and practices of Ecologically Sustainable Development from LEP 2005.*

#### **1.2A Considerations before development consent**

The draft LEP 2013 includes the requirement in LEP 2005 that development consent will only be granted if the consent authority is satisfied that the development 'complies with' the aims of the plan.

The DLEP has been prepared in the 'one size fits all' Standard LEP template and 'complies with' is much stronger (and more legally enforceable) than the wording 'have regard to' in that template.

*The Blue Mountains Conservation Society strongly supports the requirement that development 'complies with' the Aims of the plan.*

### **Part 2 Permitted or prohibited development**

#### **2.1 Land use zones**

The Blue Mountains Conservation Society generally supports the proposed choice of land use zones, the zone objectives, and the land uses that Council proposes be permitted or prohibited in those zones. The Society considers the zones and uses in those zones replicate to the best ability the existing LEP 1991 and 2005 land use zone provisions.

The Blue Mountains Conservation Society supports the inclusion of proposed new zone R6 Residential Character Conservation as the appropriate replacement for the LEP 2005 Living Conservation zone. However, the Society is concerned about the risk of invasive species entering nearby bushland and recommends the following amendment to the R6 zone objectives.

***Recommendation:*** *that the third objective of the R6 zone be amended to read "To ensure development retains the prominence of landscape elements and European garden settings while protecting nearby*

*bushland areas from the impact of invasive species". To support this amended objective, a definition of 'invasive species' with a reference to Schedule F2 "Weeds List" in the Better Living Development Control Plan should be included in the Dictionary.*

### **2.3A Consideration of zone objectives**

*The Blue Mountains Conservation Society supports the requirement that development 'complies with' the zone objectives of the plan.*

### **Part 3 Exempt and Complying Development – exclusion of environmentally sensitive areas**

This is a compulsory clause under the Standard Instrument that Council has to include in the new draft LEP 2013. Exempt development is minor development that can be carried out without consent. Complying development is development that requires consent but which is assessed using a fast track code-based process which does not include a proper environmental assessment of a site.

In view of the highly sensitive nature of the Blue Mountains environment, the Blue Mountains Conservation Society strongly recommends the following additions to the areas excluded from exempt or complying development under clause 3.3.

***Recommendation:*** Clause 3.3 should include additional areas that should be excluded from exempt and complying development. These areas are the 'environmentally constrained lands' as defined in the Dictionary, namely any land:

- a) zoned E2 Environmental Conservation, or
- b) that is designated 'Protected area – Slope constraint area' on the Natural Resources – Land Map, or
- c) that is designated 'Protected Area – Ecological buffer area' on the Natural Resource – Biodiversity Map or that comprises a watercourse, together with any buffers required to protect the watercourse, or
- d) on which any significant vegetation community is located, together with any buffers required to protect that community, or
- e) on which any rare species of flora is located, together with any buffers required by the consent authority to protect that flora, or
- f) comprising any significant geological feature, such as rock outcrops and escarpments, which in the opinion of the consent authority is worthy of conservation.

### **Part 4 Principal development standards**

#### **4.1 Minimum subdivision lot size**

The Blue Mountains Conservation Society supports the use of the minimum lot size clause and accompanying Lot Size maps. The lot sizes applied in the draft LEP have been applied in a way that duplicates to the best ability the "no subdivision" and minimum subdivision lot sizes under LEPs 1991 and 2005. However, the Society is concerned about the application of a variety of different minimum lot sizes to the environmental protection (E2) zone on private property and that minimum lot sizes have not been applied to crown land or reserves.

- **Minimum lot sizes applied to E2 zone on private property:**

In LEP 1991 and 2005 no subdivision of any size could occur on lands zoned for environmental protection, so no minimum subdivision lot sizes were applied. The draft LEP 2013 has applied varying minimum lot sizes to E2 zones on private property, generally reflecting the minimum lot size applying to the rest of the block. This has led to some anomalies and minimum lot sizes as low as (or sometimes even lower than) 1200m<sup>2</sup> across vast areas of environmentally protected (E2) lands.

While there are other protections for these areas in the DLEP, the Society believes there should be one minimum lot size of 40 ha for E2 areas on privately owned land. This is comparable to the approach and minimum lot size adopted for these areas in other local government area LEPs.

- **Minimum lot sizes applied to crown land and reserves**

Minimum lot sizes have not been applied to crown lands and reserves, as these are public lands and assumed not to be subdividable. However, the Society is concerned that these lands could be sold in the future and recommends that the largest minimum lot size possible be applied to protect against subdivision.

