



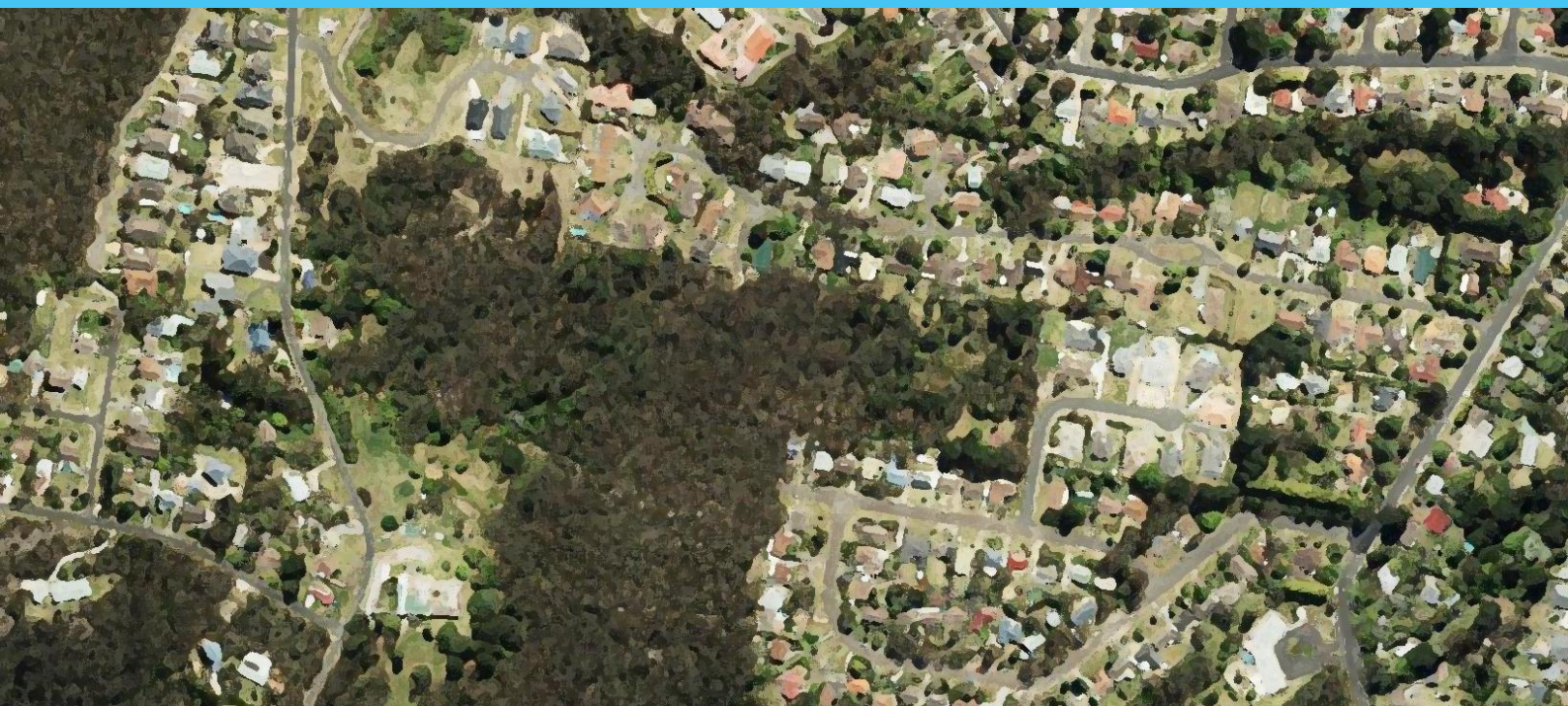
Planning Proposal

Amend Blue Mountains Local Environmental Plan 2015
to rezone land from E2 Environmental Conservation to E4 Environmental Living

54 Luchetti Avenue, Hazelbrook

March 2017

Aesthete No.9 Pty Ltd



Stimson & Baker Planning
ACN: 167 096 371
ABN: 34 824 672 534

Suite 5,
488 High Street
Blue Mountains NSW 2750

P 02 4731 2730

F 02 4731 2370

www.stimsonandbaker.com.au

This submission has been prepared by



Natasha Baker MPiA
Director

Author	Version	Date
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1 Executive Summary

This Planning Proposal has been prepared by Stimson & Baker Planning on behalf of Aesthete No.9 Pty Ltd and is submitted to Blue Mountains City Council to request an amendment to Blue Mountains Local Environmental Plan 2015 (BMLEP 2015) to rezone part of 54 Luchetti Ave, Hazelbrook, legally described as Lot 1 DP 958100 from E2 Environmental Conservation to E4 Environmental Living and to amend other relevant mapping layers as it relates to this zone change.

The primary objective and intended outcome of the Planning Proposal is to amend the BMLEP 2015 by rezoning the land that reflects the current site characteristics as agreed by Blue Mountains City Council. The Planning Proposal is to ensure that the site zoning reflects and is consistent with the outcomes of the site investigations in relation to vegetation on the site. It is proposed that this rezoning can be achieved by amending the Land Zoning Map, Natural Resources – Biodiversity Map, Slope Constraint Map and Lot Size Map.

Initial discussions have been undertaken with Blue Mountains City Council, Planning and Development Department and addresses matters raised.

The Planning Proposal demonstrates that there is site specific planning merit and justified by addressing the relevant strategic documents, the objectives and actions within the relevant regional and sub-regional strategies, the relevant State policies, Ministerial Directions and preliminary assessment of the environmental impacts.

It is recommended that this Planning Proposal be endorsed by Blue Mountains City Council and commence the Gateway process.

2 Introduction

This Planning Proposal is submitted to Blue Mountains City Council to request an amendment to BMLEP 2015 to rezone land at 54 Luchetti Avenue, Hazelbrook from E2 Environmental Conservation to E4 Environmental Living and to amend other relevant mapping layers as it relates to this zone change.

The planning proposal is considered to be minor and have no adverse impacts to the overall strategic outcomes of the Blue Mountains LGA. Also, detailed consideration of that part of the subject site currently zoned E2 Environmental Conservation was undertaken during a recent Land and Environment Court appeal over the site (*Aesthete No.9 Pty Ltd v Blue Mountains City Council 2016/00184360*). The outcomes of this planning proposal reflects agreement by Council throughout this process.

This Planning Proposal has been prepared in accordance with Section 55 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the *NSW Government's A Guide to Preparing Planning Proposals* and *A Guide to Preparing Local Environmental Plans*.

In particular, this Planning Proposal addresses the following specific matters in the EP&A Act and guideline;

- Objectives and intended outcomes;
- Explanation of provisions;
- Justification;
 - Need for the Planning Proposal;
 - Relationship to strategic planning framework;
 - Environmental, social and economic impact;
 - State and Commonwealth interests;
- Mapping;
- Community consultation; and
- Project timeline.

We request that Council forward this Planning Proposal to the Minister for Planning for a 'gateway determination' in accordance with section 56 of the EP&A Act.

2.1 Background

Detailed consideration of that part of the subject site currently zoned E2 Environmental Conservation was undertaken during a recent Land and Environment Court appeal over the site (*Aesthete No.9 Pty Ltd v Blue Mountains City Council 2016/00184360*). Evidence presented during those proceedings (including the Council's own detailed assessment) resulted in Council not pressing a contention in

relation to the Scheduled Vegetation Unit historically mapped on the site. Further discussion regarding the vegetation on the site is outlined below in Section 6.1.7. Council have advised that in conjunction with the Planning Proposal the application is to include specialist documents supporting the proposed rezoning. Council advised that these reports should include (but not necessarily be limited to):

- the environmental reports provided as part of development application S/47/2015 and subsequent reports provided during the Land and Environment Court matter;
- a plan of the site and plans identifying the proposed changes to zoning and any other mapped constraints.

