

Blue Mountains Local Environmental Plan 1991 (Amendment No 39) - Planning Proposal to transfer land to Local Environmental Plan 1991

Proposal Title : Blue Mountains Local Environmental Plan 1991 (Amendment No 39) - Planning Proposal to transfer land to Local Environmental Plan 1991

Proposal Summary :

The Planning Proposal seeks to rezone 57 parcels of land (at 27 different locations across the Local Government Area), currently zoned under Local Environmental Plan No. 4 to a suitable zone under Local Environmental Plan 1991. Detailed site information about each parcel including maps showing the existing zone under LEP 4 and the proposed zone under LEP 1991 is provided in Attachment 1 (in Documents). Attachment 2 (in Documents) includes a comparison of zone objectives and land use permissibilities between the existing zones under LEP 4 and the proposed zones under LEP 1991.

The proposal is the first stage in Council's program to develop a single comprehensive local environmental plan. Council intend to transfer LEP 4 land into LEP 1991 and then transfer the remaining LEP 1991 land into LEP 2005. A similar LEP that translates LEP 4 land directly into LEP 2005 is being considered separately.

PP Number : PP_2012_BLUEM_003_00 **Dop File No :** 12/11441

Proposal Details

Date Planning Proposal Received :	09-Jul-2012	LGA covered :	Blue Mountains
Region :	Sydney Region West	RPA :	Blue Mountains City Council
State Electorate :	BLUE MOUNTAINS	Section of the Act :	55 - Planning Proposal
LEP Type :	Spot Rezoning		

Location Details

Street :	Various		
Suburb :		City :	Postcode :
Land Parcel :	Various		

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DoP Planning Officer Contact Details

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Metro North West subregion	Consistent with Strategy :	Yes
MDP Number :	0	Date of Release :	
Area of Release (Ha) :	0.00	Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with : Yes

If No, comment : In relation to the Lobbyist Code of Conduct there are no records on the Department's Lobbyist Contact Register regarding this matter.

Have there been meetings or communications with registered lobbyists? : No

If Yes, comment :

Supporting notes

Internal Supporting Notes : Background to this Planning Proposal

Blue Mountains Council presently has 3 major Local Environmental Plan (LEPs) that regulate land use and development in the Local Government Area (LGA). These are:

- LEP 2005, which applies mainly to the urban areas in and around the towns and villages;
- LEP 1991, which applies to the more rural and natural areas outside the towns and villages; and
- LEP 4, which was the main LEP when it was gazetted in 1982, but now only applies to

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the remaining parcels of land that were not included in either LEP 1991 or LEP 2005.

As part of the process of moving towards a single comprehensive Local Environmental Plan, the Council has identified a number of sites which remain zoned under Blue Mountains Local Environmental Plan No 4. These lands were not transferred to the Council's other major LEPs (LEP 1991 and LEP 2005) when these LEPs were prepared, and the first stage in the Council's program to develop a single Comprehensive LEP is to transfer all lands still zoned under LEP 4 to a suitable zone under another major LEP. The Council is therefore preparing two related Planning Proposals:

1. Rezoning some land presently zoned under LEP 4 to an appropriate zone under LEP 1991 (this Planning Proposal).
2. Rezoning other land zoned under LEP 4 to a suitable zone under LEP 2005 (addressed in a separate Planning Proposal).

When these two Planning Proposals have been completed, LEP 4 will be repealed,

Council has advised that transferring land into LEP 1991 is a result of one or both of the following reasons:

- Where adjoining land is zoned under LEP 1991 and a similar LEP 1991 zone is appropriate for the LEP 4 land. In this instance, rezoning the LEP 4 land to zone under LEP 1991 provides a simplified approach to determining land use zonings, use permissibility and DA assessments. It will in many cases eliminate "split zonings" applying to one allotment of land, thereby reducing the likelihood of errors occurring when LEP 1991 is combined into LEP 2005, in the future.
- Where land, currently zoned under LEP 4 is considered to be most appropriately transferred to the Bushland Conservation zone under LEP 1991 on a temporary basis. Council has further advised that as part of converting Council's three major LEPs into one comprehensive LEP, studies are currently being undertaken to support the transfer of LEP 1991 land into LEP 2005. The Bushland Conservation zone under LEP 1991 is therefore being used as a 'holding' zone in some cases until these studies are completed and a considered approach to all lands zoned Bushland Conservation under LEP 1991 has been finalised.

