



Blue Mountains Conservation Society Inc

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Nature Conservation Saves for Tomorrow

Date: 23 March 2016

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

By Email to: council@bmcc.nsw.gov.au

Cc Councillors Greenhill, Christie and Von Schulenburg

Subject: Submission re S/47/2015 16 Cox St Glenbrook one into five lot subdivision

The Blue Mountains Conservation Society is a community based volunteer organisation with over 830 members. Its mission is to help conserve the natural environment of the Greater Blue Mountains, and to increase awareness of the natural environment in general.

I write on behalf of our Membership to support local residents in opposing this proposed subdivision. Our concerns with the development are as follows.

- The state and federally listed endangered ecological community Shale Sandstone Transition Forest (SSTF) occurs over the majority of the site, as mapped by Council's vegetation mapping and confirmed by the proponents consultant in the Flora and Fauna Report (p9). SSTF ranked good and moderate in the same report was identified as occurring on land proposed to be developed either in the "building envelope" of the new lots or as part of the Asset Protection Zone (APZ) (p1). Significant amount of SSTF will be either removed completely or directly impacted (eg by underscrubbing in the APZ) if the subdivision proceeds. The new lots are all up slope of the remainder of the site, which will be undeveloped and which contains SSTF ranked good. However, the undeveloped portions of the land will still be potentially impacted by the new housing development through down slope erosion, weed encroachment and potentially underscrubbing beyond the APZ. The Society does not agree with the assessment in the Flora and Fauna report that the impacts on SSTF, either direct or indirect, will not be significant and that a SIS is not required. It should be noted that SSTF is now listed as Critically Endangered under Commonwealth and State legislation, in recognition of how little of this vegetation community is left and the threats from increased development it faces.

- The proposed lots includes land zone E2 Environmental Conservation under the BM LEP 2015. Dwellings and associated development is prohibited on land zone E2. The building envelopes of the new lots identified in the Flora and Fauna Report (p1) appear to include land E2.
- According to Council's mapping, there is an identified watercourse on the site down slope of the proposed new lots. Any developments up slope of a watercourse may have negative impacts including erosion, urban runoff and pollution, and weed dispersal.
- According to Council mapping the site includes land mapped as Protected Area - Vegetation Constraint and Protected Area - Ecological Buffer under LEP 2015. All of the building envelopes of all the new lots are mapped either as Protected Area - Vegetation Constraint or Protected Area - Ecological Buffer Protected Area. Both of these Protected Areas are subject to special provisions in the BM LEP 2015 (Clause 6.6 and Clause 6.7) to protect their values. The Society does not believe that the subdivision as proposed is consistent with these provisions and therefore does not believe that Council as consent authority can be satisfied that the requirements of these clauses can be achieved.
- According to Council mapping the site includes land mapped as Protected Area Slope Constraint under LEP 2015. This includes land identified as being within the building envelope of two of the new proposed lots. Areas mapped as Protected Areas - Slope Constraint are subject under the LEP to special provisions (Clause 6.4) to protect their values. The Society does not believe that the subdivision as proposed is consistent with these provisions and therefore does not believe that Council as consent authority can be satisfied that the requirements of this clause can be achieved.
- Local residents report, and the Flora and Fauna Report confirm, a number of threatened flora and fauna occurring or have the potential to occur on the site. These species would be directly impacted by the proposed subdivision and future development through the direct removal of native vegetation and habitat, as well as indirectly impacted in areas where direct development is not proposed to occur, through urban run off and sediments in watercourses, weed intrusion, and noise and disturbance during construction.
- It is the Society's understanding that under Clause 4.1 of BM LEP 2015, in calculating lot sizes for new subdivisions, if a new lot is zoned partly E2 the land zoned E2 cannot be used to calculate the lot size. The Society believes in applying this Clause that some of the new lots do not meet the minimum lot size of 1200sqm.
- The Society would argue that the provisions of the LEP 2015 are a key relevant consideration when assessing this development application because:
 - The DA was lodged on January 2016, after the LEP 2015 was gazetted in December 2015 but before the new LEP commenced in February 2016. It is recognized that Clause 1.8A of LEP 2015 applies (ie the DA will be assessed principally under LEP 1991) as the DA was not determined before commencement of LEP 2015. However, Clause 79C(a) of the EPAA Act specifically provides for consent authorities to consider in determining a DA "any proposed planning instrument ...that has been subject to public exhibition". LEP 2015 clearly meets this criteria – in fact the LEP was gazetted before the DA was lodged and meets the test applied by the courts of "certain and eminent".
 - In addition, Clause 79C(a) also requires Councils to consider the "public

interest” in determining DAs – the Society would argue that the application of relevant provisions of LEP 2015 would be in the public interest.

- Arguments put forward by the applicant, as to the suitability of Council's vegetation mapping methodology in relation to LEP 2015 and suggesting that the Protected Area and vegetation mapping is onerous and restrictive, the Society believes are not relevant. The Protected Areas and zoning maps accompanying the LEP 2015 are legislative instruments which must be complied with and cannot be subject to revisions by proponents.
- Regardless of the above the Society believes that the proposed subdivision also does not meet the requirements of LEP 1991. Given the presence of SSTF on the site, including within the proposed development envelope of the new lots and the APZ, the presence of threatened fauna and flora on the site, the presence of a watercourse downslope of the new lots and the amount of development excluded land as identified under LEP 1991, the Society believes the development does not meet the requirements of Clauses 10.5 and 11.5 of LEP 1991.

Given the level of interest and concern that has arisen within the community in regard to this DA, and the potential negative impacts on the environment arising from this DA if approved, the Society asks:

- That the DA is considered by full Council at a Council meeting.
- That the public submission period is extended for another 2 weeks.

If you have any queries in relation to our submission please contact me via email or on the number below.

Yours sincerely



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