

Submission on the Blue Mountains Draft Local Environment Plan 2013



Blue Mountains Conservation Society Inc.
March 2014





Blue Mountains Conservation Society Inc

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Nature Conservation Saves for Tomorrow

The General Manager
Blue Mountains City Council
Locked Bag 1005
Katoomba NSW 2780

March 3, 2014

Reference no. F08616. Blue Mountains Draft Local Environmental Plan 2013

Dear Sir,

The Blue Mountains Conservation Society is pleased to present its submission on the Blue Mountains Draft Local Environmental Plan 2013.

The Society strongly supports Council's approach to the current draft LEP and commends its efforts to transfer existing environmental protections into the restrictive Standard Instrument template. The Blue Mountains is a city located in World Heritage listed national parks and requires stringent environmental protections to minimize the impact of urban development on the surrounding Greater Blue Mountains World Heritage Area (GBMWA) and Sydney's drinking water catchment.

A key consideration in the development of the Blue Mountains LEP 2005 was the World Heritage Area Committee's concerns about the ongoing viability and integrity of the GBMWA given the urban development on the surrounding ridge tops. The GBMWA Strategic Plan 2009 identifies the critical role that local planning instruments play in reducing the negative impacts from land use adjacent to the GBMWA. The continued listing of the GBMWA depends on maintaining and even strengthening current environmental protections in the new LEP for the Blue Mountains.

Although the Society strongly supports the current DLEP 2013, we have some concerns relating to minimum lot sizes and Protected Area mapping in Environmental Conservation (E2) zoned lands, as well as some other provisions in the DLEP 2013. Accordingly, we have recommended certain amendments. We are particularly concerned that the definition, principles and practices of Ecologically Sustainable Development (ESD), outlined in LEP 2005, have not been retained in DLEP 2013. The inclusion of ESD as a central planning principle in LEP 2005 was based on international agreements made by Australia arising from the 1992 Rio Earth Summit and is still referenced in NSW environmental and planning legislation.

The Society is aware that the Part 6 Local Provisions (which transfer the required stringent environmental protections across from previous LEPs), Schedule 6 'Significant Vegetation Communities' and the new R6 Residential Character Conservation zone are particularly at risk of being disallowed by the Department of Planning and Infrastructure, and Minister. Given the imperative to prevent the environmental degradation of the City of Blue Mountains and conserve the surrounding GBMWA, any watering down or removal of the environmental provisions in the current DLEP is unacceptable. If this occurs, the Society strongly urges Council to request a re-exhibition of the DLEP and call a public hearing.

Although we are pleased to have the opportunity to comment on the DLEP 2013, the Society still wishes to register its concern about its public exhibition. The BMCS's position has consistently been that the timing of

the exhibition, December 4th 2013 to March 5th 2014, was less than ideal, even with the one month extension to the original 2 month exhibition. Apart from the difficulties of engaging the community in strategic planning during the busy lead-up to Christmas, and then the Christmas-New Year and January holiday period, the priority of many Blue Mountains residents and the Council itself during this time was dealing with the aftermath of the terrible bushfires of October 2013. The BMCS therefore requested that the exhibition of the DLEP 2013 be delayed until January 2014. We are concerned that, given these circumstances, public consultation and opportunity for community scrutiny of and input into DLEP 2013 has not been as comprehensive as it could have been. We understand that this timing was not under the control of Blue Mountains City Council but of the government of NSW.

If you have any queries in relation to this submission please contact Tara Cameron, the Society's Senior Vice President, on 0419 824 974 or taracameron4@gmail.com.

Yours Sincerely,

A handwritten signature in black ink that reads "P. Ridgeway". The signature is written in a cursive style with a long, sweeping underline.

Peter Ridgeway
President, Blue Mountains Conservation Society

Blue Mountains Conservation Society

Submission on the Blue Mountains Draft Local Environmental Plan 2013

Introduction

Since its establishment in the 1960s, the Blue Mountains Conservation Society (BMCS) has worked to protect the natural environment of the Blue Mountains. The BMCS is the key environmental organization in the Blue Mountains with more than 900 members and many more supporters.

The overarching mechanism for protecting the Blue Mountains natural environment from the adverse impacts of development is the local environmental plan (LEP). The Blue Mountains LEPs 2005 and 1991 contain well-established planning and development controls that have resulted in impacts on the natural environment largely being contained and minimized. The approach taken in these LEPs has helped to protect the highly sensitive Blue Mountains bushland, waterways, World Heritage listed national parks and Sydney's drinking water from the adverse impacts of development and activities occurring along and out from the towns and villages on its main ridge tops and in its settled valleys.

The importance of LEPs 1991 and 2005 in protecting the Blue Mountains environment cannot be overstated. Consequently, BMCS has a long history of participating in each new LEP revision to encourage the retention and improvement of existing environmental protection provisions. The BMCS was heavily involved in the process that led to the final 2005 LEP and prior to then the 1991 LEP. The BMCS has also participated in the formation of associated development control plans (DCPs), and commented on many LEP amendments and development proposals that could impact on the environment.

The aim for the BMCS in its participation in the land use planning process is to ensure the integrity of the Blue Mountains natural environment and surrounding Greater Blue Mountains World Heritage Area, and the mechanisms that protect that environment, remain as intact as possible. The BMCS is therefore pleased to have the opportunity to provide its input to the new Draft Local Environmental Plan 2013 (draft LEP).

Greater Blue Mountains World Heritage Area (GBMWH)

The impact of any Blue Mountains LEP extends well beyond the boundaries of this Local Government Area (LGA). The Blue Mountains is a unique LGA in NSW, being surrounded by the Blue Mountains National Park which is the largest component of the Greater Blue Mountains World Heritage Area (GBMWH). The GBMWH supports outstanding biodiversity values of international significance. The GBMWH attracts a large and growing number of local and overseas visitors, contributing significantly to the economy of the Blue Mountains LGA where tourism and visitation is the largest economic sector.

However, at the time of the listing of the GBMWH in 2000, the World Heritage Area Committee expressed concerns about the ongoing viability and integrity of the GBMWH given the urban development on the surrounding ridge tops. The conservation of the GBMWH was a key consideration in the development of Blue Mountains LEP 2005 and the GBMWH Strategic Plan (2009). This Plan was jointly developed by the NSW and Commonwealth governments to guide management of the GBMWH, including key threats and a number of management strategies to address them. Adjacent land uses—including increasing urbanization and associated infrastructure in the Blue Mountains LGA—can significantly impact on the values of the GBMWH.

The management strategies to reduce the negative impacts from adjacent land uses, as outlined in the Strategic Plan, include:

- Providing ongoing and proactive input to the establishment and implementation of effective local government planning and land management controls for land adjacent to the GBMWhA.
- Ensuring that environmental impact assessments for proposals that may affect the GBMWhA (whether or not on the reserves themselves) adequately address potential and existing impacts on World Heritage values.
- Working with local councils to develop suitable local planning instruments (e.g. Local Environment Plans) for areas adjacent to the GBMWhA.
- Where there is doubt about the potential impacts of development on World Heritage values the precautionary principle shall be applied.
- Ensuring that the impact of new developments within and adjacent to the GBMWhA on the area's scenic and aesthetic values are considered.
- Working with local government authorities to introduce appropriate development controls for lands adjoining and within, scenery catchments of the GBMWhA.

The Society believes that the Blue Mountains City Council has largely fulfilled its obligation to conserve the GBMWhA through developing a draft Local Environmental Plan consistent with these management strategies. Strong controls on development in the Blue Mountains LGA are critical to maintaining the biodiversity values of the GBMWhA. Any threat to the continued listing of the GBMWhA through inappropriate development activity in adjacent areas, similar to recent events in relation to the Great Barrier Reef, would also have significant economic consequences for the Blue Mountains. This additional responsibility to consider the impacts of development activity in the LGA on the adjoining GBMWhA will always make Blue Mountains LEPs unique in NSW. This uniqueness must be recognized by the NSW government in considering approval for the new Blue Mountains LEP.

BMCS support for the Draft Blue Mountains LEP 2013

The BMCS strongly supports Council's approach to the current draft LEP. The BMCS considers the draft LEP represents to the greatest extent possible the outcomes that exist in the current 2005 and 1991 LEPs. Most importantly, this exhibited draft version retains most of the existing environmental protection provisions which are essential for ensuring that urban and rural development does not have an adverse impact on the adjacent World Heritage national parks. It is critical that the local environmental protection provisions are retained in the new LEP.

The BMCS has suggested amendments to some clauses and has raised concerns with lot size and the lack of Protected Area mapping on Environmental Conservation (E2) zoned lands as detailed below. Generally, however, it is highly supportive of the draft LEP in its current form.

The BMCS urges Council to strongly argue the case with the NSW Government to retain the local provisions (in green print) that are in the current exhibited draft. The Blue Mountains environment is too fragile and at risk of degradation from inappropriate development for its existing local planning and development controls to be removed or downgraded in the LEP revision process. The impact of a downgraded LEP, and its impact on the surrounding GBMWhA, would not only be of local significance but also of international significance.

Recommendation

If the draft LEP is amended significantly by the NSW Government post exhibition—for example, if the local (green print) provisions that protect the natural environment and GBMWA are removed or significantly watered down, or if Schedule 6 is removed—BMCS recommends that Council strongly request that the altered draft LEP is re-exhibited and a public hearing held.

Organisation of submission

The submission is in several parts:

- Summary of recommendations
- Analysis of written instrument and justification for recommendations
- Comments on Schedule 6 ‘Significant Vegetation Communities’
- Comments and recommendations relating to DLEP 2013 mapping in Natural Resources – Biodiversity map sheets
- Comments on *Residential Development Strategy 2010*
- Attachments:
 - Attachment ‘A’ Map Series – local site-specific issues relating to mapping. See separate document.
 - Attachment ‘B’ – case study illustrating several of the Society’s concerns and recommendations relating to minimum lot sizes, minimum lot size applying to E2 zones and mapping of Protected Areas in E2 zones.
 - Attachment ‘C’ Cemetery Management – justification for recommendation relating to buffer area to cemeteries.

SUMMARY OF RECOMMENDATIONS

General

- If the draft LEP is amended significantly by the NSW Government post exhibition—for example, if the local (green print) provisions that protect the natural environment and GBMWhA are removed or significantly watered down, or if Schedule 6 removed—BMCS recommends that Council strongly request that the altered draft LEP is re-exhibited and a public hearing held.