The allotments subject to this Planning Proposal have been identified, their history has been researched and environmental factors for each lot have been assessed and details are provided in Attachment 1. In total, it is proposed to rezone 57 parcels of land at 27 different locations across the LGA. The reasons why these lots remain zoned under LEP 4, and were not transferred to LEP 1991 (or LEP 2005) when these LEPs were introduced, falls into three broad categories, namely:

- Mapping anomalies – these are parcels of land where errors of mapping have occurred during the preparation of LEP 1991. Typically these parcels are formed roads or very small parcels of land.
- Minor unresolved issues – these are parcels of land with a potential unresolved issue such as possible future road widening or an environmental issue that had not been resolved when the LEP 1991 was prepared; or
- Deferred land – these parcels were deferred during the preparation of LEP 1991 of LEP 2005 due to significant and previously unresolved issue.

External Supporting
Notes :

POLITICAL DONATIONS DISCLOSURE STATEMENT

Political donations disclosure laws commenced on 1 October 2008. The legislation requires the public disclosure of donations or gifts for certain circumstances relating to the Planning system.

"The disclosure requirements under the new legislation are triggered by the making of relevant planning applications and relevant public submissions on such applications.

The term relevant planning application means:

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- A formal request to the Minister, a council or the Director-General to initiate the making of an environmental planning instrument..."

Planning Circular PS 08-009 specifies that a person who makes a public submission to the Minister or Director General is required to disclose all reportable political donations (if any).

The Department has not received any disclosure statements for this Planning Proposal.

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : The Planning Proposal clearly identifies Council's intention to rezone land presently zoned under LEP 4 to a suitable zone under LEP 1991.

It is considered that the intended outcomes of the Planning Proposal are consistent with the criteria outlined in the 'Guide to preparing planning proposal'.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : Council has provided an explanation for all the proposed amendments. The explanatory statement with the relevant maps are in Attachment 1 (in Documents). .

It is considered that the explanation for the proposed amendments is adequate.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

1.2 Rural Zones

* May need the Director General's agreement

1.3 Mining, Petroleum Production and Extractive Industries

2.1 Environment Protection Zones

3.1 Residential Zones

4.4 Planning for Bushfire Protection

5.2 Sydney Drinking Water Catchments

6.1 Approval and Referral Requirements

6.2 Reserving Land for Public Purposes

7.1 Implementation of the Metropolitan Plan for Sydney 2036

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP (Housing for Seniors or People with a Disability) 2004

SEPP (Infrastructure) 2007

Drinking Water Catchments Regional Environmental Plan No. 1

SREP No. 20 - Hawkesbury-Nepean River (No. 2 - 1997)

e) List any other matters that need to be considered :

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

1.2 Rural Zones:

The objective of this direction is to protect the agriculture production value of rural land.

Clause 4 of this Direction states that a Planning Proposal must not rezone land from a

rural zone to a residential, business, industrial or tourist zone.

This direction applies to one parcel of land (Land at No. 118 – 124 Mt York Road, Mt Victoria – Ref Sheet 28) which is currently zoned Rural 1(a1) and the proposed zone under LEP 1991 is Living Bushland Conservation (CONS) with Protected Areas – Water Supply Catchment and Protected Area – Escarpment Area. Technically, the proposal is not consistent with this Direction. However, the inconsistency is considered to be justified in this instance, as:

- clause 5(d) of the Direction states that a planning proposal can be inconsistent if the relevant planning authority can satisfy the Director General of the Department of Planning (or an officer of the Department nominated by the Director General) that the provisions of the planning proposal that are inconsistent are of minor significance.
- Council has advised that the Planning Proposal affects an area of 3000m², which will not be developed for agricultural or rural uses, and is unlikely to ever be so, due to its location close to the escarpment, extent of existing vegetation cover and the irregular and narrow shape of the land.

In view of the above, it is considered that the provisions of the planning proposal that are inconsistent with the direction are of minor nature.

The approval of the Director-General is recommended in this report, to satisfy the Direction.

1.3 Mining, Petroleum Production and Extractive Industries

This direction applies to a Planning Proposal when it prohibits or restricts mining of coal or other materials, production of petroleum, or wining or obtaining of extractive materials.

