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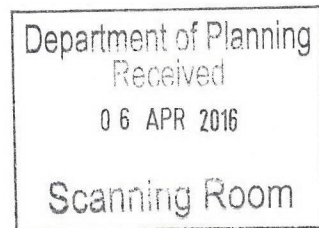


1 April 2016

Office of the General Manager

Reference File: F09997; 16/60835

Catherine Van Laeren
Director Sydney Region West
Planning Services
NSW Planning and Environment
GPO Box 39
SYDNEY NSW 2001



Dear Ms Van Laeren

**SUBJECT Draft Amendment 2 to Blue Mountains Local
Environmental Plan 2015 – Zone R6 Residential Character**

I write to advise that at its meeting of 29 March 2016 (Minute No.77) Blue Mountains City Council resolved:

1. *That the Council endorses the Draft Planning Proposal for the introduction of an R6 Residential Character zone, to be known as Blue Mountains LEP 2015 (Draft Amendment No. 2) prepared in accordance with the provisions of Section 55 of the Environmental Planning and Assessment Act, 1979;*
2. *That the Council notes that:*
 - a) *This Planning Proposal is consistent with the recognition by the Minister for Planning, the Hon. Rob Stokes, of a need for the proposed R6 Residential Character zone, as conveyed in a meeting with a delegation from Council on 25 September 2015;*
 - b) *The outcomes sought by the Planning Proposal are contingent upon the amendment of the Standard Instrument Order; and*
 - c) *The Secretary of the Department of Planning and Environment has invited the Council to submit a Planning Proposal in order to initiate the commencement of that process;*
3. *That the Council refers the Planning Proposal to the Greater Sydney Commission or delegate requesting a Gateway Determination in accordance with the provisions of Section 56 of the Environmental Planning and Assessment Act, 1979;*
4. *That the Council processes the Planning Proposal in accordance with the Gateway Determination issued under the provisions of Section 56 of the Environmental Planning and Assessment Act, 1979; and*
5. *That the Council, subject to reviewing the Gateway Determination, proceeds with the Planning Proposal and receive a report following the conclusion of the exhibition of the Draft Planning Proposal.*

The outcome sought by the Planning Proposal, namely the introduction of the R6 Residential Character Zone into LEP 2015, is contingent upon the amendment of the Standard Instrument Order to introduce such a zone. In this respect, the Planning Proposal has been prepared in response to the invitation of the Secretary of the Department to submit a Planning Proposal in order to initiate that process.

It is appreciated this process will involve various sections within the Department and Council wishes to continue to work in collaboration with officers of the Department to progress this zoning initiative and the Planning Proposal.

Please find enclosed two hard copies and electronic copy of the Planning Proposal. The Council now requests the review of the planning proposal for Draft Amendment 2 to DLEP 2015 and the commencement of the process to review the Standard Instrument to support a residential character zone.

Please contact Mr Will Langevad – Acting Director, Development and Customer Services on 4780 5759 should you have any queries or require further information.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Robert Greenwood', with a long horizontal flourish extending to the left.

ROBERT GREENWOOD
General Manager

PLANNING PROPOSAL

Blue Mountains
Local Environmental Plan 2015
(Draft Amendment 2)



Zone R6 Residential Character



Draft for Council endorsement

March 2016

Prepared by Blue Mountains City Council

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PART 1 OBJECTIVES OR INTENDED OUTCOMES

The objective of this Planning Proposal is to amend Blue Mountains Local Environmental Plan 2015 (LEP 2015) to introduce the new Zone R6 Residential Character, foreshadowing an amendment to the Standard Instrument, to include certain land currently deferred from this plan.

This planning proposal predominantly concerns land currently zoned Living-Conservation under LEP 2005, and which was exhibited in the draft plan, DLEP 2013, as Zone R6 Residential Character.

This land was deferred from the then draft LEP 2013 post exhibition because Zone R6 Residential Character Conservation is not present in the Standard Instrument LEP, and is being proposed by Blue Mountains Council. This allowed the LEP to proceed to being made without the need for the Standard Instrument Order to be amended. The land was deferred by Council resolution at the 14 October 2014 meeting.

Following the commencement of LEP 2015, this planning proposal has been prepared to pursue an amendment to the Standard Instrument and to incorporate these deferred properties into LEP 2015.

Zone R6 Residential Character is being proposed to recognise at a zone level those areas of value where little to no change is envisaged. These areas differ from other low density residential areas where zone R2 Low Density Residential has been applied, where some change, however minor and incremental, is planned.

Whether one looks at the process of developing the character conservation zone in the Blue Mountains or the emerging approaches adopted by other States, it is evident that there is a case for a residential character zone. The State Government has previously identified this shortcoming of the existing standard instrument framework, proposing a new residential character zone in the planning reform Green Paper.

Part 3 of this planning proposal sets out in detail the justification for the proposed R6 zone and the need to establish a Residential Character zone in NSW.

The following key principles guided the development of LEP 2015, and underpin the reason for pursuing the proposed zone R6 Residential Character in order to translate planning policy which has been in place for over 20 years into the SI format.

- Principle 1: Apply the same planning approach across the LGA
- Principle 2: Translate where possible using the standard instrument format
- Principle 3: Use best-fit to achieve current planning results
- Principle 4: Introduce new policy only when appropriate

PART 2 EXPLANATION OF PROVISIONS

There are two components to draft amendment 2:

- The addition of zone R6 Residential Character to LEP 2015, including zone objectives, land use table, and amendments to certain clauses to reference the proposed zone as necessary, and
- The addition of land deferred by Council resolution from DLEP 2013 that is proposed to be zoned R6 Residential Character.

The proposed zone R6 Residential Character provisions are dependent upon an amendment to the Standard Instrument.

NB: In DLEP 2013 the proposed R6 zone was exhibited as Zone R6 Residential Character Conservation, the zone name reflecting the current LEP 2005 Living-Conservation zone. This planning proposal is proposing the new zone be denoted more simply as Zone R6 Residential Character. Any reference to Zone R6 Residential Character Conservation in this planning proposal is considered to be a reference to Zone R6 Residential Character.

DRAFT AMENDMENTS TO THE WRITTEN INSTRUMENT

The following amendments are proposed to the written instrument of LEP 2015 to add the proposed zone R6 Residential Character, foreshadowing an amendment to the SI to include this new zone with zone objectives and mandated uses consistent with those proposed below.

Part 2

2.1 Land use zones

The land use zones under this Plan are as follows:

Residential Zones

R1 General Residential
R2 Low Density Residential
R3 Medium Density Residential
R6 Residential Character

Land Use Table

Zone R6 Residential Character

1 Objectives of zone

- To preserve and enhance the character of low density residential areas that exhibit a consistent and noteworthy residential character that are formed characterised by larger allotments and single dwelling houses within a prominent traditional garden setting.
- To minimise impacts on the amenity of established low density residential neighbourhoods
- To allow for a limited range of non-residential land uses to serve the local community needs in appropriate locations where they are consistent with the retention of a residential character
- To ensure development retains the prominence of landscape elements and traditional garden settings.

2 Permitted without consent

Home businesses; Home occupations; Environmental protection works.

3 Permitted with consent

Bed and breakfast accommodation; Building identification signs; Business identification signs; Child care centres; Dwelling houses; Environmental facilities; Exhibition homes; Flood mitigation works; Home-based child care; Neighbourhood shops; Respite day care centres; Roads.

4 Prohibited

Multi-dwelling housing; Residential flat buildings; Seniors Housing; Any development not specified in item 2 or 3.

Part 4

4.1AA Minimum subdivision lot size for community title schemes

(2) This clause applies to a subdivision (being a subdivision that requires development consent) under the Community Land Development Act 1989 of land in any of the following zones:

- (f) Zone R6 Residential Character.

4.3A Exceptions to the maximum floor space ratio and height of buildings

(9) Within Zone R6 Residential Character, consent may be granted to a building that exceeds the maximum height shown on the Height of Buildings Map, if the consent authority is satisfied that the building:

- (a) will retain the prominence of the landscape setting and will not protrude above the existing tree canopy of vegetation adjacent to the building or above adjacent buildings, and
- (b) incorporates a design that minimises its apparent bulk when viewed from a public road, and
- (c) buildings in the immediate vicinity in Zone R6 Residential Character zone have a 2 storey residential character, and
- (d) the building does not exceed a maximum building height of 8 metres.

4.4A Site coverage and landscaped area

(2) This clause applies to land in the following zones:

- (a) Zone E3 Environmental Management,
- (b) Zone E4 Environmental Living.
- (c) Zone R6 Residential Character

(7) Development consent must not be granted to development that would reduce the landscaped area on land in Zone E4 Environmental Living or Zone R6 Residential Character unless the landscaped area of the land will be at least 60%.

4.4C Setback for development in Zone R6 Residential Character zone

- (1) The objective of this clause is to manage the setbacks of buildings to ensure development is consistent with established patterns within character areas and to retain a landscape setting.
- (2) This clause applies to development within Zone R6 Residential Character zone.
- (3) The location of buildings on an allotment is to ensure that:
 - (a) the bulk and scale of development is consistent with the existing streetscape of the surrounding area and promotes a prominent landscape setting for dwellings, and
 - (b) overshadowing of adjoining buildings and impact on solar access to the living areas and private open space of those buildings is minimised, and
 - (c) the design and location of the buildings respond effectively to individual site constraints and minimise site disturbance and clearing of vegetation.
- (4) The front wall of a new building or carport is to be set back from the primary front boundary a distance that:
 - (a) allows for established gardens to be retained, and
 - (b) is a minimum of 20 per cent of the average setback of buildings on immediately adjoining allotments in established areas or, where there are no buildings on these allotments, a minimum of 10 metres from the primary road frontage.
- (5) For any building that has a street frontage on an allotment, the width of any building across the allotment may be up to 75 per cent of the greatest width of the allotment at any one point.
- (6) The minimum setback of a dwelling-house from the side or rear boundary of the allotment is 1 metre.
- (7) Notwithstanding any of other provisions of this clause, the minimum setback from a side boundary does not apply to minor additions and alterations to a building where this:

- (a) incorporates an extension of an existing external wall along the line projected by that wall, and
- (b) does not decrease the closest distance of the building to the side boundary.

Part 6

6.31 Location of sex services premises

(2) In deciding whether to grant development consent for development for the purposes of sex services premises, the consent authority must consider the following:

- (a) whether the premises will be located on land that adjoins, is directly opposite or is separated only by a local road from land:
 - (i) in Zone R1 General Residential, Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone R6 Residential Character, Zone RE1 Public Recreation or Zone E4 Environmental Living, or

DRAFT AMENDMENTS TO LEP 2015 MAPPING

This planning proposal seeks to add 4452 properties, deferred by Council resolution from DLEP 2013, into LEP 2015. The subject properties are detailed in the attached maps.

To implement this proposed change, the LEP 2015 maps will be modified as follows:

- Land application map amended to remove deferred areas relating to subject properties
- Zoning map amended to add zone R6 Residential Character to the legend to include subject properties as zone R6 Residential Character
- All other maps to be amended to include subject properties as they were exhibited in DLEP 2013 or by Council resolution.

The subject properties consist predominantly of those properties which are currently zoned Living – Conservation under LEP 2005 and a small number of additional properties that were deferred from DLEP 2013 for further investigation, and are now also proposed to be zoned R6 Residential Character.

LEP 2005 Living – Conservation zone

These properties are proposed to be zoned R6 Residential Character, as was exhibited in DLEP 2013 and which translates the current planning provisions which apply to the properties under LEP 2005.

These properties were deferred following exhibition of DLEP 2013 because they were proposed to be zoned R6 Residential Character Conservation and this would have delayed the making of LEP 2015 due to the need to amend the SI to facilitate the proposed zoning.

Falls Road, Wentworth Falls

In addition to those properties that were exhibited as zone R6 Residential Character Conservation, and that are currently zoned Living–Conservation under LEP 2005, there is a small number of lots which were deferred from DLEP 2013 for further investigations which are now proposed to be included in LEP 2015 zoned R6 Residential Character.

These properties are located at the southern end of Falls Road, Wentworth Falls and were exhibited in DLEP 2013 as zone E4 Environmental Living, but were deferred following public exhibition in response to submissions from local residents. Further investigation into the character of the area was undertaken and Council considered these properties at the 26 March 2015 Council meeting as part of the review of the then DLEP 2013 deferred matters. It was resolved that this area be proposed to be zoned R6 Residential Character rather than E4 Environmental Living as publically exhibited. As such these properties were excluded from draft Amendment 1 to LEP 2015 to remain deferred, similarly to all other land proposed to be zoned R6.

PART 3 JUSTIFICATION:

Section A - A Need for the Planning Proposal

Blue Mountains Council has adopted, as a guiding principle, the identification and retention of residential character in the Blue Mountains. This principle has been applied to plan preparation and development assessment for over two decades.

Council adopted the purpose-specific Living Conservation zone as part of a suite of measures to manage residential character in its Local Environmental Plan 2005 (LEP 2005) following a robust plan-making process, which involved an extensive public hearing and two major public engagement exercises. The legitimacy of LEP 2005's zoning control to protect character lies not just in the statutory process of its formulation and its making by the State Government. It derives from a community's response to, and expectation of, an integrated zoning approach to protect residential character.

In contrast to the Blue Mountains framework, the Standard Instrument does not currently make provision to carry forward a residential character zone, an approach subject to significant support through the public exhibition phase of the Council's new LEP.

The Standard Instrument in its current form impacts on Council's ability to employ a zoning control for its character areas, something which both the Victorian and Queensland Governments have introduced into their planning schemes.

This short coming of the SI has previously been recognised by the State Government which identified in July 2012, as part of its reform agenda, a proposal to introduce a new zone to protect character, in order to address problems with the existing standard zoning framework.

For its part, and having exhausted the alternatives, Council continues to seek an amendment to the Standard Instrument to bring this option forward, thus making available a residential character zone to be able to complete LEP 2015.

As well as detailing the strategic studies and reports which have informed Council's planning policy for the protection of residential character, this part also establishes the need for zoning control as a tool to achieve the required outcome. Consideration has been given to alternatives such as subzones, which are also not permitted under the Standard Instrument. Attention is then directed to considering the Department's previously proposed best fit alternative zone option under the Standard Instrument (R5 Large Lot Residential). This 'non-urban' or 'rural-residential zone' would be misapplied in the context of the Blue Mountains' premier character areas. It is important step, nonetheless, in making a case for a new zone: it shows an acceptance of the need for a zoning tool outcome, but that the appropriate zone is not available under the Standard Instrument.

In fundamental respects a review of the approaches to urban character within the Blue Mountains traces and parallels the recognition and value of residential character within the broader setting of urban planning. Although the tools have changed, the earliest identification of the Blue Mountains town character sets out principles that retain their currency. It will be demonstrated that the achievement of those principles, the retention of the cultural landscape of the Blue Mountains, would be compromised if the Council cannot employ – or more correctly retain – a purpose-specific zone to protect residential character in its principal planning instrument.

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

Yes, the planning framework of the Blue Mountains over the past two decades reveals a concerted attempt by a planning authority and a community to recognise and protect residential character based on clear principles and thorough strategic planning.

This concern to acknowledge place identity, or to maintain a sense of place in the towns and villages of the Blue Mountains, was first articulated by the Council as early as 1991 with the adoption of the *Blue Mountains Character Guidelines DCP No. 10*.

Since that time the approach to residential character has evolved and emerges as a key theme in successive principal planning instruments in the Blue Mountains, each founded on a public planning process underwritten by a highly engaged community:

- Environmental Management Plan 2 1995
- Draft LEP 1997 and Commissioners of Enquiry Public Hearing 1998
- Environmental Management Plan 2002 – Residential Character Study
- Draft LEP 2002
- LEP 2005

Blue Mountains Character Guidelines DCP No. 10 (1992)

In February 1991 the Council adopted the *Blue Mountains Character Guidelines (DCP No. 10)*. It sets out a case for the Blue Mountains Town Character in the following terms:

The Blue Mountains has long been regarded as a special place – from times of its being an Aboriginal meeting ground through to contemporary tourist destination. The prime attraction has always been the qualities and grandeur of the natural landscape. Further outstanding qualities have developed through the distinctive character and heritage of human settlement...

Within the unique setting towns and villages, houses and gardens have grown with distinctive charm and character. Older areas show earlier settlement patterns of increasing heritage value; whilst some newer areas have responded well to their bushland setting. Thus a unique cultural landscape has developed that is rich and diverse – and very different from the plains of suburbia.

These aspects of town character should be highly valued and conserved. Growth and change will occur – but it must be compatible with the special and unique qualities of this “City in a National Park”.

From this foundation the DCP identifies the “Character of Settlement”:

The settled portions of the Blue Mountains are remarkable in the way that evidence of all the major stages of development from the earliest settlement are still visible. Towns and villages, roads and laneways, buildings and landscapes, all illustrate successive stages of development and change whilst retaining a remarkable unity and character – particularly in the upper Blue Mountains.

There is much of value. Perhaps most overlooked but of primary heritage significance is the extent and quality of remaining ‘ordinary’, ‘everyday’ places from yester year. Whole streets and precincts that are no longer ordinary or everyday to our society but remain distinctive to Mountains towns and values.

The Guidelines also identify the “Value of Character”, which has informed the approach to managing character since:

Residents develop an emotional attachment to their place in the Mountains probably more readily than those in anonymous suburbs. There is greater likelihood of community pride and involvement whilst distinctive character remains.

Householders need a satisfying place, an environment for living that meets individual needs. The Mountains offer a range of quality living environments.

Visitors require the Mountains to be different from elsewhere – or there’s no incentive to visit or stay. The Mountains economy depends upon retaining town character.

People value highly what is distinctive and unique. The ‘special place’ is prized for its contribution to our feelings, our spirit, our life. The Mountains has many special places.

Business relies upon having a product marketability different or better than competitors. The ‘cultural landscape of the Mountains’ is presently marketable – whilst it remains conserved.

***Tourism** depends upon remaining special. Once the natural landscape has been inspected or the weather closes in, it is the charm and character of the towns and villages that is important.*

***Public interest** in the heritage of houses, gardens and regions like the Blue Mountains is on the rise. When one region so accessible to Sydney can link past and present so well its value is enormous.*

***Culturally**, at a time when much of society is seen to be becoming increasingly standardised and monopolised, it is increasingly important to maintain diversity and specialness in every way.*

In establishing the case to support a planning response to protect character in the Blue Mountains, the DCP remains relevant today and aligns with collective values which are not just social and cultural, but economic. Our appreciation of place is intrinsically personal and subjective, but the DCP framed a number of principles that began to frame the preparation of planning instruments.

The Council's response to character through its DCP was seen by practitioners at that time as leading practice: the *Blue Mountains Town Character Guidelines DCP* was awarded the Royal Australian Planning Institute Commendation for Excellence in 1992. It provides a very early and solid foundation for the subsequent development of the Blue Mountains planning framework and its approach to managing character.

Environmental Management Plan No. 2 and DLEP 1997 (1995-1997)

The DCP did not provide the full answer to conserving character. In its subsequent preparation of a City-wide LEP, it became evident that a zoning response is required to achieve that outcome.

Without an integrated framework to guide development, identified and valued character can be compromised as evidenced incrementally through the development assessment process. This realisation informed the Council's identification of a character-specific zone in 1995 as part of a local environmental study known as *Environmental Management Plan No. 2 (EMP 2)*, which formed the background study to DLEP 1997.

In place of a conventional residential zone, EMP 2 proposed two zones:

- Living, and
- Living Conservation

This was a significant development, breaking the orthodoxy of the traditional Residential 2(a1) zone as used across NSW. It distinguishes between a base residential zone (Living) and a new zone aimed at character conservation (Living Conservation):

The first proposed zone, the Living Conservation Area, will aim to satisfy the residential objectives which seek to conserve those residential areas with a bushland or heritage setting, located typically on large lots, and with significant scenic or visual amenity. (EMP: 2, 1997: 112)

The objectives for this new zone echo aspects of DCP 10 and include:

To conserve the character of those residential areas of the City which Council considers to have significant amenity because of their bushland or heritage setting, or because they contain unique natural or physical elements which are significant components of the City's cultural landscape.

To ensure that building form, including alterations and additions are in character with surrounding development and does not detract from the amenity of adjoining residents or the existing quality of the environment.

