

ITEM NO: 19

SUBJECT: DRAFT AMENDMENT 8 TO LEP (54 LUCHETTI AVENUE, HAZELBROOK)

FILE NO: F10391 - 17/135216

Delivery Program Link

Principal Activity: Using Land

Service: Land Use Management

Recommendations:

1. *That the Council endorses the draft Planning Proposal and addendum prepared under s.55 of the Environmental Planning and Assessment Act 1979 for the partial rezoning of 54 Luchetti Avenue, Hazelbrook from E2 Environmental Conservation to E4 Environmental Living under Blue Mountains Local Environmental Plan 2015;*
 2. *That the Council refers the draft Planning Proposal and addendum for Local Environmental Plan Amendment 8 to the Greater Sydney Commission for Gateway Determination under s.56 of the Environmental Planning and Assessment Act 1979;*
 3. *That the Council requests Written Authorisation to Exercise Delegation over the Planning Proposal in accordance with clause 23 of the Environmental Planning And Assessment Act 1979;*
 4. *That the Council includes a request to the Department of Planning and Environment that the draft Planning Proposal be designated low impact;*
 5. *That the Council includes with the draft Planning Proposal to be forwarded to the Greater Sydney Commission, an addendum with the proposed amended provisions and controls on adjoining lots, arising as a consequence of the draft Planning Proposal;*
 6. *That the Council notes the Blue Mountains Local Environmental Plan 2015 Amendment 8 will be processed in accordance with the Gateway Determination; and*
 7. *That the Council receives a report, subject to the Gateway Determination, at the conclusion of the notification period to enable consideration of submissions made to Blue Mountains Local Environmental Plan 2015 Amendment 8.*
-

Report by Director, Development & Customer Service:**Reason for report**

The Council has received an application to rezone part of Lot 1 DP 958100 at 54 Luchetti Avenue, Hazelbrook. The draft Planning Proposal seeks the rezoning of part of this lot from E2 Environmental Conservation to E4 Environmental Living under Blue Mountains Local Environmental Plan 2015 (LEP 2015). A copy of the Planning Proposal is provided as Enclosure 1 to this business paper.

The purpose of this report is to inform the Council of the proposal and for the Council to determine whether to approve proceeding with the rezoning of the land.

The proposal arises out of the recent decision by the Land and Environment Court to uphold an Appeal in relation to refusal of a development application for a 1 into 17 lot subdivision on the subject site.

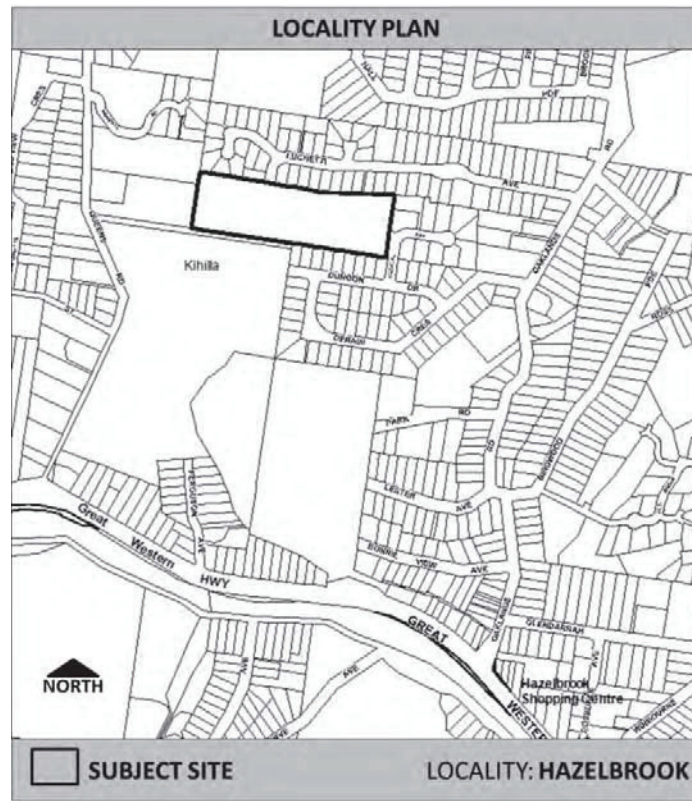
The report describes the subject land and explains the justification and intended outcome of the proposed amendment.