1.2. Aims of Plan

- The BMCS recommends that the overarching environmental protection aims – (b), (d), and (f) are made the first three aims in that order under clause 1.2.
- The BMCS recommends that ecologically sustainable development (ESD) is translated fully, with its principles included, (as it is under cl 11 in BMLEP 2005) and either made a stand-alone aim after clause 1.2(2)(b), or with the translation and principles placed in a Note attached to the Aims of Plan clause.

2.1. Land Use Zones

- The BMCS recommends that the rezoning of areas of LEP 1991 Bushland Conservation to EP/E2 recommended in the *Rural Lands Planning Study Bushland Conservation Zone Report* be applied in full.
- The BMCS recommends that the third objective under the R6 zone is amended as follows:

To ensure development retains the prominence of landscape elements and garden settings [while protecting nearby bushland areas from the impact of invasive species]

It is recommended that a Note is added to the R6 clause that defines “invasive species” with reference to the Schedule F2 Weeds List in the Better Living DCP, or equivalent list in the yet to be exhibited new Blue Mountains DCP.

3.3. Environmentally sensitive areas excluded [from exempt and complying development]

- The BMCS strongly recommends that Council adds to the list under clause 3.3 the local “environmentally constrained lands” as defined in the draft LEP Dictionary but with the additions under (c), (d) and (e) as shown below.
 - 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 – Vegetation Constraint Area’] and ‘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 designated ‘Protected Area – Watercourse’ or ‘Protected Area – Riparian Land’ on the Riparian Lands and Watercourses Map], or

- d) on which any significant vegetation community [*as listed in Schedule 6*] is located, together with any buffers required to protect that community, or
- e) on which any [*rare or threatened species of flora and fauna or their habitats (as defined in the Dictionary)*] is located, together with any buffers required by the consent authority to protect that flora [*and fauna or habitats*], 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.

4.1. Minimum subdivision lot size

- The BMCS strongly recommends that the standard minimum lot size applied to private and public E2 zoned land is 40ha or higher. Where the area of E2 zoning is larger than 80ha, the largest minimum lot sizes available in the draft LEP should be applied (100 or 130 ha).
- A 100 or 130ha minimum lot size should be applied to all E2 zoned land in the areas largely zoned for rural purposes to the west and north of the LGA to be compatible with surrounding lot sizes.
- The BMCS strongly recommends that the largest minimum lot size available is applied to the Recreation RE1 and RE2 lands.

Part 6 LOCAL PROVISIONS

- The BMCS strongly recommends that the Protected Area mapping is applied to all lands in the LEP under Council's jurisdiction, including land zoned E2. The Protected Area mapping to be extended to all E2 zoned lands that currently has not been applied in the draft LEP is listed below.

Natural Resources – Biodiversity Map (Map series 4)

- Protected Area – Vegetation Constraint Area
- Protected Area – Ecological Buffer Area

Natural Resources – Land Map (Map series 4)

- Protected Area – Slope Constraint Area

Riparian lands and watercourses (Map series 3)

- Protected Area – Riparian Land

Scenic and Landscape Values map (Map series 3)

- Protected Area – Escarpment
- Protected Area – Land Between Towns

6.1. Impact on environmentally constrained land

- The definition of “environmentally constrained land” should be amended as follows:
 - c) that is designated [*‘Protected Area – Vegetation Constraint Area’*] and ‘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 designated ‘Protected Area – Watercourse’ or ‘Protected Area – Riparian Land’ on the Riparian Lands and Watercourses Map*], or
 - d) on which any significant vegetation community [*as listed in Schedule 6*] is located, together with any buffers required to protect that community, or

e) on which any [*rare or threatened species of flora and fauna or their habitats (as defined in the Dictionary)*] is located, together with any buffers required by the consent authority to protect that flora [*and fauna or habitats*], or

- The BMCS recommends that if “environmentally constrained land” is not supported at State level as an additional local term in the Dictionary, its definition should be included as a Note under cl 6.1 and all other clauses in which it is used.

6.1 (5). Other development

- The BMCS recommends that *Blue Mountains National Park* is added to this clause as one of the natural features that should be taken into consideration in terms of avoiding adverse environmental impacts when building works and asset protection zones are designed and sited.

6.5. Protected Area - Vegetation Constraint Area

- The BMCS strongly recommends that Clause 6.5 (2) (b) should be amended as follows:

6.5(2)(b) that is the site of a significant vegetation community [as listed in Schedule 6] or [rare or threatened species of flora and fauna or their habitats (as defined in the Dictionary)]

6.8. Groundwater vulnerability

- The BMCS recommends that in view of its threatened status, the Blue Mountains Swamps should be mapped as “high groundwater vulnerability” on the Groundwater Vulnerability Map
- The BMCS recommends that all areas from Woodford to Mt Victoria (and also The Mounts) be mapped as “moderate groundwater vulnerability” unless there is detailed information to alter that status.

6.9. Stormwater management

- The BMCS recommends that the stormwater clause should be amended as follows under cl 6.9(3):

6.9(3). Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development: etc etc

6.14. Earthworks

- The BMCS recommends that the words "environmentally constrained land" be added to clause 6.14 (3) (i).

6.24. Essential services

- The BMCS recommends that clause 6.24(3) references the relevant DCP that should contain the requirements for a geotechnical report and water balance report and that further clarifies the factors for a measure of ‘adverse impact on the environment’ under this clause.

6.26. Development Ancillary to a Dwelling House

- The BMCS strongly recommends that clause 6.26 be deleted.

6.32. Horticulture within certain Environment Protection zones

- The BMCS strongly recommends that an additional provision is added to this clause to prevent horticulture on environmentally constrained land as follows:

6.32(4) *Consent will not be granted to development for the purpose of horticulture if it is on any land that is zoned E2, is environmentally constrained land, or is land that contains Protected Areas.*

6.33. Keeping of hoofed animals

- The BMCS recommends that clause 6.33 is amended to prohibit the keeping of hoofed animals, regardless of stocking rates, on any land that is zoned E2, is environmentally constrained land, or is land that contains Protected Areas.

Dictionary

- The BMCS recommends that the term “environmentally constrained land” be amended as follows:
 - c) that is designated [*‘Protected Area – Vegetation Constraint Area’*] and ‘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 designated ‘Protected Area – Watercourse’ or ‘Protected Area – Riparian Land’ on the Riparian Lands and Watercourses Map*], or
 - d) on which any significant vegetation community [*as listed in Schedule 6*] is located, together with any buffers required to protect that community, or
 - e) on which any [*rare or threatened species of flora and fauna or their habitats (as defined in the Dictionary)*] is located, together with any buffers required by the consent authority to protect that flora [*and fauna or habitats*], or
- The BMCS recommends that a definition of “rare or threatened species of flora and fauna or its habitats” should replace “rare species of flora” in the Dictionary.
- The BMCS recommends that a definition of “Ecological Buffer Area” be included in the Dictionary.
- The BMCS strongly recommends that a definition of “Fauna Biocorridors” be included in the Dictionary.
- The BMCS also recommends that should these additional local terms not be permitted in the Dictionary post exhibition, they are inserted as Notes under all clauses in which the term is used in the body of the draft LEP.

Other recommendations

- The BMCS recommends that the background studies be made available for public comment in the interest of validating and refining the accuracy of mapping.

- The BMCS recommends that all cemeteries have a buffer area of at least 25m wide on the downslope side, contained within the lot, for the protection of groundwater. In cemeteries located within 100m of a swamp or watercourse this buffer width should be increased (similar to buffer widths required around effluent disposal areas as stated in Better Living DCP, clause D1.9.11). This buffer should be zoned E2 - Environmental Protection.
See Attachment 'C'.

ANALYSIS OF WRITTEN INSTRUMENT

Part 1: PRELIMINARY

1.2. Aims of Plan

The BMCS strongly supports the local additional aims of the draft LEP, particularly those that protect the Blue Mountains natural environment.

Ecologically Sustainable Development

LEP 2005 contains a detailed definition of “ecologically sustainable development” (ESD) as a central planning principal. This was based on international agreements made by Australia arising from the 1992 Rio Earth Summit and is referenced in NSW environmental and planning legislation. A definition which includes the principles is not included in this clause of 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 of ESD in LEP 2005, be retained in DLEP 2013 to provide strength to this important principle.

Recommendations

- The BMCS recommends that the overarching environmental protection aims – (b), (d), and (f) are made the first three aims in that order under clause 1.2.
- The BMCS recommends that ecologically sustainable development (ESD) is translated fully, with its principles included, (as it is under cl 11 in BMLEP 2005) and either made a stand-alone aim after clause 1.2(2)(b), or with the translation and principles placed in a Note attached to the Aims of Plan clause.

1.2A. Considerations before development consent

The BMCS strongly supports the inclusion of local clause 1.2A after the aims, in particular the requirement to “comply”. A similar clause (9) exists under LEP 2005 and this should be retained in the translation into Standard Instrument format to ensure there is no downgrading of environmental assessment and determination processes under the new draft LEP. This clause provides strength to the aims of the draft LEP by linking them to its substantive provisions.

Part 2: PERMITTED OR PROHIBITED DEVELOPMENT

2.1 Land Use Zones

The BMCS strongly supports Council’s translation of current LEP 2005 and 1991 land use zones into Standard Instrument format. The BMCS considers the chosen zones, and the objectives and permitted and prohibited land uses inserted under each zone have, to the greatest extent possible, transferred the existing protections and rights under land use zones in LEPs 1991 and 2005 into the revised draft LEP.

Most importantly, the environmental protection zones under the current Blue Mountains LEPs have been transferred into the equivalent environmental protection standard instrument zone - E2 Environmental Conservation - with equivalent uses permitted. This is strongly supported. The additional application of E2 to some new areas of mapped significant vegetation is also supported. However, not all areas of the LEP 1991

Bushland Conservation zone recommended for rezoning to EP in the *Rural Lands Planning Study Bushland Conservation Zone Report* have been rezoned E2 in DLEP 2103. The BMCS believes that the rezoning of areas of LEP 1991 Bushland Conservation to EP/E2 recommended in the *Rural Lands Planning Study Bushland Conservation Zone Report* should be applied in full.