The relevant documentation is outlined in this Planning Proposal and also accompanies the application and includes:

Report	Prepared By
Concept Stormwater Management Plan October 2016	Martens Consulting Engineers
Ecological Opinion Regarding Presence of Blue Mountains Heath and Scrub 6 October 2016	Cumberland Ecology
Flora and Fauna Assessment March 2016	Cumberland Ecology
Supplementary Ecological Assessment 9 August 2016	Enviro Ecology
Identification of Blue Mountains Hanging Swamp EEC 5 November 2015	Enviro Ecology
Flood Assessment 29 November 2016	Martens Consulting Engineers
Bushfire Assessment Report November 2015	Terence O'Toole

Please note that the above documentation may refer to the development application that was subject to the court proceedings, however as the entire site was assessed in relation to this matter, the investigations and the outcomes are relevant to the Planning Proposal.

3 The Subject Land

3.1 The Subject Site and Characteristics

The site is located on the southern side of Luchetti Avenue at the point where the road diverts and terminates (approximately 16m frontage). The site also has a frontage to Caratel Avenue (approximately 42m). The site is known as 54 Luchetti Avenue, Hazelbrook and is legally described as Lot 1 DP958100. The property is generally orientated in an east-west direction and is some 3.249ha in area. The site is currently occupied by a single dwelling that fronts Caratel Avenue with the remainder of the site containing vegetation regrowth. The site is located between formed and established residential lots.



Figure 1: Site location (Source: <http://www.bmcc.nsw.gov.au/bmccmap/>)



Figure 2 Subject site -aerial (Source: SIX Maps)

Topography

The site has a gentle even slope from the north-east corner to the south-west corner approximately 25m over a distance of approximately 300m. This slope increases from east to west along the southern edge.

Vegetation

There is vegetation on the site that is considered to be regrowth forest and woodland with significant disturbed areas with weeds and exotic pine trees.

Vehicular and Pedestrian Access

There is no direct vehicular access to the site from Luchetti or Caratel Avenue. There is kerb and gutter to the streets and no concrete footpath within the adjoining streets

Public Transport

The site is within 2km of Hazelbrook Railway Station. There is a bus stop within 350m of the site (Route 685H) providing services between Springwood and Hazelbrook and located on Oaklands Road.

Stormwater

There is an existing stormwater drainage pit nearly opposite the accessway in Luchetti Avenue in front of No.34 Luchetti Avenue. The pipeline from this pit crosses Luchetti Avenue to a pit in front of No.37-39 Luchetti Avenue and then to the existing creek line running in a north east direction across this same property.

Utilities and Services

Provision will be required for reticulated sewer, gas, water and electricity services onto the site as it is currently vacant. There is provision for this extending from Luchetti Avenue and Caratel Avenue.

3.2 Existing and Surrounding Development

The site is located central to residential lots to the north and east and partially south. Also located to the south is a large underdeveloped property that is occupied by Kihilla lodge. To the west there are large vacant lots.



Figure 3 View of site from Caratel Ave



Figure 4 View of site from Luchetti Ave



Figure 5 View of Luchetti Avenue from the site



Figure 6 View of Caratel Avenue from the site



Figure 7 Existing dwelling fronting Caratel Avenue (Source: Google maps)

3.3 Subject Site Current Zoning and Mapping

3.3.1 Blue Mountains Local Environmental Plan 2015

Land Zoning

The subject site is zoned under Blue Mountains Local Environmental Plan 2015 (BMLEP 2015). Part of the lot is zoned *E2 Environmental Conservation* which is the land subject to the zone change proposed in this planning proposal and the other portion is zoned *E4 Environmental Living* which will be retained. The Planning Proposal will require altering this map.

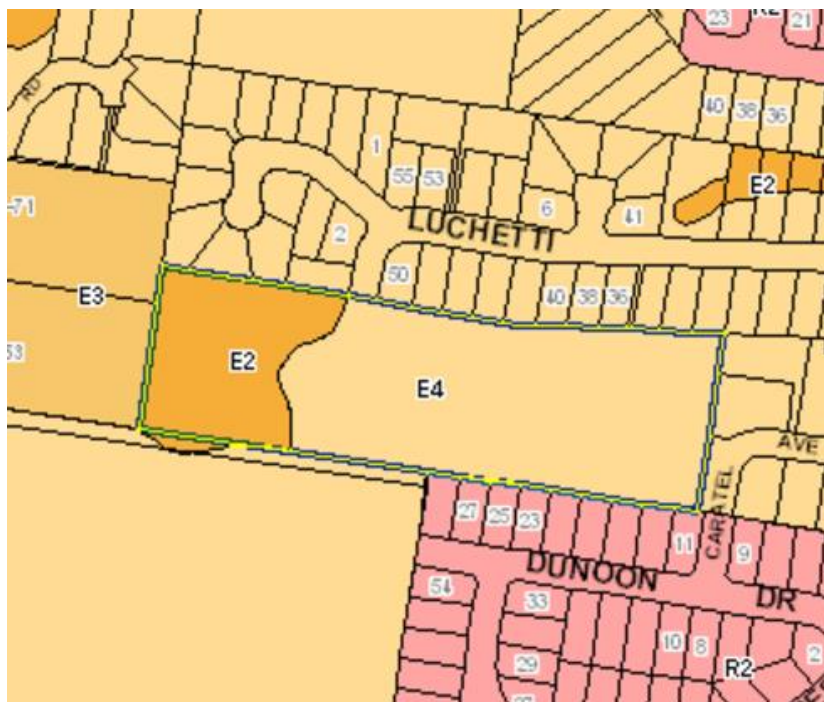


Figure 8: Land Zoning (Source: www.bmcc.nsw.gov.au)

Lot Averaging

The subject site is subject to the Area F in relation to Clause 4.1E and Clause 4.1F Lot Averaging under BMLEP2015. There will be no changes to this map as a result of the Planning Proposal and these provisions will still apply.

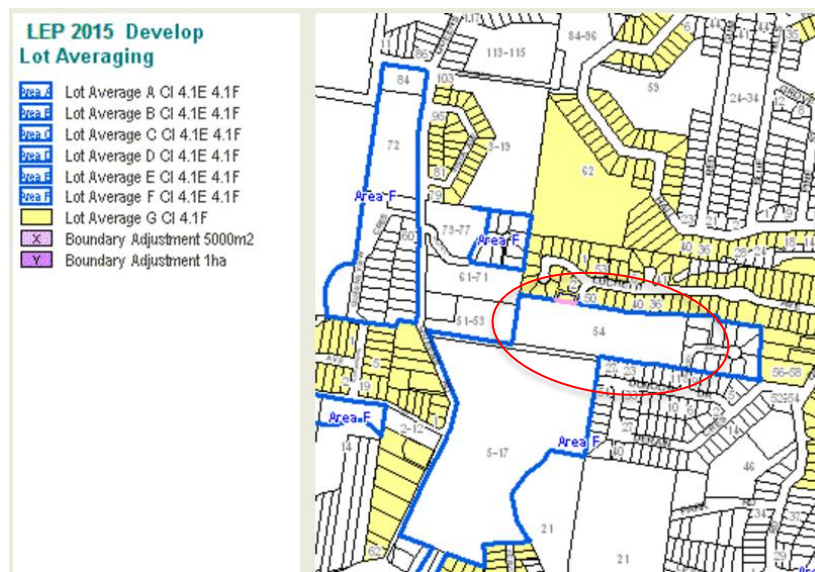


Figure 9: Lot Averaging Map (Source: <http://www.bmcc.nsw.gov.au/bmccmap/>)

Minimum Lot Size

The land that is currently zoned E2 and does not permit subdivision whereas the land currently zoned E4 permits a minimum lot size of 1200m2 for the site. There will be requirements to include the whole site as “U2” Lot Size 1200m2 as part of the Planning Proposal.