This direction applies in this instance as the Planning Proposal proposes to rezone certain land at Colless Road, Yellow Rock (ref No. 21) from existing Reservation Local Open Space 9(d) and Escarpment Preservation Area to Recreation – Environment Protection and Protected Area – Escarpment Area.

Council has advised that it consulted with the Department of Trade and Investment, Regional Infrastructure and Services and the agency has raised no objections to the Planning Proposal (a copy of the letter in the Documents).

In view of the above, it is considered that the provisions of the planning proposal that are inconsistent with the direction are of minor nature.

The approval of the Director-General is recommended in this report, to satisfy the Direction.

2.1 Environmental Protection Zones

Clause 4 of this Direction requires that a Planning Proposal must include provisions to facilitate the protection and conservation of environmentally sensitive areas. Clause 5 of the Direction also requires that a Planning Proposal must not reduce the environmental standards applying to land zoned or otherwise identified for environmental protection purposes.

This direction applies in this instance as the Planning Proposal proposes to rezone 14 parcels of land (for details, please see page 6 of the Planning Proposal) from the current environment protection zones under the LEP 4 to an equivalent environmental protection zone under LEP 1991.

Council has advised that the Planning Proposal is considered to be not inconsistent with the Direction as it complies with clause 4 of the Direction, which requires that it must include provisions that facilitate the protection and conservation of environmentally

sensitive areas.

Council's submission is considered to be satisfactory.

2.3 Heritage Conservation

This direction applies when a Planning Proposal contains any item of heritage significance.

This direction applies in this instance as the Planning Proposal includes one parcel of land (Part Wentworth Falls Reserve Wentworth Falls – ref: sheet 11) which is recognised as being of local heritage significance. Council has advised that the parcel do not contain any known items, areas, objects or places of indigenous heritage significance. Office of Environment and Heritage has not been consulted at this stage.

Council has advised that the Planning Proposal is considered to be not inconsistent with the Direction as the heritage status of the item is not altered by this proposal.

In view of the above, the plan is considered to be not inconsistent with this direction.

3.1 Residential Zones:

This direction applies when a Planning Proposal will affect an existing or proposed residential use or any other zone in which significant residential development is permitted or proposed to be permitted and approval of the Director General of the Department of Planning is required if the reduction in density is involved.

This direction applies as the Planning Proposal includes some parcels of land (Land at Darling Causeway, Bell (ref: sheet 1) within an existing or proposed residential zone. However, the inconsistency is considered to be of minor nature given the Planning Proposal does not include any zone in which significant residential development is permitted and as stated before, the intent of this Planning Proposal is simply to transfer land from the current zone under LEP 4 to an equivalent zone under LEP 1991.

In view of the above, the Planning Proposal is considered to be not inconsistent with the Direction and the approval of the Director-General is recommended in this report, to satisfy the Direction.

4.4 Planning for Bushfire Protection

This direction applies when a council prepares a Planning Proposal that affects, or is in proximity to land mapped as bushfire prone land.

This direction is relevant to this Planning Proposal as it applies to 20 allotments (please refer to page 8 of the Planning Proposal for more details) being within a bush fire area.

Council has advised that as stated before, the main purpose of the Planning Proposal is simply to transfer land that is zoned under LEP 4 to a suitable zone under LEP 1991. However, in some cases the proposed zoning under the LEP 1991 may provide more development opportunities, such as when land is zoned to Residential Bushland Conservation under LEP 1991. However, the development opportunities are minor.

Technically, the Planning Proposal is inconsistent with this Direction as the proposal does not provide for inclusion of measures such as Asset Protection Zones, performance standards for development, access roads or water for fire fighting purposes as this Direction requires. Council has however advised that any inconsistencies are considered to be of minor significance, because as has been noted before, the Planning Proposal simply seeks to transfer the zoning of land zoned under LEP 4 to a zone under LEP 1991. Furthermore, it is unlikely that any of these lots ever being developed for

special fire protection purposes as defined in the Rural Fires Act, given the constraints of scheduled vegetation, location of the land with the Sydney Drinking Water Catchment, bush fire, lack of reticulated water and sewer, and in many cases, the proposed Environment Protection zone.

Council has also advised that it will consult with the Commissioner of NSW Rural Fire Service following Gateway Determination to ensure that they do not object to any aspect of this Planning Proposal.

It is considered that once Council consults with the Commissioner of the NSW Rural Fire Service and addresses their concerns, if any, Council should be required to demonstrate the consistency of the Proposal with this Direction prior to undertaking community consultation.