Site context

The subject site has a total area of 32,596m² and is located approximately 800m northwest of the Hazelbrook shopping centre (refer Locality Plan below). The site is rectangular in shape and is orientated along an east-west axis. The site is developed with a single dwelling house in the south-eastern corner of the lot.

Adjoining land to the north and east is zoned E4 Environmental Living and consists predominately of single dwelling houses on lots generally averaging 1200m² and above. Development adjoining the southern boundary consists of smaller lots (approximately 700m²) zoned R2 Low Density Residential. A narrow strip of land (L 1 DP 660491), which varies in width from 11.83m at Queens Road to 10.06m at its eastern boundary, separates the subject site and heritage item Kihilla Conference & Retreat Centre to the south. This long narrow lot is not encumbered by easements.

The adjoining development pattern to the west consists of large lots, constrained by steep slopes. These lots are zoned E3 Environmental Management.





Background

Development application for 1 into 17 lot subdivision

In November 2015, a development application was lodged with Council, seeking approval for a subdivision of 1 into 17 lots at 54 Luchetti Avenue, Hazelbrook (L 1 DP 958100). The application was lodged under LEP 1991. At that time, the new standard instrument LEP had been exhibited but had not been made. Therefore, while still in draft, the provisions of LEP 2015 required consideration, both in relation to the subdivision as proposed and also the future development of the lots to be created.

Certain environmental constraints were identified on the land. The allotment contained an area of mapped scheduled vegetation (5A Blue Mountains Heath and Scrub), which had been identified on the site since the making of LEP 1991. It was this mapped vegetation unit which formed the basis for the placement of the E2 – Environmental Conservation zoning, over the western end of the site, under LEP 2015.

Consequently, a key assessment matter of the development application (and primary contention within the subsequent Land and Environment Court appeal) was the potential for adverse environmental impact to this vegetation community. This was coupled with the limited potential for future residential development of allotments proposed within the part of the site zoned E2 under LEP 2015.

The site was also identified as being flood affected by the Hazelbrook and Woodford Catchments Mainstream and Overland Flow Flood Study (November 2013). Both flood mitigation and stormwater management were key assessment concerns.

This combination of issues, as well as other planning considerations, led to the refusal of the development application by Council on 20 May 2016.

Land and Environment Court Appeal

On the 17 June 2016, the Applicant lodged an appeal to the NSW Land and Environment Court. During the pre-hearing process for *Aesthete Pty Ltd v Blue Mountains City Council [2017] NSWLEC 1199*, the applicant provided detailed flood modelling and designs for flood mitigation measures, demonstrating that a suitable building area could be provided on each

lot. Additional stormwater drainage information was also provided, which largely addressed the contentions raised by the Council on these matters, subject to the inclusion of relevant conditions of consent.

As well as stormwater and flooding contentions, concern in relation to the potential adverse impact to the mapped vegetation community on the site formed the basis of the majority of Council's remaining contentions. The scheduled vegetation community was extensively investigated by Council's environmental staff and an independent environmental expert, both as part of the development assessment process and during the court case. The applicant's environmental experts also provided reports on the identification and status of this vegetation community.

In summary, while it was agreed that the site at the time of the court case did contain a small area of scrub at the western end of the site, that scrub community was considered not typical (in its current form) of the environmentally sensitive vegetation unit 5A – Blue Mountains Heath and Scrub or unit 5B Blue Mountains Swamps, listed within Council's LEP. As a result of the senescent or over mature age class of most of the scrub vegetation, the encroachment of Eucalyptus and Angophora species into the community, and the absence of a regular fire regime, it was considered that the current processes would, over time, transform the patch of scrub into an open forest community.

It is also important to note that at the time the development application was being assessed, a portion of mapped vegetation community was cleared under the Rural Fire Service 10/50 Vegetation Clearing Code (10/50 Code), prior to the site investigations during the court case. Therefore, the area of mapped community remaining at the time of the court case was limited.