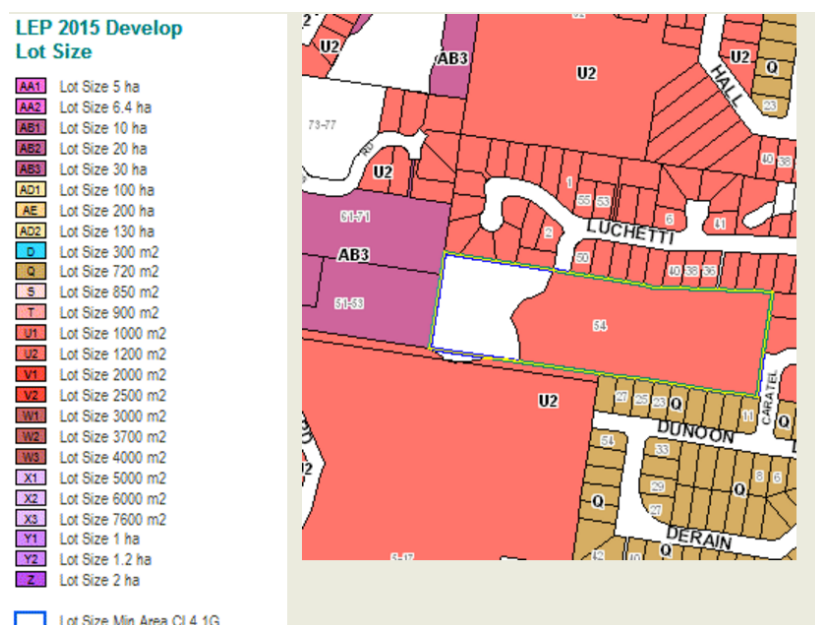


Figure 10: Minimum Lot Size Map (Source: <http://www.bmcc.nsw.gov.au/bmccmap/>)

Height of Building

The subject site is subject to a maximum Height of Building of 8m under BMLEP2015. There will be no changes to this map as a result of the Planning Proposal and these provisions will still apply.



Figure 11: Height of Buildings Map (Source: <http://www.bmcc.nsw.gov.au/bmccmap/>)

Environment - Land

The subject site is affected by slope constraint and has part of its land identified as *Protected Area – Slope Constraint Area*. A review of the actual slopes on the site has revealed that the south-western corner of the site has a minor affectation. Accordingly, Council may take this opportunity to update this map.

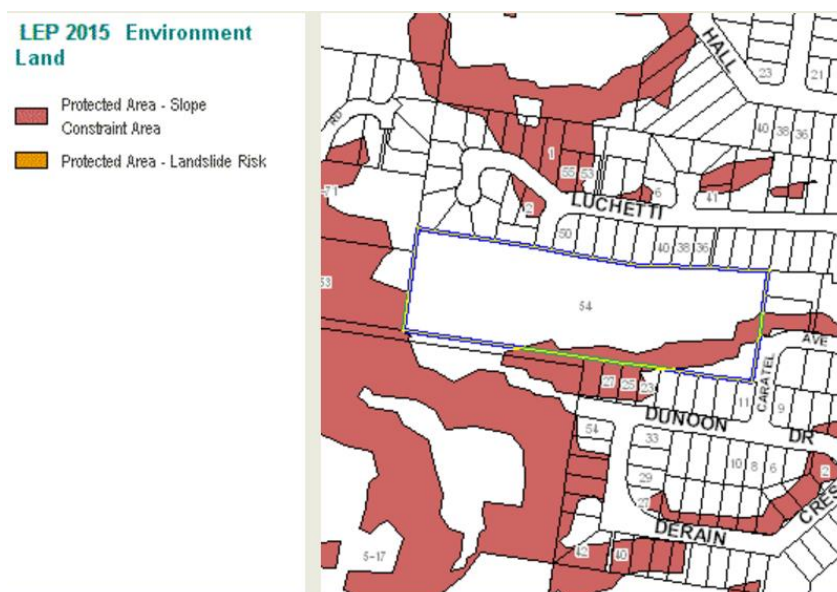


Figure 12: Environment- Land Map (Source: <http://www.bmcc.nsw.gov.au/bmccmap/>)

Natural Resources - Biodiversity

The subject site is affected by environmental buffers and has part of its land identified as *Protected Area – Ecological Buffer Area*. The Planning Proposal will request the removal of this buffer as it is no longer required. As the Planning Proposal only relates to the subject site, there is also no requirement for the buffer to exist on the adjoining properties. Council may undertake to remove this buffer from those properties adjoining the subject site as part of this Planning Proposal to ensure consistency across the site reflective of the site attributes.

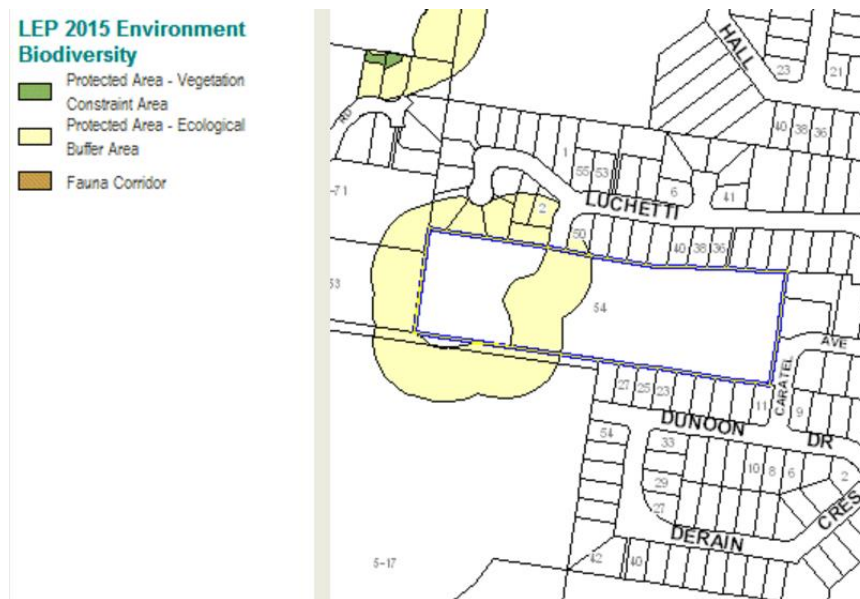


Figure 13: Environment - Biodiversity Map (Source: <http://www.bmcc.nsw.gov.au/bmccmap/>)

4 Part 1 – Objectives or Intended Outcomes of the Planning Proposal

The intended outcome of the planning proposal is to rezone that part of the subject site from E2 Environmental Conservation to E4 Environmental Living and associated mapping layers to be consistent with the outcomes of the subject site investigations in relation to vegetation on the site. The changes to the BMLEP 2015 will be required through the mapping layers resulting in changes to the Land Zoning Map, the Lot Size Map and the Natural Resources – Biodiversity Map as it relates to ecological buffers.

The application of part of the site as E2 Environmental Conservation, as well as the limitation of subdivision potential and application of ecological environmental buffers, was the result of Council historically identifying the site as Blue Mountains Hanging Swamp. Further site investigations and ground truthing undertaken during recent court proceedings as outlined above in Section 2.1 has resulted in Council (Respondent) outlining in its Amended Statement of Facts and Contentions the following (as extracted) in relation to the vegetation:

- There is present within the site (in the location identified in Figure 2 to the letter dated 24 August 2016 prepared by Dr Steven Douglas) a small area of scrub. The Respondent accepts, on the basis of the expert advice referenced in the Particulars below, that the scrub concerned is not environmentally sensitive vegetation unit 5A – Blue Mountains Heath and Scrub or unit 5B – Blue Mountains Swamps as defined in Schedule 3 to LEP 1991.
- The Respondent notes the assessment made by Dr David Robertson of Cumberland Ecology (report dated 6 October 2016) that the scrub vegetation referred to in this contention B2 does not correspond to Unit 5A.
- The Respondent also notes and accepts the assessment of Dr Steven Douglas on behalf of the Respondent that the scrub, while similar to unit 5A is not (for much the same reasons put forward by Dr Robertson) unit 5A.

It is therefore, confirmed that the site has no ecological value and the application of the E2 Environmental Conservation zone and associated mapping layers has no relevance.

It is important to note that the matters relating to the vegetation was translated from LEP 1991 to BMLEP 2015. Any reference to Schedule 3 vegetation under LEP 1991 is taken to also refer to Schedule 6 of BMLEP 2015.

5 Part 2 – Explanation of Provisions

The Planning Proposal will not require any amendments to the written planning instrument. There will be no changes to the BMLEP 2015 in regards to specific clauses and provisions, however will require an amendment to the BMLEP 2015 maps.

The proposed change in land use zoning from E2 Environmental Conservation to E4 Environmental Living is considered the most appropriate and logical land use zone in the site context and character of the area and which also reflects the current site characteristics as agreed through site investigation and ground truthing of the ecological and conservation value of the vegetation on the site. The E2 when viewed in the context of the map is also isolated.