To provide for the residential housing needs within the City where the only type of residential development that can occur is single detached dwellings that match the capacity of the environment to sustain such development. (EMP: 2, 1997: 112)

The EMP goes on to state that the intention of the zone is to provide residential areas where:

Bushland, heritage and other natural and physical features that provide character to a neighbourhood are conserved. (EMP: 2, 1997: 112)

The Living and Living Conservation zoning was taken forward under DLEP 1997, which was exhibited in October 1997 to January 1998.

Commissioners of Enquiry – Public Hearing (1998)

DLEP 1997 gave rise to a public hearing in 1998, which the Office of the Commissioners of Enquiry for Environment and Planning described as one of the largest hearings undertaken by the Commission into a local environmental plan in NSW.

The Office of the Commissioners of Enquiry was constituted under the *Environmental Planning and Assessment Act 1979*, to conduct hearings in public and to provide expert recommendations to the Minister for Planning. They also conducted significant numbers of public hearings for councils.

The Commissioner identified:

The Living Conservation zone is the second largest issue raised in submissions to the Public Hearing, with 119 or 38% of submissions expressing support or objection to this zone. The Living Conservation zone is a new low density zone introduced by Blue Mountains City Council that is designed to conserve areas with significant character value because of their setting or unique natural or physical elements. In order to achieve this objective the Council has zoned such land to only allow single detached residential development, has limited the number of ancillary uses permissible in this zone and has imposed more restrictive provisions on subdivision and building heights in this zone than any other. The Living Conservation zone is more restrictive than the lowest density zoning under LEP 4. (1998: 65)

The Public Hearing was convened over four weeks. As the second largest issue with DLEP 1997, the Living Conservation zone was subject to extensive submissions, site inspections and review by an expert Commissioner. In providing an evidence base for the creation of a Living Conservation zone, the findings of that Commission remain significant:

Commissioner's Response

The Commission is generally in agreement with the creation of the Living Conservation zone and its zone objectives. The Commission is of the view that existing uses on a site or its existing zoning do not provide sufficient justification by themselves, for the retention of the current or existing zoning. (1998:70)

The Living Conservation zone, in its aims to preserve character, represented a significant change from existing zones. By its nature it is more restrictive than a conventional residential zone and was an important planning intervention in the Blue Mountains. The Commission's endorsement directed the development of the Council's planning framework in relation to this zone over the following years.

As a matter to be detailed further below, the function of zone is to prescribe permissibility of development and it is only a zone that can achieve that outcome. For a character area, the range of potentially incompatible uses needs to be managed. By way of example, the Commissioner determined the case of dual occupancies:

Conversely, the evidence is that dual occupancy development would be in conflict with the basic objectives of the proposed Living Conservation areas; namely conserving the character of significant areas, providing single detached dwellings, and allowing development within the environmental capacity of a sensitive residential environment (1998: 72)

Along with hundreds of individual recommendations, the Commission handed down 12 major findings on DLEP 1997, which included:

The Commission supports the objectives and intentions of the proposed Living and Living Conservation zones, but recommends review of the application of these zones (and specific review in certain locations or within certain boundaries) (1998: ix)

This finding directed the development of the Council's DLEP 2002. However, it also led, along with a number of strategic planning responses, to the Council preparing the *Residential Character Study* to better substantiate and further define the Living Conservation zone.

Residential Character Study (2002)

As outlined in the Council's *EMP 2002 – Planning Study Vol. 1*:

Consequently, a full review of DLEP 1997 was carried out to provide a more comprehensive understanding of the many elements that contribute to urban character in the Blue Mountains, and to develop appropriate planning tools to protect and enhance that character.

This included a detailed character study of the residential areas of the city. The aim of the Residential Character Study (BMCC 2002b) was to establish what types of character are important and where they are found. The findings of this study have been used to justify the application of residential zones and to develop provisions for the protection of residential character in DLEP 2002.

The character study was undertaken in several stages, leading to the establishment of definitive character types:

- a review of previous planning reports and studies to establish Council's previous approaches to the identification of character; and a review of heritage studies to provide information on the historical context and evolution of character types within the Blue Mountains;*
- an extensive character study involving site inspections and analysis of all residential areas within the DLEP 2002 area. A broad array of character types, including many variations on themes, was identified and mapped for these areas. The study was site specific and presented character types within local street contexts. The character patterns arising from this study were presented at stakeholder workshops for DLEP 2002 in May 2000;*
- a secondary examination of the study area, to consolidate the character types and identify areas that reflected these character types in a unified way. This consolidation made it possible to incorporate the findings of the character study into land-use provisions within DLEP 2002; and*
- incorporation of land-use zones, protected areas and management provisions into DLEP 2002.*

The character review process resulted in the identification of the following general character types:

- Bushland setting*
- Visually prominent areas*
- Garden setting*
- Dominant landscape setting*
- Visually significant streetscapes*
- Period (older) housing areas*

(2002: 23-24)

The preparation of DLEP 2002 utilised a range of planning tools to retain the contribution of these typologies to the character of the Blue Mountains.

DLEP 2002 and response to public exhibition

The six character types identified through *Residential Character Study* were translated into DLEP 2002, with the proposed Living Conservation zone comprising only those with a garden setting, dominant landscape setting or visually significant streetscape.

As consequence, the Living Conservation zone was applied to areas dominated by larger allotments (average size 1100m²) that are generally closer to the village centre, where there is no major servicing or environmental constraint, and where the dominant character is of single dwelling, traditional gardens and visually prominent streetscapes. The range of permissible

residential development in the zone is restricted to dwelling house and precludes dual occupancies and higher density development in order to preserve the character and amenity of these areas. These allotments are often located on historically significant tourist routes such as Falls Road, Wentworth Falls and Leura. The protection of these areas contributes to the appealing quality of the villages and is important, both for its inherent value to the local community and as a major contributor to the local tourist based economy.

The Living Conservation zone, was limited to 4452 lots in the City. This zoning approach worked in tandem with measures to protect areas of older housing, identified as a Period Housing Area. This overlay for period housing areas was applied to 2932 properties and sought to protect these areas from demolition and inappropriate infill development. Those areas containing both older housing and being within a Living Conservation zone equates to 1024 parcels.

The Living Conservation zone (which equates to the R6 Residential Character zone) comprises the following number of lots, and allocated across the villages as shown in the table below:

Village	Number of R6 zoned lots per town	R6 zoned land per town (ha)	R6 zoned lots as a percentage of total residential zoned lots per town (%)
Blackheath	754	69.17	20.29
Bullaburra	138	14.80	17.63
Faulconbridge	49	5.53	2.87
Glenbrook	853	92.13	44.71
Hazelbrook	99	7.80	4.53
Katoomba	280	23.39	6.01
Lawson	194	20.26	13.95
Leura	1104	127.50	38.87
Springwood	145	16.31	4.74
Warrimoo	7	0.48	0.75
Wentworth Falls	829	100.61	23.48
TOTAL:	4452	477.98 ha	11.95%

DLEP 2002 was exhibited in October 2002 and attracted 1404 public submissions. 221 submissions were made to DLEP 2002's approach to "Locality Management – Living zones". This provision applied to the suite of three Living zones and its zone objectives, including the Living Conservation zone.

Within those submissions, 189 matters (80.8%) were raised in support of the planning approach adopted for the Living zones, out of a total of 234 matters raised on that issue. This comprised over 120 individual submissions and 101 proformas. This was a significant public validation of the revised approach to the Living zones following the outcomes of the public hearing into DLEP 97.

Given that the Living Conservation zone of DLEP 1997 was one of the most highly contested aspects of the public hearing, this outcome following a second major public exhibition process provides a solid foundation for the Living Conservation zone.

Local Environmental Plan 2005

Local Environmental Plan 2005, with its provision for a Living Conservation zone, was made by the Minister for Planning and gazetted on 7 October 2005.

As set out above, the preparation of that plan commenced with EMP 2 in 1995, was founded on the outcomes of two major public exhibitions, an extensive public hearing by the Commissioners of Enquiry and subsequent studies and investigations in response to that hearing. The completion of LEP 2005 represented the culmination of a significant investment by the Council, the Department and the Parliamentary Counsels Office. The LEP and its studies were recognised as the 'Land Use Planning' category winner in the Federal Government's *National Awards for Local Government 2004*. But moreover, the level of the community response to a local environmental plan was unprecedented in the Blue Mountains and provides the 'strategic conviction' for the achievement of the following Principal Objective:

12 (h) To identify and retain the diverse built and landscape elements that contribute to the character and image of the Blue Mountains.

This zone, its objectives and its related controls are an intrinsic part of the LEP 2005 planning framework. It is possible, and has been necessary, to disaggregate those components to comply with Standard Instrument formats. However, the underlying function of a character zone remains: to prescribe its purpose via zone objectives and to determine the permissibility of land uses that are compatible with its defined character.

The legitimacy of planning instruments and their technical approach relies on the public process of their formulation as much as the policy itself. The approach that led to LEP 2005 and its response to identifying and maintaining its residential character spans a decade. It is characterised by a deliberative process, building on previous initiatives, that is informed by the community's expectation to achieve the protection of residential character.

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

In developing a standard instrument LEP, a number of options to translate the LEP 2005 Living – Conservation zone were investigated. It was determined that the most appropriate means of protecting residential character was through zoning, but that no suitable zoning currently exists in the Standard Instrument. This paralleled the State Governments consultation on planning reforms which included the proposal to add a residential character zone to the Standard Instrument in the Green Paper. This section will detail why a zoning control is the best means of protecting residential character in the Blue Mountains, and the merits for its application State wide.

2.1 Protection of residential character in NSW

The case for incorporating an R6 Residential Character zone within the Blue Mountains LEP, by necessity, demands a consideration of the Standard Instrument, and the merits for the State of a residential character zone.

The Standard Instrument performs a number of functions. On one hand the instrument provides a standard set of provisions which are utilised across the State, promoting uniformity of approach between planning jurisdictions and enabling the Government to direct planning priorities and establish best practice. On the other hand, standard planning provisions can curtail a community pursuing its planning objectives. This can happen as a deliberate policy direction and intervention of the State or as a default outcome if the instrument is not kept updated and responsive to changes in policy or practice.

Central to any planning instrument in NSW is its zoning structure, which is the tool employed to permit or prohibit development. So fundamental are these zoning controls that the NSW Standard Instrument sets the direction:

2.1 Land Use zones [compulsory]...

Direction 1. Additional zones or subzones are not to be prescribed

In preparing a LEP a Council cannot create new zones, nor can it apply 'subzones' in which areas within a zone are identified and subject to a different zoning criterion. To do so would break down the structure and function of the Standard Instrument.

Since 2006, and in common with other States, the Department has exercised increased flexibility with the Standard Instrument enabling councils to provide and update local provisions to respond to local circumstance. This flexibility, increasingly recognised in contemporary planning systems, does not however extend to Part 2 (Permitted or prohibited development) of the Standard Instrument in NSW.

As a consequence, the problem and its resolution, needs to consider:

- If it is necessary to use a zoning control to protect character?
- If a 'subzone' or a character overlay could be used?

Use of a zoning control to protect character

Currently the planning framework in the Blue Mountains operates with the Living Conservation zone as the base plate for identifying residential character, complemented by a range of planning tools.

A zone has a purpose, as expressed by core objectives and supplementary local objectives. The core objectives of the Residential zones of the Standard Instrument do not accord with those of Living Conservation zone or the role of a residential character zone more broadly. This alignment between zone objectives and the land to which it is applied is fundamental to a zoning structure whether in the Standard Instrument or an LEP.

Council proposed in DLEP 2013 the following low density residential zoning framework:

- R2 – Low Density Residential (consistent with the Living zone LEP 2005), and
- R6 – Residential Character Conservation (consistent with the Living Conservation zone LEP 2005).

Both are low density residential zones. In common with the Victorian and Queensland frameworks, the R6 Residential Character zone is the more restrictive. The nature of the R6 zone is that character derives from its historical, larger lot subdivisions that nest within the most established parts of an urban settlement. In some areas pressures of infill development and subdivision have altered the urban fabric in areas of higher growth, but this has not been the case in the Blue Mountains.

The zone prescribes land uses that are compatible with retaining a residential character based on single detached houses. As a zone concerned with preserving residential character, the Living Conservation is necessarily restrictive when it comes to permitting the introduction of different development types, which would be inconsistent with the prevailing character. Such a zone is required to prevent alternative developments such as dual occupancies, medium density forms such as Seniors Housing or non-residential development types that would alter the prevailing building forms and settings. It is also the case that protection of the valued character is not simply about avoiding development of inappropriate character or screening such development by extensive landscaping.

Instead, the appropriate zone is more akin to that described in the "Reformed residential zones for Victoria" of July 2014, in which the Victorian Government explain that a Residential Character zone is applied in the following circumstance:

In areas where single dwellings prevail and change is not identified, such as areas of recognised neighbourhood character or environmental or landscape significance.

Gradual and moderate change is proposed in the R2 Low Density Residential zone, compared to the R6 zone in which no change is identified. This starts with a comparison of permissible uses so that the prevalence of single dwellings is retained:

R2 – Low Density Residential	R6 Residential Character (Conservation)
Bed and Breakfast accommodation	Bed and Breakfast accommodation
Boarding Houses (M)	
Building identification signs	Building identification signs
Bushfire hazard reduction work	Bushfire hazard reduction work
Business identification signs	Business identification signs
Child care centres	Child care centres
Community facilities	
Dual occupancies	
Dwelling houses (M)	Dwelling houses
Environmental facilities	Environmental facilities
Exhibition homes	Exhibition homes
Flood mitigation works	Flood mitigation works
Group homes (M)	

Health consulting rooms	
Home-based child care	Home-based child care
Hospitals	
Neighbourhood shops	Neighbourhood shops
Places of public worship	
Public administration buildings	
Respite day centres	Respite day centres
Roads	Roads
'Secondary dwellings'	'Secondary dwellings'
Seniors housing	

For the purpose of this exercise, it is necessary only to demonstrate that there is a difference in the permissibility framework between the two zones, which in turn can only be achieved via a zoning control. At no stage through this process, has the Department disagreed with the underlying premise of the Living Conservation zone.

The need for a purpose-specific zone to protect character was identified by the Government in the *Green Paper*, and the *White Paper* had reiterated the position of a mechanism to protect suburban character albeit with different tools. NSW has retained a Standard Instrument system based on zones and, whilst that remains the case, a zoning control is the appropriate mechanism to provide a foundation for residential character.

Subzones and character overlays

The Standard Instrument specifically precludes the use of 'sub-zones'. Prior to the release of the *Green Paper* in 2012, the Department exhibited a proposal to alter the Standard Instrument to enable the use of sub-zones, suggesting this would create greater flexibility for councils in achieving local planning outcomes. This was in response to requests from councils.

In the context of this review, and by way of example, a zone would be applied to a residential area (effectively a combination of R2 and R6), and a sub area of the zone, being an area with particular character attributes, could be subject to different zoning controls. At one level a sub-zone provides increased flexibility. At another, sub-zones require careful management in order to not undermine the benefits of standardisation. Evidence of this application was not contained in the Department's proposal.

This proposal was subject to some adverse responses from diverse stakeholder groups, generally because of a lack of information about its purpose and function. As an option it has not been further pursued by the Department.

Like a character zone, character overlays can serve to identify an area to be subject to particular controls. This does not however extend to zone objectives or permissibility. Whether a zone or an overlay, they can both be combined with integrated controls around subdivision, site coverage and setbacks. These other elements are already able to be built into an LEP under the Standard Instrument. However, these need to be achieved in conjunction with a zone control to manage permissibility.

"New zoning to protect character": the NSW Green Paper

Upon the release of the NSW Government's *Green Paper* in July 2012, the *Sydney Morning Herald* reported the Government's proposal to introduce a new zone to protect character, with the Minister stating:

We have some of the finest suburban landscapes anywhere in Australia and we should preserve them.

(SMH, 14 July 2012)

The Government's *Green Paper* indicated:

Three zones are proposed to address problems with the current zoning framework...Finally, there are many complaints from community members about the impact of new development on the existing local character of a suburban area.

(*Green Paper*, July 2012: 44)

These problems or limitations with the Standard Instrument zoning framework have not just been identified by Blue Mountains City Council, but by the Government itself. Addressing these problems does not require a new planning act, but an amendment to the Standard Instrument. The initial limitation of the Standard Instrument in 2006 to recognise suburban character in its zone structure has been identified by the Government as part of – but potentially subject to – the broader reform of the NSW planning system; it remains to be taken forward.

The Government stated:

...there is a need for a new zone that gives greater certainty about what can and can't be developed in an area the local community wants to preserve because of the importance of the urban character.

[July 2012:44]

The underlying need for a zone, as distinct from character overlays, precincts or subzones, is identified by the State Government:

There may be some locations within a local government area that the Council and the whole community want to preserve because of the proven significance of the urban character or because of its established development patterns and amenity. The NSW Government is proposing to introduce a Suburban Character Zone that can be applied to an area that will explicitly preclude development that adversely impacts on the local character.

[July 2012:45]

The Green Paper goes on to state that councils will have the capacity to preserve character by excluding medium or high density development. Determination of permissibility is the role of a land use zone, not other planning devices, and hence the Government's proposal.

The NSW White Paper

Between the meetings with Minister, the NSW Government released its *White Paper: A New Planning System for NSW* in April 2013. One of the initiatives of this reform agenda was to dispense with a fine grained suite of residential zones. Instead it was proposed to have just one residential zone. This is in complete contrast to the Green Paper from the previous year, which proposed additional zones, including the Suburban Character Zone.

However, the White Paper still proposed to introduce "Suburban Character Areas", noting:

Suburban Character Areas – where council and the community want to preserve the proven significance of the urban character, including established development patterns and amenity – will be an element of the Residential zone. Specific Suburban Character controls, for example, to exclude medium or high density development, will be contained in Part 3 Development Guidelines.

(2013: 96)

Any planning controls would therefore be by way of 'guides'. There was doubt raised by some legal and other commentators critical of the capacity of overlays and the like to preserve character. Significantly in this case, following the extensive response to the Green Paper, the White Paper maintained recognition of suburban or residential character, which is absent from the current Standard Instrument. The *Planning Bill 2013* introduced in October 2013 to deliver the reform process was not supported and has not progressed. The Bill had in fact retained the Standard Instrument as the mechanism to provide for zones in NSW but without clarifying one way or another the position on residential character. The Standard Instrument therefore retains its primacy in determining zoning structure in NSW.

Emerging approaches in Victoria and Queensland

At the same time as the reform process was proceeding in NSW, but realizing a different outcome, both the Victorian and Queensland Governments had moved to embed a character zone in their standard instruments.

Within the Victorian planning system there has been statutory recognition of the need to protect character since 2001, supported by detailed practice notes. This statutory recognition is generally attributed to the 'save our suburbs' movement in the 1990s, which was a community movement in response to urban consolidation. The Victorian Planning Provisions (VPPs) had

relied since that time on character overlays as proposed by the NSW White Paper. In July 2013, however, the Government revised this approach and gazetted the “Neighbourhood Residential Zone” as part of the VPP, with the following purpose:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To recognise areas of predominantly single and double storey residential development.*
- *To limit opportunities for increased residential development.*
- *To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics.*
- *To implement neighbourhood character policy and adopted neighbourhood character guidelines.*
- *To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.*

This function is directly aligned with the proposed R6 Character Conservation zone of DLEP 2013. At the time NSW was proposing to reduce the number of zones, the Victorian Government was introducing new zones. The likely application of the new character zone was identified by the Victorian Department of Planning and Community Development in the following terms:

The likely application of the Neighbourhood Residential Zone is in areas where single dwellings prevail and change is not identified, such as areas of recognised neighbourhood character, heritage, environmental or landscape significance.

The Living Conservation or R6 zone as proposed by this Council, is applied in these same circumstances, specifically to protect neighbourhood character and landscape setting, and this echoes the Blue Mountains EMP 2 zone provision of 1995.

Similarly, the Queensland Planning Provisions (QPPs) were gazetted in June 2014 under the *Sustainable Planning Act 2009* and provide for the “Character Residential Zone” with the following purpose:

The purpose of the character residential zone code is to provide for a particular character of a predominantly residential area. The residential uses are supported by community uses and small-scale services and facilities that cater for local residents.

Within the ongoing amendments to the Queensland framework since 2009, a council is also provided considerable flexibility to make its own provisions to protect character under the prescribed zone. The Brisbane City Plan 2014 commenced on 30 June 2014, with the State Government acting as ‘strategic enabler’ to deliver the latest QPP in concert with the outcomes of the Brisbane City Plan.

