

Planning Services

Plan Finalisation Report

Local Government Area: Blue Mountains

File Number: IRF18/451

1. NAME OF DRAFT LEP

Blue Mountains Local Environmental Plan 2015 Amendment No. 3 (draft LEP).

2. SITE DESCRIPTION

The planning proposal applies to ten (10) long term, key tourist sites across the Blue Mountains Local Government Area (LGA).

The ten (10) sites and the associated allotments are listed in the table below (Table 1).

| | Site | Address | Lot and DP |
|----|---------------------------|--|---|
| 1. | Blackheath Caravan Park | 67 – 69 Prince Edward Street, Blackheath | Lots 1 and 2, Sec 16, DP 758115 Lots 8, 9 and 10, DP 131091 |
| 2. | Parklands | 132 – 174 Govetts Leap Road, Blackheath | Lot 1 DP 840 261 |
| 3. | The Hydro Majestic | 52 – 88 Great Western Highway, Medlow Bath | Lots 8 – 22, DP 2450 Lot 1, DP 133407 Lot 1, DP 113904 Lot 134, DP 751657 Lot 2, DP 133410 Lot 2, DP334630 Lot D, DP 413431 Lot 20, DP 25570 |
| 4. | Scenic World | 2 Violet Street, Katoomba | Lot 2, DP 1025431 |
| 5. | Church Missionary Society | 4 – 12 Violet Street, Katoomba | Lot 1, DP 1034347 |
| 6. | Echo Point Motel Inn | 18 Echo Point Road, Katoomba | Lots A & B, DP 400429 |

| | Site | Address | Lot and DP |
|-----|--|---|---|
| 7. | Katoomba Precinct Includes the Church Missionary Society and Scenic World | 2, 4 – 12 and 41 Violet Street and 119 Cliff Drive, Katoomba. | Lot 2, DP 1025431 Lot 1, DP 1034347 Lots 1, DP 1121828 Lots 5, DP 222736 |
| 8. | Fairmont Resort | 1 Sublime Point Road, Leura | Lot 1, DP 718860 Lot 1, DP 720795 |
| 9. | School of Hotel Management | 74 Gladstone Road, 3 Chambers Road, and 16 – 18 Fitzroy Street, Leura | Lots 3 and 8 – 14, Sec 1, DP 4305 Lots A – D, DP 385345 |
| 10. | Waldorf Leura Gardens Resort | 20 – 28 Fitzroy Street, Leura | Lot 1, DP 1116868 Lot 1, DP 940336 Lot 2, 184184 Lot 3, DP 1097665 Lot A, DP 315787 Lot A, DP 414796 |

Table 1: Site identification

3. PURPOSE OF PLAN

The draft LEP seeks to recognise the long-term tourism uses ten key tourism sites, currently operation under existing use rights. The amending plan seeks to recognise the tourism uses by introducing the SP3 Tourist zone to the BMLEP 2015 and applying this zone to the Hydro Majestic, Scenic World and Fairmont Resort sites. The amending plan also seeks to rezone and amend a suite of planning controls across the ten sites to recognise and facilitate tourism uses on these sites and to ensure their continued operation.

The LEP seeks to make a number of written and mapped amendments.

Written Amendments

- Amend Part 2 Permitted or prohibited development to:
 - introduce special purpose zone SP3 Tourist, under clause 2.1 Land use zones;
 - introduce the SP3 Tourist zone objectives and list development types permitted without and with consent, or prohibited, under the Land Use Table.
- Amend Part 4 Principle Development Standards to:
 - introduce clause 4.3A Exceptions to the maximum floor space ratio and height of buildings, to allow development at 119 Cliff Drive, Katoomba, (being Lot 5 DP 222736), to exceed the maximum building height, but only if the consent authority is satisfied the development is not visible from Cliff Drive, any public place, or the Blue Mountains National Park, and has a building height of no more than 10 metres.

Note: 119 Cliff Drive, Katoomba is located within the Katoomba Precinct, identified on the Built Character Map as Katoomba Precinct RE2/SP3-KA20.