The E4 Environmental Living Zone would allow for more consistent and compatible development to the surrounding area and would also reflect the site characteristics. It is considered that the E4 zone objectives and land use table is cognisant with the site characteristics compared to its current zoning of E2 Environmental Conservation. The Zone Objectives and Land Use Table for the E4 Environmental Living under BMLEP 2015 is as follows:

Zone E4 Environmental Living

1 Objectives of zone

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To preserve and re-establish native bushland in those areas that exhibit a predominantly bushland character, where consistent with the protection of assets from bush fire.*
- *To ensure that the form and siting of buildings are appropriate for, and harmonise with, the bushland character of the locality.*

2 Permitted without consent

Environmental protection works; Home businesses; Home occupations

3 Permitted with consent

Bed and breakfast accommodation; Bee keeping; Building identification signs; Business identification signs; Dwelling houses; Eco-tourist facilities; Emergency services facilities; Environmental facilities; Flood mitigation works; Home-based child care; Recreation areas; Roads; Secondary dwellings; Water storage facilities

4 Prohibited

Industries; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3

The proposed mapping changes as it applies to the subject property that will be required to be amended include:

Map tile	Map type	Current Provision	Proposed
LZN_005BA	Land Zoning Map	E2 Environmental Conservation / E4 Environmental Living	E4 Environmental Living
LSZ_005BA	Lot Size Map	No minimum (E2 land) U2 – 1200m2 (E4 land)	U2 – 1200m2
NRB_005BA	Natural Resources - Biodiversity Map	Protected Area - Ecological Buffer Area	Remove Protected Area – Ecological Buffer Area on subject site
NRL_005BA	Natural Resources – Land Map	No slope constraint in south-western corner.	Add slope constraint to small area in south-western corner

Further details as to the map changes are outlined in Section 7.

6 Part 3 – Justification

Section A – Need for the Planning Proposal

6.1.1 Is the planning proposal a result of any strategic study or report?

The Planning Proposal is not the result of any strategic study or report. The proposal is considered to be minor and have no adverse impacts in the overall strategic context of the Blue Mountains Local Government Area. The Planning Proposal is required as the current zoning applied to a portion of the property does not reflect its site characteristics and currently does not allow the economic orderly development of the land.

6.1.2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The intended outcomes on the site is to allow the site to be developed in an orderly and economic manner and for any future development to be consistent with the predominant adjoining development and reflective of its site characteristics. The planning proposal seeks to apply a more appropriate zone for this portion of the property.

There is no other means that would enable this outcome, as an E4 zone and the permissible land uses within this zone are the most appropriate use of this site. The amendments to the land zoning maps to apply the E4 Environmental Living Zone to the entire property is the best means of achieving the objectives and intended outcomes of the Planning Proposal as it will minimise land use conflicts and enable the economic and orderly development of the site. The site location and surrounding characteristics lends itself to a low-density development outcome.

The application of the E4 zone to the whole property is practical planning given it is not necessary to zone the land in this manner given there is no ecological value attached to it. A consistent zoning to the adjoining properties is more appropriate.

Section B – Relationship to Strategic Planning Framework

6.1.3 Is the planning proposal consistent with the objectives and actions contained within the applicable regional or subregional strategy?

A Plan for Growing Sydney

The Metropolitan Strategy, A Plan for Growing Sydney (Plan) was released in December 2014. This is the NSW Government's 20 year plan for the Sydney Metropolitan Region. Whilst the Blue Mountains is not identified as playing a significant role in the metropolitan region for housing delivery, its contribution, albeit small, assists in the provision of affordable housing, jobs close to home and dwelling targets for the region.

The *Plan* sets out the Government's goals for Sydney and these include:

- A competitive economy with world-class services and transport;
- A city of housing choice with homes that meet our needs and lifestyles;
- A great place to live with communities that are strong, healthy and well connected; and
- A sustainable and resilient city that protects the natural environment and has a balanced approach to the use of land and resources.

The proposal is broadly consistent with the goals set out by the Government for Sydney and it is considered to be of minor significance in the context of this plan.

Draft West District Plan

To implement the directions for the *Plan* a number of priorities are being considered for each of the districts of Sydney. Blue Mountains is part of the West District. The proposal does not compromise the priorities for Blue Mountains. The draft West Central District Plan developed by the Greater Sydney Commission applies to the property. The priorities for achieving the vision for the West District include:

1. *Protect the distinct natural landscape* – It has been identified that the vegetation on the site has no ecological value and is not distinct in the landscape or surrounding area.
2. *A connected place* - The proposed rezoning has no impact on this priority.
3. *Plan for a 21st Century aerotropolis* - The proposed rezoning has no impact on this priority.
4. *Create a hub for international tourism* - The proposed rezoning has no impact on this priority.
5. *Provide access to jobs, goods and services* – minor proposal so not applicable.

6. *Create a diversity of jobs for the next generation* – minor proposal so not applicable.
7. *Enhance Greater Penrith as Sydney' Western gateway* – N/A
8. *Encourage a diversity in housing* – The site, albeit a small contribution the proposal contributes to the diversity of housing and support for housing choices for residents of the Blue Mountains.

The proposal is considered minor in the broader strategic context and will not compromise the priorities proposed under the Draft West District Plan.

6.1.4 Is the planning proposal consistent with local Council's community strategic plan, or other local strategic plan?

Sustainable Blue Mountains 2025 – The Community Strategic Plan

Sustainable Blue Mountains 2025 is Blue Mountains Councils Community Strategic Plan that identifies the community's main priorities and aspirations for the future and presents a range of strategies for achieving these. and identifies the 6 key directions for the City which include:

1. Looking After Environment
2. Using Land
3. Moving Around
4. Looking After People
5. Sustainable Economy
6. Civic Leadership

Each Strategic Direction has focus areas to provide specific long term objectives for the Blue Mountains City. The planning proposal aligns with the objectives and strategies for the following key directions:

Key Direction 1 Looking After the Environment	
Objective 1.1 The health and diversity of native flora, fauna, habitat and ecosystems are maintained	Not inconsistent. The proposal has vegetation on the site however this has been identified as having no ecological value which is not different to other adjoining properties that are zoned E4. When a development application is lodged for the site then the assessment of the vegetation can be undertaken then and in the context of a proposal, however extensive investigation has revealed that no further investigation is necessary.
Objective 1.2 The health of waterways and water catchments is maintained	N/A

Objective 1.3 City activities contribute to a healthy atmosphere and resilience and adaptation to climate change	N/A
Objective 1.4 Resources are used and managed in an environmentally responsible way	N/A
Objective 1.5 The community and all levels of government work together to protect the Blue Mountains World Heritage environment	N/A
Key Direction 2 Using Land	
Objective 2.1 The liveability, vibrancy and safety of towns and villages is strengthened	The provision of additional housing lots in the area will assist in supporting a livable and vibrant community as well as contribute to the surrounding villages and in particular Hazelbrook Village.
Objective 2.2 The impact of development on the natural and built environment is managed, and the City's unique character retained	The area has been identified as having no ecological value and therefore when a development application is lodged for the site then the assessment of the application and the impacts on the natural and built environment can be undertaken then and in the context of a proposal.
Key Direction 3 Moving Around	
Objective 3.1 Integrated accessible and sustainable choices are provided for moving around	N/A
Objective 3.2 The City has a safe, well designed and maintained network of roads	N/A
Key Direction 4 Looking After People	
Objective 4.1 Community health and well being is maintained and improved	
Objective 4.2 Blue Mountains communities are safe, caring and inclusive	N/A
Objective 4.3 The City is recognised as a centre of culture, creativity and life-long learning	N/A
Objective 4.4 The population has a healthy balance of people of different ages and life stages	To provide additional housing lots in the area and contribute to housing stock also contributes to people being able to stay in the area at all stages of their life.