The Brisbane City Plan 2014 adopts both a character zone and an infill housing precinct that protects older housing stock, which includes a demolition control. This approach was first developed in the Brisbane Plan 2000 and is not dissimilar in its fundamental respects to the two-pronged approach of the Living Conservation zone and Period Housing Area developed under the *Residential Character Study*, as adopted under LEP 2005 and translated into DLEP 2013.

At a strategic level, the Victorian, Queensland, and NSW Governments have recognised the need to provide for a residential character zone; however this has not yet been implemented in NSW.

A new zone under the Standard Instrument

The Department and the Minister had foreshadowed that amendments to the Standard Instrument may be required to provide for appropriate planning outcomes for the Blue Mountains. In Council’s opinion the case for recognising residential character has been made in the Blue Mountains, was supported in the public response to the Green Paper and aligns with the position of other State Governments. The Department nor the Council has identified an alternative means for bringing this option forward under the Standard Instrument. For this reason, an amendment is required.

For its part, the Council seeks the introduction of a residential character zone with sufficient flexibility to meet the needs of the Blue Mountains. It also needs to be adaptable enough to align with a range of applications required by councils across the State. In terms of its broader application the aim of the residential character zone could be:

To identify and retain the character of residential areas where single dwellings prevail and change is not anticipated, such as areas of recognised neighbourhood character, heritage, environmental or landscape significance.

Derived in part from the Victorian experience, extending back to 2001, this principal aim for a character zone would support the range of typologies that comprise the built and landscape elements that contribute to character. It would provide a base from which different planning jurisdictions can analyse and identify the different character types and means to retain them.

Concern has been expressed previously by the Department that a new R6 zone could set a precedent for new standard instrument zones. The provision of a character zone, appropriately applied, can only further fulfil the objects of the *Environmental Planning and Assessment Act 1979*, but this requires a balanced examination and should work in tandem with the review of zones where growth and change is proposed.

Both steps of the reform process, the *Green Paper* and the *White Paper*, recognised the need for a response to, and recognition of, residential character. They are distinguished by the different tools they proposed. The reform process provided an unprecedented community engagement exercise in NSW to gauge public opinion in relation to such a zoning response. It forms a sound basis on which to consider an amendment to the Standard Instrument.

As councils across the State have completed their standard instruments, the opportunity arises to introduce a revised zoning structure to be taken up by any council in the subsequent phases of updating their LEPs. It is the Council's submission that the time has come to update the Standard Instrument to recognise residential character which can be balanced with other policy priorities linked to the State's zoning structure.

2.2 Justification for a residential character zone in the Blue Mountains

Conversion of "Living Conservation zone" within DLEP 2013

At the same time as the review of the Green Paper, Council staff had numerous meetings and exchanges with the Department following the Minister's letter in June 2012, which continued into early 2013. At that time it became increasingly evident that there was no natural conversion of the "Living Conservation zone" available under the Standard Instrument.

The Council and the Department variously proposed the following translation:

- To RU6 (Transition zone) – a rural zone applied at the urban fringe
- To R2 (Low Density Residential) – the zone applied to the Living – General zone under LEP 2005 and already adopted under DLEP 2013 for that purpose
- To R5 (Large Lot Residential) – a very large lot rural-residential zone.

The inability to 'land' an appropriate zone speaks to the incompatibility of the Standard Instrument zones to provide for this particular planning outcome.

Despite this difficulty with the Living Conservation zone, discussions were generally constructive, and the Department acknowledged a key concern of the Council that Seniors Housing SEPP should not apply in the "Living Conservation zone" areas and that they would support an exemption to this end (Attachment 1).

However, notwithstanding the generally constructive approach by the Department, the anomalies with the Standard Instrument zones became apparent, as did the need for a new character zone. It was equally evident that the provision of this zone, which requires an amendment to the Standard Instrument, would not be forthcoming without the support of the Minister.

Meetings with the Minister

On 14 March 2013, the Council's Mayor, Deputy Mayor and staff met with the Minister to seek agreement on the remaining seven key provisions required to enable the effective translation of the Council's planning scheme into DLEP 2013. One of the key provisions identified by the Council was the need to incorporate the equivalent of the Living Conservation zone into DLEP 2013. The Minister and senior Department staff were generally receptive to the resolution of the other outstanding key provisions, adopting a flexible approach to facilitate the preparation of DLEP 2013, which was in line with the Minister's commitments expressed in June 2012. This support has resulted in a range of local provisions in the Blue Mountains not seen elsewhere in the State.

Following the initial meeting with the Minister, it was suggested that all other issues were resolved, but it became clear that the difficult, remaining issue was the conversion of the Living Conservation zone into the Standard Instrument. The Department had written to Council on 12 June 2013:

The proposed conversion of the Living Conservation zone into a new Character zone is not supported as the broad thrust of the White Paper planning reforms is to create less zones not more.

In response, the Council's Mayor, Deputy Mayor and staff again met with the Minister and Senior Departmental Staff on 21 August 2013 to discuss the need for a new zone under the Standard Instrument.

Council outlined the key attributes and outcomes it sought with the retention of the Living Conservation zone. At that meeting the Minister requested advice from the Department as to what would be regarded as the simplest mechanism to achieve the "Living Conservation" or R6 zone outcomes. It was agreed by all, including the Department, that a new zone was the simplest. Promoting simplicity is one of key objectives of the planning reforms.

The Department argued that notwithstanding, a new zone was inconsistent with the outcome of the recently released White Paper, but the Minister noted that management of the suburban character issue was not, at that stage, resolved under the White Paper and that a new zone is likely to be welcomed and relevant to other councils.

The Minister asked the Department to prepare two options for consideration:

- 1) Creation of a new zone to address suburban character
- 2) Managing as an area or layer within another zone, being an option previously suggested by the Department.

The Department's review of these options were not been made available to the Council as it continued with its preparation of DLEP 2013. The Mayor wrote to the Minister on 27 August 2013, to thank him:

... for agreeing to give close consideration to the merits of creating a new residential character zone or equivalent, which will ensure that the key elements of the Blue Mountains planning framework are retained in the translation to the Standard Instrument Format.

A Mayoral Minute of 17 September 2013, reporting on the outcomes of the meeting with the Minister, noted that the:

...Planning Proposal has been prepared on the basis that the new key provisions as sought by the Council will be agreed, including a new zone equivalent to the Living Conservation Zone in LEP 2005.

With this understanding, the Council went on to finalise its Planning Proposal for DLEP 2013 and submitted it to the Department on 20 September 2013.

Gateway determination

Upon consideration of Council's DLEP 2013 and Planning Proposal, the Department issued a Gateway Determination on 15 October 2013 to permit public exhibition. As part of the "Living Conservation Zone Translation (Proposed R6 Zone)" the Department noted the detailed

discussions with the Minister, the Department and Council. However the Department stated that it “remained concerned about the precedent that the R6 zone may set for new standard instrument (SI) LEP zones”. The Department instructed the Council that, in addition to its new R6 option that the Council must also exhibit the R5 Large Lot Residential zone:

Rather than support the R6 zone outright, it is proposed that the former Living Conservation zone land be identified as both the R6 zone and the R5 zone for the purposes of public exhibition.

This step is important for the case of the R6 zone for a number of reasons:

- 1) The Department had not rejected the R6 option, enabling the R6 option to be publicly exhibited.
- 2) The Department had settled on what it describes as the ‘best fit’ Standard Instrument zone, being the R5 zone to apply in the place of the Living Conservation zone, which in Council’s view was a misapplication of the zone in the Blue Mountains context.

On the day of the receipt of the Gateway Determination, the Council considered a Mayoral Minute, resolving to seek a formal review of the Gateway Determination on the basis that the R5 zone, as required by the Department, was inappropriate as it would apply a rural-residential zone in the context of the Living Conservation zone. In its letter to the Department of 25 October 2013, the Council stated:

Council understands the limitations of relying on the R6 Residential Character Conservation zone. However, we reiterate that the current problem with the Standard Instrument framework has been identified by the NSW Government some time ago as part of the Green Paper. The issue was also acknowledged by the Minister for Planning and Infrastructure at the most recent meeting with the Mayor, with the outcomes of that meeting [being an agreement] to come to an appropriate resolution. Given this background it is considered that the matter should now be resolved to a point that will enable the Blue Mountains to finalise its planning instrument with a suburban character zone.

A revised Gateway Determination was issued on 1 November 2013. It removed the requirement to apply an R5 zone to the premier character of the Blue Mountains, but the Acting Deputy Director General of the Department stated:

...it is understood that Council will now submit further justification for Council's proposed R6 – Residential Character Conservation zone in place of a version of the R5 zone once the plan has completed public consultation and is submitted for making. It should be noted that the R6 zone is not consistent with the SI order and there is a risk that it cannot be supported.

The Department subsequently requested that the Council bring forward the preparation of its case, so that it can be considered ahead of the draft plan being submitted for making. In response to this request Council submitted its case for the R6 Residential Character zone in October 2014.

Alternative zones with the Standard Instrument: the case of R5

During the earlier plan-making process of DLEP 2013, the Council and the Department had reviewed the alternative Standard Instrument zones in an effort to find a reasonable equivalence to the Living Conservation zone.

Such an exercise is important as it:

- recognises that a zoning function is accepted as necessary, and
- is directed by the shared understanding that it is preferable to use an existing Standard Instrument zone without having to create an additional zone, but on the proviso that the zone is fit for purpose.

As previously detailed, an initial Gateway Determination had been issued by the Department for DLEP 2013 on 15 October 2013, which nominated (without consultation with Council) that the R5 zone was the ‘best-fit’ under the Standard Instrument and was required to be exhibited as an option.

In response, the Council had notified its decision on 25 October 2013 to appeal to the NSW Planning Assessment Commission about the Department's decision to impose the R5 zone option on the Blue Mountains. The problem for Council was twofold, firstly it had not endorsed this R5 Standard Instrument zoning option to replace the Living Conservation area in its own LEP and secondly, this option was unsatisfactory and technically deficient as will be illustrated below.

Although the Department revised its Gateway Determination on 1 November 2013 to delete this requirement for the purpose of exhibition, it stipulated that the Council was to make its case why the R5 zone should not be applied in a place of the Living Conservation zone as an alternative to creating the new R6 zone. This was presented in Council's previous submission to the Department on the case for the R6 Residential Character Conservation zone.

As presented below, the R5 zone is shown to be unfit for this purpose and yet at is the best-fit identified by the Department it only serves to underscore the view that a new zoning alternative for residential character is required.

R5 zone: function and application

It is necessary to briefly consider the function and application of this alternative zone. In its planning circular, the Department specifies that the R5 Large Lot Residential zone:

"is intended to cater for development that provides for residential housing in a rural setting, often adjacent to towns or metropolitan areas."

The State government formally identifies R5 as a "rural-residential zone" in its Rural Lands SEPP. It is a zone used by councils with rural-residential areas, where there is a need to manage conflicting land uses between the interface of large lot residential development and surrounding rural undertakings. Such land is identified by having the largest lot size of the residential suite of zones before transitioning into rural zones. It is found on the edge of towns, bordering the rural fringe.

A zone has a particular purpose based on its application to the appropriate areas, but also in setting mandatory objectives that development is required to meet. This is to be standard across planning jurisdictions. Adjoining councils are an example. Hawkesbury City Council demonstrates the appropriate application of the R5 zone. As per the guidelines of the Department, this zone has been applied to substantial lots in the Hawkesbury adjoining rural land and outside, but adjacent to, townships.

This is in direct contrast with Living Conservation zone or 'Residential Character' zone. It is never adjacent to towns, but rather at the heart of the most established suburban areas of the Blue Mountains townships, often in close proximity to town centres as shown in the case of Wentworth Falls. In most respects, if not in all, the location and attributes of the Blue Mountains Living Conservation zone are contrary to an R5 zone.

As the R5 zone is rural-residential, its function is to provide housing in a rural setting on substantial lots. The R5 zones in south Penrith have a minimum lot size of 4,000m², through to examples of the R5 zone in the Hawkesbury which have minimum lot sizes of two to 25 hectares; hence "Large Lot Residential". It is these lot sizes and the nature of the specific fringe or rural location of the R5 zone that gives rise to a rural setting. On this point, and in contrast, the minimum lot size for subdivision in the Living Conservation zone is 1,200m². In no way does Living Conservation comprise a rural setting.

Rather than arguing this point further on first principles, attention is drawn to the State Government's *SEPP (Housing for Seniors) 2004*. At clause 4 this State Policy identifies "Land that is not zoned primarily for urban purposes", which includes "Zone R5 Large Lot Residential". As the Council and the Department are aware, the Living Conservation zone forms a core part of the urban structure of the Blue Mountains, with many of these subdivisions dating from early settlement, in some cases located along roads of historic significance. Similarly, the community and visitors value and prize these areas for their special residential and garden character. In this context, reference to rural settings and non-urban zones do not accord with the principles of an orderly and rational land use planning system.

Mandatory zone objectives:

Secondly, should a non-urban zone be applied to the Living Conservation zone, the mandatory R5 zone objectives with which development is to comply, would not be aligned:

- The first objective of this zone is to provide housing in a “rural setting”. This is problematic for assessment purposes for the reasons outlined above – it simply does not and cannot apply to this land.
- The objective of ensuring that large residential lots do not hinder the proper and orderly development of the urban areas in the future, is not relevant to the R6 circumstance. This land is already urban and change is not proposed. It is not in transition but is highly established with the intention to preserve its built and landscape elements. Once large lot, rural-residential development is established on the urban fringe it can prevent orderly urban expansion and hence the zone objective. An understanding of the places that comprise the Living Conservation zone in the Blue Mountains makes clear that it is not appropriate to apply a transitional zone to the proposed R6 localities.
- The objective to minimise conflict between land uses between this and other zones – appropriate in the context of the R5 zone where it is necessary to manage the interface between the residential and the rural – does not apply in Living Conservation zone which interfaces with other residential areas.

The mandatory objectives for the R5 zone are designed for the rural/urban interface, not established suburban areas of the Blue Mountains villages. These mandatory objectives frame the application of the zone. This works against the adoption of the standard R5 zone, particularly when inappropriate mandatory objectives must be complied with for new development.

Broader planning framework

To put this in a broader planning context, a principal purpose of the Standard Instrument is that it provide for the orderly and consistent application of zones across the State. Should the Department impose an R5 zone in the Council’s LEP 2015, it cascades through the planning system. This is moreover the case when the R5 zone has a specific and valid role to perform in other planning jurisdictions.

Under this scenario, the premier character areas in the Blue Mountains would then be subject to the “Rural Housing Code” under the SEPP Exempt and Complying Development. One and two storey houses could become complying development depending on minimum lot width, setting outcomes which are contrary to the Living Conservation zone. Council would then need to argue for exemptions to this policy, exemptions that would not be required if an appropriate zone, properly applied, is in place.

The Department altered its position in relation to the Gateway Determination at the pre-exhibition stage and did not press the R5. The Council’s position is that imposing an R5 or other unsuitable zone on the established residential character areas of the Blue Mountains is counter-productive. The fact that such a zone could be considered the ‘best fit’ of the Standard Instrument demonstrates – and indeed reinforces – the need for a new Suburban Character zone for the Blue Mountains. As the Minister has indicated in discussions, such a zone is also likely to have application in other council areas.

DLEP 2013 and its public exhibition

DLEP 2013 was prepared as an organisational priority, representing an unprecedented concentration of Council’s planning resources to meet a strategic priority of the State Government to prepare for its reform process. The Government, for its part, contributed via the Department in the early stages of the plan-making process and in the rapid turnaround of the Planning Proposal to enable exhibition to commence in December 2013.

DLEP 2013 was exhibited in accordance with the Gateway Determination from 4 December 2013 until 5 March 2014, with the inclusion of a new proposed zone of R6 Residential Character Conservation zone. It was a direct translation of the Living Conservation zone of LEP 2005.

The Council received a total of 595 submissions to the public exhibition, raising 4,975 matters to be addressed in the review of submissions process. Of those issues, 66% were in support of DLEP 2013, 15% were neutral or providing comment and 20% were in objection.

The proposed R6 zone to replace Living Conservation was raised in 199 submissions or a third of all submissions received. There were 62 individual submissions, 14 organisations and 122 proformas. Other submissions dealt with site-specific aspects of the R6 zone and may be subject to future review of the zone at the precinct level.

Within those 199 submissions there were 206 issues raised with the proposed R6 zone, with 175 (84%) supporting the R6 Residential Character Conservation zone. In this way, the public response to DLEP 2013 character zone equates to its predecessor. Such levels of support for a plan provide a sound basis for its implementation in the Blue Mountains.

Section B - Relationship to strategic planning framework

3. Is the planning proposal consistent with the objectives and actions of the applicable regional or sub – regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

This planning proposal is not inconsistent with the Sydney Metropolitan Strategy. This Planning Proposal is seeking to move items deferred from then DLEP 2013 into the LEP 2015 with the intention of converting existing LEP provisions into the standard instrument format.

4. Is the planning proposal consistent with the local council's strategy, or other local strategic plan?

This planning proposal is consistent with the Sustainable Blue Mountains 2025 and other adopted local strategic planning policies. Draft Amendment 2 to LEP 2015 is seeking to translate Council's policy of the protection of residential character into the SI format.

5. Is the planning proposal consistent with applicable state environmental planning policies?

An analysis of the application and consistency of Draft Amendment 2 to DLEP 2015 with all State Environmental Planning Policies (SEPPs) has been undertaken as in the table below.

Note:

¹ **Not Relevant:** This provision or planning instrument does not apply to land within the Draft Amendment 2 to DLEP 2015

² **Consistent:** This provision or planning instrument applies; the Draft Amendment 2 to DLEP 2015 meets the relevant requirements and is in accordance with the provision or planning instrument.

³ **Justifiably Inconsistent:** This provision or planning instrument applies, and is considered to be locally inappropriate.

State Environmental Planning Policies in force		NOT RELEVANT ¹	CONSISTENT ²	JUSTIFIABLY INCONSISTENT ³
SEPP 1	Development Standards	✓		
SEPP 14	Coastal Wetlands	✓		
SEPP 15	Rural Landsharing Communities	✓		
SEPP 19	Bushland in Urban Areas	✓		
SEPP 21	Caravan Parks	✓		
SEPP 26	Littoral Rainforests	✓		
SEPP 29	Western Sydney Recreation Area	✓		
SEPP 30	Intensive Agriculture	✓		
SEPP 32	Urban Consolidation (Redevelopment of Urban Land)		✓	
SEPP 33	Hazardous and Offensive Development	✓		
SEPP 36	Manufactured Home Estates	✓		
SEPP 39	Spit Island Bird Habitat	✓		
SEPP 44	Koala Habitat Protection		✓	
SEPP 47	Moore Park Showground	✓		
SEPP 50	Canal Estate Development	✓		
SEPP 52	Farm Dams and Other Works in Land and Water Management Plan Areas	✓		
SEPP 55	Remediation of Land	✓		
SEPP 59	Central Western Sydney Economic and Employment Area	✓		
SEPP 62	Sustainable Aquaculture	✓		
SEPP 64	Advertising and Signage		✓	
SEPP 65	Design quality of Residential Flat Development	✓		
DSEPP 66	Integration of Land Use and Transport	✓		
SEPP 70	Affordable Housing (Revised Schemes)	✓		
SEPP 71	Coastal Protection	✓		
SEPP	(Affordable Rental Housing) 2009			✓
SEPP	(Building Sustainability Index: BASIX) 2004		✓	

State Environmental Planning Policies in force		NOT RELEVANT¹	CONSISTENT²	JUSTIFIABLY INCONSISTENT³
SEPP	(Exempt and Complying Development Codes) 2008			✓
SEPP	(Housing for Seniors or People with a Disability) 2004			✓
SEPP	(Infrastructure) 2007		✓	
SEPP	(Kosciuszko National Park – Alpine Resorts) 2007	✓		
SEPP	(Kurnell Peninsula) 1989	✓		
SEPP	(Major Development) 2005		✓	
SEPP	(Mining, Petroleum Production and Extractive Industries) 2007	✓		
SEPP	(Penrith Lakes Scheme) 1989	✓		
SEPP	(Port Botany and Port Kembla) 2013	✓		
SEPP	(Rural Lands) 2008	✓		
SEPP	(SEPP 53 Transitional Provisions) 2011	✓		
SEPP	(State and Regional Development) 2011		✓	
SEPP	(Sydney Drinking Water Catchment) 2011		✓	
SEPP	(Sydney Region Growth Centres) 2006	✓		
SEPP	(Three Ports) 2013	✓		
SEPP	(Temporary Structures) 2007	✓		
SEPP	(Urban Renewal) 2011	✓		
SEPP	(Western Sydney Employment Area) 2009	✓		
SEPP	(Western Sydney Parklands) 2009	✓		
SREPP	Sydney Regional Environmental Plan No. 20 Hawkesbury – Nepean River (No. 2 – 1997)		✓	
DSEPP	(Application of Development Standards) 2004	✓		
DSEPP	Draft State Environmental Planning Policy (Competition) 2010	✓		

This planning proposal is consistent or justifiably inconsistent with all the relevant SEPPs as detailed below. Special attention is drawn to SEPP (Exempt and Complying Development Codes) 2008 and SEPP (Affordable Rental Housing) 2009 with regard to how the proposed new zone would interact with these policies.