Given the assessed lack of quality and integrity of the vegetation community on the site, it was agreed that the vegetation was no longer representative of scheduled vegetation unit 5B Blue Mountains Swamps, or the 5A – Blue Mountains Heath and Scrub vegetation unit.

The presence of scheduled vegetation is one of the criteria for the application of the E2 zoning, and in the case of this site, the single reason the zone was applied under LEP 2015. Therefore, given that investigation during the court appeal demonstrated the vegetation was no longer representative of a scheduled vegetation unit under Council's LEP the Court approved the subdivision proposal subject to a number of conditions including flood mitigation and stormwater drainage requirements.

It is on the basis of the court outcome, the applicant has lodged a Planning Proposal for removal of the E2 – Environmental Conservation zone from the western end of the site, and the rezoning of this area to E4 – Environmental Living.

The Planning Proposal

A Planning Proposal has been prepared by Stimson and Baker Planning and was lodged with Council on the 22 June 2017. The Planning Proposal seeks to rezone part of the site from E2 Environmental Conservation to E4 Environmental Living, and to remove the Protected Area - Ecological Buffer Area mapping, associated with the scheduled vegetation.

In addition, the planning proposal seeks to apply a minimum lot size (MLS) to that part of the site to be rezoned from E2 – Environmental Conservation to E4 – Environmental Living, as the E2 zone does not have a MLS. The proposed MLS of 1200m² is consistent with other E4 zoned land on the site and within the LGA.

The site is also impacted by slopes greater than 20%. Slopes on the eastern section of the site greater than 20%, are identified as Protected Area – slope constraint area however

council mapping indicates some areas of steep slopes in that part of the site currently zoned E2. The removal of the E2 zone requires that the slopes, identified in that western section of the site as being greater than 20%, be mapped as Protected Area – steep constraint area.

The rezoning will require the making of an amending LEP under Part 3 of the *Environmental Planning and Assessment Act 1979*. The applicable Principal LEP is LEP 2015. The Planning Proposal is provided at Enclosure 1 to this report and explains the intended effect of the proposed amending LEP, as well as the justification for making it.

Merits of the Planning Proposal

Under LEP 1991 the site was zoned Residential – Bushland Conservation (8 lots per hectare) with part of the western portion of the site identified as Protected Area – Environmental Constraint area. In the translation of this LEP into the Standard Instrument LEP, the Residential – Bushland Conservation was translated as E4 Environmental Living.

The lot is currently zoned E4 Environmental Living and E2 Environmental Conservation under LEP 2015. As detailed above within the background section of this report, the E2 Environmental Conservation zone was applied over that part of the site which contained the mapped scheduled vegetation unit 5B Blue Mountains Swamp. As discussed above, and as demonstrated during the Land and Environment Court case, the vegetation present on the site is no longer representative of a scheduled vegetation unit under Council's LEP.

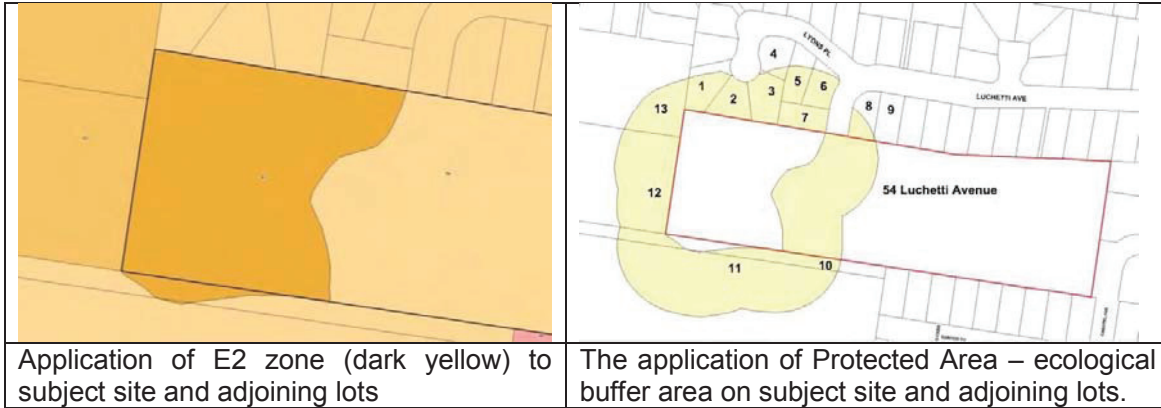
Given that the application of the E2 zoning on the site was solely related to the presence of this vegetation, the request for its removal as detailed in the submitted Planning Proposal is valid. The Planning Proposal has been reviewed against the Department of Planning and Environment guidelines "*A guided to preparing planning proposals*" and "*A guide to preparing local environmental plans*", and is considered to adequately explain the intended effect and justification for making the plan. It is appropriate that it be forwarded to Greater Sydney Commission for gateway determination.