Key Direction 5 Sustainable Economy	
Objective 5.1 The Blue Mountains economy is vibrant and strong with increased local employment	N/A
Objective 5.2 The City is recognised nationally as an innovative learning region within a World Heritage Area	N/A
Objective 5.3 The City of Blue Mountains is a model for sustainable local business and tourism	N/A
Key Direction 6 Civic Leadership	
Objective 6.1 The Council lives responsibly within its means and strengthens its financial sustainability	The additional yield from the proposed rezoning although small will contribute to increase in revenue from additional rates for the area.
Objective 6.2 The Council provides transparent, fair and accountable civic leadership	N/A
Objective 6.3 The community is informed, consulted and engaged	The community will be engaged in the Planning Proposal process through the statutory public notification process.
Objective 6.4 The Council provides value for money services	N/A
Objective 6.5 The Council, other levels of government and the community work together to implement Sustainable Blue Mountains 2025	N/A
Objective 6.6 Sustainable services, assets and infrastructure are provided in the City	N/A

The Planning Proposal is minor in the context of Council's overall Strategic Planning and does not compromise Council's key directions or associated objectives.

6.1.5 Is the planning proposal consistent with applicable state environmental planning policies?

The majority of the State Environmental Planning Policies (SEPPs) that are in force and relevant to the Planning Proposal are better addressed at the detailed stage of a development application on the site. However, it is considered that the Planning Proposal is generally consistent with the relevant SEPPs as outlined below:

SEPP	Comment
SEPP 1 – Development Standards	N/A
SEPP 14 – Coastal Wetlands	N/A
SEPP 15 – Rural Landsharing Communities	N/A
SEPP 19 – Bushland in Urban Areas	N/A
SEPP 21 – Caravan Parks	N/A
SEPP 26 – Littoral Rainforests	N/A
SEPP 29 – Western Sydney Recreation Area	N/A
SEPP 30 – Intensive Agriculture	N/A
SEPP 32 – Urban Consolidation (Redevelopment of Urban Land)	N/A
SEPP33 – Hazardous and Offensive Development	N/A
SEPP 36 – Manufactured Homes Estate	N/A
SEPP39 – Spit Island Bird Habitat	N/A
SEPP 44 – Koala Habitat Protection	Applicable
SEPP 47 – Moore Park Showground	N/A
SEPP 50 – Canal Estate Development	N/A
SEPP 52 – Farm Dams and other works in Land and Water Management Plan Areas	N/A
SEPP 55 – Remediation of Land	Applicable
SEPP 59 – Central Western Sydney Economic and Employment Area	N/A
SEPP 62 – Sustainable Agriculture	N/A
SEPP 64 – Advertising and Signage	N/A
SEPP 65 – Design Quality of Residential Apartment Development	N/A
SEPP 70 – Affordable Housing (Revised Scheme)	N/A
SEPP 71 – Coastal Protection	N/A
SEPP – (Affordable Rental Housing) 2009	N/A
SEPP – (Building Sustainability Index: BASIX) 2004	N/A
SEPP – (Exempt and Complying Development Codes) 2008	N/A
SEPP – (Housing for Seniors or People with a Disability) 2004	N/A
SEPP – (Infrastructure) 2007	N/A

SEPP – (Kosciusko National Park – Alpine Resorts) 2007	N/A
SEPP – (Kurnell Peninsula) 1989	N/A
SEPP – (Mining, Petroleum Production and Extractive Industries) 2007	N/A
SEPP – (Miscellaneous Consent Provisions) 2007	N/A
SEPP – (Penrith Lakes Scheme) 1989	N/A
SEPP – (Rural Lands) 2008	N/A
SEPP – (SEPP53 Transitional Provisions) 2011	N/A
SEPP – (State and Regional Development) 2011	N/A
SEPP – (State Significant Precincts) 2005	N/A
SEPP – (Sydney Drinking Water Catchment) 2011	N/A
SEPP – (Sydney Region Growth Centres) 2006	N/A
SEPP – (Three Ports) 2013	N/A
SEPP – (Urban Renewal) 2010	N/A
SEPP – (Western Sydney Employment Area) 2009	N/A
SEPP – (Western Sydney Parklands) 2009	N/A
Sydney Regional Environmental Plan No. 20 Hawkesbury – Nepean River (No. 2 – 1997)	Applicable

SEPP 44 – Koala Habitat Protection

This SEPP applies to the Blue Mountains Local Government Area. There are specific provisions also in the LEP which relates to preservation of trees and vegetation and flora and fauna. The planning proposal does not impact on the vegetation on the site as it has no ecological value.

Any future development application would need to address this SEPP and the environmental impacts in the context of the proposal.

The planning proposal is considered to be consistent with this SEPP.

SEPP 55 – Remediation of Land

The aims and objectives of *State Environmental Planning Policy 55* (SEPP 55) are to provide a statewide planning approach to contaminated land remediation. It also promotes the remediation of contaminated land to reduce the risk of harm. SEPP 55 applies where consent is being sought for works on potentially contaminated land and/or where remediation works are proposed.

Clause 6 of the SEPP states that all planning proposals to rezone land are to consider whether the subject land is contaminated and if remediation is required.

The proposal is on land that has not undertaken any activities that may cause contamination as identified in Table 1 of the SEPP55 Guidelines, therefore under Clause 6 of the SEPP55 Council must consider whether the land is contaminated and satisfied that the land is suitable when considering an environmental planning instrument. Council can be satisfied that further investigations are not required to satisfy SEPP55 for the rezoning and further consideration can also be undertaken in the context of a future development application.

The planning proposal is considered to be consistent with this SEPP.

Sydney Regional Environmental Plan No. 20 Hawkesbury – Nepean River (No. 2 – 1997)

The aim of SREP 20 (now a deemed SEPP) is to protect the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.

Any nominated strategies in relation to water quality and management is addressed in accompanying report and can be further considered at the time a development application is lodged on the subject land. Appropriate conditions of consent would normally be applied to any approval to ensure the health of the river system is not compromised by way of sediment or erosion from the works or use.

Council also have additional provisions within BMLEP 2015 to ensure protection of environmentally sensitive lands and that the provisions in relation to water quality is addressed.

The planning proposal is considered to be consistent with this SEPP.

6.1.6 Is the planning consistent with applicable Ministerial directions?

When land owners want to rezone land, a planning proposal is required to justify an appropriate zoning. Amongst other matters for consideration there are certain directions set down by the Minister for Planning to ensure that strategic directions and principles are adhered to. The consideration of the *S117 Directions* is outlined below:

1. Employment and Resources	
1.1 Business and Industrial Zones	N/A
1.2 Rural Zones	N/A
1.3 Mining, Petroleum Production and Extractive Industries	N/A
1.4 Oyster Aquaculture	N/A
1.5 Rural Lands	Applicable

2. Environment and Heritage	
2.1 Environment Protection Zones	Applicable
2.2 Coastal Protection	N/A
2.3 Heritage Conservation	Applicable
2.4 Recreation Vehicle Areas	N/A
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	N/A
3.2 Caravan Parks and Manufactured Home Estates	N/A
3.3 Home Occupations	N/A
3.4 Integrating Land Use and Transport	N/A
3.5 Development Near Licensed Aerodromes	N/A
3.6 Shooting Ranges	N/A
4. Hazard and Risk	
4.1 Acid Sulfate Soils	N/A
4.2 Mine Subsidence and Unstable Land	N/A
4.3 Flood Prone Land	Applicable
4.4 Planning for Bushfire Protection	Applicable
5. Regional Planning	
5.1 Implementation of Regional Strategies NB: This Direction has been revised to include previous Directions 5.6 and 5.7.	N/A
5.2 Sydney Drinking Water Catchments	N/A
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	N/A
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	N/A
5.8 Second Sydney Airport: Badgerys Creek	N/A
5.9 North West Rail Link Corridor Strategy	N/A
6. Local Plan Making	
6.1 Approval and Referral Requirements	Applicable
6.2 Reserving Land for Public Purposes	N/A
6.3 Site Specific Provisions	N/A
7. Metropolitan Planning	

7.1 Implementation of A Plan for Growing Sydney	Applicable
7.2 Implementation of Greater Macarthur Land Release Investigation	N/A
7.3 Parramatta Road Corridor Urban Transformation Strategy	N/A
7.4 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	N/A

Direction 1.5 Rural Lands

This Direction is to protect the agricultural production value of rural land and facilitate the orderly and economic development of rural lands and related purposes. This Direction also applies to Environment Protection zones. The planning proposal has given consideration to the Rural Planning Principles listed in State Environmental Planning Policy (Rural lands) 2008 in that:

- The proposal is not fragmenting land, it is contributing to consistent zoning across the property. The E2 portion of the site is isolated, being surrounded on four sides with E4 zoned land. The area of land zoned E2 is too small to warrant continued protection in the absence of any ecological value and as it is already fragmented.
- The proposal providing a consistent zone across the property minimises land use conflicts as it is all consistent.
- The proposal is considered suitable for rural subdivision and lot sizes consistent with the adjoining properties that have a similar zone as proposed.
- There are existing BMLEP provisions which provide additional consideration at the time a development application is lodged in relation to natural and physical constraints of the site. There are no constraints on the portion of the land subject to the Planning Proposal.
- Dwelling opportunities on future lots will consider the LEP provisions applicable to the zone and land use.