- Amend Part 7 Additional local clauses – development in villages.

The BMLEP 2015 contains precinct objectives to guide development in specific areas within the villages of the Blue Mountains, as identified on the Built Character Map.

The amending plan is seeking to introduce the following precinct objectives:

- 7.2 Blackheath Precinct - insert a new clause providing objectives for development on the Parklands site, identified as 'Blackheath Precinct R1-BH06' on the Built Character map;
 - 7.6 Katoomba Precinct – introduce two new clauses providing objectives for development on the Scenic World and Echo Point Motor Inn sites, identified as 'Katoomba Precinct R1-KA19' on the Built Character map, and the Katoomba Precinct site, identified as 'Katoomba Precinct RE2/SP3-KA20' on the Built Character map;
 - 7.8 Leura Precinct – introduce two new clauses providing objectives for development on the Fairmont Resort site, identified as 'Leura Precinct SP3-LE07' on the Built Character map, and the School of Hotel Management and the Waldorf Leura Gardens Resort site, identified as 'Leura Precinct R1-LE07'; and
 - 7.9 Medlow Bath Precinct – introduce a new clause providing objectives for development on the Hydro Majestic site, identified as 'Medlow Bath Precinct SP3-MB01'.
- Introduce Part 8 Site specific provisions;
 - introduce Part 8 to the BMLEP 2015;
 - introduce clause 8.1 Preservation of certain existing landscaped area, to retain the existing landscaped area on the Parklands site.
 - Amend Schedule 1 Additional Permitted Uses to:
 - permit development for the purposes of a 'tourist and visitor accommodation' on the Church Missionary Society site;
 - permit development for the purposes of an 'eco-tourist facility' on the Blackheath Caravan Park site; and
 - permit development for the purposes of an 'education establishment' on the Waldorf Hotel and School of Hotel Management sites.

The amending plan will not create any additional residential lots or create any jobs.

Map Amendments

The amending plan comprises ten (10) sites and seeks to amend 59 map tiles, a table of the proposed map amendments is at **Attachment H**.

4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Blue Mountains State Electorate. Trish Doyle MP is the State Member for the Blue Mountains.

The site falls within the Macquarie Federal Electorate. Susan Templeman MP is the Federal Member for Macquarie.

To the regional planning team's knowledge, neither MP has made any written representations regarding the proposal.

NSW Government Lobbyist Code of Conduct: There have been no meetings or communications with registered lobbyists with respect to this proposal.

NSW Government reportable political donation: There are no donations or gifts to disclose and a political donation disclosure is not required.

5. GATEWAY DETERMINATION AND ALTERATIONS

The Gateway determination issued on 24 January 2017 (**Attachment C**) determined that the proposal should proceed subject to conditions. The Gateway determination was altered on 30 January 2018, to extend the timeframe (**Attachment D**).

The current finalisation date is 31 July 2018. However, as the planning proposal was received prior to this date, the plan making process is almost complete and the Department is the delegated authority for the plan making process, an altered Gateway extending the timeframe for completion is not required.

6. PUBLIC EXHIBITION

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 15 March 2017 to 12 April 2017.

Forty-seven (47) submissions were received from members of the community and five were made by public agencies.

Community Submissions

The key issues raised in community submissions are as follows:

Introduction of the SP3 Tourist Zone

Objections were raised to the introduction of the SP3 Tourist zone as it would facilitate the development of large scale tourist facilities, such as resorts, which are incompatible with the National Park and are likely to have significant environmental impacts.

Intensity of development

A number of submissions raised concerns that the amending plan would lead to large, bulky, intense developments, would have greater environmental impacts and likely to only cater to the high-end tourist visitor, or international tourists.

Amenity

Submissions raised concerns that large-scale tourist development will impact on both the visual and natural amenity of the Blue Mountains.

Consultation

A number of concerns were raised in regard to consultation process, including the length of the consultation period; whether the Local Aboriginal Land Council had been consulted; and that the introduction of the SP3 Tourist zone would reduce future opportunities for members of the community to oppose large incompatible development.