The Planning Proposal also notes the impact of the proposal on adjoining lots and recommends that zoning, Protected Area – Ecological buffer area and MLS on these lots be amended to ensure consistency of provisions and controls. These additional lots are discussed below, and an Addendum to the Planning Proposal has been prepared to detail the changes proposed to these allotments. This Addendum is provided at Enclosure 2 of this report.

Additional impacted lots

Under LEP 2015, where an E2 zoning was applied to land as a result of the presence of scheduled vegetation, a Protected Area – Ecological buffer area was mapped for a distance of 50m beyond the mapped scheduled vegetation. This buffer area is intended to minimize the impact of development on the environmentally sensitive land identified as containing significant vegetation communities.

For the reasons outlined in this report and the attached Planning Proposal, the proposed rezoning of the western end of the site from E2 – Environmental Conservation to E4 – Environmental Living is supported. A consequential effect of the removal of E2 on 54 Luchetti Avenue, is the removal of a small area of E2 on adjoining lots to the south, and the removal of the Protected Area – Ecological buffer area from a number of adjoining lots, as identified below.



Property owners of these additional lots as listed below, will be notified prior to the commencement of community consultation as prescribed by the Gateway Determination.

	Lot number and DP	Address	Proposed map changes
1	L 215 DP 775767	19 Lyons Place, Hazelbrook	remove PA- ecological buffer area
2	L 214 DP 775767	21 Lyons Place, Hazelbrook	remove PA- ecological buffer area
3	L 213 DP 775767	8 Lyons Place, Hazelbrook	remove PA- ecological buffer area
4	L 212 DP 775767	6 Lyons Place, Hazelbrook	remove PA- ecological buffer area
5	L 211 DP 775767	4 Lyons Place, Hazelbrook	remove PA- ecological buffer area
6	L 210 DP 775767	2 Lyons Place, Hazelbrook	remove PA- ecological buffer area
7	L 209 DP 775767	59 Luchetti Avenue, Hazelbrook	remove PA- ecological buffer area
8	L 208 DP 775767	50 Luchetti Avenue, Hazelbrook	remove PA- ecological buffer area
9	L 207 DP 775767	48 Luchetti Avenue, Hazelbrook	remove PA- ecological buffer area
10	L 1 DP 660491	51-53 Queens Road, Lawson	Rezone from E2 to E4; remove PA- ecological buffer area and apply MLS 1200m ²
11	L 101 DP 1166821	5-17 Queens Road, Lawson	Rezone from E2 to E4 remove PA- ecological buffer area and apply MLS 1200m ²
12	L B DP 407209	51-53 Queens Road, Lawson	remove PA- ecological buffer area
13	L 10 1095994	61-71 Queens Road, Lawson	remove PA- ecological buffer area

The Planning Proposal seeks to amend the controls applicable to the site consistent with the demonstrated and agreed site constraints. Any future development or modification to the court approved subdivision will require development consent.

Delegated authority

The Department of Planning and Environment has returned some of the responsibility for plan making back to Councils. The changes give local councils responsibility for LEPs of local significance, including spot rezoning consistent with surrounding zones. The delegation operates in respect of a draft LEP on receipt by council of a Written Authorization to Exercise Delegation and is issued as part of the Gateway Determination. The proposal is considered to be low impact and for this reason Council will seek delegated authority under section 59 of the *Environmental Planning and Assessment Act 1979*.