The Society would like to suggest that an additional prohibited use be included for the E2 zone: hoofed animals. This issue is discussed in 6.33.

The new R6 Residential Character Conservation zone is supported as an appropriate local zone to replace the existing “Living Conservation” zone in LEP 2005, but with the following amendment to address incursion of invasive species into bushland from such lands and to remove the vague term “traditional”.

Recommendations

- The BMCS recommends that the rezoning of areas of LEP 1991 Bushland Conservation to EP/E2 recommended in the *Rural Lands Planning Study Bushland Conservation Zone Report* be applied in full.
- The BMCS recommends that the third objective under the R6 zone is amended as follows:

To ensure development retains the prominence of landscape elements and garden settings [while protecting nearby bushland areas from the impact of invasive species]

It is recommended that a Note is added to the R6 clause that defines “invasive species” with reference to the Schedule F2 weeds list in the Better Living DCP, or equivalent list in the yet to be exhibited new Blue Mountains DCP.

2.3A. Consideration of zone objectives

The BMCS supports the inclusion of local clause 2.3A that links the zone objectives to the substantive provisions in the draft LEP, ensuring in the assessment of development applications there is 'compliance'.

Part 3: EXEMPT AND COMPLYING DEVELOPMENT

The compulsory Standard Instrument clause 3.3: “Environmentally sensitive areas excluded”, under Part 3 of the draft LEP includes a Direction that allows additional areas to be added to the Standard Instrument list of environmentally sensitive areas from which exempt or complying development is excluded.

A number of local Councils have successfully made amendments to the Standard Instrument to ensure Exempt and Complying development does not apply in environmentally sensitive areas within their LGAs. This includes the Wingecaribee LEP 2010 (Clause 3.3) where land identified as riparian land and land mapped as a “Regional Wildlife Habitat Corridor” were deemed environmentally sensitive areas for the purposes of Exempt and Complying development. Similarly, under the *Wollongong LEP 2009* (Clause 3.3) land identified as containing an endangered ecological community and land mapped as the Illawarra Escarpment Conservation Area were deemed environmentally sensitive areas within the LGA for the purposes of Exempt and Complying development. Ensuring that the statewide Exempt and Complying Development Code does not apply to environmentally constrained and sensitive land within the Blue Mountains is especially important given the recent announcement by the NSW Government to extend the reach of the Code, in

terms of the type and amount of development covered, in order to bring into force many of the planning reforms which the NSW Government have been unsuccessful in achieving through legislation.

Recommendation

- The BMCS strongly recommends that Council follows this Direction and adds to the list under clause 3.3 the local “environmentally constrained lands” as defined in the draft LEP Dictionary but with the additions under (c), (d) and (e) as shown below.
 - 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 – Vegetation Constraint Area’*] and ‘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 designated ‘Protected Area Watercourse’ or ‘Protected Area – Riparian Land’ on the Riparian Lands and Watercourses Map*], or
 - d) on which any significant vegetation community [*as listed in Schedule 6*] is located, together with any buffers required to protect that community, or
 - e) on which any [*rare or threatened species of flora and fauna or their habitats (as defined in the Dictionary)*] is located, together with any buffers required by the consent authority to protect that flora [*and fauna or habitats*], 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.

These amendments require additions to be made to the Dictionary – see later.

Part 4: PRINCIPAL DEVELOPMENT STANDARDS

4.1. Minimum subdivision lot size

The BMCS supports the inclusion of the optional clause 4.1 Minimum subdivision lot size in the draft LEP and of the associated Lot Size Maps. The BMCS considers the lot sizes applied in the draft LEP largely duplicate to the greatest extent possible the lot sizes under LEPs 2005 and 1991. However the BMCS has significant concerns with the minimum lot sizes applied to E2 lands.

Minimum lot size over E2 Environmental Conservation Lands

The BMCS has significant concerns with the minimum lot sizes applied to land zoned E2 on the Lot Size Maps which show highly variable sizes based on the minimum lot size of the developable part of a lot. For example, if there is a large parcel of 100 ha that is mostly zoned E2 but with one small part zoned E4 with a 1200 square metre (m²) lot size to duplicate previous rights over that land, the entire lot, including the E2 area, is given a minimum lot size of 1200 m². The BMCS does not support this approach.

The BMCS urges Council to apply the same large minimum lot size to all private and public owned E2 zoned land rather than the lot size applied to the developable part of a lot or no MLS at all. The BMCS has recommended (below) a 40ha or higher MLS is applied to all E2 zoned land, as used by other NSW councils¹, and to differentiate it from the 30ha applied to E3 zoned land. Where the area of E2 zoning is 80 ha or larger,

¹ For example see Wollongong LEP 2009, or Gosford LEP 2012.

the largest minimum lot size available should be used (100 ha or 130 ha). The BMCS provides the following reasons for making this recommendation:

- Council is relying on local (green print) provisions that have largely been transferred from LEPs 1991 and 2005 to limit or prevent subdivision in the new E2 zones. Should the local (green print) provisions be weakened or removed from the LEP by State Government post exhibition, many E2 lands would be left vulnerable with such small minimum lot sizes.
- The application of one large minimum lot size to E2 lands gives a clear message to members of the public or developers and landowners that the land has very limited, if any, subdivision and development potential because it is highly constrained. As a “picture paints a thousand words” the visual representation of a large minimum lot size over the E2 lands would be similar to the existing limiting subdivision local provisions under current LEPs. Should the small lot sizes remain the public and landowners would (understandably) assume that the land could be subdivided into 1200 sqm, 900 sqm or any other size lots shown on the map regardless of other constraints.
- The draft Metropolitan Strategy for Sydney to 2031 which encompasses the Blue Mountains and under which the new LEP will operate, and new draft planning legislation, clearly state that economic growth through high levels of land release and development is the purpose and priority for planning in NSW over the next 20 years. Many areas of land in the Blue Mountains that are currently zoned for environmental protection and that will become E2 in the draft LEP have been identified as “future urban growth” in the Metrostrategy. With such State level encouragement, owners of E2 zoned are more likely to lodge a planning proposal to rezone their land for residential development. Even if Council refuses the rezoning application, the proponent is now able to seek a review of Council’s decision by the relevant Joint Regional Planning Panel (JRPP) and Council’s refusal could be overturned (see Planning Circular PS12-006). Should a rezoning application be lodged over E2 land with, for example, a 1200 sqm MLS, it might be difficult for Council to increase that lot size to gain the protections the land would lose through a change of zone. It would be far more sensible to have the lot size limitations in place in the first instance, putting the onus on the applicant to argue for a smaller MLS with their rezoning application, rather than Council seeking to upsize the lot in a retrospective attempt to protect the land.

Minimum lot size over Public and Private Recreation, RE1 and RE2 lands

The BMCS strongly recommends that the largest lot size available is applied to the Recreation RE1 and RE2 lands. This would strengthen and back up clause 4.1D which does not allow subdivision except for a public purpose. It would also be a safety net should clause 4.1D be removed or watered down at State level.

Recommendations

- The BMCS strongly recommends that the standard minimum lot size applied to private and public E2 zoned land is 40ha or higher. Where the area of E2 zoning is larger than 80ha, the largest minimum lot size available in the draft LEP should be applied (100 or 130 ha).
- A 100 or 130ha minimum lot size should also be applied to all E2 zoned land in the areas largely zoned for rural purposes to the west and north of the LGA to be compatible with surrounding lot sizes.
- The BMCS strongly recommends that the largest minimum lot size available is applied to the Recreation RE1 and RE2 lands.

4.1D, 4.1E. Subdivision in the recreation zones for a public purpose, Subdivision in the Environmental Protection zones.

The BMCS strongly supports these local clauses as they transfer similar provisions limiting subdivision in recreation and environmental zones from the current LEPs 1991 and 2005, ensuring the same protections remain.

4.1F, 4.1G, 4.3A, 4.4A. Cluster Housing within certain environmental protection zones, Consolidation within certain environmental protection zones, Flexibility in the height of buildings, Site Coverage.

The BMCS supports these local clauses that bring existing LEP controls into the draft LEP. In particular, BMCS strongly supports clauses 4.1G which ensures consolidation and hence protection of environmentally constrained land.

Clause 4.1F contains subclauses that refer to “development excluded land” which appears to be an oversight as this term is not in the Dictionary. BMCS recommends that this is replaced with the term “environmentally constrained land” and Protected Areas.

4.6. Exceptions to development standards

The BMCS supports the addition of local exclusions under this compulsory clause in accordance with the clause’s Direction.

Part 5: MISCELLANEOUS PROVISIONS

5.1. Acquisition issues

BMCS supports the acquisition of lands zoned E2 for the purposes of conservation. Some of these shown on the Land Reservation Acquisition Maps have been specifically commented on in Attachment ‘A’ which outlines specific local area issues.

5.9. Preservation of trees or vegetation

The BMCS supports the inclusion of this optional clause in the draft LEP. The BMCS also supports the inclusion of subclause (9) under 5.9 that will prevent the clearing of trees and native vegetation in environmental zones that would otherwise be permitted through exemptions under the Native Vegetation Act 2003, such as for routine agricultural management activities.

Part 6: ADDITIONAL LOCAL PROVISIONS

The Blue Mountains Conservation Society strongly supports those Part 6 Local Provisions in green print related to the protection of the Blue Mountains natural environment but objects to clause 6.26 which does the reverse. The local provisions ensure the protections existing under the current LEPs for Protected Areas such as significant vegetation, areas with steep slopes and escarpment, and riparian land and watercourses are continued under the new LEP. The BMCS also supports the addition of settled clauses that address groundwater vulnerability, areas at risk of landslide and fauna corridors.

The BMCS is very concerned, however, that the Protected Area mapping Series 3 and 4 has not been applied to E2 lands. Any rezoning, development or subdivision in E2 land would subsequently not be subject to the controls contained in the relevant Protected Area clauses under Part 6.

It is highly unlikely that the State Government would support retrospective amendment of the natural resources maps to extend or add Protected Areas in the event of a rezoning or development proposal over E2 lands. If Council applied the protected area mapping to E2 lands now, it would provide a complete, consistent and continuous picture of where the Protected Areas are located in the Blue Mountains, be consistent with current LEP approaches, acceptable at State level under the Standard Instrument process, and be similar to the approaches taken by other local councils in NSW. It would also mean that at least the settled Protected Area clauses would be a safety net in the event of other local (green print) provisions being removed or weakened at State level.