As the future zoning would be changing from one Environmental Protection zone to another Environmental Protection zone there would be minimal impacts or conflicts with the planning principles and the Planning Proposal is considered to be of minor significance

The planning proposal is consistent with this Direction.

Direction 2.1 Environment Protection Zones

This Direction is to protect and conserve environmentally sensitive areas. The application of the E2 zone was applied due to Council incorrectly mapping the land as an Endangered Ecological Community. The property has no ecological value and

the application of an Environmental Living zone to replace an Environmental Conservation zone does not alter the environmental considerations for this property.

The planning proposal is consistent with this Direction.

Direction 2.3 Heritage Conservation

The Direction aims to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.

The site adjoins an item of environmental heritage (LN017- 'Kilhilla'). Any future development applications would need to address this issue with a heritage assessment.

The planning proposal is consistent with this Direction.

Direction 4.3 Flood Prone Land

This Direction aims to ensure that future development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the *Floodplain Development Manual 2005*, and ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.

The land is subject to localised overland flooding. A stormwater drainage concept plan accompanies the application as well as a flooding assessment by *Martens Consulting Engineers*.

The report by concludes:

This report demonstrates the proposed subdivision can safely convey standard flood flows through the site via the proposed stormwater system and significantly improve existing flooding conditions for properties immediately downstream of the site.

The planning proposal is consistent with this Direction.

Direction 4.4 Planning for Bushfire Protection

This Direction is in place to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and to encourage sound management of bush fire prone areas.

The site is within a Bushfire Prone Area. There are additional provisions within BMLEP 2015 that relates to consideration of bushfire hazards and future development. Further consultation in relation to the Planning Proposal will be required with the Commissioner of NSW Rural Fire Service.

A Bushfire Assessment accompanies the planning proposal which indicates that appropriate Asset Protection ones can be achieved for future development on the land that is to be rezoned.

The proposal satisfies this Direction.

Direction 6.1 Approval and Referral Requirements

This Direction applies to all Planning Proposals. The subject Planning Proposal is considered to be substantially consistent with this clause, as there is no development application proposed as part of this Planning Proposal. Any referrals required as part of the development assessment process will be required as a result of existing site constraints and requirements of the Environmental Planning and Assessment Act 1979. Further, this Planning Proposal will not result in designated development.

The proposal satisfies this Direction.

Direction 7.1 Implementation of A Plan for Growing Sydney

The Direction gives legal effect to the planning principles; directions; and priorities for subregions, strategic centres and transport gateways contained in A Plan for Growing Sydney.

The proposal contributes to the supply of housing in the Blue Mountains LGA and in this regard, satisfies the Direction.

The planning proposal is considered to be of minor significance and is to be consistent with the relevant S117 Directions.

Section C – Environmental, Social and Economic Impact

6.1.7 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The Planning Proposal will not alter any provisions or statutory requirements in the future development assessment as it relates to flora and fauna. Detailed investigation as to the impact of the development on Flora and Fauna on the site has been extensively carried out throughout recent court proceedings as outlined in Part 2, Section 2.1 and Part 4 above.

Accompanying the application is documentation in relation to the extensive research and ground truthing of the site that indicates that the site is not containing vegetation or ecological communities as identified under Schedule 6 of BMLEP 2015. The site does not contain *Blue Mountains Heath and Scrub (BMHS)*. The vegetation on the site comprises woodland in various conditions on historically cleared land. The zoning of the land as E2 Environmental Conservation was to reflect the Endangered Ecological Community of BMHS and as it is not identified or classified as this the zone is not appropriate and is irrelevant for the site. The area subject to the rezoning is predominately modified woodland.



Figure 14: Amended Vegetation Mapping (Source: Cumberland Ecology)

Appropriate further assessment will be carried out against the BMLEP 2015, as there are specific provisions that relate to protection of flora and fauna, and other relevant

legislation. However, given the extensive investigations to date on the site this is considered unnecessary.

There are no adverse impacts in relation to flora and fauna on the site as a result of the Planning Proposal.

6.1.8 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

There are no changes to any provisions of the BMLEP 2015 as it relates to likely environmental impacts, all existing provisions in this regard will apply to the site. A more detailed formal assessment of the specific impacts of a future development application (likely for subdivision) can be properly assessed against the relevant LEP provisions. The matters addressed below are a few key areas to be considered during the future assessment of a development application and do not necessarily preclude the consideration of development on the site, such matters include:

1. Flooding - Council currently has provisions in BMLEP as it relates to flood prone land. A Flood Assessment accompanies the application and demonstrates that any future development can provide a building platform above the flood level and also improve the downstream flooding that currently occurs in the area.
2. Bushfire - The site is identified as bush fire prone land according to Blue Mountains Councils Bushfire Prone Map with a vegetation category 1 & 2 and buffer layer. The proposal will also improve the bushfire impacts to surrounding areas with future development as the lands will be managed.

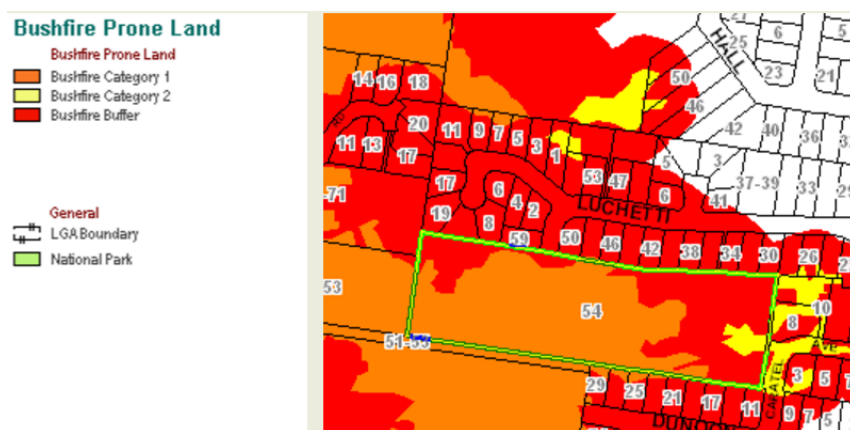


Figure 15: Bushfire Prone Land Map (Source: <http://www.bmcc.nsw.gov.au/bmccmap/>)

3. Aboriginal and Cultural Heritage - The subject site is located to the north of Kilhilla Lodge and grounds, a scheduled heritage item under Blue Mountains LEP 2015. It is considered that the future development of the lot is unlikely to impact on the heritage significance of the heritage item given the buffer of vegetation, the residential area already to the east of this item and the curtilage not being impacted upon. There is also no built form that

would impact on this item. An AHIMS Search (Appendix A) has revealed that there is no known aboriginal sites. No adverse impacts from the development on heritage items in the vicinity of the site, however more specific consideration under the heritage provisions within the LEP will be undertaken at the time a development application is lodged for the property.

4. Traffic and parking – the site upon being rezoned would have potential for an additional seven lots. This is a very small increment in the overall traffic generation accessing the existing road pattern. The existing road system has adequate capacity for this negligible increase in traffic. Any traffic generated as a result of the proposal would not exceed the capacity of the existing surrounding road network.

It is considered that the impacts can be managed on site through the proper assessment of a future development application on the site.

6.1.9 Has the planning adequately addressed any social and economic effects?

The proposal is considered to be of minor significance in the overall strategic direction in the area, however there are some minor social and economic benefits to the area as a result of the zone change and potential for additional lots.