It is also considered that the Director General should nominate the Regional Director, Sydney Region West, as having the authority to exercise the Director General's function pursuant to clause 7 of the Direction, to approve, where appropriate, any inconsistency of the Planning Proposal with the Direction once advised that the Rural Fire Service is satisfied.

5.2 Sydney Drinking Water Catchments

This direction applies to the hydrological catchment in a number of local government areas.

Blue Mountains Council is among the local government areas mentioned in the direction.

As per the requirement of this Direction, Council consulted with the Sydney Catchment Authority

The Sydney Catchment Authority did not object to any of the proposed rezonings (copy in Documents).

6.1 Approval and Referral Requirements

Claus 4 of the Direction requires a Planning Proposal to minimise the inclusion of concurrence and not identify development as designated development.

This Planning Proposal is consistent with this Direction as no new concurrence, consultation requirement or identification of development as designated development is proposed.

6.2 Reserving Land for Public Purposes

This direction requires that a Planning Proposal shall not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General.

This direction applies as the Planning Proposal proposes changes on 11 lots (for details please see page 11 of the Planning Proposal).

Council has advised that the concurrence of the relevant public authority and the Director General of the Department of Planning and Infrastructure will be sought following the Gateway, as required by clause 4 of this Direction.

In view of the above, it is considered that Council should be required to clarify this

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matter and demonstrate the Proposal's consistency with the Direction to the Sydney Region West Branch prior to undertaking community consultation. Accordingly, it is considered that the Director General should nominate the Regional Director, Sydney Region West, as having the authority to exercise the Director General's function pursuant to clause 8 of the Direction, to approve, where appropriate, any inconsistency of the Planning Proposal with the Direction.

7.1 Implementation of the Metropolitan Strategy

This Direction requires that the Planning Proposal must be consistent with the Government's Metropolitan Plan for Sydney 2036.

The Planning Proposal is considered not to be generally inconsistent with the Metropolitan Strategy and the draft South West Subregional Strategy.

State Environmental Planning Policy – Housing for Seniors or People with a Disability

This SEPP applies to a number of parcels, however each parcel of land proposed to be rezoned is a small portion of a larger parcel and in each instance the proposed zone is the same as the adjacent existing zone.

The Planning Proposal basically maintains a status quo with regard to this Direction.

State Environmental Planning Policy – Infrastructure 2007

This State Environmental Planning Policy has no significant implications for this Planning Proposal.

State Environmental Planning Policy – Nepean River (now a deemed SEPP)

This planning instrument applies to all lands within this Planning Proposal. The aim of this planning proposal is simply to transfer land zoned under LEP 4 into a suitable zone under LEP 1991. It is considered that the proposal will result in only in minimal change to permissible land uses and so there will not be any significant implications for this deemed SEPP.

State Environmental Planning Policy – Drinking Water Catchments Regional Environmental Plan No 1

Several parcels of the Planning Proposal are located within the Sydney Drinking Water Catchment and these were referred to Sydney Water Catchment Authority, who raised no objections to the proposed rezonings.

Mapping Provided - s55(2)(d)

Is mapping provided? Yes

Comment :

The proposal contains a detailed site information including map/s for each site. The maps are considered to be inadequate as they can not be clearly interpreted.

It is recommended that:

- Council provides a map Legend Sheet to enable the zones to be identified.
- The maps should also indicate where land is zoned under LEP 4 and LEP 1991 (or 2005).
- The land subject to the rezoning should be more clearly identified through the use of arrows and/or darker/thicker outline shading.

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These changes should be made prior to exhibition to improve the public understanding of the Planning Proposal.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council has advised that community consultation will occur in accordance with the Gateway Determination.**

It is suggested that the Planning Proposal should be exhibited for 28 days.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date : **July 2015**

Comments in relation to Principal LEP :

Assessment Criteria

Need for planning proposal :	The objective of the Planning Proposal is to comply with the directive from the Department of Planning and Infrastructure to move towards a single comprehensive local environmental plan. This Planning Proposal is the first step of this program.
Consistency with strategic planning framework :	The planning proposal is not inconsistent with both the draft South West Sub-regional Strategy and the Sydney Metro Strategy.
Environmental social economic impacts :	An assessment of any likely impact on critical habitat, threatened species, populations or ecological communities is provided in the detailed assessment for each parcel in Attachment 1 (copy in documents). Council considers there is no likelihood that any threatened species or endangered ecological communities listed under the Threatened Species Conservation Act will be affected by this proposal. However, this will be confirmed by consultations with the Office of Environment and Heritage following the Gateway Determination.