Recommendation

- The BMCS strongly recommends that the Protected Area mapping is applied to all lands in the LEP under Council's jurisdiction, including land zoned E2. The Protected Area mapping to be extended to all E2 zoned lands which currently has not been applied in the draft LEP, is listed below.

Natural Resources – Biodiversity Map (Map series 4)

- Protected Area – Vegetation Constraint Area
- Protected Area – Ecological Buffer Area

Natural Resources – Land Map (Map series 4)

- Protected Area – Slope Constraint Area

Riparian lands and watercourses (Map series 3)

- Protected Area – Riparian Land

Scenic and Landscape Values map (Map series 3)

- Protected Area – Escarpment
- Protected Area – Land Between Towns

6.1. Impact on environmentally constrained land

The BMCS supports clause 6.1 as it duplicates a range of provisions under the current LEPs 1991 and 2005 that protect environmentally constrained land, including significant vegetation that might not be identified in mapping.

The term “environmentally constrained land” is defined in the Dictionary and this is supported with the slight amendment recommended below and with a recommendation that the definition be added as a Note if it is removed from the Dictionary at State level.

Recommendations

- The definition of “environmentally constrained land” should be amended as follows:
 - (c) that is designated [*‘Protected Area – Vegetation Constraint Area’*] and ‘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 designated ‘Protected Area – Watercourse’ or ‘Protected Area – Riparian Land’ on the Riparian Lands and Watercourses Map*], or

- (d) on which any significant vegetation community [*as listed in Schedule 6*] is located, together with any buffers required to protect that community, or
- (e) on which any [*rare or threatened species of flora and fauna or their habitats (as defined in the Dictionary)*] is located, together with any buffers required by the consent authority to protect that flora [*and fauna or habitats*], or

These amendments require additions to be made to the Dictionary – see later.

- The BMCS recommends that if “environmentally constrained land” is not supported at State level as an additional local term in the Dictionary, its definition should be included as a Note under cl 6.1 and all other clauses in which it is used.

6.1(2). Impact on the National Park

The BMCS supports this important clause that highlights the need to ensure the Blue Mountains World Heritage listed national parks are not adversely impacted by adjoining development.

6.1(5). Other development

The BMCS supports this clause but with the slight amendment below.

Recommendation

- The BMCS recommends that *Blue Mountains National Park* is added to this clause as one of the natural features that should be taken into consideration in terms of avoiding adverse environmental impacts when building works and asset protection zones are designed and sited.

6.2, 6.4, 6.11. Fauna Corridors, Landslide Risk, Floodplain risk management.

The BMCS supports the inclusion of these settled clauses in the draft LEP.

6.3, 6.5, 6.6, 6.12. Protected Area – Slope Constraint Area, Vegetation Constraint Area, Ecological Buffer Area, Escarpment.

The BMCS strongly supports these local clauses that bring the protections contained under current LEPs 1991 and 2005 into the new draft LEP. These should be retained verbatim (apart from 6.5(2)(b) – see below) and as noted above should be extended to E2 lands through extension of the mapping series to which they refer.

However, the BMCS strongly recommends that Clause 6.5 (2) (b) be expanded to also include “rare or threatened species of flora and fauna or their habitats”.

Recommendation

- The BMCS strongly recommends that Clause 6.5 (2) (b) should be amended as follows:

6.5(2)(b) that is the site of a significant vegetation community [as listed in Schedule 6] or [rare or threatened species of flora and fauna or their habitats]

6.7. Protected Area – Riparian land and watercourses

The BMCS strongly supports the incorporation into this settled clause of local provisions that ensure protection for buffer zones along watercourses.

As noted above, the BMCS strongly urges council to expand the mapping of riparian land and watercourses attached to this clause, on to E2 land in the Protected Area – Riparian Land and Watercourses maps.

6.8. Groundwater vulnerability

The BMCS supports the inclusion in the draft LEP of this settled clause.

The BMCS recommends that the associated Groundwater Vulnerability mapping incorporates the existing Blue Mountains Swamps mapping completed by Council and endorsed by State and Federal governments.

The Blue Mountains Swamps are listed as a vulnerable ecological community under the NSW *Threatened Species Conservation Act 1995*², and as an endangered ecological community under the *Commonwealth Environmental Protection and Biodiversity Conservation Act 1998*³.

No detailed mapping of the whole mountains has occurred to identify the depth of aquifers. However, the presence of swamps as a Groundwater Dependent Ecosystem indicates how widespread "highly vulnerable" groundwater is between Woodford and Mt Victoria. Therefore it can only be assumed that no areas should be excluded from at least the lowest level of vulnerability. There are patches excluded from this mapping which should definitely be included e.g. an area south of the Katoomba Airfield (Medlow Bath) and an area to the north and west of Lemartine Ave, Wentworth Falls.

Recommendation

- The BMCS recommends that in view of its threatened status, the Blue Mountains Swamps should be mapped as "high groundwater vulnerability" on the Groundwater Vulnerability Map
- The BMCS recommends that areas from Woodford to Mt Victoria (and also The Mounts) be mapped as "moderate groundwater vulnerability" unless there is detailed information to alter that status.

6.9. Stormwater management

The BMCS strongly supports the incorporation into this settled clause of local provisions. The local provisions provide this clause with strength and direction, and transfer existing LEP controls into the new draft LEP. The local provisions in this clause also help to protect the highly vulnerable network of rivers, creeks, watercourses, waterfalls and hanging swamps, which are an integral part of the Blue Mountains environment, from the impact of upstream development. The provisions also help to protect water quality in the World Heritage national parks and the Sydney drinking water catchment which encompasses part of the LGA.

Most development in the Blue Mountains is along the top of the main and outlying ridge tops, with the potential to adversely impact downstream aquatic environments and water quality. It is vital therefore that meaningful and substantive stormwater provisions are retained in the statutory LEP. The BMCS would not support these provisions being relegated to a lesser status by incorporation in the DCP rather than LEP. The BMCS has suggested an amendment (below) to the local provision wording based on wording used in similar

² Listed as *Blue Mountains Swamps in the Sydney Basin Bioregion* under the TSC Act (NSW).

³ Listed as part of the endangered *Temperate Highland Peat Swamps on Sandstone* under the EPBC Act (Cth).

additional local stormwater provisions placed under the Stormwater Management clauses in Shellharbour LEP 2013 and Eurobodalla LEP, for example. The BMCS considers the phrase “development consent must not be granted”, used in those LEPs, is more instructive than the current draft LEP wording.

Recommendation

- The BMCS recommends that the stormwater clause should be amended as follows under cl 6.9(3):

6.9(3). Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development: etc etc

6.14. Earthworks

The BMCS strongly supports the inclusion in this settled clause of local provision cl 6.14(3)(d) that addresses cut and fill. This is an important addition as the Blue Mountains topography means many developments require cut and fill works, and in carrying out these works the highly vulnerable aquatic and terrestrial environment downslope or adjacent to the subject site can be significantly impacted.

However there is still the loophole of building materials, sediment, pollutants etc entering environmentally constrained land that is on the property of the building site. Ideally the requirement should be that none of this material should move off the development footprint.

Recommendation

- The BMCC recommends that the words "environmentally constrained land" be added to clause 6.14 (3) (i).

6.15. Bush rock removal

Bush rock is vital habitat for many species found in the Blue Mountains including listed threatened flora and fauna species such as *Acacia gordonii*, *Acacia bynoeana* and *Melaleuca deanei* and the Spotted-tailed Quoll, Red-crowned Toadlet and Broad-headed Snake. The removal of bushrock from rock outcrops or areas of native vegetation is listed as a Key Threatening Process under the NSW *Threatened Species Conservation Act 1995*. The inclusion of this clause does not completely prevent the removal or damage to bushrock from development but at least requires a proposal to avoid areas containing bushrock, or the minimization or mitigation of bushrock impacts, before consent can be granted. This approach is strongly supported by the BMCS.

6.17. Principal Development Area

This clause, brought over from current LEPs, is supported by BMCS as it minimizes the extent of impervious surface on large lot sites and therefore reduces the level of impact from development on surrounding sensitive aquatic and terrestrial ecosystems.

6.22. Sustainable resource management

Although this clause only requires the consent authority to consider how it can “encourage” the sustainable use of resources, the BMCS supports its inclusion as a means of bringing the ecologically sustainable development reference in clause 1.2(b) into consideration at the development stage.

6.24. Essential services

The BMCS supports the incorporation into this settled clause of local provisions that regulate development on land that is not connected to the reticulated sewer. In view of the sensitivity of the Blue Mountains environment, the need to protect water quality and aquatic ecosystems, and the quality of water in the drinking water catchment, these local inclusions are vital.

Many development sites are highly unsuitable for on-site systems. Existing problems with unsewered sites that have limited capacity for such systems illustrate the need for development proposed on unsewered land to be carefully controlled. The Blue Mountains City Council for example found in a 2009/2010 inspection of such sites that 50% were failing to meet operational requirements, with failed systems leading to weed infestations and falling water quality⁴.

The BMCS strongly supports the local provisions in this clause that prevent subdivision unless the subject land will be connected to reticulated sewerage, and that require a development site to be capable of the disposal of effluent without adversely affecting the environment where there is no sewer.

BMCS recommends that clause 6.24(3) include reference to the DCP that should contain the requirements for a geotechnical report and water balance report and that further clarifies the factors for a measure of 'adverse impact on the environment'.

The BMCS also supports the limits on pump out systems and the requirement for multi-occupied accommodation such as bed and breakfasts and boarding houses to be connected to reticulated sewerage with the capacity to accommodate the loads generated.

Recommendation

- The BMCS recommends that clause 6.24(3) references the relevant DCP that should contain the requirements for a geotechnical report and water balance report and that further clarifies the factors for a measure of 'adverse impact on the environment' under this clause.

6.26. Development Ancillary to a Dwelling House

The BMCS strongly objects to this clause and recommends it be deleted for the reasons given below.

A very limited number of uses are permitted in E2 zoned land because of the general environmental sensitivity of that land. Ancillary or incidental development was not permitted on environmentally protected land under LEP 1991 which encompassed most of the areas containing such land. It is recognized that this anomaly existed in LEP 2005, so there is now the opportunity to rectify the situation and create something enforceable to properly protect E2 zoned lands. The clearing of native vegetation or any other development should not occur in E2 zones under DLEP 2013. The clause is worded so openly it could, as is the case now under LEP 2005, lead to degradation and damage of environmentally sensitive areas such as creek lines and hanging swamps.