Positive social impacts will arise as a result of this development due to the provision of vacant land for housing in the Blue Mountains which is in demand and that is also close to public transport, services, community facilities and recreation. The additional people in the area can only be a positive contribution to the services provided in the area and vibrancy of Hazelbrook Village.

Section D – State and Commonwealth Interests

6.1.10 Is there adequate public infrastructure for the Planning Proposal?

It is expected that the existing infrastructure is adequate to serve and meet the needs of the site. A full and proper assessment of this will be carried out at the time of a development application lodged with Council for the site. This proposal is not considered to be of a scale that would affect public infrastructure or demand additional infrastructure. In any event, Section 94 contributions are payable for the creation of additional lots and this will contribute to the public infrastructure in the area.

6.1.11 What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

No Commonwealth or State public authorities have been consulted in the process of preparing this Planning Proposal, however it is expected that the relevant public authorities will be consulted as part of the exhibition and consultation process and this section will be amended accordingly throughout the gateway process and to which this planning proposal will respond.

7 Part 4 – Mapping

It is expected that Council will prepare final maps for the Gateway process that will be carried out in accordance with the *Standard technical requirements for LEP maps* and in accordance with its relevant GIS software to ensure consistency.

To achieve the intended outcome of this proposal, an amendment to the BMLEP 2015 for the subject land will be required by amending the following maps:

Map tile	Map type	Current Provision	Proposed
LZN_005BA	Land Zoning Map	E2 Environmental Conservation / E4 Environmental Living	E4 Environmental Living
LSZ_005BA	Lot Size Map	No minimum (E2 land) U2 – 1200m2 (E4 land)	U2 – 1200m2
NRB_005BA	Natural Resources - Biodiversity Map	Protected Area - Ecological Buffer Area	Remove Protected Area – Ecological Buffer Area on subject site
NRL_005BA	Natural Resources – Land Map	No slope constraint in south-western corner.	Add slope constraint to small area in south-western corner

LZN_005BA Land Zoning Map

The portion of the property that is zoned E2 Environmental Conservation is to be amended to E4 Environmental Living:

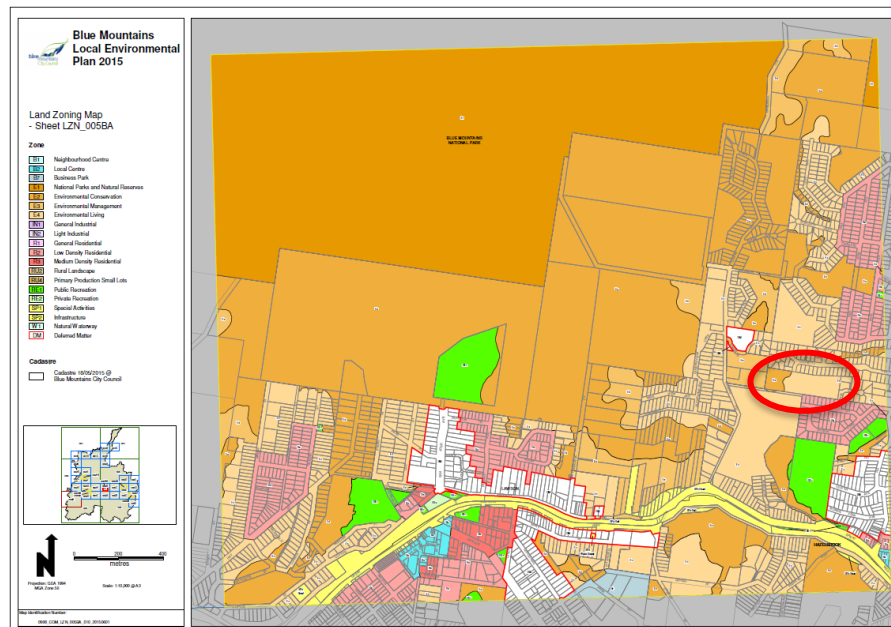


Figure 16: Land Zoning Map - Sheet LZN_005BA

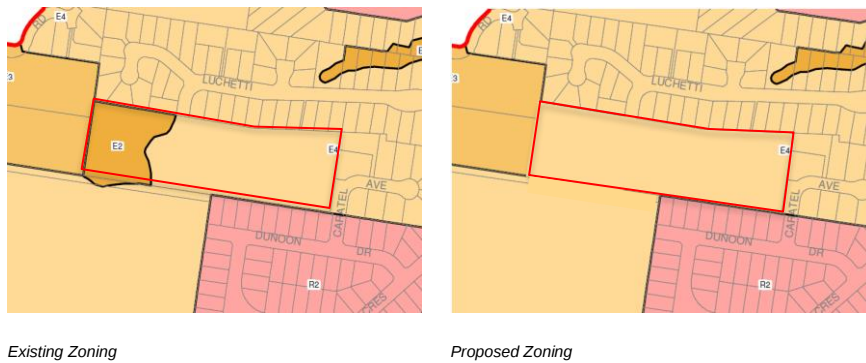


Figure 17: Extract of Existing and Proposed Zoning

It is recommended that the portion of land zoned E2 to the property to the south is included as E4 Environmental Living for consistency.

LSZ_005BA Lot Size Map

The portion of the property that is mapped as having no minimum lot size is to be mapped as “U2- 1200m2” to be consistent with other land that is zoned E4 Environmental Living:

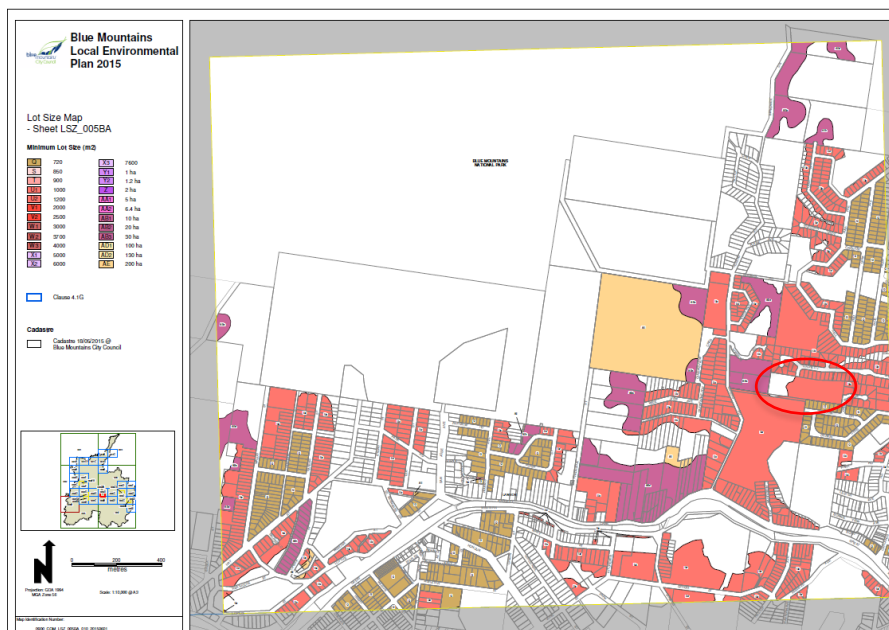


Figure 18: Lot Size Map - Sheet LSZ_005BA



Figure 19: Extract of Existing and Proposed Lot Size

It is recommended that the portion of land with no minimum lot size to the property to the south is included as U2-1200m2 for consistency.