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Assessment Process

Proposal type : **Routine** Community Consultation Period : **28 Days**

Timeframe to make LEP : **12 Month** Delegation : **DDG**

Public Authority **Hawkesbury - Nepean Catchment Management Authority**
 Consultation - 56(2)(d) **Office of Environment and Heritage - NSW National Parks and Wildlife Service**
 : **NSW Rural Fire Service**
Adjoining LGAs

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :
No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Letter from Council.pdf	Proposal Covering Letter	No
Attachment 1 - detailed site information LEP 4 to LEP 1991.pdf	Determination Document	No
Attachment 2 - zone comparison tables LEP 4 to LEP 1991.pdf	Determination Document	No
Attachment 3 - SCA response LEP 4 to LEP 1991.pdf	Determination Document	No
Attachment 3A - SCA response LEP 4 to LEP 1991.pdf	Determination Document	No
Attachment 4 - DTI response LEP 4 to LEP 1991.pdf	Determination Document	No
Attachment 5 - report to Council LEP 4 to LEP 1991.pdf	Determination Document	No

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.2 Rural Zones**
- 1.3 Mining, Petroleum Production and Extractive Industries**
- 2.1 Environment Protection Zones**
- 3.1 Residential Zones**
- 4.4 Planning for Bushfire Protection**
- 5.2 Sydney Drinking Water Catchments**

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6.1 Approval and Referral Requirements
 6.2 Reserving Land for Public Purposes
 7.1 Implementation of the Metropolitan Plan for Sydney 2036

Additional Information :

It is recommended that the Planning Proposal proceed subject to the following conditions:

1. Community consultation is required under section 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 for a period of 28 days;
2. The Director General pursuant to the item (5) (d) of section 117(2) Direction - 1.2 Rural Zones agrees that the inconsistency in this instance is of minor nature;
3. The Director General pursuant to the item (6) of section 117(2) Direction - 1.3 Mining, Petroleum Production and Extractive Industries agrees that the inconsistency in this instance is of minor nature.
4. The Director General pursuant to the item (6)(d) of section 117(2) Direction – 3.1 Residential Zones agrees that a reduction of residential zoned land in this instance is of minor nature.
5. Under section 117 Direction 4.4 Planning for Bushfire Protection, Council is required to consult with the Commissioner of the NSW Rural Fire Service following the receipt of the Gateway Determination and prior to undertaking community consultation. Following such consultation, Council should demonstrate the consistency of the Proposal with the Direction. It is also recommended that the Director General nominate the Regional Director, Sydney Region West, as having the authority to exercise the Director General's function pursuant to clause 7 of the Direction, to approve, where appropriate, any inconsistency of the Planning Proposal with the Direction subject to advice from the Rural Fire Service.
6. Under section 117 Direction 6.2 Reserving Land for Public Purposes, Council is required to consult with the relevant public authority and the Director General of the Department of Planning and Infrastructure following the receipt of the Gateway Determination and prior to undertaking community consultation. Following such consultation, Council should demonstrate the consistency of the Proposal with the Direction. It is recommended that the Director General should nominate the Regional Director, Sydney Region West, as having the authority to exercise the Director General's function pursuant to clause 8 of the Direction, to approve, where appropriate, any inconsistency of the Planning Proposal with the Direction.
7. Council should consult with the Office of Environment and Heritage – NSW National Parks and Wildlife Service for an assessment of any likely impact on critical habitat, threatened species, populations or ecological communities for each parcel in Attachment 1.
8. Council should provide updated map to the Department prior to exhibition to improve public understanding of the Planning Proposal. The maps should include:
 - a map Legend Sheet to enable the zones to be identified;
 - indicate where land is zoned under LEP 4 and LEP 1991 (or 2005).
 - the land subject to the rezoning should be more clearly identified through the use of arrows and/or darker/thicker outline shading.
9. The Planning Proposal is to be completed within 12 months from the week following the Gateway determination.

Supporting Reasons :

The proposal is the first stage in Council's program to develop a single comprehensive local environmental plan.

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Signature:

Derryn John

Printed Name:

DERRYN JOHN

Date:

20/7/12