SEPP 32 Urban Consolidation (Redevelopment of Urban Land)

- This planning proposal is consistent with the Urban Consolidation SEPP. It relates to established residential areas. It does not relate to underutilised land suitable for multi-unit housing or land which is otherwise suitable for multi-dwelling housing.

SEPP 44 Koala Habitat Protection

- This planning proposal is consistent with the Koala Habitat SEPP. It only proposes to translate existing planning provisions for established residential areas. Nothing in this planning proposal seeks to contradict or diminish the operation of the Koala Habitat SEPP.

SEPP (Affordable Rental Housing) 2009

- If the Standard Instrument is amended to add a new residential character zone, then consideration needs to be given to how this interacts with the Affordable Rental Housing SEPP.
- The following divisions of the Affordable Rental Housing SEPP require the building type to be permissible under an EPI applying to land and would therefore be consistent with any new zone:
 - Division 1 In-fill affordable housing
 - Division 4 Residential flat buildings – social housing providers, public authorities and joint ventures
 - Division 6 Residential flat buildings – Land and Housing Corporation

- The remaining divisions list the specific zones in which they apply, and consideration needs to be given as to whether these should apply to the proposed Zone R6 Residential Character.
 - Division 2 Secondary dwellings (currently applies to R1, R2, R3, R4, R5)
 - Division 3 Boarding houses (currently applies to R1, R2, R3, R4, B1, B2, B4)
 - Division 7 Group homes (currently applies to R1, R2, R3, R4, B4, SP1, SP2)
- It should be noted that it is not proposed to make boarding houses or secondary dwellings permissible with consent in Zone R6 Residential Character.
- The intention of a residential character zone is to limit growth and change in those areas where the built environment character is considered to be of high enough quality and value as to be worthy of preservation. Therefore in determining whether the Affordable Rental Housing SEPP should apply to such areas, the potential for development under the SEPP to degrade or alter the character of an area needs to be considered.
- Secondary dwellings under the Affordable Rental Housing SEPP would be unlikely to alter the character of an area because they will only result in small structures within a landscaped setting.
- Boarding and group homes however are more intense uses. Because of their potential impact, Council proposes that the proposed zone R6 Residential Character, or a similar residential character zone added to the Standard Instrument, be exempt from Division 3 Boarding houses, and Division 7 Group homes. This approach would not significantly impact upon housing diversity or the supply of affordable housing which would be unaffected in other residential zones.

SEPP (Building Sustainability Index: BASIX) 2004

- This planning proposal is consistent with the BASIX SEPP. It concerns an established residential area, and nothing in this planning proposal seeks to override or contradict the BASIX SEPP.

SEPP (Exempt and Complying Codes) 2008

- Similarly to the Affordable Rental Housing SEPP, if the Standard Instrument is amended to add a new residential character zone, then consideration needs to be given to how this interacts with the Codes SEPP.
- The Exempt Development Codes set out restrictions on where individual structures or uses apply. The structure of these codes is generally that they apply unless otherwise stipulated. There are only three instances in the General Exempt Development Code where individual residential zones are referred to which would need to be modified to include the proposed R6 zone:
 - Subdivision 17 Fences
 - Subdivision 21 Foul and poultry houses
 - Subdivision 29 Playground equipment
 There are no references to specific residential zones in either the Advertising and Signage Exempt Development Code or the Temporary Uses and Structures Exempt Development Code.
- For complying development, the operation of the General Housing Code and the Housing Alterations Code needs to be considered.
- The General Housing Code lists the zones (R1, R2, R3, R4, and RU5) to which it applies, rather than applying more generally to all residentially zoned land. This would mean that if Zone R6 Residential Character were added to the Standard Instrument, then the Housing Code would not apply to this zone unless it was modified to include it. Consideration needs to be given as to whether this outcome is desirable.
- The Codes SEPP sets floor space, site coverage and landscaped area controls which may be inconsistent with a Council's standards, particularly in areas of more significant

built environment character which are often characterised by larger setbacks and landscaped area, and lower building heights and site coverage. This means that complying development under the Codes SEPP could have the potential to detract from the character of an area worthy of being given a residential character zoning.

- No modification would be required for the Housing Alterations Code because it applies to existing residential accommodation rather than any particular zones, and would thus apply to any existing dwelling in any new residential character zone.
- Because of this potential impact, Council proposes that the General Housing Code not include zone R6 Residential Character, or similar residential character zone added to the Standard Instrument.
- This approach would not significantly impact upon housing diversity or the supply of affordable housing which would be unaffected in other residential zones. Rather it would increase the clarity for the community, developer, builders, and land owners regarding where these types of development can or cannot occur. This differs from the current situation where the community's expectations of what could occur in many areas zoned R2 Low Density Residential may not align with what can actually occur under the Codes SEPP.
- Proposed amendment to the Codes SEPP – multi-unit housing. The introduction of medium housing forms works against the R6 zone, and its objective to preserve character areas. As with interstate jurisdictions, the introduction of the R6 zone can work to balance the increase of housing density in other areas, more suitable for the provision of medium density. The proposed amendment to the Codes SEPP underlines the need for a residential character zone.

SEPP (Housing for seniors and people with a disability) 2004

- An Accessible Housing Strategy was prepared for the Blue Mountains in 2002 as part of Environmental Management Plan 2002, and also to form the basis for an exemption from SEPP 5, which was later repealed by the Seniors SEPP. This Strategy identified Accessible Housing Areas (AHAs) in the City to meet the housing needs for seniors and people with a disability. These AHAs made it clear where accessible housing would be appropriate and protected other areas of the City from inappropriate development, including those areas to be zoned Living-Conservation under LEP 2005, and which are proposed to zoned R6 Residential Character by this planning proposal.
- Critical to achieving the objectives of a residential character zone is ensuring it is protected from large scale intense developments such as seniors living facilities which typically detract from the established character of an area.
- To this end Council is seeking to continue an exemption for the subject land from the Seniors SEPP which was supported by the Department during the development of LEP 2015, as per the letter from the DDG dated 12/6/2013 (Attachment 1).

"The Department will support Council's proposal to continue current arrangements whereby the subject land is exempt from the Seniors SEPP."

SEPP (Infrastructure) 2007

- This planning proposal is consistent with the Infrastructure SEPP. It only proposes to translate existing planning provisions for established residential areas. Nothing in this planning proposal would inhibit the operation of the Infrastructure SEPP.

SEPP (Major Development) 2005

- This planning proposal is consistent with the Major Development SEPP. It only proposes to translate existing planning provisions for established residential areas. It does not include any areas where State significant development is able, let alone, likely to occur.

SEPP (State and Regional Development) 2011

- This planning proposal is consistent with the State and Regional Development SEPP. It only proposes to translate existing planning provisions for established residential areas. It does not include any areas listed in the schedules of the State and Regional Development SEPP. The subject areas of this planning proposal are also unlikely to be location of any future State significant infrastructure.

SEPP (Sydney Drinking Water Catchment) 2011

- This planning proposal is consistent with the Drinking Water Catchment SEPP. It only proposes to translate existing planning provisions for established residential areas. A key element of LEP 2015 is the recognition and protection National Park and environment which surround the urban areas of the City, including the Sydney drinking water catchment. These protections of the Sydney drinking water catchment will apply to the land subject to this planning proposal, and nothing in this planning proposal seeks to diminish or contradict these provisions.

SREPP No.20 Hawkesbury-Nepean River (No.2 – 1997)

- This planning proposal is consistent with the SREPP 20. It only proposes to translate existing planning provisions for established residential areas. A key element of LEP 2015 is the recognition and protection National Park and environment which surround the urban areas of the City, including strong stormwater controls. These protections will apply to the land subject to this planning proposal, and nothing in this planning proposal seeks to diminish or contradict these provisions.

6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)

The following table provides a summary of the application and consistency with Section 117 Directions.

Note:

- ¹ **Not Relevant:** This provision or planning instrument does not apply to land within the Draft Amendment 2 to DLEP 2015
- ² **Consistent:** This provision or planning instrument applies; the Draft Amendment 2 to DLEP 2015 meets the relevant requirements and is in accordance with the provision or planning instrument.
- ³ **Justifiably Inconsistent:** This provision or planning instrument applies, and is considered to be locally inappropriate.

<u>Directions under Section 117(2)</u>		NOT RELEVANT 1	CONSISTENT 2	JUSTIFIABLY INCONSISTENT 3
1. EMPLOYMENT AND RESOURCES				
1.1 Business and Industrial Zones		✓		
1.2 Rural Zones		✓		
1.3 Mining, Petroleum Production and Extractive Industries		✓		
1.4 Oyster Aquaculture		✓		
1.5 Rural Lands		✓		
2. ENVIRONMENT AND HERITAGE				
2.1 Environmental Protection Zones		✓		
2.2 Coastal Protection		✓		
2.3 Heritage Conservation			✓	
2.4 Recreation Vehicle Areas		✓		
3. HOUSING, INFRASTRUCTURE AND URBAN DEVELOPMENT				
3.1 Residential Zones			✓	
3.2 Caravan Parks and Manufactured Home Estates		✓		
3.3 Home Occupations			✓	
3.4 Integrating Land Use and Transport			✓	
3.5 Development Near Licensed Aerodromes		✓		
3.6 Shooting Ranges		✓		
4. HAZARD AND RISK				
4.1 Acid Sulfate Soils		✓		
4.2 Mine Subsidence and Unstable Land			✓	
4.3 Flood Prone Land			✓	
4.4 Planning for Bushfire Protection			✓	
5. REGIONAL PLANNING				
5.1 Implementation of Regional Strategies		✓		
5.2 Sydney Drinking Water Catchments			✓	
5.3 Farmland of State and Regional Significance on the NSW Far North Coast		✓		
5.4 Commercial and Retail Development along the Pacific Highway, North Coast		✓		
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)		✓		
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)		✓		
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)		✓		
5.8 Second Sydney Airport: Badgerys Creek		✓		
5.9 North West Rail Link Corridor Strategy		✓		
6. LOCAL PLAN MAKING				
6.1 Approval and Referral Requirements			✓	
6.2 Reserving Land for Public Purposes			✓	
6.3 Site Specific Provisions			✓	

Directions under Section 117(2)		NOT RELEVANT 1	CONSISTENT 2	JUSTIFIABLY INCONSISTENT 3
7. METROPOLITAN PLANNING				
7.1 Implementation of A Plan for Growing Sydney			✓	

This planning proposal is consistent with all relevant Section 117(2) Ministerial Directions as detailed below.

117 Direction 2.3 Heritage Conservation

Objective

- (1) *The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.*

Where this direction applies

- (2) *This direction applies to all relevant planning authorities.*

When this direction applies

- (3) *This direction applies when a relevant planning authority prepares a planning proposal.*

What a relevant planning authority must do if this direction applies

- (4) *A planning proposal must contain provisions that facilitate the conservation of:*
- (a) *items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area,*
 - (b) *Aboriginal objects or Aboriginal places that are protected under the National Parks and Wildlife Act 1974, and (c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.*

Consistency

- (5) *A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that:*
- (a) *the environmental or indigenous heritage significance of the item, area, object or place is conserved by existing or draft environmental planning instruments, legislation, or regulations that apply to the land, or*
 - (b) *the provisions of the planning proposal that are inconsistent are of minor significance.*

Response

This draft amendment is consistent with Ministerial Direction 2.3 Heritage Conservation. The proposed R6 Residential Character zone is not intended to be applied solely to those areas of heritage significance already recognised by heritage listings or heritage conservation areas (HCAs). It is intended to provide another level of protection which will be available for areas of significant established character that may not meet the criteria for heritage or HCA listing. It is anticipated that this could strengthen the significance or weight given to heritage listings and HCAs by reducing the potential for 'marginal' listings. Currently there may be areas of noteworthy and valued character that a Council and community may wish to protect. A residential character zone provides the means of achieving this where currently a heritage listing or HCA may be pursued instead, even though it is not the most appropriate outcome.

117 Direction Direction 3.1 Residential Zones

Objectives

- (1) *The objectives of this direction are:*
- (a) *to encourage a variety and choice of housing types to provide for existing and future housing needs,*
 - (b) *to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and*
 - (c) *to minimise the impact of residential development on the environment and resource lands.*

When this direction applies

- (3) *This direction applies when a relevant planning authority prepares a planning proposal that will affect land within:*

- (a) an existing or proposed residential zone (including the alteration of any existing residential zone boundary),
- (b) any other zone in which significant residential development is permitted or proposed to be permitted.

What a relevant planning authority must do if this direction applies

- (4) A planning proposal must include provisions that encourage the provision of housing that will:
 - (a) broaden the choice of building types and locations available in the housing market, and
 - (b) make more efficient use of existing infrastructure and services, and
 - (c) reduce the consumption of land for housing and associated urban development on the urban fringe, and
 - (d) be of good design.
- (5) A planning proposal must, in relation to land to which this direction applies:
 - (a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and
 - (b) not contain provisions which will reduce the permissible residential density of land.

Response

This draft amendment is consistent with Ministerial Direction 3.1 Residential Zones. The proposed Zone R6 Residential Character in the Blue Mountains context will operate as one of a suite of residential zones. The application of these different residential zones to appropriate areas across the City ensures that there is a variety of housing choice, with opportunities for increased densities near existing infrastructure and services, and that future development is consolidated within existing urban areas to minimise the impact on the environment.

117 Direction 3.3 Home Occupations

Objective

- (1) The objective of this direction is to encourage the carrying out of low-impact small businesses in dwelling houses.

Where this direction applies

- (2) This direction applies to all relevant planning authorities.

When this direction applies

- (3) This direction applies when a relevant planning authority prepares a planning proposal.

What a relevant planning authority must do if this direction applies

- (4) Planning proposals must permit home occupations to be carried out in dwelling houses without the need for development consent.

Consistency

- (5) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent with the terms of this direction are of minor significance.

Response

This draft amendment is consistent with Ministerial Direction 3.3 Home Occupations. As detailed in Part 2 of this planning proposal, it is proposed that home occupations be mandated as permitted with consent in the proposed Zone R6 Residential Character, consistent with this direction.

117 Direction 3.4 Integrating Land Use and Transport

Objective

- (1) The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:
 - (a) improving access to housing, jobs and services by walking, cycling and public transport, and
 - (b) increasing the choice of available transport and reducing dependence on cars, and
 - (c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and
 - (d) supporting the efficient and viable operation of public transport services, and
 - (e) providing for the efficient movement of freight.

Where this direction applies

- (2) This direction applies to all relevant planning authorities.

When this direction applies

- (3) This direction applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.

What a relevant planning authority must do if this direction applies

- (4) A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of:

- (a) *Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and*
 - (b) *The Right Place for Business and Services – Planning Policy (DUAP 2001).*
- Consistency**
- (5) *A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:*
 - (a) *justified by a strategy which:*
 - (i) *gives consideration to the objective of this direction, and*
 - (ii) *identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and*
 - (iii) *is approved by the Director-General of the Department of Planning, or*
 - (b) *justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or*
 - (c) *in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or*
 - (d) *of minor significance.*

Response

This draft amendment is consistent with Ministerial Direction 3.4 Integrating Land Use and Transport. This planning proposal is seeking to translate current planning provisions into LEP 2015. This will not 'create, alter, or remove a zone or provision' for the majority of subject land. For the parcels on Falls Road that are proposed to be zoned R6 Residential Character, rather than E4 Environmental Living as exhibited, the zone applying to this land will be altered. However the permissible land uses and planning provisions for these properties will remain substantially the same, and as such this planning proposal is considered to be consistent with this direction.

117 Direction 4.2 Mine Subsidence and Unstable Land

Objective

- (9) *The objective of this direction is to prevent damage to life, property and the environment on land identified as unstable or potentially subject to mine subsidence.*

Where this direction applies

- (10) *This direction applies to land that:*
 - (a) *is within a Mine Subsidence District proclaimed pursuant to section 15 of the Mine Subsidence Compensation Act 1961, or*
 - (b) *has been identified as unstable land.*

When this direction applies

- (11) *This direction applies when a relevant planning authority prepares a planning proposal that permits development on land that:*
 - (a) *is within a mine subsidence district, or*
 - (b) *has been identified as unstable in a study, strategy or other assessment undertaken:*
 - (i) *by or on behalf of the relevant planning authority, or*
 - (ii) *by or on behalf of a public authority and provided to the relevant planning authority.*

What a relevant planning authority must do if this direction applies

- (12) *When preparing a planning proposal that would permit development on land that is within a Mine Subsidence District a relevant planning authority must:*
 - (a) *consult the Mine Subsidence Board to ascertain:*
 - (i) *if the Mine Subsidence Board has any objection to the draft Local Environmental Plan, and the reason for such an objection, and*
 - (ii) *the scale, density and type of development that is appropriate for the potential level of subsidence, and*
 - (b) *incorporate provisions into the draft Local Environmental Plan that are consistent with the recommended scale, density and type of development recommended under (4)(a)(ii), and*
 - (c) *include a copy of any information received from the Mine Subsidence Board with the statement to the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of section 57 of the Act.*
- (13) *A planning proposal must not permit development on unstable land referred to in paragraph 3(b).*

Consistency

- (14) *A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:*
 - (a) *justified by a strategy which:*
 - (i) *gives consideration to the objective of this direction, and*
 - (ii) *identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and*
 - (iii) *is approved by the Director-General of the Department of Planning, or*
 - (b) *justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or*
 - (c) *in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or*
 - (d) *of minor significance.*

Response

This draft amendment is consistent with Ministerial Direction 4.2 Mine Subsidence and Unstable Land. It is only seeking to translate existing planning provisions for an established residential area, and is not proposing to increase residential development potential.

117 Direction 4.3 Flood Prone Land

Objectives

- (1) *The objectives of this direction are:*
 - (a) *to ensure that 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*
 - (b) *to 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.*

Where this direction applies

- (2) *This direction applies to all relevant planning authorities that are responsible for flood prone land within their LGA.*

When this direction applies

- (3) *This direction applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.*

What a relevant planning authority must do if this direction applies

- (4) *A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas).*
- (5) *A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.*
- (6) *A planning proposal must not contain provisions that apply to the flood planning areas which:*
 - (a) *permit development in floodway areas,*
 - (b) *permit development that will result in significant flood impacts to other properties,*
 - (c) *permit a significant increase in the development of that land,*
 - (d) *are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or*
 - (e) *permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development.*
- (7) *A planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).*
- (8) *For the purposes of a planning proposal, a relevant planning authority must not determine a flood planning level that is inconsistent with the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas) unless a relevant planning authority provides adequate justification for the proposed departure from that Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).*

Consistency

- (9) *A planning proposal may be inconsistent with this direction only if the relevant planning authority can satisfy the Director-General (or an officer of the Department nominated by the Director-General) that:*
 - (a) *the planning proposal is in accordance with a floodplain risk management plan prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005, or*
 - (b) *the provisions of the planning proposal that are inconsistent are of minor significance.*

Response

This draft amendment is consistent with Ministerial Direction 4.3 Flood Prone Land. It is not proposing to increase residential development potential on any flood prone land, or impose flood related development controls.