Consultation

The Gateway Determination prescribes the community consultation that must be undertaken on the Planning Proposal. Generally, Planning Proposals require a consultation period of 28

days, however the consultation period may be tailored for specific proposals and 'low impact proposals' may require an exhibition period of only 14 days.

The Department of Planning and Environment guideline, "*A guide to preparing local environmental plans*" advises that a 'low' impact Planning Proposal is:

- consistent with the pattern of surrounding land use zones and/or land uses;
- consistent with the strategic planning framework;
- presents no issues with regard to infrastructure servicing;
- not a principal LEP;
- does not reclassify public land.

It is considered that this proposal meets the 'low impact' criteria. The proposal seeks to rezone part of the site from E2 to E4. The eastern section of the site is currently zoned E4 and adjoining land to the north and east is zoned E4, therefore the proposed zone is consistent with the surrounding land use zones. The proposal is consistent with the strategic planning framework and the site is capable of being serviced with the relevant infrastructure. In addition, the Planning Proposal is for a single lot in private ownership and is therefore not a principal LEP nor does it require reclassification of land.

Sustainability Assessment

Effects	Positive	Negative
Environmental	Nil	The proposal has the potential to increase the number of future allotments and dwellings on the site. However, these will be the subject of development assessment under the relevant planning controls.
Social	The rezoning will increase the potential for additional housing on the subject land. The provision of lots for dwelling houses within close proximity to Hazelbrook village is considered a positive social outcome.	There are no foreseeable adverse social impacts arising from the recommendations of this report. The proposal does not alter the approved land use on the site.
Economic	Nil	Nil
Governance	The proposal has been assessed and found to have merit. The proposed zone is considered to be appropriate in this context on an environmental, social and economic level. The proposed rezoning process is to follow the State government Gateway Process, including a transparent community consultation and consideration of proposed changes to permissible land uses.	Nil

Financial implications for the Council

There are no foreseeable financial implications for the Council as a consequence of the Planning Proposal.

Legal and risk management issues for the Council

There are no foreseeable legal or risk management issues for the Council as a consequence of proceeding with the Planning Proposal as recommended.

External consultation

The Gateway Determination will prescribe the consultation required with the community and with State and Commonwealth authorities. It is considered that the planning proposal meets the criteria for low impact development and while this results in a reduced consultation period, the proposal will be publically exhibited.

Conclusion

This report recommends that the Council resolve to commence the process to amend the LEP 2015 by rezoning part Lot 1 DP958100 at 54 Luchetti Road, Hazelbrook from E2 Environmental Conservation to E4 Environmental Living. This zoning change is consistent with, and results from, the decision of Land and Environment Court in *Aesthete Pty Ltd v Blue Mountains City Council [2017] NSWLEC 1199*. The consequential effect of the removal of the E2 zoning is the removal of Protected Area – Ecological buffer area, and the introduction of a minimum lot size over the part of the site originally zoned E2.

This application to rezone land and apply controls consistent with the proposed zone is found to have merit and will not result in any foreseeable adverse environmental, social or economic impacts. A Planning Proposal (Enclosure 1) has been prepared by a consultant, in accordance with section 55 of the *Environmental Planning and Assessment Act 1979 (the Act)* and it is a recommendation of this report, that it be forwarded to the Greater Sydney Commission (GSC) for assessment and Gateway Determination in accordance with section 56 of the Act.

In addition to the changes to 54 Luchetti Avenue and as a consequence of those changes, it is also proposed to amend the zoning on two adjoining allotments and remove the Protected Area – Ecological buffer area on allotments surrounding 54 Luchetti, given that there is now no basis for this mapped protected area on these sites. An addendum to the Planning Proposal has been prepared, which outlines these changes. This will be forwarded to the GSC with the planning proposal.

The Planning Proposal will be accompanied by a request to the Greater Sydney Commission that the proposal be considered to be low impact, and the Council will also seek delegations for this proposal.

ATTACHMENTS/ENCLOSURES

1	Planning Proposal - 54 Luchetti Avenue Hazelbrook	17/151499	Enclosure
2	Addendum to Planning Proposal for 54 Luchetti Avenue (additional sites)	17/151513	Enclosure

* * * * *