***Recommendation:*** *that a 40 ha minimum lot size be applied to all E2 zoned areas on private property and that the largest minimum lot size possible be applied to all crown lands and reserves to provide a consistent, clear and more protective overlay to these highly environmentally sensitive areas.*

#### **4.1D ‘Subdivision in the recreation zones for a public purpose’ and 4.1E ‘Subdivision of land in Environmental Protection zones’**

*The Blue Mountains Conservation Society strongly supports these two local clauses. These clauses retain current limits to subdivision on environmentally sensitive land.*

#### **4.1F ‘Cluster Housing within certain environmental protection zones’ and 4.1G ‘Lot Consolidation within certain environmental protection zones’**

*The Blue Mountains Conservation Society strongly supports these two local clauses. These clauses retain current provisions limiting the impact of housing development in environmentally sensitive areas.*

#### **4.3A ‘Flexibility in the height of buildings’ and 4.4A ‘Site coverage’**

*The Blue Mountains Conservation Society strongly supports these two local clauses. These local provisions transfer the development controls that exist under the current LEPs. The clauses on site coverage set thresholds which are critical to retain pervious areas to protect catchment health. They help ensure development in the Blue Mountains does not concrete over entire sites or take development above the tree line in visually sensitive areas.*

#### **4.6 Exceptions to development standards**

Council has added subclauses (8)(d), (8)(e), (8)(f) to this compulsory clause to stop development standards being varied in E3 and E4 land use zones and to control the development of major supermarkets and drive-through fast food outlets in the Blue Mountains. *The Blue Mountains Conservation Society supports Council’s added subclauses.*

### **Part 5 Miscellaneous provisions**

#### **5.9 Preservation of trees or vegetation**

*The Blue Mountains Conservation Society strongly supports this clause and the inclusion of subclause (9) under it. Subclause (9) prevents the clearing of trees and native vegetation in environmental zones that would otherwise be permitted through exemptions for rural activities under the Native Vegetation Act 2003.*

### **Part 6 Local provisions**

The Part 6 ‘Additional Local Provisions’ of DLEP 2013 includes environmental protection provisions from LEPs 1991 and 2005. These Part 6 provisions are critical to retaining and strengthening existing environmental protections.

It is critically important that Blue Mountains residents support these local provisions and the Society’s amendments in a written submission to the DLEP 2013. The more these provisions are supported, the more likely the NSW Department of Planning and Infrastructure will include them in the final published Blue Mountains LEP 2013. If they are not included many existing environmental protections will be lost at the expense of the Blue Mountains environment.

*The Blue Mountains Conservation Society strongly supports all the Part 6 Local Provisions, particularly those environmentally-related clauses listed below. Recommendations for amending some clauses are also included.*

**Recommendation:** *The Part 6 Local Provisions should be strongly supported but with recommended amendments to some clauses, as outlined below.*

## **Environmental constraints mapping**

Updating and expanding the existing mapping of important natural features such as watercourses, slope and significant vegetation has been undertaken by Council across the whole Blue Mountains local government area to support the development of the draft LEP. These natural features have then been afforded additional protection under the draft LEP by being mapped as "Protected Areas". Specific clauses under Part 6 require that specific assessment or consideration of impacts occurs where development is proposed on land mapped as Protected Areas.

However, Protected Areas have not been mapped on land zoned environmental protection (E2) and therefore the Protected Areas clauses in the DLEP do not apply to these areas. The Society does not support this for two reasons:

- 1) While development is very limited in E2 land, some development is permissible with consent, and therefore the Society believes that the Protected Area clauses should apply.
- 2) Regardless of the zoning, there should be consistent application of environmental protection measures within the draft LEP.

**Recommendation:** *that mapping of Protected Areas be applied to all land covered by the draft plan, including lands zoned for environmental protection (E2).*

### **6.1. Impact on environmentally constrained land**

This is a clause transferred from a mix of local provisions under the current LEPs to protect watercourses, steep land, significant vegetation and other sensitive lands.

However, the Society believes that this clause should be amended to give added protection to the Blue Mountains National Park.

**Recommendation:** *that Clause 6.1 (2) be amended to read "Consent shall not be granted to development proposed on any land adjacent to, or nearby, the Blue Mountains National Park, unless the consent authority ..." and that Clause 6.1 (5) be amended to add "(f) the Blue Mountains National Park".*

### **6.2 Fauna Corridors**

Whilst this clause does not provide any strong protections to fauna corridors identified on the Natural Resources – Biodiversity Map, it does require Council to give some consideration to these corridors when assessing Development Applications.

### **6.3 Protected Area – Slope Constraint Area**

This clause retains existing protections for land on slopes greater than 20 per cent.

### **6.4 Protected Area - Landslide risk**

This is a new Protected Area and represents a policy change in that landslide risk has never been identified as a constraint to development before. A map identifies the landslide prone areas where additional matters must be considered for Development Applications in these areas. The extent of land in the Blue Mountains affected by landslide is minor with the high landslide risk areas likely to be found around escarpments, steep slopes and volcanic soils.

### **6.5 Protected Area – Vegetation Constraint Area**

This clause allows for significant vegetation communities to be protected, whether mapped or not, as they are currently. *The Blue Mountains Conservation Society strongly supports this Clause.*

## **6.6 Protected Area – Ecological Buffer Area**

This clause allows for the buffers of significant vegetation communities to be protected, as they are currently.