Economic impacts

Concerns were raised that the rezoning may lead to large scale tourism precincts which encourage tourists to bypass the town centres and local businesses.

Existing use rights

Objectors noted that these sites had been operating successfully for many years under existing use rights and that the introduction of the SP3 Tourist zone is not suitable given that some of these sites are adjoining National Parks; have scenic values; or, comprise areas of environmental significance.

Environmental protection

Concerns were raised that the amendment will result in the intensification of land uses and result in the weakening of environmental protection.

Council Comments

Council has addressed community concerns at **Attachment F**.

Department Comments

SP3 Tourist zone

Three sites i.e. The Hydro Majestic, Scenic World, Fairmont Resort will be rezoned SP3 Tourist zone under this amendment. The application of the SP3 Tourist zone has been underpinned by The Strategic Tourism and Recreation Planning Study (The Stafford Report) and seeks to recognise the importance of these sites, as long-term, key tourist sites.

The application of this zone removes a number of unsuitable land uses that are currently permissible and will clearly indicate that these sites are tourist focused and will continue to be used for tourism purposes.

The zone objectives for the SP3 zone seek to recognise, protect and manage the environmental, scenic and landscape values of the area and the Blue Mountains LEP has strong provisions which seek to protect the natural environment. The application of the SP3 zone will enable land use and development outcomes for the continued operation of these sites.

Intensity of development and amenity

The Department is satisfied that the bulk and scale of any future developments on these sites will be appropriately considered on a site by site basis at the development application stage. The BMLEP 2015 has comprehensive provisions to promote and protect the natural environment, including visual impacts. The zone and precinct objectives together with the planning controls that apply to each site, including zoning, building height, lot size, floor space ratio provisions, setbacks and landscaping provisions, will determine the appropriate bulk and scale of any future development on these sites.

Consultation

The proposal was publicly available for 29 days and advertised in the local paper, over three weeks. The proposal was available on Council's website and hardcopies were placed in the Katoomba and Springwood council offices and in the Katoomba, Blackheath, and Springwood Libraries. Additionally, council wrote to all land owners whose properties are included in the amendment, as well as adjoining neighbours and properties in the vicinity. The Department is satisfied that community consultation was undertaken in accordance with the statutory requirements.

Existing use rights

Where a land use is operating on existing use rights, there are limitations on alterations, expansions or intensification of the site. Further, the zoning and controls that apply to the site may not be the most appropriate for the site. The draft plans seeks to rezone and amend certain provisions across the ten sites to ensure the planning controls are appropriate for these sites and to ensure their continued operation.

Environmental Protection

No new development is proposed as part of this amendment. The amending plan is seeking to recognise the importance of long standing tourist sites in the Blue Mountains and guide development. The environmental impacts of any future development will be considered against BMLEP 2015, which comprises a comprehensive suite of controls to protect environmentally sensitive land.

Summary

The Department is satisfied that the community submissions have been adequately addressed.

The planning proposal was submitted to the Department in November 2016 and pre-dated the establishment of the local planning panel. Consequently, the planning proposal was not referred to local planning panel under section 2.19(1)(b) of the Act.

7. ADVICE FROM PUBLIC AUTHORITIES

Council was required to consult with the NSW Office of Environment and Heritage (Biodiversity and Land Management division); Water NSW; the Department of Industry – Resources and Energy; NSW Rural Fire Service; and, NSW National Parks and Wildlife Service, in accordance with the Gateway determination.

Council has consulted these authorities. Copies of the agency responses are at **Attachment E**. The Office of Environment and Heritage (Heritage Council of NSW) also provided a response (**Attachment E**).

Office of Environment and Heritage (Biodiversity and Land Management division)

The Office of Environment and Heritage advised it had incorporated National Parks and Wildlife Service comments with their advice. OEH advised it had no concerns, however, it requested clauses which refer to the national park to be listed as either land zoned E1 National Park or Blue Mountains National Park, but not both.