117 Direction Direction 4.4 Planning for Bushfire Protection

Objectives

- (1) *The objectives of this direction are:*
 - (a) *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*
 - (b) *to encourage sound management of bush fire prone areas.*

Where this direction applies

- (2) *This direction applies to all local government areas in which the responsible Council is required to prepare a bush fire prone land map under section 146 of the Environmental Planning and Assessment Act 1979 (the EP&A Act), or, until such a map has been certified by the Commissioner of the NSW Rural Fire Service, a map referred to in Schedule 6 of that Act.*

What a relevant planning authority must do if this direction applies

- (4) *In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 56 of the Act, and prior to undertaking community consultation in satisfaction of section 57 of the Act, and take into account any comments so made,*
- (5) *A planning proposal must:*
 - (a) *have regard to Planning for Bushfire Protection 2006,*
 - (b) *introduce controls that avoid placing inappropriate developments in hazardous areas, and*
 - (c) *ensure that bushfire hazard reduction is not prohibited within the APZ.*
- (6) *A planning proposal must, where development is proposed, comply with the following provisions, as appropriate:*
 - (a) *provide an Asset Protection Zone (APZ) incorporating at a minimum:*
 - (i) *an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and*
 - (ii) *an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,*
 - (b) *for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the Rural Fires Act 1997), the APZ provisions must be complied with,*
 - (c) *contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks,*
 - (d) *contain provisions for adequate water supply for fire fighting purposes,*
 - (e) *minimise the perimeter of the area of land interfacing the hazard which may be developed,*
 - (f) *introduce controls on the placement of combustible materials in the Inner Protection Area*

Response

This draft amendment is consistent with Ministerial Direction 4.4 Planning for Bushfire Protection, and the Commissioner of the NSW RFS will be consulted as per the Gateway Determination. This planning proposal is not seeking to increase housing or development opportunities, rather it is simply translating existing planning provisions for established areas.

117 Direction 5.2 Sydney Drinking Water Catchment

Objective

- (1) *The objective of this Direction is to protect water quality in the Sydney drinking water catchment.*

Where this Direction applies

- (2) *This Direction applies to the Sydney drinking water catchment in the following local government areas:*

<i>Blue Mountains</i>	<i>Kiama</i>	<i>Sutherland</i>
<i>Campbelltown</i>	<i>Lithgow</i>	<i>Upper Lachlan</i>
<i>Cooma Monaro</i>	<i>Oberon</i>	<i>Wingecarribee</i>
<i>Eurobodalla</i>	<i>Palerang</i>	<i>Wollondilly</i>
<i>Goulburn Mulwaree</i>	<i>Shoalhaven</i>	<i>Wollongong</i>

When this Direction applies

- (3) *This Direction applies when a relevant planning authority prepares a planning proposal that applies to land within the Sydney drinking water catchment.*

What a relevant planning authority must do if this Direction applies

- (4) *A planning proposal must be prepared in accordance with the general principle that water quality within the Sydney drinking water catchment must be protected, and in accordance with the following specific principles:*
 - (a) *new development within the Sydney drinking water catchment must have a neutral or beneficial effect on water quality, and*
 - (b) *future land use in the Sydney drinking water catchment should be matched to land and water capability, and*
 - (c) *the ecological values of land within a Special Area that is:*
 - (i) *reserved as national park, nature reserve or state conservation area under the National Parks and Wildlife Act 1974, or*
 - (ii) *declared as a wilderness area under the Wilderness Act 1987, or*
 - (iii) *owned or under the care control and management of the Sydney Catchment Authority, should be maintained.*
- (5) *When preparing a planning proposal that applies to land within the Sydney drinking water catchment, the relevant planning authority must:*
 - (a) *ensure that the proposal is consistent with State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011, and*
 - (b) *give consideration to the outcomes of the Strategic Land and Water Capability Assessment prepared by the Sydney Catchment Authority, and*
 - (c) *zone land within the Special Areas owned or under the care control and management of Sydney Catchment Authority generally in accordance with the following:*

<i>Land</i>	<i>Zone under Standard Instrument (Local Environmental Plans) Order 2006</i>
<i>Land reserved under the National Parks and</i>	<i>E1 National Parks and Nature Reserves</i>

Wildlife Act 1974

Land in the ownership or under the care, control and management of the Sydney Catchment Authority located above the full water supply level

E2 Environmental Conservation

Land below the full water supply level (including water storage at dams and weirs) and operational land at dams, weirs, pumping stations etc.

SP2 Infrastructure (and marked "Water Supply Systems" on the Land Zoning Map)

- and
- (d) consult with the Sydney Catchment Authority, describing the means by which the planning proposal gives effect to the water quality protection principles set out in paragraph (4) of this Direction, and
- (e) include a copy of any information received from the Sydney Catchment Authority as a result of the consultation process in its planning proposal prior to the issuing of a gateway determination under section 56 of the Environmental Planning and Assessment Act 1979.

Consistency

- (6) A planning proposal may be inconsistent with the terms of this Direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are of minor significance.

Response

This draft amendment is consistent with Ministerial Direction 5.2 Sydney Drinking Water Catchment. A key element of LEP 2015 is the recognition and protection National Park and environment which surround the urban areas of the City, including the Sydney drinking water catchment. These protections of the Sydney drinking water catchment will apply to the land subject to this planning proposal, and nothing in this planning proposal seeks to diminish or contradict these provisions. Further, the proposed Zone R6 Residential Character is by its nature more restrictive of future development or increases in densities, and thus is in any event unlikely to result in any adverse impact on the Sydney Drinking Water Catchment.

117 Direction 6.1 Approval and Referral Requirements**Objective**

- (1) The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.

Where this direction applies

- (2) This direction applies to all relevant planning authorities.

When this direction applies

- (3) This direction applies when a relevant planning authority prepares a planning proposal.

What a relevant planning authority must do if this direction applies

- (4) A planning proposal must:
- (a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and
- (b) not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of:
- (i) the appropriate Minister or public authority, and
- (ii) the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), prior to undertaking community consultation in satisfaction of section 57 of the Act, and
- (c) not identify development as designated development unless the relevant planning authority:
- (i) can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and
- (ii) has obtained the approval of the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of section 57 of the Act.

Consistency

- (5) A planning proposal must be substantially consistent with the terms of this direction.

Response

This draft amendment is consistent with Ministerial Direction 6.1 Approval and Referral Requirements. This draft amendment does not seek to:

- include of provisions that require the concurrence of development applications to a Minister or public authority, or
- identify development as designated development.

117 Direction 6.2 Reserving Land for Public Purposes

Objectives

- (1) *The objectives of this direction are:*
- (a) *to facilitate the provision of public services and facilities by reserving land for public purposes, and*
 - (b) *to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.*

Where this direction applies

- (2) *This direction applies to all relevant planning authorities.*

When this direction applies

- (3) *This direction applies when a relevant planning authority prepares a planning proposal.*

What a relevant planning authority must do if this direction applies

- (4) *A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General).*
- (5) *When a Minister or public authority requests a relevant planning authority to reserve land for a public purpose in a planning proposal and the land would be required to be acquired under Division 3 of Part 2 of the Land Acquisition (Just Terms Compensation) Act 1991, the relevant planning authority must:*
- (a) *reserve the land in accordance with the request, and*
 - (b) *include the land in a zone appropriate to its intended future use or a zone advised by the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), and*
 - (c) *identify the relevant acquiring authority for the land.*
- (6) *When a Minister or public authority requests a relevant planning authority to include provisions in a planning proposal relating to the use of any land reserved for a public purpose before that land is acquired, the relevant planning authority must:*
- (a) *include the requested provisions, or*
 - (b) *take such other action as advised by the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) with respect to the use of the land before it is acquired.*
- (7) *When a Minister or public authority requests a relevant planning authority to include provisions in a planning proposal to rezone and/or remove a reservation of any land that is reserved for public purposes because the land is no longer designated by that public authority for acquisition, the relevant planning authority must rezone and/or remove the relevant reservation in accordance with the request.*

Consistency

- (8) *A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that:*
- (c) *with respect to a request referred to in paragraph (7), that further information is required before appropriate planning controls for the land can be determined, or*
 - (d) *the provisions of the planning proposal that are inconsistent with the terms of this direction are of minor significance.*

Response

This draft amendment is consistent with Ministerial Direction 6.2 Reserving Land for Public Purposes. This planning proposal does not seek to add or remove any reservations of land for public purpose.

117 Direction 6.3 Site Specific Provisions

Objective

- (1) *The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.*

Where this direction applies

- (2) *This direction applies to all relevant planning authorities.*

When this direction applies

- (3) *This direction applies when a relevant planning authority prepares a planning proposal that will allow a particular development to be carried out.*

What a relevant planning authority must do if this direction applies

- (4) *A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:*
- (a) *allow that land use to be carried out in the zone the land is situated on, or*
 - (b) *rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or*
 - (c) *allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.*
- (5) *A planning proposal must not contain or refer to drawings that show details of the development proposal.*

Consistency

- (6) *A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are of minor significance.*

Response

This draft amendment is consistent with Ministerial Direction 6.3 Site Specific Provisions. Zone R6 Residential Character is being proposed in order to avoid situations similar to those which this ministerial direction is trying to avoid. Without a zone to protect residential character, additional LEP provisions, uses, and restrictions would need to be applied to properties to have the same affect in contravention of this ministerial direction. If this draft amendment cannot be progresses and the standard Instrument amended, then a future planning proposal would be required for the subject land that would by necessity be inconsistent with this direction in order to translate existing planning provisions.

117 Direction Direction 7.1 Implementation of A Plan for Growing Sydney

Objective

- (1) *The objective of this direction is to give legal effect to the planning principles; directions; and priorities for subregions, strategic centres and transport gateways contained in A Plan for Growing Sydney.*

When this direction applies

- (3) *This direction applies when a Relevant Planning Authority prepares a planning proposal.*

What a Relevant Planning Authority must do if this direction applies

- (4) *Planning proposals shall be consistent with:*
(a) *the NSW Government's A Plan for Growing Sydney published in December 2014.*

Response

This draft amendment is not inconsistent with Ministerial Direction 7.1 Implementation of A Plan for Growing Sydney. This planning proposal seeks to translate existing planning provisions into LEP 2015, to be able to complete the process of preparing a standard instrument LEP for the Blue Mountains. Upon the making of this draft amendment, and the completion of this process, Council will be able to proceed with the development of its Local Housing Strategy consistent with the Plan for Growing Sydney requirement. This process will investigate how to meet the housing needs of the local Blue Mountains community, consistent with the Plan for Growing Sydney and the District Plan, if it has been drafted.

Section C - Environmental, Social and Economic Impact

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?

- There is very little likelihood that critical habitat, threatened species, populations or ecological communities will be affected as a result of the Planning Proposal. There is in any case no critical habitat listed under the Threatened Species Conservation Act. Whilst there are a number of threatened species and ecological communities within the LGA and the Greater Blue Mountains National Park system, they are most unlikely to be affected by the matters addressed by this Planning Proposal.
- Provisions in LEP 2015 recognise and seek to protect the environmental values that are present within the Blue Mountains LGA, including the world heritage values of the surrounding National Park system and the location of the Sydney Drinking Water Catchment within the LGA.
- This planning proposal does not seek to change these provisions. As a result it is considered that the level of protection afforded to critical habitat, threatened species populations or ecological communities will be maintained as a result of this amendment.

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

- LEP 2015 contains strong controls for the protection of the environment, and nothing in this draft amendment seeks to diminish or contradict these provisions.
- This planning proposal seeks to translate planning policy from LEP 2005 and will not result in any increased environmental impacts. The proposed residential character zone will be the most restrictive residential zone in LEP 2015 and is proposed to apply to those areas where minimal change is planned, and therefore minimal environmental impact.

9. Has the planning proposal adequately addressed any social and economic effects?

- Tourism is a significant component of the Blue Mountains economy. This is driven in part by natural attractions but also by the character of the towns, villages and settlements of the Mountains.
- The translation, or retention, of a residential character zone will continue to ensure that this character is maintained which will continue to attract visitors to the area and drive the local tourism economy. Were the character of these areas to be degraded by dense and unsympathetic development then it would impact upon the identifiable character of these areas and their attractiveness to visitors – negatively affecting the economy.
- The economic effect of a residential character zone has also been considered with regard to development potential and housing capacity in the Blue Mountains. The proposed residential character zone will be one of a suite of residential zones used in the Blue Mountains. Although it is intentionally restrictive, it operates in conjunction with the other residential zones which are less restrictive; the R2 zone which allows more incremental density increases through dual occupancies; the R3 zone which allows higher density development in the form of multi-dwelling housing; and the R1 zones which allows a range of higher density residential and tourist uses. The use of this suite of zones provides for development potential and housing capacity whilst still ensuring that particular areas of significant character are protected.

Section D - State and Commonwealth Interests

10. Is there adequate public infrastructure for the planning proposal?

- As noted previously, this amendment is seeking to include items deferred from then DLEP 2013 into LEP 2015, translating the current planning provisions which apply to the properties. It concerns land that is mostly developed and is unlikely to change in the future. This amendment will not be generating any extra demand on infrastructure.

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

- In accordance with Clause 4 of Section 117 Direction 4.4 Planning for Bushfire Protection, the Commissioner of the NSW Rural Fire Service will be consulted.
- Council will consult with any agencies required by the Gateway Determination.

PART 4 MAPPING

Mapping will be prepared in accordance with the Standard Technical Requirements for LEP Maps published November 2012, Version 2.0 and the finalised maps will be returned to the Department of Planning and Environment at the conclusion of the consultation.

For clarity, as part of this planning proposal, zoning maps have been prepared which show the zoning of the subject areas properties only (Attachment 2).

PART 5 COMMUNITY CONSULTATION

Because draft Amendment 2 to LEP 2015 is dependent upon an amendment to the Standard Instrument it will involve two consultation process – One conducted by the Department as part of their process to amend the Standard Instrument to introduce a new zone, and the other conducted by Council for this planning proposal in accordance with the Gateway Determination.

Blue Mountains Council - Planning Proposal

The consultation and exhibition process will be conducted in accordance with the Gateway determination.

It should be noted that with the exception of the Falls Road precinct this amendment proposes provisions and zonings as was already exhibited for DLEP 2013.

DLEP 2013 was exhibited in accordance with the Gateway Determination from 4 December 2013 until 5 March 2014, with the inclusion of a new proposed zone of R6 Residential Character zone. It was a direct translation of the Living Conservation zone of LEP 2005.

The Council received a total of 595 submissions to the public exhibition, raising 4,975 matters to be addressed in the review of submissions process. Of those issues, 66% were in support of DLEP 2013, 15% were neutral or providing comment and 20% were in objection.

The proposed R6 zone to replace Living Conservation was raised in 199 submissions or a third of all submissions received. There were 62 individual submissions, 14 organisations and 122 proformas. Other submissions dealt with site-specific aspects of the R6 zone and may be subject to future review of the zone at the precinct level.

Within those 199 submissions there were 206 issues raised with the proposed R6 zone, with 175 (84%) supporting the R6 Residential Character Conservation zone.

All residents of the Falls Road area have been individually notified of Council's intention to propose their land to zoned R6 Residential Character Conservation following the investigation of deferred matters for draft amendment 1.

DP&E - Standard Instrument Amendment

Extensive consultation was undertaken as part of the NSW Government's proposed planning reforms, which included proposals for the expansion or reduction of zones in the Standard Instrument. It is anticipated that this would form the foundation for community consultation on the proposal to add a residential character zone to the Standard Instrument, allowing the Department to proceed with the exhibition of a draft Standard Instrument Order Amendment without first needing to exhibit a discussion paper or similar preliminary step.

It is understood from the *Green Paper Feedback Summary, December 2012*, that 377 (of 1220), or 31% of submissions commented on the proposed new zones. 2.2 Key Issue: Strategic Focus of this summary outlines that a number of groups including the NSW Heritage Council supported the suburban character zone, whilst groups such as the NSW Business Chamber wanted more detail particularly regarding how areas are selected to be given a residential or suburban character zone.

According to the *White Paper Feedback Report* Just over 40% of the 4,926 submission received raised the issue of having fewer and broader zones, with the response to these submissions being not to proceed with reducing zones based on the concern that there would be reduced protection of residential amenity and environmental protection.

The significant response, both in terms of volume of submissions, and the support for the protection of residential character through zoning, to the planning reform green and white papers is a strong indicator that an amendment to the Standard Instrument to add a residential character zone would be well received.

PART 6 PROJECT TIMELINE

Council anticipates a high level of community support for the proposed amendment based on the response received during public exhibition of DLEP 2013, and therefore does not anticipate any significant issues arising from community consultation that would affect the project timeline.

This amendment does however rely on an amendment to the standard instrument which would be a separate process undertaken by the DP&E with its own community consultation. The timing of this process would affect the timeline of this proposed amendment.

A nominal time period for the preparation, exhibition, and making of an amendment to the SI has been allowed for, and the estimated project timeline is:

29 March 2016	Planning Proposal reported to the Council
April 2016	Submission of planning proposal to DP&E (or GSC) for 'gateway review' of draft Amendment 2 to LEP 2015 Gateway determination issued, subject to SI amendment
May – December 2016	DP&E process for amending SI
February 2017	Public exhibition of draft Amendment 2 to LEP 2015
March 2017	Council review of submissions to draft Amendment 2 to LEP 2015
April 2017	Report prepared for the Council to consider the result of the community consultation including any changes to this amendment. Planning Proposal and relevant supporting information forwarded to DP&E (GSC) for final review.
June 2017	The Minister (or GSC) considers the final draft of draft Amendment 2 to LEP 2015 and determines if the instrument can be made.
July 2017	Plan is notified.

PART 7 ATTACHMENTS

Following is a list of attachments:

- Attachment 1: Letter from DG committing to continued exemption from SEPP seniors living
- Attachment 2: Maps of proposed zone R6 Residential Character land

Draft Amendment 2

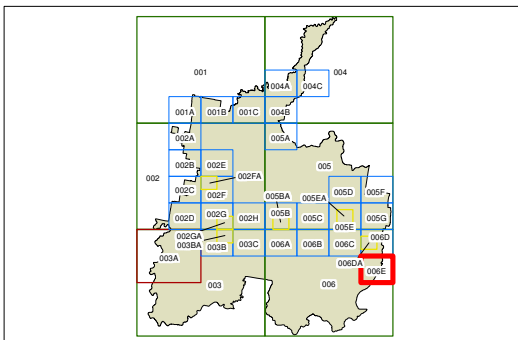
Land Zoning Map - Sheet LZN_006E

Zone

B1	Neighbourhood Centre
B2	Local Centre
B7	Business Park
E1	National Parks and Natural Reserves
E2	Environmental Conservation
E3	Environmental Management
E4	Environmental Living
IN1	General Industrial
IN2	Light Industrial
R1	General Residential
R2	Low Density Residential
R3	Medium Density Residential
R6	Residential Character Conservation
RU2	Rural Landscape
RU4	Primary Production Small Lots
RE1	Public Recreation
RE2	Private Recreation
SP1	Special Activities
SP2	Infrastructure
W1	Natural Waterway
DM	Deferred Matter