Small scale cumulative impacts are currently a major source of degradation of EP land in the Blue Mountains, rather than large developments. There should not be the ability for development to be permitted on E2 zoned land that can have relatively high cumulative impacts, such as garden sheds, barbeque areas, storage areas, clothes lines etc. These are the developments that are multiplying along many private E2 lands and are causing gradual but significant degradation. Car parks and sewerage systems have obvious immediate

⁴ <http://www.sustainablebluemountains.net.au/imagesDB/resources/On-sitesewagesystems.pdf> Sustainable Blue Mountains data sheet 2010.

impacts. There is already flexibility under cl 5.3 allowing for some incursion into E2 zoned land. The DLEP should not open up all E2 zoned lands to inappropriate development.

Recommendation

- The BMCS strongly recommends that clause 6.26 be deleted.

6.32. Horticulture within certain Environment Protection zones

Recommendation

- The BMCS strongly recommends that an additional provision is added to this clause to prevent horticulture on environmentally constrained land as follows:

6.32(4) Consent will not be granted to development for the purpose of horticulture if it is on any land that is zoned E2, is environmentally constrained land, or is land that contains Protected Areas.

6.33. Keeping of hoofed animals

The current LEPs do not contain an enforceable clause to prevent damage being done by goats and horses along creeklines and in swamps.

Recommendation

- The BMCS recommends that clause 6.33 is amended to prohibit the keeping of hoofed animals, regardless of stocking rates, on any land that is zoned E2, is environmentally constrained land, or is land that contains Protected Areas.

DICTIONARY

The Blue Mountains Conservation Society supports the inclusion in the draft LEP Dictionary of local terms not otherwise defined in the Standard Instrument Dictionary such as “environmentally constrained land”, “notional development area”, and “rare species of flora” (though see following).

Recommendations

- The BMCS recommends that the term “environmentally constrained land” be amended as follows:
 - (c) that is designated [*‘Protected Area – Vegetation Constraint Area’*] and ‘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 designated ‘Protected Area – Watercourse’ or ‘Protected Area – Riparian Land’ on the Riparian Lands and Watercourses Map*], or
 - (d) on which any significant vegetation community [*as listed in Schedule 6*] is located, together with any buffers required to protect that community, or
 - (e) on which any [*rare or threatened species of flora and fauna or their habitats (as defined in the Dictionary)*] is located, together with any buffers required by the consent authority to protect that flora [*and fauna or habitats*], or

- The BMCS recommends that a definition of “rare or threatened species of flora and fauna or its habitats” should replace “rare species of flora” in the Dictionary.
- The BMCS recommends that a definition of “Ecological Buffer Area” be included in the Dictionary.
- The BMCS strongly recommends that a definition of “Fauna Biocorridors” be included in the Dictionary.
- The BMCS also recommends that should these additional local terms not be permitted in the Dictionary post exhibition, they are inserted as Notes under all clauses in which the term is used in the body of the draft LEP.

SCHEDULE 6: SIGNIFICANT VEGETATION COMMUNITIES

General comments

The Blue Mountains Conservation Society strongly supports the inclusion of the Significant Vegetation Communities as a Schedule to the LEP rather than be in the DCP. The Blue Mountains LGA has a large amount of vegetation that is critically endangered, endangered or vulnerable at national, state and/or regional level and this vegetation requires particular protection.

This Schedule transfers the current LEP provisions protecting these communities into the new draft LEP. The inclusion of this Schedule, which links to any clause referencing “environmentally constrained land” in the draft LEP, also enables the protection of significant vegetation that is not mapped in the Protected Area – Vegetation Constraint Map.

The BMCS would urge Council, however, to ensure that all mapped significant vegetation is incorporated into the Protected Area – Vegetation Constraint Map as this provides a stronger and more certain attachment to the additional local provisions in Part 6 that contain the development controls. The vegetation should be mapped across the whole LGA, including E2 areas.

If this Schedule is disallowed by the NSW Department of Planning and Infrastructure or Minister then the Blue Mountains City Council needs to press for re-exhibition, particularly as the background vegetation mapping behind the vegetation constraint mapping has not been exhibited or made available. The vegetation constraint mapping exhibited is not complete as it does not cover all lands, and the community has not able to ascertain the accuracy of the background vegetation mapping.

In Schedule 6, where the communities are listed as Endangered or Vulnerable Ecological Communities under the NSW *Threatened Species Conservation Act 1995* (TSC Act), this is noted within the community description. This is supported. However, Schedule 6 communities that are listed under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) should also be noted in the community description.

Specific comments and corrections

Page 171

The Note states that bold italics are used to denote rare, endangered or dominant species.

The word “endangered” should be replaced by “threatened” which includes vulnerable, endangered, critically endangered and extinct species. Bold italics are missing for rare and threatened species in the species list for each community.

Page 174

In the community description *Toona australis* should be *Toona ciliata*.

Page 175

(2A) Moist Basalt Cap Forest is not listed under the TSC Act but it is listed as an endangered ecological community under the EPBC Act as ‘Upland Basalt Eucalypt Forest of the Sydney Basin Bioregion’. *Davesia ulicifolia* should be *Daviesia ulicifolia*.

Page 176

(2B) Blue Mountains Shale Cap Forest is also listed under the Commonwealth EPBC Act. It is specifically included in the nationally listed and critically endangered community Turpentine-Ironbark Forest of the Sydney Basin Bioregion.

Remove “The form of Blue Mountains Shale Cap Forest that occurs within the City is distinguished from the closely related Sydney Turpentine Ironbark Forest by the presence of *E. notabilis* (Mountain Mahogany)” – this statement is not correct as demonstrated by the inclusion of *Eucalyptus notabilis* in the species lists for both (2B) and (2C).

Page 177

(2C) Sydney Turpentine-Ironbark Forest is listed as critically endangered under the EPBC Act.

Page 178

(2C) Sydney Turpentine –Ironbark Forest also occurs on the fringes of the volcanic diatreme at Sun Valley and on the shale-influenced soils in gullies and sheltered sites along the eastern escarpment of the Blue Mountains.

Page 178

(2D) Shale Sandstone Transition Forest is listed as endangered under the EPBC Act.

Page 185

(2I) Sun Valley Cabbage Gum Forest

Add after “on the diatremes at Sun Valley” “There is also a small outlying occurrence near Cripple Creek at Warrimoo”.

Page 187

(2K) Blue Gum Riverflat Forest. This community is included in the endangered ecological community ‘River-flat Eucalypt Forest on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner Bioregions’ which is listed under the NSW TSC Act. Advice from the NSW Scientific Committee (dated 9 June 2010) in regard to whether Community 2K was included in this TSC Act listing stated:

“While Eucalyptus deanei is now not included as a characteristic species it can still be present in this community and the tall open forests on alluvium soils in the Blue Mountains containing Eucalyptus deanei could still be considered a part of the River-Flat Eucalypt Forest on Coastal Floodplains community provided they contain other components of the listed community”.

Page 198

(4D) Redgum Swamp Woodland. According to Blue Mountains City Council (2002) *Native vegetation mapping of the Blue Mountains City 2002*, “this very rare community was previously mapped as Cox’s River Swamps by Keith and Benson (1988)”. The Keith and Benson (1988) Cox’s River Swamps are included in the endangered ecological community Montane Peatlands and Swamps of the New England Tableland, NSW North Coast, Sydney Basin, South Eastern Corner, South Eastern Highlands and Australian Alps Bioregions which is listed under the TSC Act. Community 4D is thus a part of the listed endangered ecological community.

Page 201**(5B) Blue Mountains Swamps**

Parts of this community are included in the endangered ecological community Temperate Highland Peat Swamps on Sandstone that is listed under the EPBC Act.

Page 202

Paragraph 5 refers to “an undescribed shrub *Melaleuca* sp. Megalong Valley” and also includes this species in the species list. This species was described in 2009 and is now known as *Callistemon megalongensis*. In May 2013 its status under the TSC Act was changed from vulnerable to critically endangered, being known now from only 8 sites in the Megalong Valley.

COMMENTS ON MAPPING CONTAINED IN NATURAL RESOURCES – BIODIVERSITY MAP SHEETS

Map units

Three map units are mapped in the Natural Resources – Biodiversity map sheets: Protected Area – Vegetation Constraint Area (green), Protected Area – Ecological Buffer Area (yellow), and Fauna Biocorridor (brown). The Vegetation Constraint Areas comprise a number of vegetation communities that are variously significant at national, state and/or regional level.

Background studies

The background studies which underpin the mapping of the three mapped units have not been made available during the period of exhibition of Draft LEP 2013. Blue Mountains Conservation Society (BMCS) has found it difficult to interpret and check the veracity of the mapping provided in the LEP without being able to assess the background mapping studies. BMCS had understood that background mapping studies, including the identification of the vegetation communities which comprise individual Vegetation Constraint Areas, would be exhibited in conjunction with Draft LEP 2013. BMCS recommends that the background studies be made available for public comment in the interest of validating and refining the accuracy of mapping. BMCS recognises that the validation and refinement of mapping is likely to be an on-going process.

Recommendation

- The BMCS recommends that the background studies be made available for public comment in the interest of validating and refining the accuracy of mapping.