## **6.7 Protected Area – Riparian land and watercourses**

This clause allows for watercourses and the buffers or ‘riparian lands’ around these to be protected, as they are currently. *The Blue Mountains Conservation Society strongly supports the local provisions in Clause 6.7(2) that will protect the buffers along creeks and other watercourses.*

## **6.8 Groundwater vulnerability**

This clause ensures that any development that could impact on groundwater addresses issues such as contamination, impact on groundwater dependent ecosystems and cumulative impacts. However, the maps should be improved to ensure that the existing Blue Mountains Swamps mapping completed by Blue Mountains City Council, which is accepted by both the State and Commonwealth governments, be overlaid onto the Groundwater Vulnerability map and that these swamp areas be designated high groundwater vulnerability.

***Recommendation:*** *that the existing Blue Mountains Swamps mapping be overlaid onto the Groundwater Vulnerability map, and these swamp areas be designated high groundwater vulnerability.*

## **6.9 Stormwater management**

LEP 2005 contained strong management controls on stormwater quality, quantity and flow and these controls are retained in draft LEP 2013. It is critically important that stormwater runoff from ridge top development in the city be carefully managed and be of high quality so that there is no adverse impact on the World Heritage national parks downstream.

*The Blue Mountains Conservation Society strongly supports this clause and the retention of the ‘no adverse impact’ test.*

## **6.12 Protected Area – Escarpment**

This clause allows for escarpments to be protected as they are currently in LEP 1991. It is critical to protecting the visual, cultural and ecological values of escarpment systems and to minimising adverse impacts of development on escarpment areas through restricting vegetation clearing, prescribing building materials and height etc.

## **6.13 Protected Area – Land between towns**

The LEP 1991 ‘Land between towns’ Protected Area mapping and protections have been retained. This is critical to protecting the bushland buffer between townships that helps create their distinct identities and to protecting the Blue Mountains from ribbon development along the highway. ‘Land between towns’ works to minimise the visual impact of development from the highway by placing restrictions on subdivision, building design and vegetation clearing.

## **6.14 Earthworks**

*The Blue Mountains Conservation Society strongly supports inclusion of this clause, and particularly the inclusion of the additional local subclause (3)(d) regarding minimisation of cut and fill.*

## **6.15 Bush rock removal**

This clause retains the existing provisions to prohibit the removal of bushrock. Bushrock provides vital habitat for many threatened species in the Blue Mountains and is highly vulnerable to removal for domestic and commercial purposes.

## **6.17 Principal Development Area**

The Principal Development Area concept applies a number of environmental protections to large properties, such as minimising the amount of hard surfaces (lots zoned E3 and E4).

*The Blue Mountains Conservation Society strongly supports the continuation of this clause.*

## **6.22 Sustainable resource management**

*The Blue Mountains Conservation Society strongly supports this clause.* This clause supports ecologically sustainable development design and operational practices including energy conservation and efficiency, total water cycle management, conservation of natural resources, reduction of greenhouse gas emissions and waste avoidance and minimisation.

## **6.33 Keeping of hooved animals**

This is an important clause to protect swamps in many areas of the upper Blue Mountains (eg Katoomba Creek). However, this clause *does not* prohibit the keeping of goats or sheep on Protected Areas (steep slopes, riparian area, swamps etc) below a certain stocking rate.

**Recommendation:** *that clause 6.33 should be amended to specifically prohibit hooved animals, regardless of stocking rates, from all E2 zoned land and environmentally sensitive areas (mapped or defined as Protected Areas).*

## **Schedules**

### **Schedule 6 Significant Vegetation Communities**

LEPs 1991 and 2005 contained Schedules of significant vegetation communities. DLEP 2013 includes Schedule 6 Significant Vegetation (including threatened species) against the Department of Planning and Infrastructure's wishes. The Department wanted this to be a Schedule in a Development Control Plan which does not have the same legal weight at an LEP. It is essential that this Schedule be in the new LEP because it gives legal protection to significant vegetation that has not yet been mapped on a site but may be identified in a site inspection as part of the development application assessment process.

*The Blue Mountains Conservation Society strongly supports Schedule 6 remaining in the LEP and not being downgraded to a Schedule in the Development Control Plan.*

## **Dictionary**

The Blue Mountain Conservation Society supports the inclusion of 'environmentally constrained land', 'notional development area', 'rare species of flora', 'Scenic and Landscape Values Map' in the Dictionary. These are critical in supporting other environmental protections provided for in the Written Instrument.

However, the Society recommends including in the Dictionary a definition of 'invasive species' with a reference to Schedule F "Weeds List" in the Better Living Development Control Plan. This addition supports the Society's amended R6 Residential Character Conservation zone objective to protect nearby bushland areas from the impact of invasive species.

**Recommendation:** *that the Dictionary include a definition of 'invasive species' with a reference to Schedule F2 "Weeds List" in the Better Living Development Control Plan.*