Cadastre

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Blue Mountains City Council



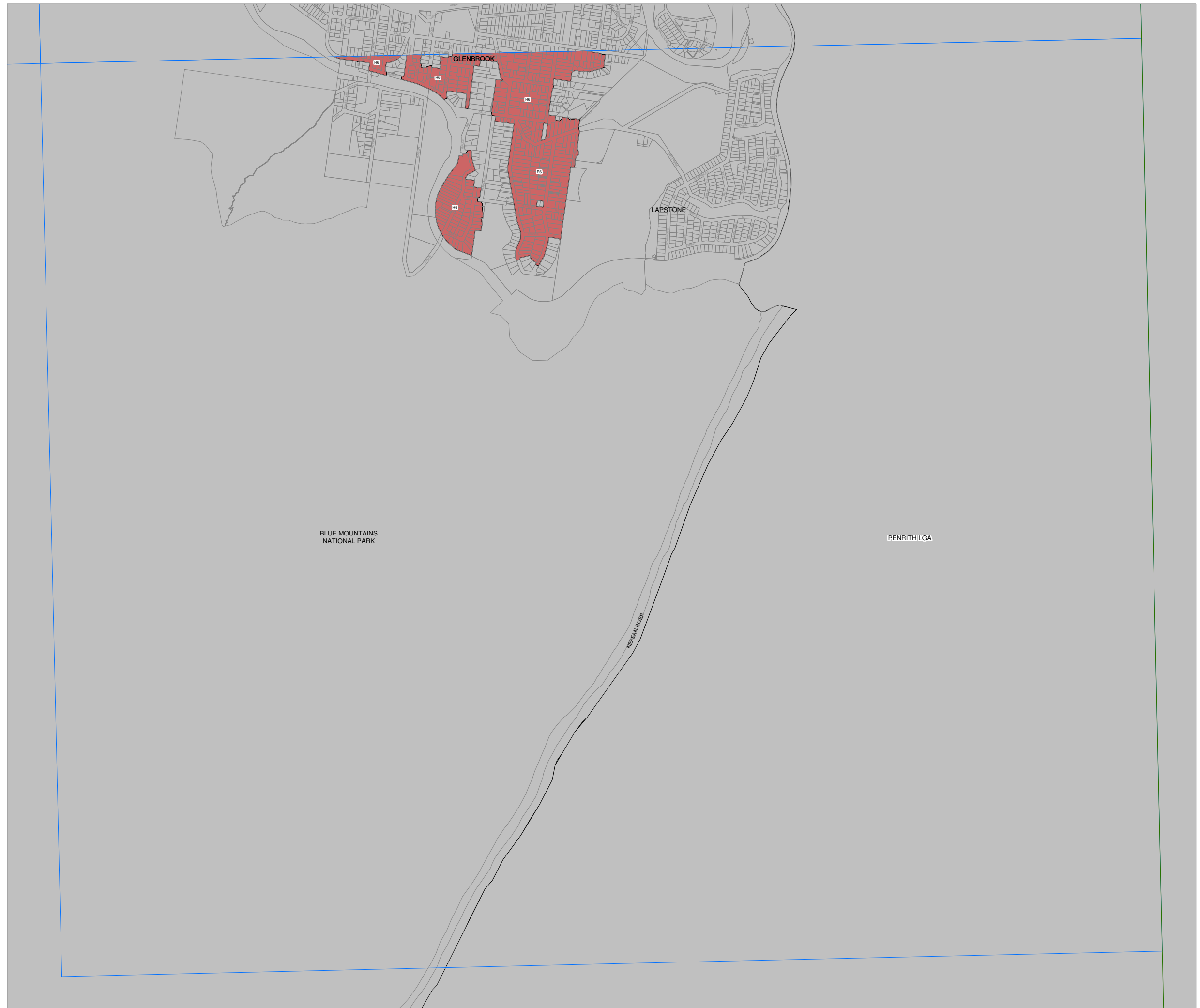
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Draft Amendment 2

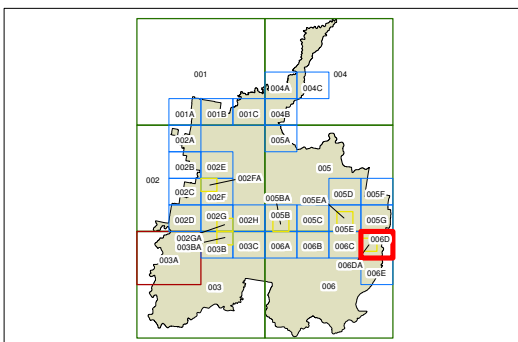
Land Zoning Map - Sheet LZN_006D

Zone

B1	Neighbourhood Centre
B2	Local Centre
B7	Business Park
E1	National Parks and Natural Reserves
E2	Environmental Conservation
E3	Environmental Management
E4	Environmental Living
IN1	General Industrial
IN2	Light Industrial
R1	General Residential
R2	Low Density Residential
R3	Medium Density Residential
R6	Residential Character Conservation
RU2	Rural Landscape
RU4	Primary Production Small Lots
RE1	Public Recreation
RE2	Private Recreation
SP1	Special Activities
SP2	Infrastructure
W1	Natural Waterway
DM	Deferred Matter

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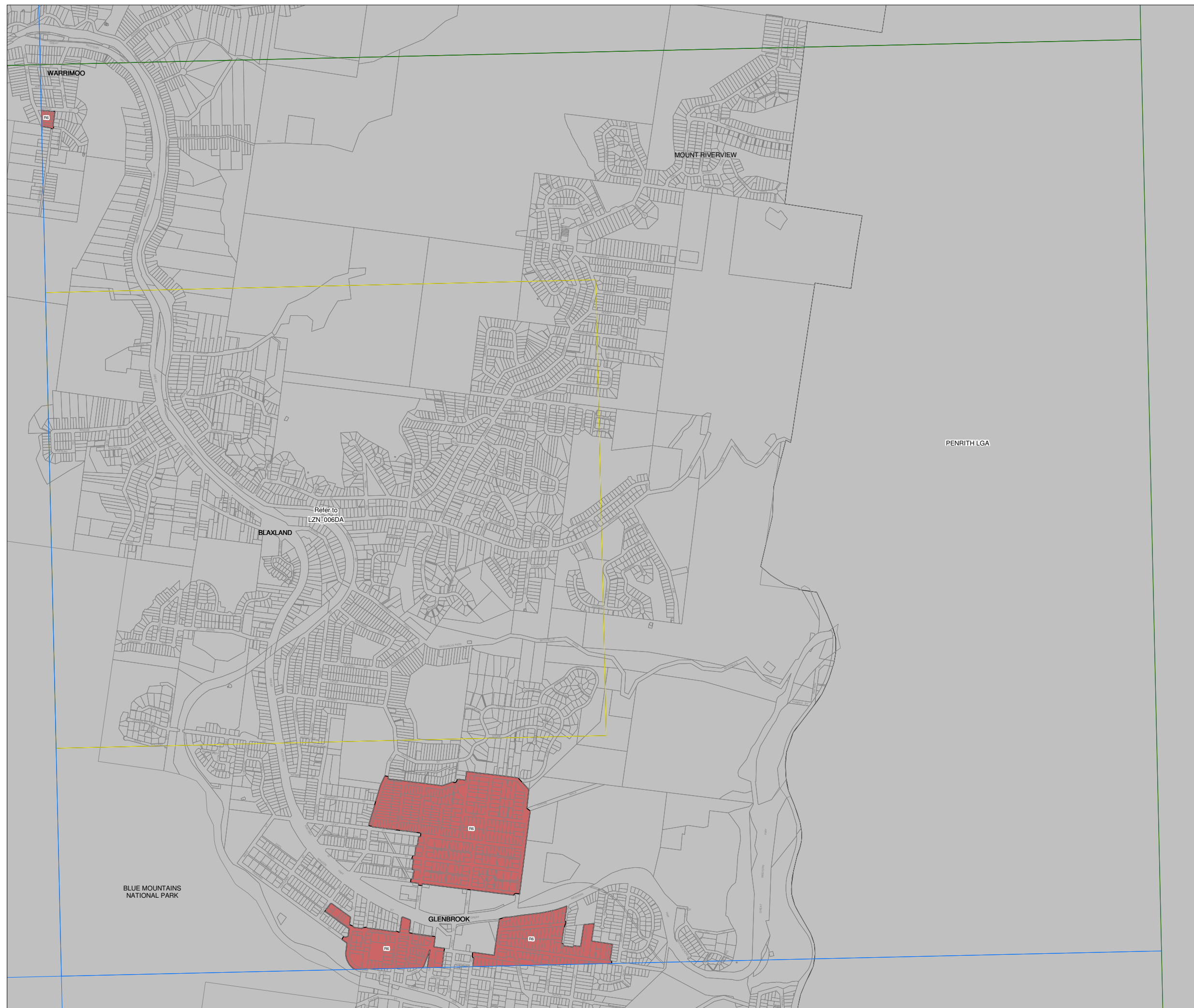
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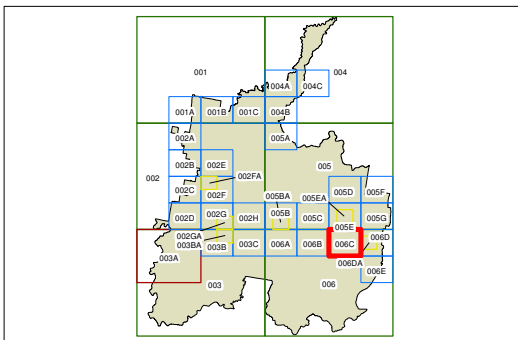
Land Zoning Map - Sheet LZN_006C

Zone

B1	Neighbourhood Centre
B2	Local Centre
B7	Business Park
E1	National Parks and Natural Reserves
E2	Environmental Conservation
E3	Environmental Management
E4	Environmental Living
IN1	General Industrial
IN2	Light Industrial
R1	General Residential
R2	Low Density Residential
R3	Medium Density Residential
R6	Residential Character Conservation
RU2	Rural Landscape
RU4	Primary Production Small Lots
RE1	Public Recreation
RE2	Private Recreation
SP1	Special Activities
SP2	Infrastructure
W1	Natural Waterway
DM	Deferred Matter

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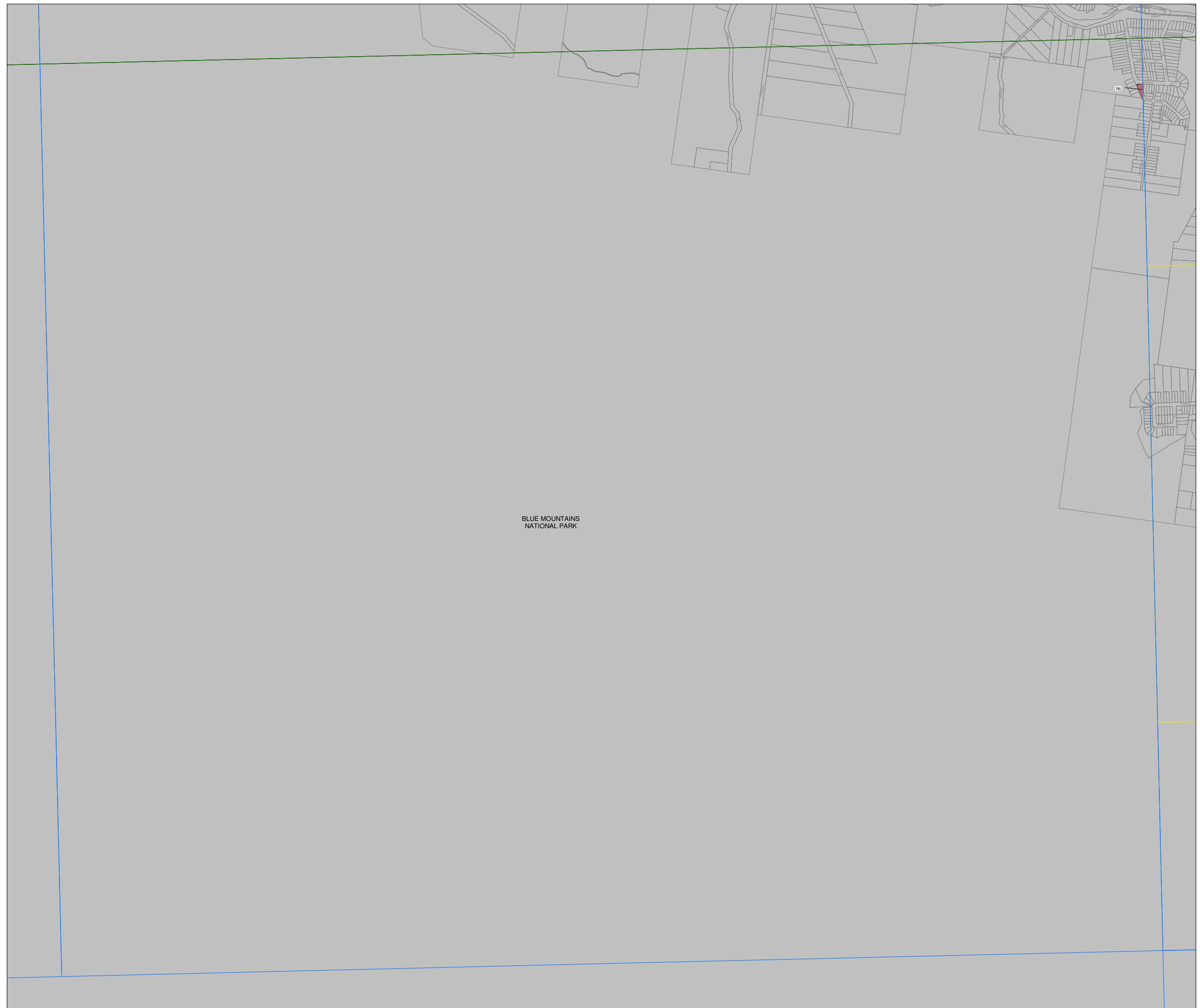
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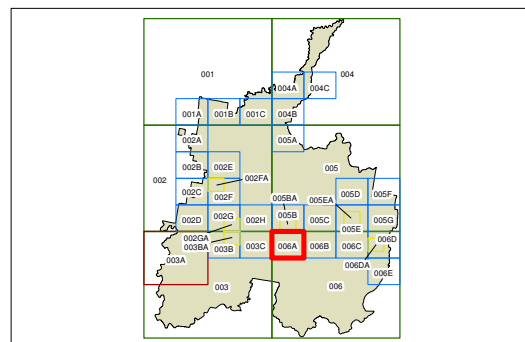
Land Zoning Map - Sheet LZN_006A

Zone

B1	Neighbourhood Centre
B2	Local Centre
B7	Business Park
E1	National Parks and Natural Reserves
E2	Environmental Conservation
E3	Environmental Management
E4	Environmental Living
IN1	General Industrial
IN2	Light Industrial
R1	General Residential
R2	Low Density Residential
R3	Medium Density Residential
R6	Residential Character Conservation
RU2	Rural Landscape
RU4	Primary Production Small Lots
RE1	Public Recreation
RE2	Private Recreation
SP1	Special Activities
SP2	Infrastructure
W1	Natural Waterway
DM	Deferred Matter

Cadastre

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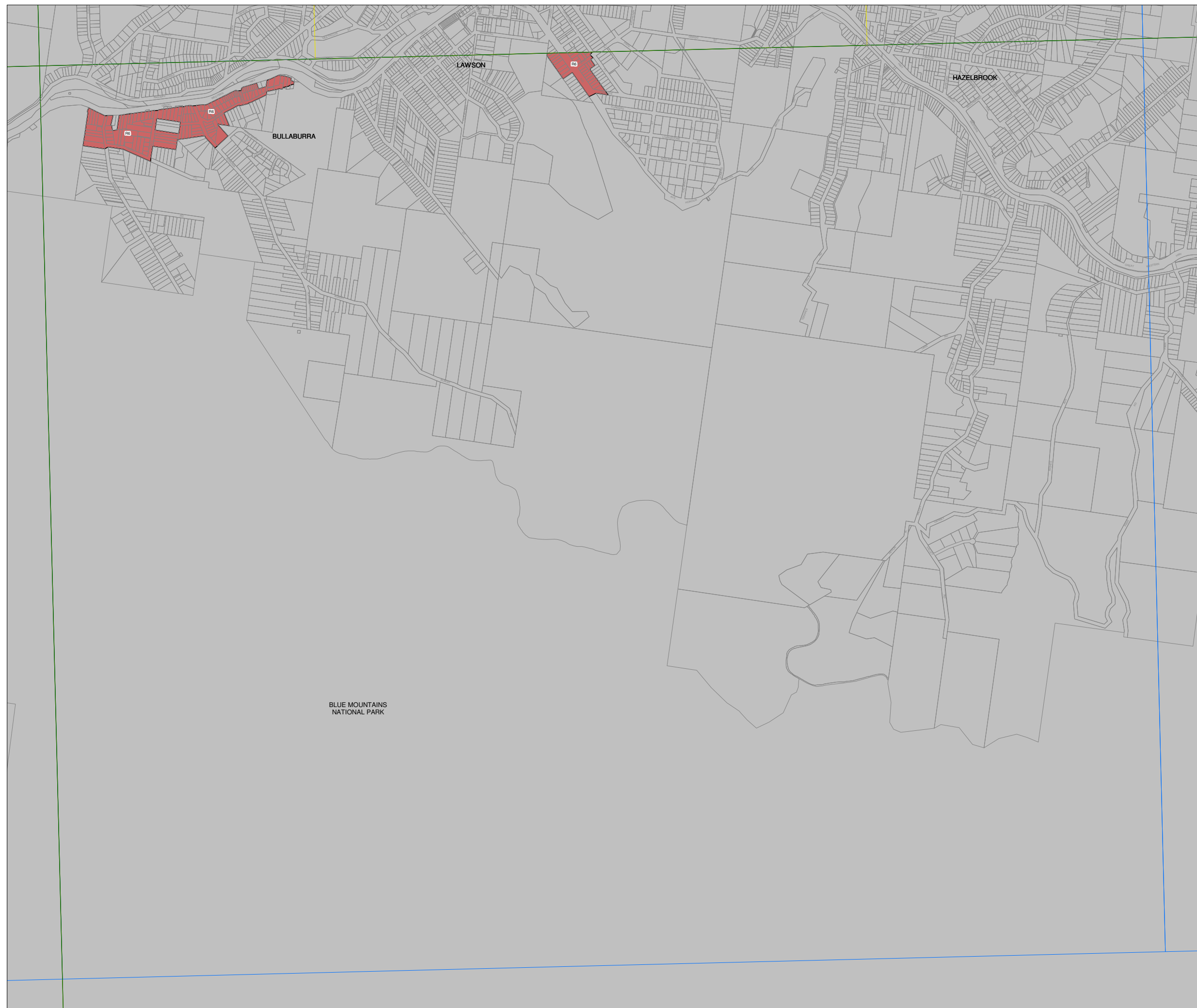
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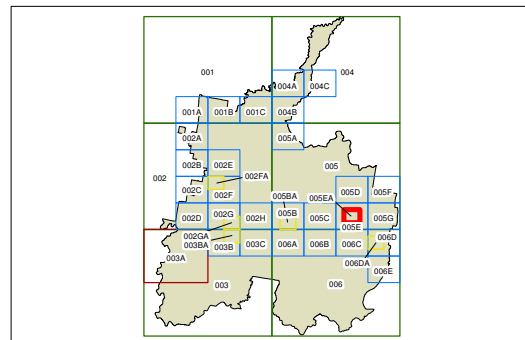
Land Zoning Map - Sheet LZN_005EA

Zone

B1	Neighbourhood Centre
B2	Local Centre
B7	Business Park
E1	National Parks and Natural Reserves
E2	Environmental Conservation
E3	Environmental Management
E4	Environmental Living
IN1	General Industrial
IN2	Light Industrial
R1	General Residential
R2	Low Density Residential
R3	Medium Density Residential
R6	Residential Character Conservation
RU2	Rural Landscape
RU4	Primary Production Small Lots
RE1	Public Recreation
RE2	Private Recreation
SP1	Special Activities
SP2	Infrastructure
W1	Natural Waterway
DM	Deferred Matter