Area of mapping

The Natural Resources - Biodiversity mapping has not been applied to all land zonings in the area covered by Draft LEP 2013 and managed by Blue Mountains City Council. Vegetation Constraint and Ecological Buffer Areas appear to have not been mapped on some parcels of land including those zoned E2 and RE1. BMCS believes that the mapping of Vegetation Constraint and Ecological Buffer Areas should be extended as a matter of priority across all lands which are managed by Council. Lands zoned E2 and RE1 are subject to impacts from developments on adjacent lands and also to impacts from developments on the E2 and RE1 zoned land itself. One example of such development on E2/RE1 zoned land is the recent construction of the downhill bike track in Knapsack Park, Glenbrook. BMCS has been long concerned about this development on land zoned E2 or RE1 which contains highly significant vegetation communities, Sydney Turpentine-Ironbark Forest (2C) and Shale Sandstone Transition Forest (2D), which are listed in Schedule 6 of Draft LEP 2013 and are also significant at state and national area (listed under the Commonwealth EPBC Act and NSW TSC Act). These areas of significant vegetation are not mapped as Vegetation Constraint Areas in the Draft LEP 2013 mapping. However, the vegetation has still been subject to a development with potential to have an adverse impact on the significant vegetation communities. By restricting the area of mapping it is possible that parcels of land in adjacent areas that should have been mapped will be missed. For example, BMCS is further concerned about a parcel of land adjacent to the above E2/RE1 land, immediately to the south of the Lovers Walk track and north of the oval in Knapsack Park, which is zoned E4 Environmental Living. This parcel of land zoned E4 contains Sydney Turpentine-Ironbark Forest which is an endangered or critically endangered ecological community at state and national level. However, in the Draft LEP 2013 mapping no Vegetation Constraint Area has been mapped on this parcel of E4 zoned land.

Clause 6.5 (2)

Clause 6.5 (2) of LEP 2013 states that Protected Area – Vegetation Constraint Areas include both lands that are mapped in the LEP and also all lands that are the site of significant vegetation communities (defined in Schedule 6) and also the site of rare species of flora. BMCS strongly recommends that Clause 6.5 (2) (b) be expanded to also include “rare or threatened species of flora and fauna and their habitats” rather than the given “rare species of flora”. BMCS recognises the difficulty of accurately mapping all areas of significant vegetation (as highlighted by the above example of the E4 parcel of land) and all occurrences of rare or threatened flora and fauna species that occur outside of areas of significant vegetation. BMCS strongly supports the application of Clause 6.5 to areas which are either mapped or are defined as a Vegetation Constraint Area.

Recommendation

- The BMCS strongly recommends that Clause 6.5 (2) (b) should be amended as follows:

6.5(2)(b) that is the site of a significant vegetation community [as listed in Schedule 6] or [rare or threatened species of flora and fauna or their habitats]

Adequacy of Vegetation Constraint Area mapping

BMCS has examined the maps of Vegetation Constraint Areas provided in the DLEP and has noted a number of areas which contain significant vegetation, as highlighted above, that are not included in the Vegetation Constraint Area mapping. An example of one such area is the land in the vicinity of Sun Valley. BMCS has had a particular interest in this area as it contains Sun Valley Cabbage Gum Forest, which is the only vegetation community in the Blue Mountains LGA that is listed as critically endangered under the NSW TSC Act. The Sun Valley area is also a popular venue for bird watchers and for spotting nocturnal mammals. BMCS is concerned that the Vegetation Constraint Area mapping in Draft LEP 2013 does not include all of the Cabbage Gum Forest that occurs on the lands zoned RU2, including the Cabbage Gum Forest that extends along Rosenthal Lane. Neither does the mapping include a large patch of Sydney Turpentine-Ironbark Forest (endangered at state level and critically endangered at national level) that occurs on the slopes above the Sun Valley diatrema on land zoned RU2. Such a finding adds further support for the need to include Clause 6.5 (2) and to continue to refine the mapping.

Adequacy of Ecological Buffer Area mapping

As no background studies underpinning the mapping of Ecological Buffer Areas have been made available the BMCS is unable to properly comment on the adequacy of the Ecological Buffer Area mapping and what is being mapped. For example, BMCS does not understand why some Vegetation Constraint Areas outside of the unmapped E2 and RE1 zoned lands are surrounded by an Ecological Buffer Area and why others areas are without a buffer area.

Some examples of unmapped Ecological Buffer Areas outside of E2 and RE1 areas, or inconsistent mapping:

- Map sheet 006B - southern side of Woodford. Green patches of significant vegetation on E3 land - room for buffer on E3 land but no buffer mapped.
- Map sheet 006A - southern Hazelbrook. Significant vegetation patch mapped on E4 land - room for buffer on E4 land but no buffer mapped

- Map sheet 005G - Yellow Rock - southern side. Significant vegetation patch mapped on E3 but no buffer mapped on adjacent E3.
- Map sheet 005F – Winmalee. Significant vegetation patch on E3, no buffer on adjacent E4 and E3.
- Map sheet 005EA – Springwood. Significant vegetation patch is mapped on RE1 to north of Lucinda Ave and east of Prince Rd. A buffer is mapped on RE1 land. However on RE1 land at Knapsack Park Glenbrook there is no significant vegetation or buffers mapped on RE1 land which contains sig veg. The mapping is not consistent.
- Map sheet 005E. South west of Sun Valley Rd is a large area of mapped significant vegetation on RU2 land but there is no buffer mapped on the adjacent RU2 lands.

Definition of Ecological Buffer Area

“Ecological Buffer Area” does not appear to be defined in the DLEP 2013. The Society notes that the BMCC’s *Environmental Management Plan 2002 Planning Study Volume 1: Planning Framework*, which was a background study to LEP 2005, contained a section on Protected Area - Ecological Buffer Area (Section 5.2.3). Section 5.2.3 states that:

"the buffer width adjoining Environmental Protection zoned significant vegetation totals 60 metres, and comprises an Ecological Buffer Area 50 metres wide and a buffer ten metres wide which is incorporated within the Environmental Protection zone itself" (p.90).

It goes on to provide a diagram of mapped buffers and how roads that cross buffers were dealt with.

The BMCS suggests that buffers around significant vegetation in DLEP 2013 could be determined as per the description in Section 5.2.3 of Council's *Environmental Management Plan 2002 Planning Study Volume 1*.

Recommendation

- The BMCS strongly recommends that the term “Ecological Buffer Area” be defined in Draft LEP 2013.

Adequacy of Fauna Biocorridor mapping

The term “Fauna Biocorridors” does not appear to be defined in Draft LEP 2013 and no background studies underpinning the mapping have been made available. BMCS is unable to properly comment on the adequacy of the Fauna Biocorridors mapping when BMCS does not understand what is being mapped.

Recommendation

- The BMCS strongly recommends that “Fauna Biocorridors” be defined in Draft LEP 2013.

COMMENTS ON RESIDENTIAL DEVELOPMENT STRATEGY 2010

The *Residential Development Strategy 2010* aims to review the original Residential Development Strategy (RDS) developed in 2002 for the Local Environmental Plan (LEP) 2005. The review also considered changes in NSW Government planning policies, more recent census data, information on development trends including new housing development and other reports and information.

Population data

The Society notes the major findings of the report which are:

- the population of the Blue Mountains **decreased** between 2001(74,323) and 2006 (74,065);
- the latest population projection (ID 2010) projected a population of 77,926 by 2021 (however, population projections over time increasingly have declined as new census data has been produced); and
- the population structure of the Blue Mountains is **ageing**, with young families and children decreasing in number as a proportion of the community.

Undeveloped land

The Society notes the analysis of total undeveloped land in the Blue Mountains, based on the planning policies currently contained in LEPs 2005 and 1991. This analysis indicates:

- total number of undeveloped lots = 4013
- total additional lots produced after subdivision = 3,206
- total lots available = **7,219**

The analysis shows that the greatest number of undeveloped parcels is in the Upper Mountains: Blackheath (1,000), Katoomba (966), Leura (603) and Wentworth Falls (838). In the entire Lower Mountains (Faulconbridge to Lapstone) there are only 1,664 undeveloped lots available.

If you look at the existing number of dwelling houses (as at 2006) in the villages with the greatest potential for development as listed above, and assume all the undeveloped lots are developed, then the character and ambience of these towns will change significantly. The potential percentage increase in growth is significant in these key towns and will put considerable strain on Council services and infrastructure such as water, sewage and roads. Greater development on the bushland fringes will also put considerable strain on the environment, including the Greater Blue Mountains World Heritage Area. While the study emphasises that not all undeveloped lots will be developed, the analysis does show the expected growth if all development potential is realised. This indicates that even under current planning policies the current allowable future development potential for the Blue Mountain is unsustainable.

- Blackheath: existing dwellings 2598; potential increase 1,000; new total 3,598 representing an increase of 38%
- Katoomba: existing dwellings 4228, potential increase 966; new total 5194 representing an increase of 22%

- Leura: existing dwellings 2300, potential increase 603; new total 2903 representing an increase of 26%
- Wentworth Falls existing dwellings 2818, potential increase 838; new total 3656 representing an increase of 29%.

The Study highlights that new development in the Blue Mountains is **severely constrained by a wide variety of factors** including environmental factors (slope, scenic values, significant vegetation, watercourses, drinking water catchment, threatened flora and fauna species), risk factors (including bushfire and flooding), quality of life factors such as retention of the character and ambience of the villages and, lastly, service and infrastructure factors (such as a lack of mains sewage, water and power). The Study therefore suggests a more realistic number of vacant lots that could be developed, taking into account the constraints listed above, is **4,045**. However, there is no detail in regard to how this revised figure was developed, which seems to be based on some large assumptions and guesstimates. This still represents a significant number of new dwellings and it is assumed the largest proportion will be in the villages in the Upper Mountains as this is where the greatest number of undeveloped lots are (although the breakdown by town of the 4,045 figure is not given).

Future development

The large number of undeveloped lots still available in the Blue Mountains contrasts sharply with the average number of new dwellings approved to be built in the Blue Mountains per year. Between 2000 and 2009 the average number of new dwellings approved was 229 per year (the number of new dwellings actually connected to mains water was a lower 151 dwellings per year). Based on this data, the Study estimates—assuming similar numbers of yearly building approvals and the 4,045 figure in terms of the vacant land available—that there are enough undeveloped lots in the Blue Mountains to meet housing demand until 2030.

Implications of the *Draft Metropolitan Strategy for Sydney*

The *Draft Metropolitan Strategy for Sydney* (Metro Strategy) was released for comment in 2013 and therefore its implications were not considered or analysed in the RSD 2010. The Metro Strategy has still not been finalised by the NSW Government. The Society made a detailed submission to the draft Strategy, given the huge implications the Strategy proposed for the Blue Mountains in terms of environmental impacts.

The draft Metro Strategy outlined some key population and growth targets for the Blue Mountains. This has significant implications for the City. The outcomes imposed included:

- identifying Faulconbridge to Lapstone as an Metropolitan Urban Area, where new residential development will be targeted to occur;
- imposing a housing target of 39,000 new houses by 2031 (an increase of 30%) to be shared between Blue Mountains, Penrith and Hawkesbury (the target for each LGA was not specified but Hawkesbury, unlike the Blue Mountains and Penrith, did not have a Metropolitan Urban Area identified); and
- imposing a population target of 416,000 by 2031, an increase of 89,000 or 27% (the target for each LGA was again not specified).