Department Comment

The Department notes that in response to OEH comments, Council removed reference to both E1 National Park and Blue Mountains National Park and replaced with the correct reference to the zone name i.e. E1 National Park and Nature Reserves.

Office of Environment and Heritage (Heritage Division)

The Heritage Council in principle supported the introduction and application of the SP3 Tourist zone and generally supported the proposed changes for the Hydro Majestic, Scenic World, Echo Point Motor Inn and Parklands sites, however, it recommended the following:

- inclusion of a specific zone objective for the SP3 Tourist zone under the Land Use Table: to protect and conserve the historic, natural and cultural values of the Greater Blue Mountains World Heritage Area;
- removal of *Recreation facility (major)* as a land use, permitted with consent, from the land use table, as the type and intensity of the uses falling under the Recreation facility

- (major) definition are not identified or suitable within the proposal and are likely to be inappropriate to the Greater Blue Mountains World Heritage Area and its setting; and
- the introduction of a minimum lot size control of forty (40) hectares to the sites zoned SP3 Tourist to prevent fragmentation and ad-hoc development outcomes.

Department Comment

It is noted that in response to OEH comments for land zoned SP3 Tourist, an additional objective and a minimum lot size provision of 10 hectares was introduced. A detailed discussion of these additions can be found at **Attachment G** - Post Exhibition Changes.

Council has not removed *Recreation facility (major)* as a land use, permitted with consent, under the SP3 Tourist zone from the draft plan. Council is satisfied the land use is consistent with the strategic intent of the SP3 Tourist zone, which is to recognise and encourage significant tourist uses. Under the draft plan, the sites to be zoned SP3 Tourist zone are already substantially developed as significant tourist sites i.e. Hydro Majestic, Fairmont and Scenic World, and any future development applications for uses defined as *Recreation facility (major)* would be subject to a thorough assessment.

Further, Council acknowledges that the inclusion of the SP3 Tourist zone under the BMLEP 2015, provides an opportunity for future rezoning applications, and an approval pathway for *Recreation facility (major)* as a land use, subject to consent. Any future rezoning applications would be subject to thorough assessment and community consultation.

The Department concurs with Council's decision to retain the Recreational facility (major) as a land use, permitted with consent in the SP3 Tourist zone.

WaterNSW

WaterNSW has advised that development is required to have a neutral or beneficial effect (NorBE) on water quality and future land use must be matched to land and water capabilities, to ensure water quality continues to be protected in the Sydney drinking water catchment. Detailed site assessments addressing the requirements for a NorBE would be required during the construction and operational stages, to support any future development proposals.

Department Comment

WaterNSW comments are matters for the development application stage and do not preclude finalisation of this report.

Department of Industry – Resources and Energy (GSNSW)

GSNSW has no concerns regarding the proposal as there are no current mineral, coal or petroleum titles covering the subject sites.

NSW Rural Fire Service

The NSW Rural Fire Service (RFS) raised no concerns or issues in relation to bushfire.

8. POST-EXHIBITION CHANGES

The proposal has been subject to a number of post exhibition changes. These are discussed in detail at **Attachment G**.

The changes identified in Attachment G are generally minor, in response to community or agency submissions and result in better planning outcomes. It is recommended that these amendments be endorsed without requiring further exhibition, as the changes do not alter the intent of the planning proposal as exhibited but add clarity.

In respect to the post exhibition inclusion of a minimum lot size of 10 hectares is to be applied to land zoned SP3 Tourist (refer to **Attachment G**), this standard was included by Council in response to an OEH recommendation.

The site was exhibited with no minimum lot size provision. The inclusion of a minimum lot size of 10 hectares to land zoned SP3 Tourist under the amending plan seeks to prevent fragmentation of the sites and is consistent with the existing minimum lot size provisions which do not allow the sites to be subdivided. It is recommended that this amendment is supported, as the change is relatively minor, seeks to prevent fragmentation and overdevelopment on these sites.

It is acknowledged, however, that a minimum lot size has been imposed over three sites: Hydro Majestic; Scenic World; and the Fairmont Resort. The sites currently have no minimum lot size control and each site is less than 10 hectares in area and consideration needs to be given to the question of re-exhibition.