NRB_005BA Natural Resources - Biodiversity Map

As the site has no ecological value the buffers imposed are no longer relevant or applicable. Therefore, the mapping layer of Protected Area – Ecological Buffer is to be removed:

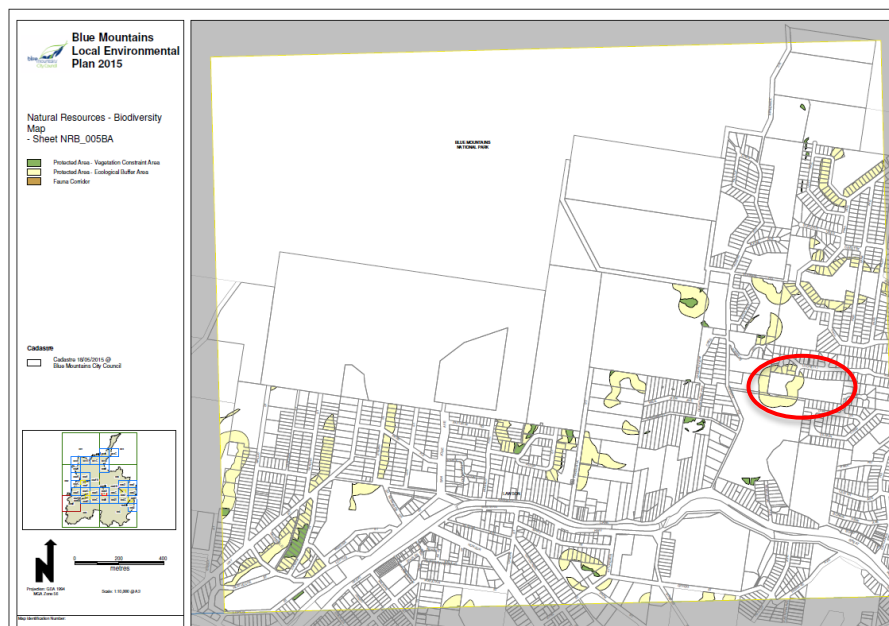


Figure 20: Natural Resources – Biodiversity Map - Sheet NRB_005BA

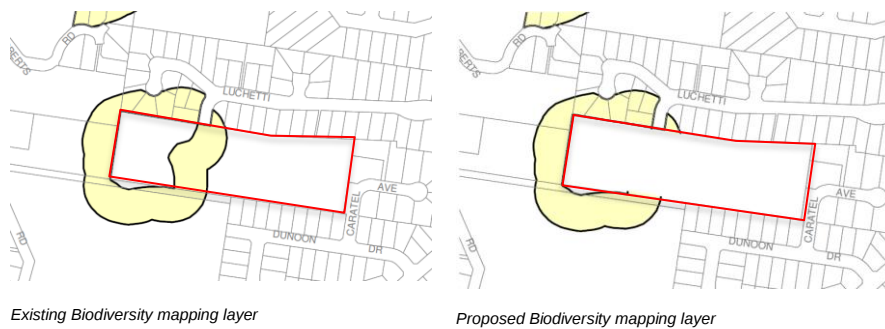


Figure 21: Extract of Existing and Proposed Biodiversity Mapping

It is recommended that the portion of land to the north, south and west of the current E2 land identified as an ecological buffer (shaded yellow Figure 21) be removed also due to there being no ecological value on the subject site to require or warrant this buffer.

NRL_005BA Natural Resources – Land Map

A detailed review of sloping land on this site has revealed an area of steep slopes within the south-western corner that should be mapped as slope constraint, being greater than 20% but less than 33%. This planning proposal is an appropriate time to update the mapping in this regard.

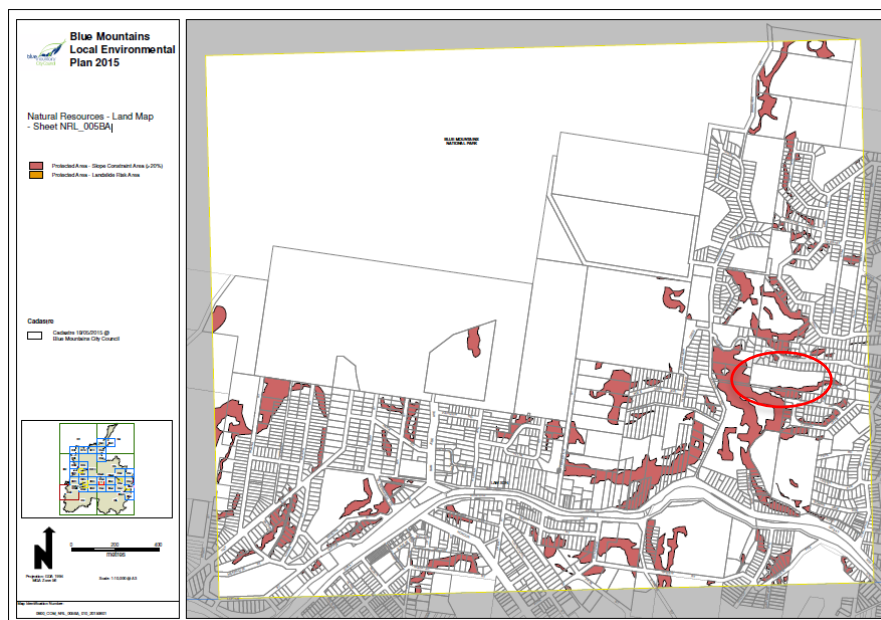


Figure 22: Natural Resource - Land - Sheet NRL_005BA

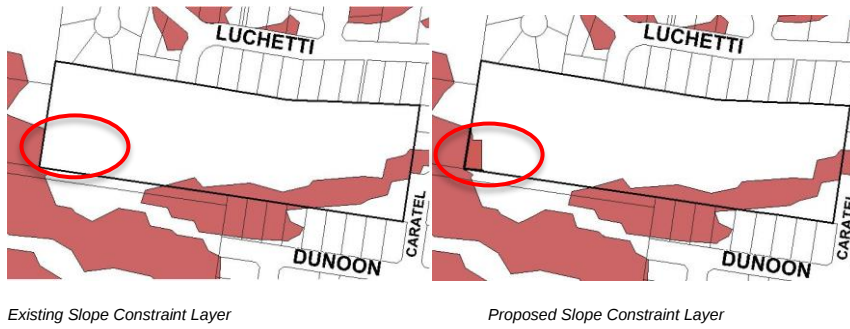


Figure 23 Extract of Existing and Proposed Slope Constraint Mapping

8 Part 5 – Community Consultation

This Planning Proposal will need to be subject to the statutory community consultation processes in accordance with Section 57 of the *Environmental Planning and Assessment Act 1979* and provisions of the *Environmental Planning and Assessment Regulation 2000*.

The Gateway will confirm the consultation requirements; however the preparation of a draft LEP amendment to enable this minor rezoning is consistent with the definition of a “low” impact Planning Proposal therefore requiring an exhibition period of 14 days.

The Planning Proposal will likely be notified in local newspapers that circulate the areas affected, Council’s website, in writing to adjoining landowners and public authorities. Details as to the Planning Proposal and how to make a submission will be included.

Supporting documentation should be included with the exhibited Planning Proposal as follows:

- The Gateway Determination
- Blue Mountains Local Environmental Plan 2015 (written instrument and maps)
- Full list of relevant State Environmental Planning Policies, S117 Directions, Council’s Community Plan
- Accompanying supporting documentation

Given the location of the site and in the context of the surrounding area and development this seems reasonable.

We look forward to responding to any feedback from the Council, public authorities and the community in relation to the planning proposal and expect that this section will be updated as the gateway process progresses and the community consultation period concludes.

9 Part 6 – Project Timeline

It is expected that given the Planning Proposal is of minor significance that it will take 6 - 9 months to finalise with the progress having the following suggested project timeline:

Milestone	Timeframe
Council report endorsing the Planning Proposal for a Gateway Determination	22 August 2017
Gateway Determination issued by the Minister for Planning and Environment	September/October 2017
Public Exhibition period including consultation with public authorities	November 2017
Assessment of the Planning Proposal and consideration of public submission	December 2017
Council report of submissions and endorsing of Planning Proposal to be submitted to the Department to finalise the LEP.	February 2018
LEP will be notified on legislation website	March 2018

It is understood that these timeframes may differ as they are dependent on when the matter is reported to Council and when the Minister issues the Gateway Determination.

10 Conclusion

The Planning Proposal is justified on the basis that the proposal would allow for more consistent and compatible development cognisant of the site investigation and findings. It meets all the relevant State, Regional and Local planning policies and is considered to be of minor significance in the context of these. Preliminary site investigations have revealed that any environmental impacts can be managed on the site and under a full and proper assessment of a development application.

It is considered that the rezoning of this site is of minor significance.

It is recommended that this Planning Proposal be endorsed by Blue Mountains City Council and request that the Planning Proposal be forwarded to the Minister for Planning for a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act.