The Residential Development Strategy 2010 was completed before the Metro Strategy was released. The evidence and data as outlined in the RSD 2010 as compared to what has been proposed in the Metro Strategy is alarming:

- The greatest potential for new development is the Upper Mountains, not the Lower Mountains as proposed in the Metro Strategy.
- The target of a 27% increase in population across the 3 LGAs by 2031 contrasts with the decrease in population in the Blue Mountains from 2001 to 2006.
- The target of 39,000 new houses across the 3 LGAs contrasts with the maximum number of undeveloped lots in the Blue Mountains of 7,319 or the more realistic 4,045 lots. Assuming the Blue Mountains would contribute 25% of the 39,000 new dwellings target, this means that 9,750 lots (out of 39,000) would need to be developed for housing in the Blue Mountains. In other words, there is a shortfall of 2,431 lots if we assume that the maximum number of undeveloped lots (7,319) were developed, or a shortfall of 5,705 lots if the more realistic figure of 4,045 undeveloped lots was used.

Achieving this level of development would require a major and significant shift in the development pattern and current planning policies for the Blue Mountains, substantially expanding areas where small lot subdivisions could occur and expanding the amount and location of where medium density housing could occur. This would include allowing small lot subdivisions along ridge tops, which are at risk from bushfires, and medium density housing and increased subdivision in established villages where large lot garden character residential areas dominate.

The Blue Mountains Conservation Society would argue that the development potential, assuming all lots under the current planning policies area developed, is unsustainable. The housing and population targets imposed by the Draft Metro Strategy would have immense negative social, environmental and economic impacts for the villages of the Blue Mountains and the Greater Blue Mountains World Heritage Area, and are in fact unrealistic and unachievable.

Blue Mountains Conservation Society submission to Blue Mountains DLEP 2013

ATTACHMENT 'A' – MAP SERIES

As stated previously, the overall concern and request by the BMCS that relates to the maps generally is the application of minimum lot sizes and Protected Area mapping. The application of larger minimum lot sizes to all public and private E2 zoned land, and Recreation RE1 and RE2 zoned land, is strongly recommended. BMCS also strongly recommends that Protected Area mapping be applied to all land under Council's jurisdiction, including E2.

Attachment 'A' consists of a table listing specific issues raised in some of the mapping relating to particular lots or areas. This list has been collated from various individuals and groups and has not been verified by BMCS. We request that Council investigates these further.

SEE SEPARATE DOCUMENT FOR ATTACHMENT 'A'

Blue Mountains Conservation Society submission to Blue Mountains DLEP 2013

ATTACHMENT 'B' - CASE STUDY

179-199 Valley Rd Hazelbrook (see APPENDIX for aerial photograph)

DLEP 2013 Map 006A, LEP 2005 Map 21

This case study illustrates several of the Blue Mountains Conservation Society's concerns and subsequent recommendations relating to:

- how past planning decisions have led to anomalies in the application of zoning and minimum lot sizes with unsatisfactory environmental outcomes for this property (and probably similar other properties) in DLEP 2013
- minimum lot size covering E2 zones
- mapping of Protected Areas in E2 zones

Site description

This is a 240 acre (97 ha) property adjoining the national park comprising 4 (?) lots/parcels spanning 3 south-running ridges and creeks in south Hazelbrook-Woodford. These creeks and runoff from the site drain into Bedford Creek and ultimately into the Nepean River. The property (and dam on the site) is often visited by birdwatchers and the walking trails are used by local residents.

There are 3 road access points to the property: Valley Rd Hazelbrook, Riches Ave Woodford and Park Rd Woodford. Valley Rd is sealed almost to the entry to the property and all houses on Valley Rd up to the property are serviced. Riches Ave is unsealed for most of its length to the property, Park Rd less so but the unsealed section is steeper and rougher. In the case of Riches Ave, the access road becomes unsealed where the sewer stops at the upper section of Riches Ave where the small subdivided blocks end. This can be clearly seen on the LEP 2005 Map 21 Panel J: sewerage. From there down it is a 1 km (approx.) dirt road with 4 houses on large lots (25 acres) until the property is reached. These lots are not connected to the sewer. Riches Ave and Park Rd loop around and meet at the site of the 'Park Rd dam' which was used by Elvis the water-bombing helicopter during the 2001-2 bushfires in the area. Only 4WD vehicles can negotiate Riches Ave and Park Rd on this part of the property, and these vehicles have caused serious erosion around the dam area.

There is no development on the site at the Riches Avenue and Park Rd access points. However, some bushland on the site was (illegally) cleared many years ago and slashing of regrowth has been maintained by all owners since. There are old horse stables and a small house/shed at the Valley Rd entrance to the property which has been used as a residence. There are cleared patches at the Valley Rd section of the property on which cattle were grazing until recently. Otherwise, the property is mainly covered by native vegetation.

As far as we are aware, the property has not yet been assessed for Aboriginal significance.

Site history

This site has a long history of subdivision attempts. Long term residents remember that around 20 years ago (it is unclear if this was before or after LEP 1991) there was an application for large scale subdivision on the site which was rejected on many grounds. Apart from lack of water and sewer provision and high bushfire

risk, one of the grounds of rejection was the unsuitability of Riches Ave for vehicle access to the site. Apart from being unsealed for most of its length, Riches Ave is very narrow, being 4.6 m wide (gutter to gutter) in the sealed section, meaning that cars have to mount the kerb to pass each other. This creates an unacceptable risk in the event of a bushfire evacuation. In other words, there is no viable access to the site from Riches Ave.

In LEP 1991 much of this property, along with large adjoining properties, was designated the Hazelbrook/Woodford Residential Investigation Area (RES-1). All these Residential Investigation Areas were removed from LEP 1991 and incorporated into LEP 2005. However, it seems that 2 parcels of land on this property at the end of Valley Rd, remained in LEP 1991 and were zoned Bushland Conservation and Environmental Protection.

In the 1997 EMP Stage 2 Local Environment Study, Study Area 3 (p.116), the Hazelbrook/Woodford Residential Investigation Area was deemed to be not suitable for conventional residential development because of the extreme to high fire threat and because of its environmental constraints. These constraints were identified as steep slopes, significant creekline and moist cliffline vegetation communities downstream, and the presence of significant fauna species and significant fauna/flora habitats. Accordingly, the study recommended that the environmental constraint areas be zoned Environmental Protection and 'Bushland Conservation' (as it was termed in the study) no subdivision "in order to conserve the natural bushland character of the landscape and to promote the regeneration of natural bushland in areas with sparse tree or canopy cover" (p.116).

The Environmental Management Plan 2002 Volume 1 Planning Framework reiterated this view that the Hazelbrook-Woodford Residential Investigation Area was highly constrained by environmental factors and high levels of bushfire threat, that development would place considerable pressure on servicing and infrastructure, and that "the impact of development on watercourses and vegetation communities within the locality would be unacceptable" (p. 62). For these reasons, the Environmental Protection zone was applied over the environmentally constrained area and Living - Bushland Conservation with a No Subdivision notation applied to other land. This was consistent with the planning principles of the Draft LEP 2005 limiting urban expansion especially to exposed, environmentally sensitive and under-serviced areas such as this. However, in August 2003, following advice from Sydney Water, Council resolved to lift the No Subdivision notation on this and other Living - Bushland Conservation areas. Lifting the No Subdivision notation was purely on the basis of Sydney Water's current and future planned capacity to provide reticulated sewerage and potable water supply, not on the basis of environmental constraints.

Around 2002 the property was sold to a Sydney-based property development company. In late 2012 the property was passed in at auction under a mortgagee sale. It was subsequently sold in 2013. Given the long history of subdivision attempts, this is a site of great concern to the Society.

DLEP 2013

Zones applying to the property

In accordance with the Council's policy to translate LEP 1991 and LEP 2005 zones into the most closely fitting Standard Instrument zones in DLEP 2013, E2 has been applied to the Environmental Protection zone areas on this property, E3 applied to the LEP 1991 Bushland Conservation zone areas, and E4 applied to the LEP 2005 Living - Bushland Conservation zone areas. While this is consistent with Council's policy of translating current LEP zones to DLEP 2013 zones, it creates anomalies in the zones and the minimum lot sizes that are then applied to the property. These anomalies have been created through two LEPs having been applied to the property. An urban zone, Living – Bushland Conservation, was applied over part of the property when it was

incorporated into LEP 2005. LEP 2005 was meant to cover already developed urban areas of the Blue Mountains, yet this property is on the outer fringes of south Hazelbrook-Woodford adjoining the national park. The anomaly becomes apparent when you consider that the areas of south Hazelbrook-Woodford further up the access roads from this property, closer to the highway and train line, are still covered by LEP 1991. So you have zones relevant to bushland areas (LEP 1991) applied to already developed residential areas, and urban zones (LEP 2005) applied to areas that really are in the undeveloped bushland adjoining the national park, at least in this case.

The upshot of this anomaly is that the most unsuitable area for residential development on this property – the portion at the end of Riches Ave which does not have water or sewer supply and with only a narrow 1 km dirt road leading to it - has had an E4 zone applied to it simply because this was a translation from the LEP 2005 Living – Bushland Conservation zone which previously applied. At the same time, the most developable part of this property – the serviced, already partly cleared and developed area with a sealed road access from Valley Rd – has a small portion of E4 at the property entrance followed by a more extensive and highly constrained E3 zone area. E3 was applied simply because this was a translation from the LEP 1991 Bushland Conservation zone that had previously applied.

Arguably, an E3 zone should have been applied to all developable areas on these large lots, as has occurred on similar lots at the end of Bedford Rd, Woodford. Alternatively, a larger minimum lot size could have been applied to the E4 areas e.g. 10ha, reflecting more accurately its environmental sensitivity. We also note that the recommendation in the LEP 1991 Rural Lands Planning Study Bushland Conservation Zone Report (p.85) that more extensive Environmental Protection zoning should be applied to the Bushland Conservation area on the property at the Valley Rd entrance has not been followed through in the DLEP 2013.