Council confirmed that each property owner was advised of the post-exhibition Planning Proposal Council meeting and that changes had been made to exhibited provisions and controls following consideration of public submissions (**Attachment G1**).

It is considered that the imposition of a minimum lot size is reasonable, as it is in keeping with both the nature of the proposed zone and the exhibited intent. Re-exhibition is not recommended as the intent of the planning proposal was clearly to apply the SP3 zone recognising the restrictive nature of that zone (refer to p.5 – **Attachment B**).

9. ASSESSMENT

The plan is recommended to proceed as it seeks to ensure the local planning framework recognises and continues to facilitate the appropriate, long-term tourism uses for ten (10) key tourist sites across the Blue Mountains by:

- Amending the zoning and other planning controls on these sites to recognise the current tourism uses, and to provide opportunities for expansion to facilitate their appropriate operation.
- The proposal was underpinned by The Strategic Tourism and Recreation Planning Study (The Stafford Report) which found the tourism is a significant part of the Blue Mountains economy and existing planning controls were perceived as limiting tourist and recreational uses. The report made a number of recommendations including recognising tourist uses on key sites and introducing the SP3 Tourist zone.
- The Gateway determination conditions, as well as, relevant community and public agency submissions, have been satisfactorily addressed.
- The plan is consistent with the relevant 9.1 Directions and State Environmental Planning Policies.
- The amending plan is consistent with productivity objectives in both the Greater Sydney Region Plan and the Western City District Plan's by facilitating employment opportunities in the tourism sector; a source of productivity in this region.

State, Regional and District Plans

The amending plan seeks to recognise the importance of tourism on ten key sites within the Blue Mountains LGA and seeks to ensure that appropriate planning controls are in place to encourage and facilitate their ongoing operation.

The amending plan is generally consistent with the Greater Sydney Region Plan Strategy 23.1 which seeks to retain, review and plan industrial and urban services land to create local employment opportunities. While the sites are not technically industrial or urban services land, tourism provides a significant portion of employment in the Blue Mountains LGA and the amending plan will encourage and enable employment opportunities in this sector.

The amending plan is consistent with the Western City District Plan's, Planning Priority W8 Leveraging industry opportunities from the Western Sydney Airport and Badgerys Creek Aerotropolis, specifically actions 38, 39, 40 and 41. These actions all seek to create capacity for and encourage tourist accommodation in appropriate locations through local environmental plans.

The amending plan is seeking to ensure appropriate planning controls are in place to enable tourism to continue and expand in the Blue Mountains LGA. Further, the amending plan is consistent with Planning Priority W14 Protecting and enhancing bushland and biodiversity, as the draft instrument contains additional local provisions clauses that seek to preserve environmentally sensitive land.

10. MAPPING

The amendment comprises a large number of mapping amendments involving 59 map tiles. A table outlining the sites, map tiles, map type and the current and proposed provisions is at **Attachment H**.

The Map Cover Sheet is at **Attachment MCS**. The maps and map cover sheet have been checked by the Department's ePlanning Team and found to be technically correct. Maps were sent to Parliamentary Counsel on 30 July 2018.

11. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979* (**Attachment I**). Council confirmed on 17 August 2018 that it was satisfied with the draft and that the plan should be made (**Attachment J**).

12. PARLIAMENTARY COUNSEL OPINION

On 8 August 2018, Parliamentary Counsel provided Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

13. RECOMMENDATION

It is recommended that Greater Sydney Commission's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- the amendment seeks to recognise and strengthen the tourism uses on these sites and seeks to facilitate their continued operation;
- the proposal was underpinned by The Strategic Tourism and Recreation Planning Study (The Stafford Report);
- the amendment has satisfied the Gateway determination conditions and addressed relevant community and public agency submissions as discussed under Part 6 Public Exhibition; and
- the plan is consistent with the relevant 9.1 Directions and State Environmental Planning Policies.
- The plan is consistent with the relevant strategic plans.



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