Cadastre

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Blue Mountains City Council



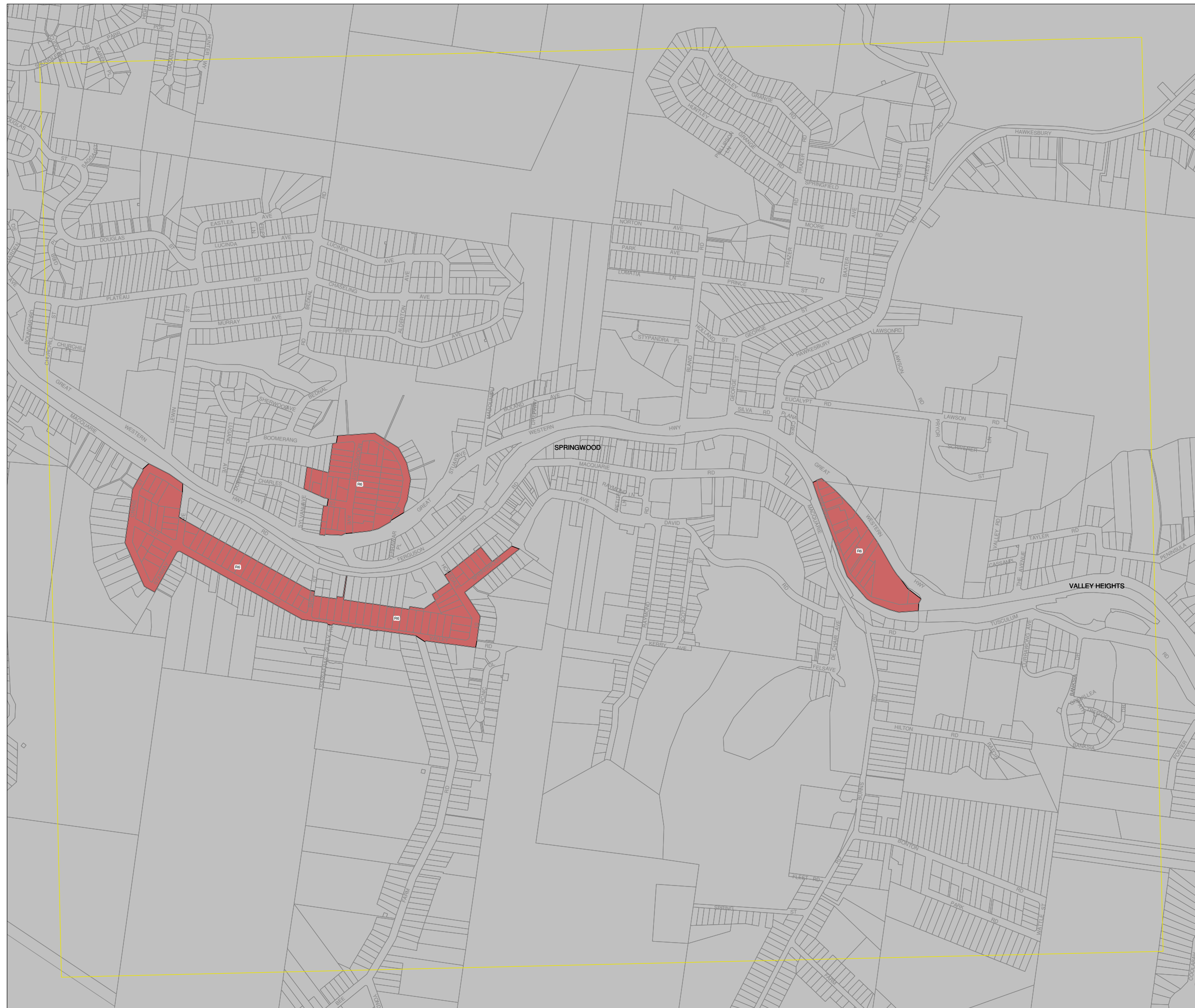
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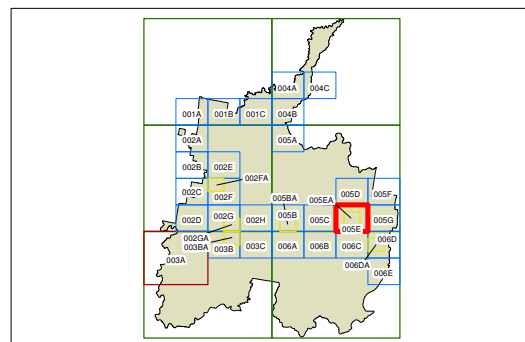
Land Zoning Map - Sheet LZN_005E

Zone

B1	Neighbourhood Centre
B2	Local Centre
B7	Business Park
E1	National Parks and Natural Reserves
E2	Environmental Conservation
E3	Environmental Management
E4	Environmental Living
IN1	General Industrial
IN2	Light Industrial
R1	General Residential
R2	Low Density Residential
R3	Medium Density Residential
R6	Residential Character Conservation
RU2	Rural Landscape
RU4	Primary Production Small Lots
RE1	Public Recreation
RE2	Private Recreation
SP1	Special Activities
SP2	Infrastructure
W1	Natural Waterway
DM	Deferred Matter

Cadastre

 Cadastre 01/02/2016 @
Blue Mountains City Council



Projection: GDA 1994
MGA Zone 56

Scale: 1:20,000 @ A3

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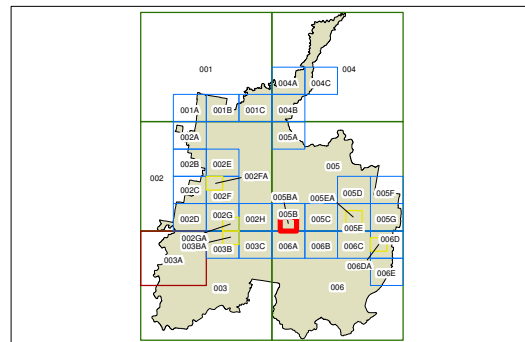
Land Zoning Map - Sheet LZN_005BA

Zone

B1	Neighbourhood Centre
B2	Local Centre
B7	Business Park
E1	National Parks and Natural Reserves
E2	Environmental Conservation
E3	Environmental Management
E4	Environmental Living
IN1	General Industrial
IN2	Light Industrial
R1	General Residential
R2	Low Density Residential
R3	Medium Density Residential
R6	Residential Character Conservation
RU2	Rural Landscape
RU4	Primary Production Small Lots
RE1	Public Recreation
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SP1	Special Activities
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Cadastre

 Cadastre 01/02/2016 @
Blue Mountains City Council



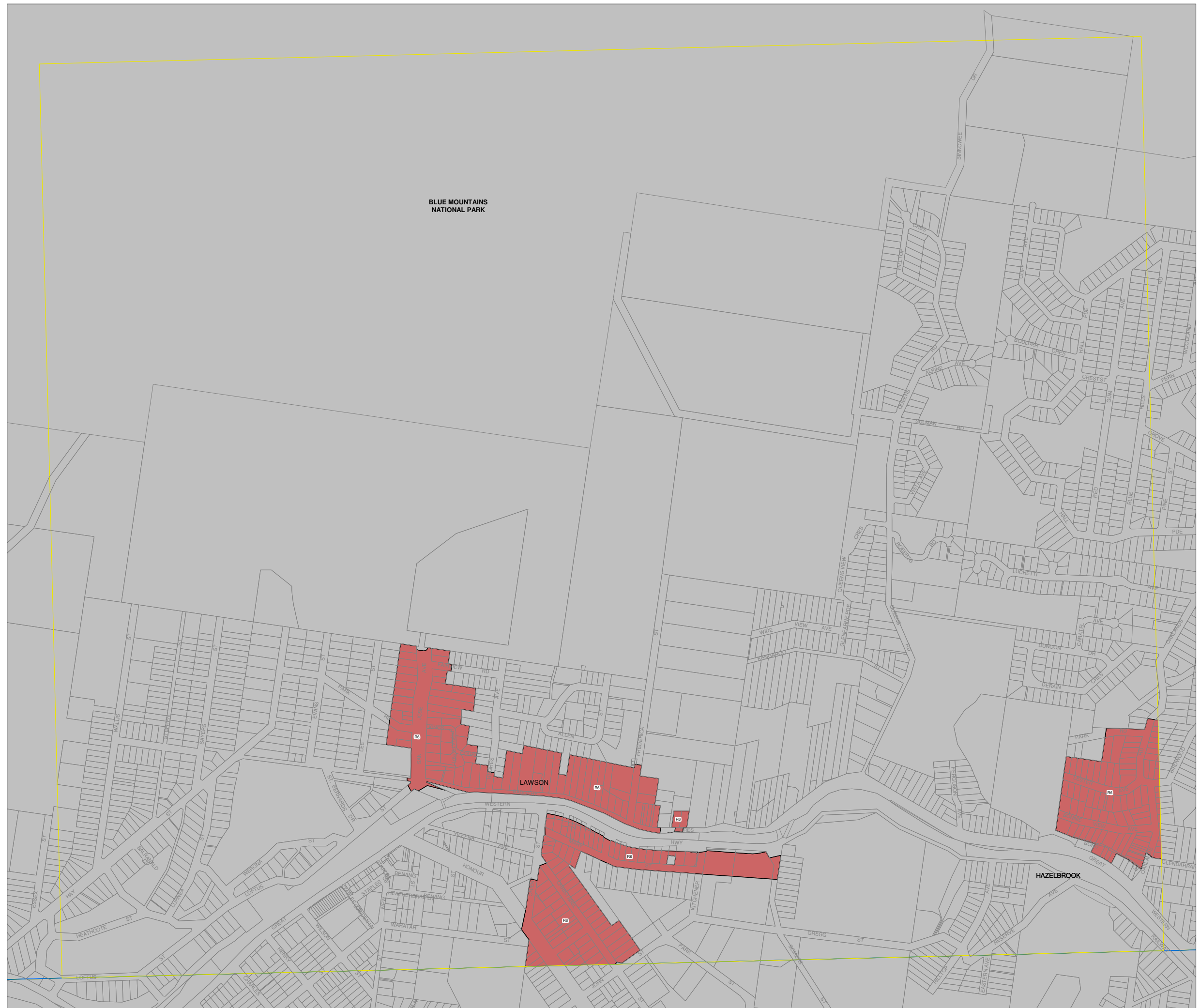
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Draft Amendment 2

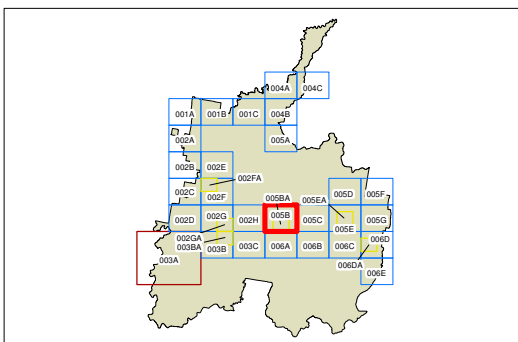
Land Zoning Map - Sheet LZN_005B

Zone

B1	Neighbourhood Centre
B2	Local Centre
B7	Business Park
E1	National Parks and Natural Reserves
E2	Environmental Conservation
E3	Environmental Management
E4	Environmental Living
IN1	General Industrial
IN2	Light Industrial
R1	General Residential
R2	Low Density Residential
R3	Medium Density Residential
R6	Residential Character Conservation
RU2	Rural Landscape
RU4	Primary Production Small Lots
RE1	Public Recreation
RE2	Private Recreation
SP1	Special Activities
SP2	Infrastructure
W1	Natural Waterway
DM	Deferred Matter

Cadastre

 Cadastre 01/02/2016 @
Blue Mountains City Council



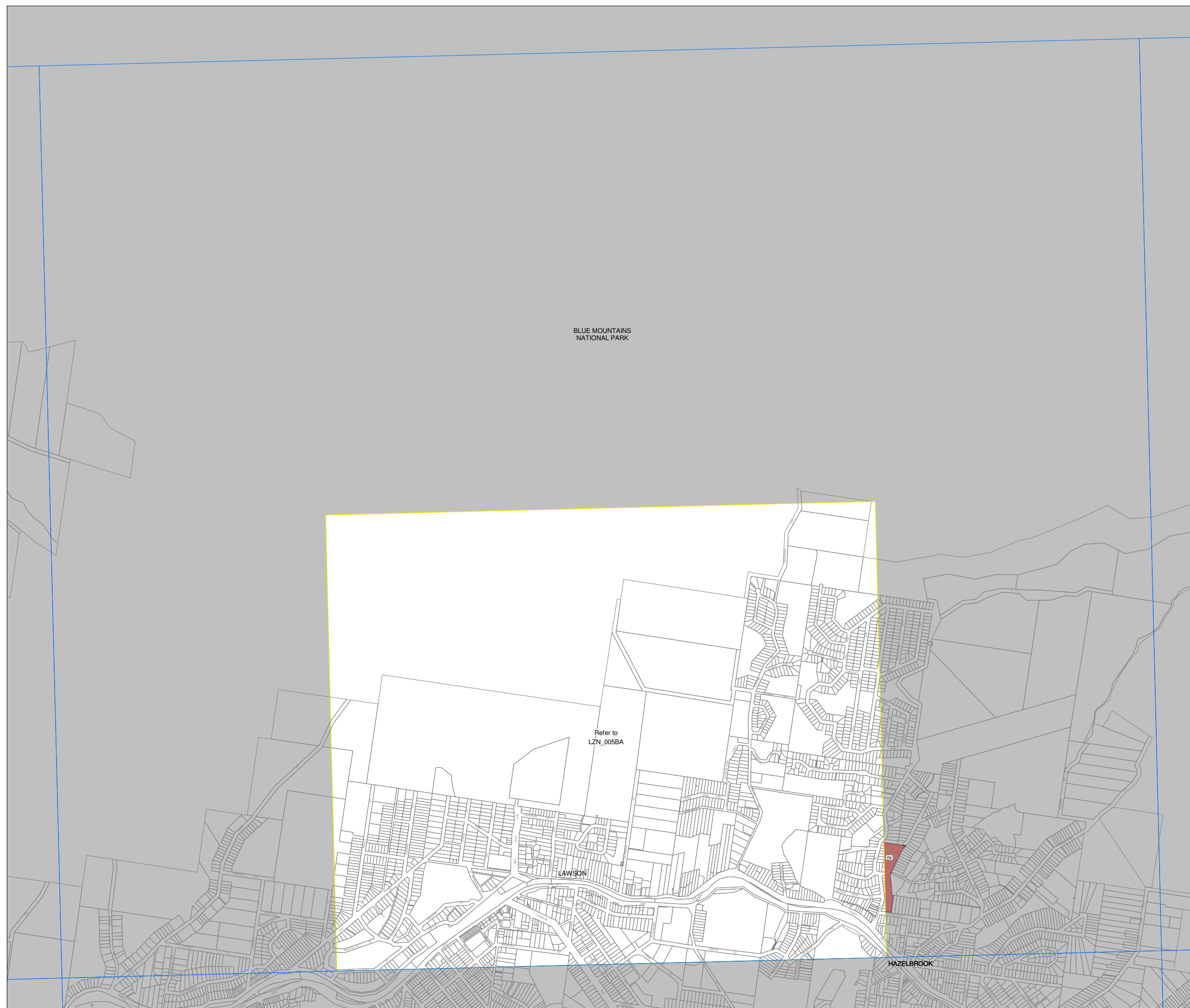
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Map Identification Number:

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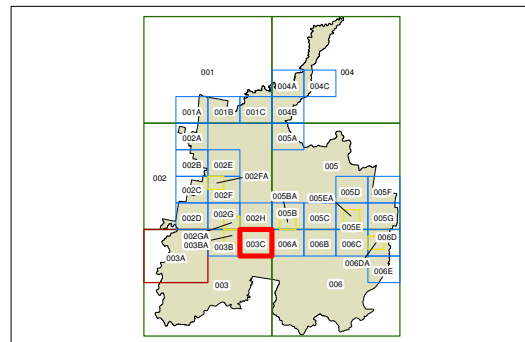
Land Zoning Map - Sheet LZN_003C

Zone

B1	Neighbourhood Centre
B2	Local Centre
B7	Business Park
E1	National Parks and Natural Reserves
E2	Environmental Conservation
E3	Environmental Management
E4	Environmental Living
IN1	General Industrial
IN2	Light Industrial
R1	General Residential
R2	Low Density Residential
R3	Medium Density Residential
R6	Residential Character Conservation
RU2	Rural Landscape
RU4	Primary Production Small Lots
RE1	Public Recreation
RE2	Private Recreation
SP1	Special Activities
SP2	Infrastructure
W1	Natural Waterway
DM	Deferred Matter

Cadastre

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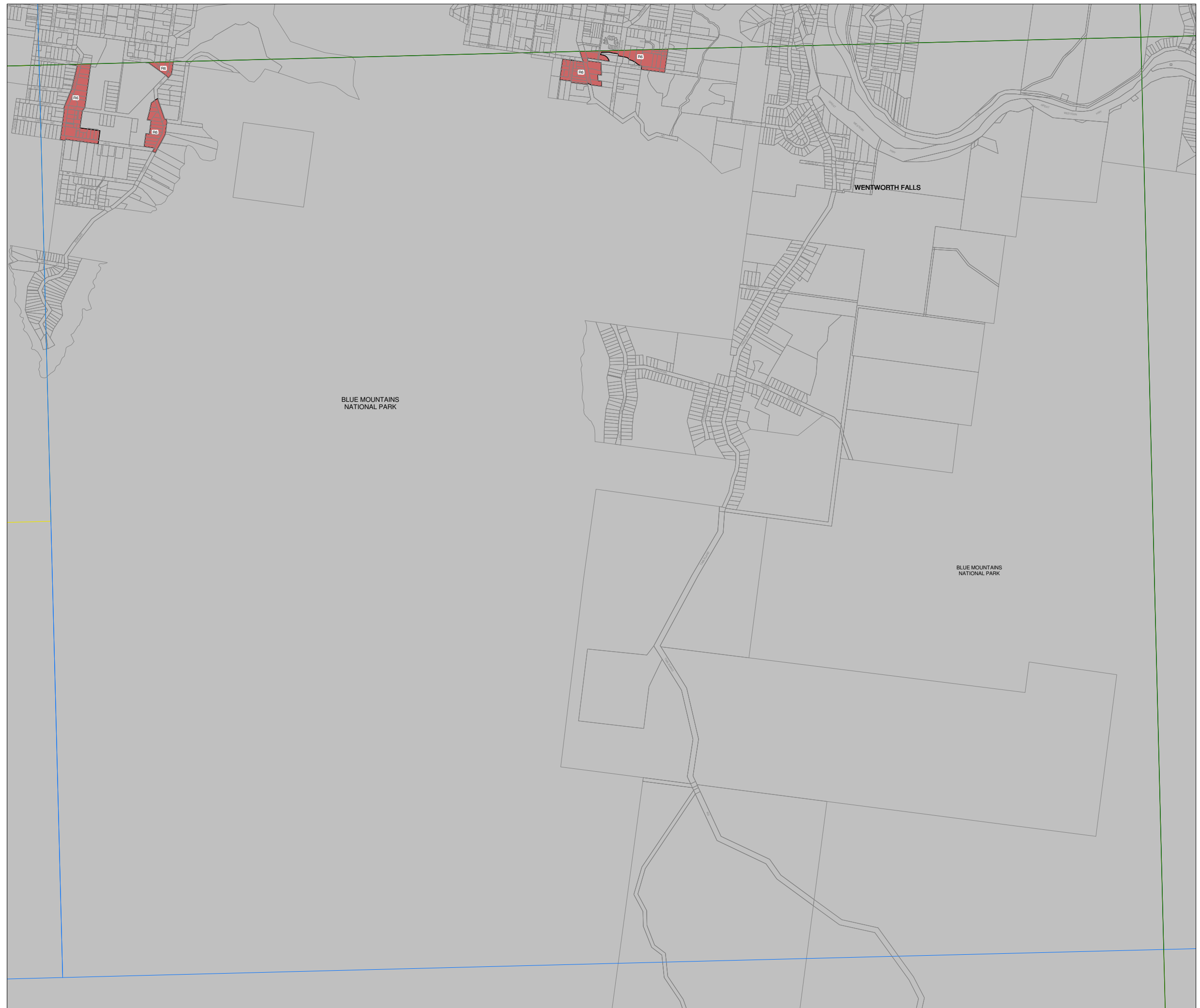
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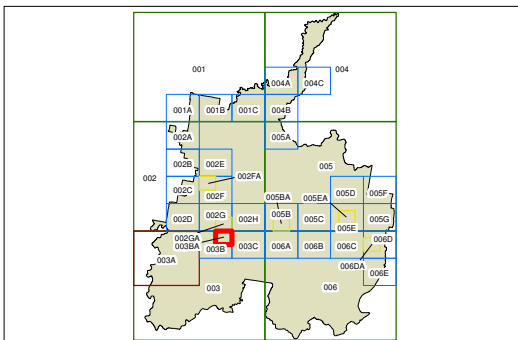
Land Zoning Map - Sheet LZN_003BA

Zone

B1	Neighbourhood Centre
B2	Local Centre
B7	Business Park
E1	National Parks and Natural Reserves
E2	Environmental Conservation
E3	Environmental Management
E4	Environmental Living
IN1	General Industrial
IN2	Light Industrial
R1	General Residential
R2	Low Density Residential
R3	Medium Density Residential
R6	Residential Character Conservation
RU2	Rural Landscape
RU4	Primary Production Small Lots
RE1	Public Recreation
RE2	Private Recreation
SP1	Special Activities
SP2	Infrastructure
W1	Natural Waterway
DM	Deferred Matter