Minimum lot sizes applying on E3 and E4 zones on the property, and essential services

The anomaly in zoning becomes more apparent when the minimum lot size that is then applied to the E3 and E4 zone areas on the property is considered. The E3 area on this property at the end of Valley Rd has an AB3 30 ha minimum lot size applied, while the E4 areas at the end of Riches Ave and Valley Rd have a 1200m² minimum lot size applied. Remember that the Riches Ave part of the property is the area that is most highly constrained by lack of access and services.

Further, the E4 areas on the property have the designation Area G (Clause 4.1F) on the Lot Averaging Map. This clause allows for cluster housing development in E3 and E4 zones. While this is meant to limit the impact of housing development in these environmentally sensitive lands, it raises the issue of servicing such a development. It would seem from Clause 6.24 that any subdivision of the E4 area at the end of Riches Ave would be precluded by the current absence of availability of sewer, water and electricity services. The cost of providing these services, along with the stormwater management and other provisions that would apply, would be prohibitive for any developer given the limited lot yield that would be possible on this part of the property.

The only economically feasible subdivision option for the Riches Ave part of the property would be one or two dwellings on lots large enough for on-site sewer disposal. This is apart from any such houses requiring large water collection tanks and possibly off-grid electricity generation. However, any dwelling and on-site effluent disposal system on this/any part of the property would be located on a hillside draining down into one of the creeks. Any on-site sewer disposal would not be acceptable, as confirmed by the Environmental Management Plan 2002 Volume 1 Planning Framework's statement that "the impact of development on watercourses and vegetation communities within the locality would be unacceptable" (p. 62).

While such constraints, plus the proximity of E2 zones and ecological buffer areas, seem to offer protection from inappropriate development on this environmentally sensitive property, the 1200m² minimum lot size

(with cluster housing provisions) applying to the most undevelopable part of the property (the Riches Ave E4 area) seems anachronistic.

Minimum lot sizes (MLS) applying to E2 zones on the property

The Council's policy in applying minimum lot sizes to E2 lands is to apply the MLS on the developable part of a lot/parcel to the adjoining E2 zone on the parcel. So if a lot/parcel has a split zoning of E4 and E2, for instance, the MLS applying to the E4 part also applies in the E2 zone on the lot/parcel i.e. 1200 m². This becomes highly problematic on this property which is made up of several parcels. Where there is an E4 zone (such as at the end of Riches Ave and Valley Rd), a 1200 m² MLS also applies to all the E2 zoned area on that parcel. Where there is an E3 zone on part of a parcel (e.g. also in the Valley Rd section), a 30 ha MLS applies to the E2 zone on that parcel. This produces an anachronous situation illustrated in the map (see APPENDIX – yellow lines show parcel divisions), where two adjoining parcels of land on the one property, which are identical in physical and natural features, have been allotted vastly different MLS on both the developable part of the parcel and on the E2 part of the parcel. This does not make sense and sends the wrong signal about the development potential of the property.

Council will argue that the E2 zone prohibits subdivision and development and that is adequate protection and so it doesn't matter what MLS is applied to the E2 zone. But the concern is that land owners can apply for rezoning of E2 land and even if Council rejects the application the owner has recourse to the relevant Joint Regional Planning Panel. If the Council decision is overturned and the 1200 m² MLS applies it may then be very difficult for Council to increase the lot size to gain the protections the land would lose through a change of zone from E2.

Supports BMCS recommendation: that to overcome such anomalies and to maintain protection of the E2 zone, the minimum lot size applied to the E2 zoned land should be 40 ha. See main submission for further recommendations about minimum lot sizes applying to E2 lands.

Unmapped Protected Areas on the E2 zone

Similarly, the BMCS is concerned about the potential impact of the lack of mapping of Protected Areas on the E2 zones surrounding the E3 and E4 zones on this site, and on all E2 zoned areas across the local government area generally.

As for LEP 2005, Council has chosen not to map the Protected Areas in the environmental protection zone (E2) in DLEP 2103. This is problematic because of the potential for rezoning of E2, and because of the (albeit limited) activities allowed in the E2 zone. If Protected Areas are not mapped in E2 areas, any rezoning, development or subdivision of E2 land would not be subject to the controls contained in the relevant Protected Area clauses under Part 6 of the DLEP.

The LEP 2005 Map 21 Panel E (Significant vegetation communities/ecological buffer areas) covering this property shows that the E2/Environmental Protection zone on this site contains substantial swamp and significant vegetation buffer areas along the creeks, riparian corridors and complexes. There are also escarpment complexes and a range of significant vegetation communities and Protected Areas on the site, but mainly (obviously) located in the E2 areas. These environmentally sensitive areas and Protected Areas on this site are mostly not visible in the DLEP 2013 maps because they are not mapped in E2 areas. This means that there is not a clear picture of what, exactly, are the environmental constraints on development on the property and to what extent.

Supports BMCS recommendation: that Protected Area mapping be applied to ALL lands in the DLEP 2013 including land zoned E2.

APPENDIX to Attachment 'B': map of minimum lot sizes on different portions of 179-199 Valley Rd Hazelbrook. The property takes up much of the bottom half of the map west of Park Rd.



Blue Mountains Conservation Society submission to Blue Mountains DLEP 2013

ATTACHMENT 'C' – CEMETERY MANAGEMENT

Comments about each of the following cemeteries are contained within Attachment 'A'

- Mt Victoria;
- Blackheath;
- Katoomba;
- Wentworth Falls;
- Lawson;
- Faulconbridge;
- Springwood.

Recommendation

The Blue Mountains Conservation Society recommends that all cemeteries have a buffer area of at least 25m wide on the downslope side, contained within the lot, for the protection of groundwater. In cemeteries located within 100m of a swamp or watercourse this buffer width should be increased (similar to buffer widths required around effluent disposal areas as stated in Better Living DCP, clause D1.9.11). This buffer should be zoned E2 - Environmental Protection.

'Buffers' usually encompass an area which requires protection – in the present case, the buffers proposed are to protect what lies outside the area used as a cemetery.

These recommendations are based on work undertaken by Boyd Dent and Michael Knight at the National Centre for Groundwater Management (University of Technology, Sydney). Although **deep** sandy soils (as discussed in Dent and Knight's work) are uncommon in the Blue Mountains, their findings provide some guidance on the matter of groundwater protection.

During the 1996-1998 National Study of Cemetery Groundwaters, Dent and Knight compiled a paper entitled "*Cemeteries: A Special Kind of Land fill. The context of their Sustainable Management*". This paper was presented to the Groundwater Sustainable Solutions Conference in Melbourne in 1998 [International Association of Hydrogeologists]. It makes the following recommendation:

There are now sufficiently strong grounds for asserting that cemeteries must have buffer zones on all boundaries but particularly on topographical lows and lowermost portions of hydraulic gradients. These should be planted with substantial, deep-rooting, native trees that consume large volumes of groundwater, rather than lawns that are unlikely to do this and may also permit excessive infiltration. No interment should lie at the cemetery boundary. Buffer zones in sandy areas should be larger than those in clayey soils, but at present cannot be prescribed for size.

Work by Boyd B. Dent¹ in 2002, gives more precise guidelines as to the width of buffer zones. This Study recommends that buffer zones be created around the whole of sites at default distances of:

- 20m in sandy soil if the boundary is down hydraulic gradient or on a topographic low; otherwise

¹Dent, Boyd B. *The Hydrogeological Context Of Cemetery Operations and Planning In Australia*. Unpublished PhD Thesis, University of Technology, 2002.

10m. This distance should be greater (to 25 m) in sandy areas with high hydraulic gradients, say more than 0.05 (5 %).

- 10m in clayey soils if the boundary is down hydraulic gradient or on a topographic low; otherwise 5m.

Dent explains that there may be some instances where the default distance is inappropriate or too restrictive to the cemetery development: for example, too small where a cemetery on steep aeolian deposits borders a wetland, or too big where a clayey site adjoins a landfill. Such instances should be resolved following an appropriate hydrogeologic evaluation.

In the buffer zone a further effort should be made to attenuate groundwater flow by removing it naturally, that is, through evapotranspiration with suitable vegetation – one of the forms of phytoremediation. The planting of deep-rooting, locally adapted, native vegetation is likely to provide the best type of planting, although there are cases where other species have proved effective.

Dent's analysis² shows that the most common decompositional product to leave the cemetery's precinct is nitrogen; other products include Cl, SO₄, Na, Mg and P. Overall, the concentrations may be small, but N and P have the propensity to cause environmental degradation because they are plant nutrients. If these nutrients could be consumed en-route, this would be advantageous for wetlands or aquifers which receive the groundwaters.

The assessment of the survival and transmission of potential pathogenic organisms, and the likely off-site migration of some nutrient substances, has reinforced the need to keep cemeteries well away from swampland, waterways and lakes.

The potential risk is that products of decomposition will spread from the swampland and contaminate the groundwater system and/or have detrimental effects on the swampland ecosystems. With respect to the latter, the effects will be very varied depending on the size, type and inter-relationships of the swampland.

Summary of DLEP 2013 Issues

The Society therefore makes the following comments concerning the proposed Zoning of cemeteries in DLEP 2013:

- The Society recognises that Council is required to zone cemeteries as SP2.
- We propose that only the extent of the area to be disturbed for cemetery purposes be zoned SP2 and the areas to be retained as natural bushland be zoned E2 when these areas have been identified as fulfilling the criteria of Protected Areas – slope, significant vegetation, watercourse buffers etc. The criteria for the E2 zone should be applied across all land tenures and uses to ensure consistency.
- A cemetery is an intensive land use, which requires significant ground disturbance and potentially impacts the groundwater regime.
- The DLEP2013 is the appropriate mechanism to protect groundwater and environmentally constrained land. Cemeteries should not be exempt from these land use controls.

² Dent (*ibid*), chapters 5 & 6

Cover photographs:

Tawny Frogmouth (*Podargus strigoides*), Blackheath – Paul Vale

Pool of Siloam, Leura – Dianne Page

Bushcare/BMCS DLEP 2013 Workshop, Springwood – Paul Vale

Mountain Devil (*Lambertia formosa*) – Alan Page

George Phillips Lookout, Blackheath – Paul Vale

Three Sisters, Katoomba – Alan Page

BMCS DLEP 2013 Public Meeting, Lawson – Paul Vale