Cadastre

 Cadastre 01/02/2016 @
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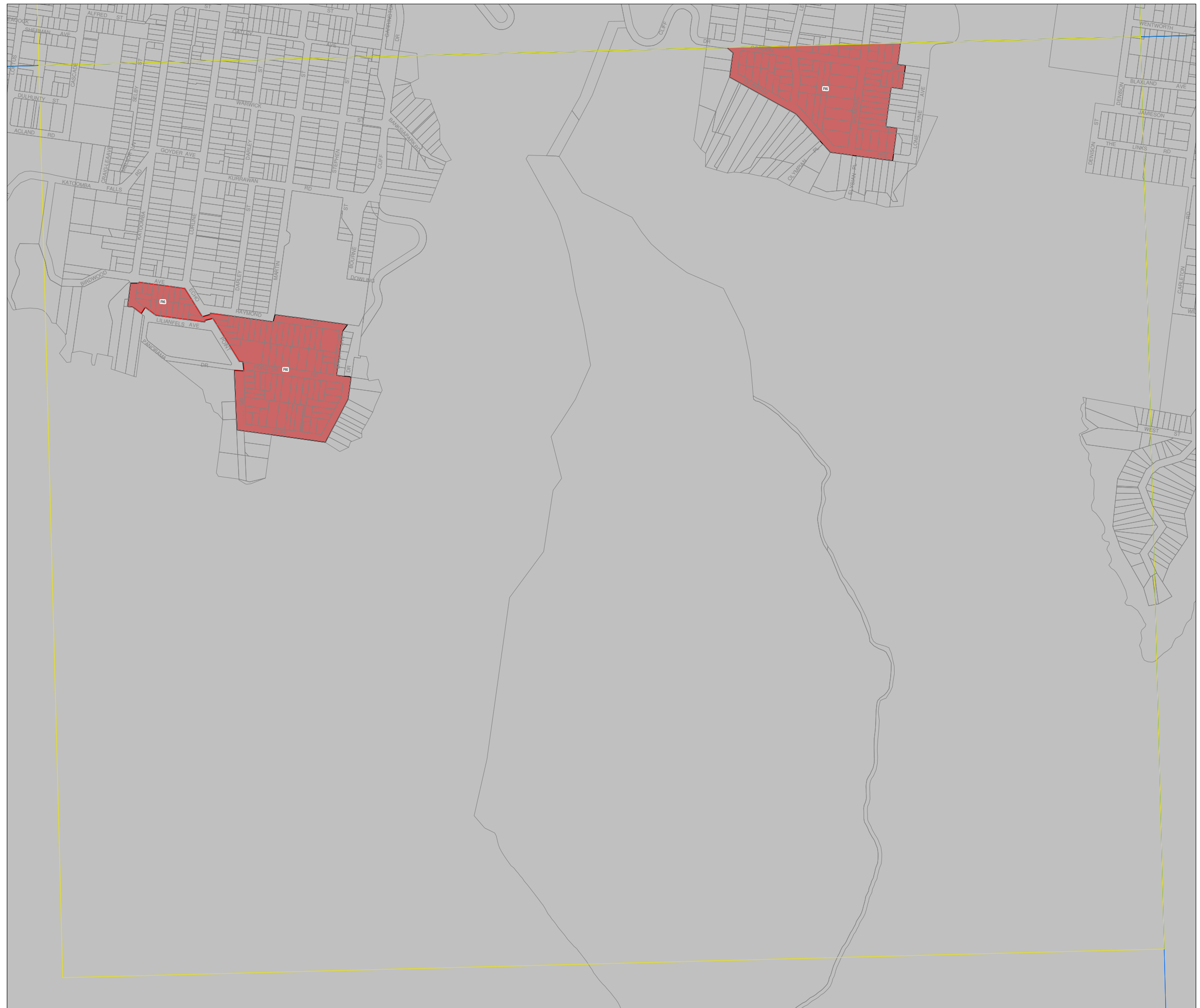
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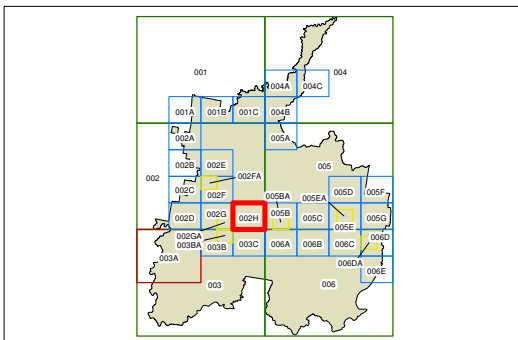
Land Zoning Map - Sheet LZN_002H

Zone

B1	Neighbourhood Centre
B2	Local Centre
B7	Business Park
E1	National Parks and Natural Reserves
E2	Environmental Conservation
E3	Environmental Management
E4	Environmental Living
IN1	General Industrial
IN2	Light Industrial
R1	General Residential
R2	Low Density Residential
R3	Medium Density Residential
R6	Residential Character Conservation
RU2	Rural Landscape
RU4	Primary Production Small Lots
RE1	Public Recreation
RE2	Private Recreation
SP1	Special Activities
SP2	Infrastructure
W1	Natural Waterway
DM	Deferred Matter

Cadastre

 Cadastre 01/02/2016 @
Blue Mountains City Council

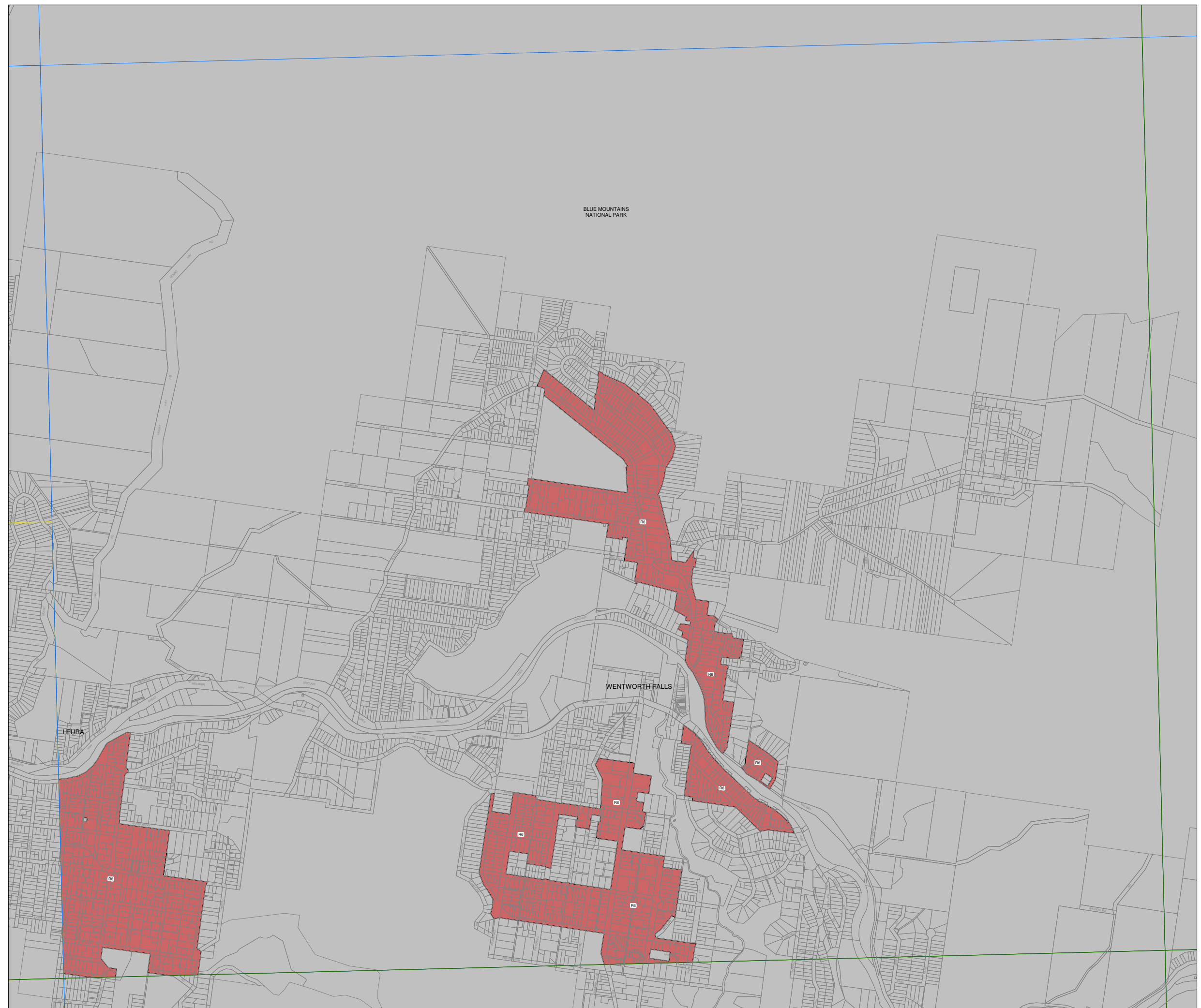


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Map Identification Number:

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Blue Mountains Local Environmental Plan 2015

Draft Amendment 2

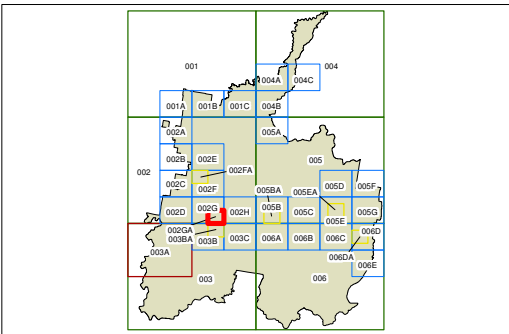
Land Zoning Map - Sheet LZN_002GA

Zone

- B1** Neighbourhood Centre
- B2** Local Centre
- B7** Business Park
- E1** National Parks and Natural Reserves
- E2** Environmental Conservation
- E3** Environmental Management
- E4** Environmental Living
- IN1** General Industrial
- IN2** Light Industrial
- R1** General Residential
- R2** Low Density Residential
- R3** Medium Density Residential
- R6** Residential Character Conservation
- RU2** Rural Landscape
- RU4** Primary Production Small Lots
- RE1** Public Recreation
- RE2** Private Recreation
- SP1** Special Activities
- SP2** Infrastructure
- W1** Natural Waterway
- DM** Deferred Matter

Cadastre

Cadastre 01/02/2016 @
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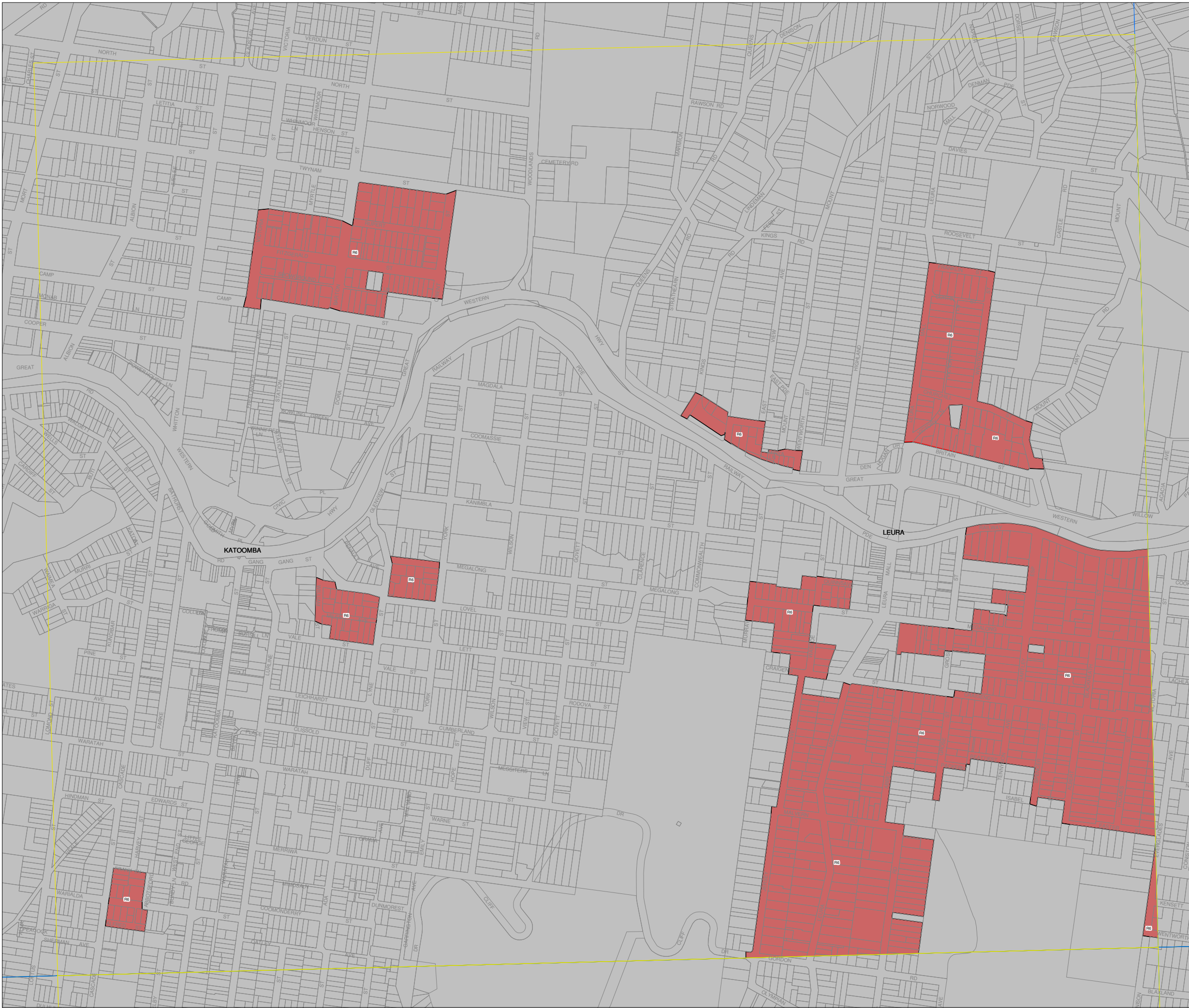
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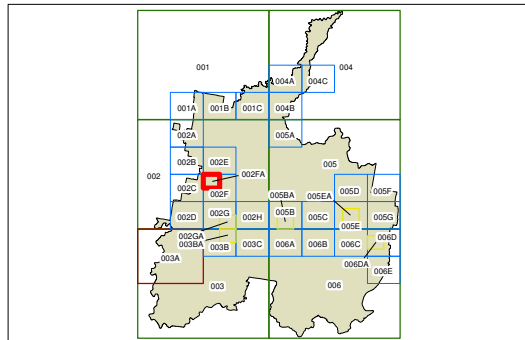
Land Zoning Map - Sheet LZN_002FA

Zone

- | | |
|--|-------------------------------------|
| B1 | Neighbourhood Centre |
| B2 | Local Centre |
| B7 | Business Park |
| E1 | National Parks and Natural Reserves |
| E2 | Environmental Conservation |
| E3 | Environmental Management |
| E4 | Environmental Living |
| IN1 | General Industrial |
| IN2 | Light Industrial |
| R1 | General Residential |
| R2 | Low Density Residential |
| R3 | Medium Density Residential |
| R6 | Residential Character Conservation |
| RU2 | Rural Landscape |
| RU4 | Primary Production Small Lots |
| RE1 | Public Recreation |
| RE2 | Private Recreation |
| SP1 | Special Activities |
| SP2 | Infrastructure |
| W1 | Natural Waterway |
| DM | Deferred Matter |

Cadastre

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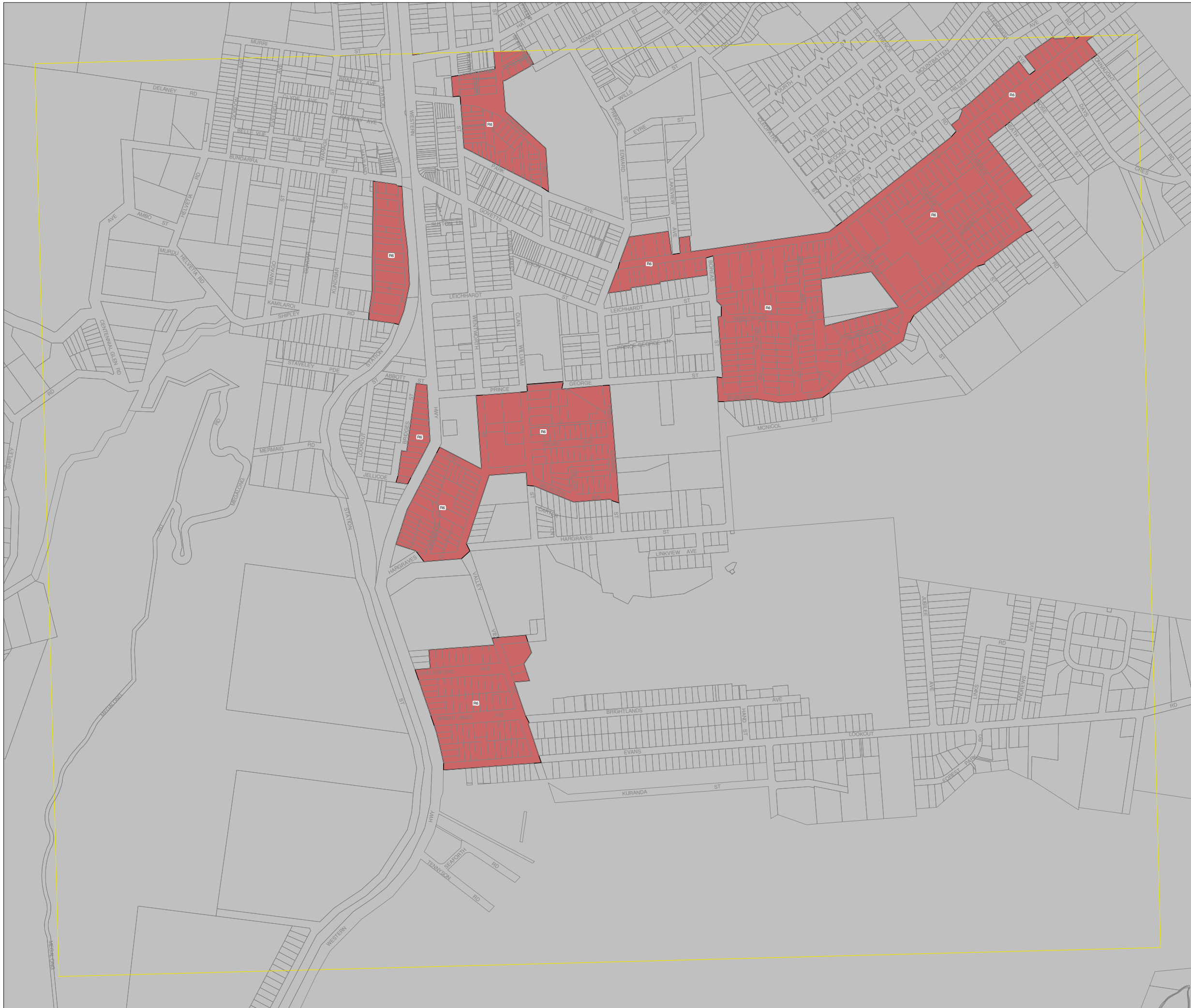
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Projection: GDA 1994
MGA Zone 56

Scale: 1:10,000 @ A3

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Draft Amendment 2

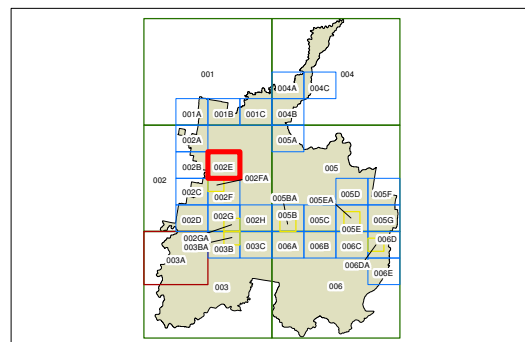
Land Zoning Map - Sheet LZN_002E

Zone

B1	Neighbourhood Centre
B2	Local Centre
B7	Business Park
E1	National Parks and Natural Reserves
E2	Environmental Conservation
E3	Environmental Management
E4	Environmental Living
IN1	General Industrial
IN2	Light Industrial
R1	General Residential
R2	Low Density Residential
R3	Medium Density Residential
R6	Residential Character Conservation
RU2	Rural Landscape
RU4	Primary Production Small Lots
RE1	Public Recreation
RE2	Private Recreation
SP1	Special Activities
SP2	Infrastructure
W1	Natural Waterway
DM	Deferred Matter

Cadastre

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0 400 800
metres

Projection: GDA 1994
MGA Zone 56

Scale: 1:20,000 @ A3

Map Identification Number:

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