

Blue Mountains Conservation Society

Why are LEPs so important?

- **Zoning:** determines what type of development can be built where
- **Building standards:** how new development can be built eg building height, lot sizes and the placement of development on a lot
- **Environmental assessments requirements:** what issues need to be considered and assessed, and what information needs to be provided, for new development.
- **LEPs determine the way we live,** conserve the character and heritage of our villages, ensure our scenic views are protected, conserve our World Heritage Areas, our bushland and our natural environment, and contribute to our economic growth and local job opportunities, including our tourism and visitation economy.

A bit of history

- BM has two LEPs 1991 (rural areas) and 2005 (urban)
- LEP 2005 developed after exhaustive community process – award winning, evidence based LEP
- LEP 2005 sought to minimise impacts on the World Heritage Areas
- Compulsory Standard Instrument LEP – one size fits standardised LEP - introduced by NSW Government in 2006
- Council began working on updating LEP 1991 to the same standard and consistency as LEP 2005
- New consolidated LEP consistent with approach and format for LEP 2005 was expected to be completed in 2015
- Council argued for an exemption from the Standard Instrument LEP

What we know

- BM is required to have one consolidated LEP consistent with the Standard Instrument LEP.
- LEP 1991 and 2005 will no longer exist.
- The deadline, imposed by Minister, for the new LEP is a draft exhibited by the end of 2013.
- Not all of the provisions in the current LEPs can be accommodated in the Standard Instrument LEP.
- Some existing provisions will be lost.

and what we don't know....

- We don't know how much of our existing provisions can be retained and how much will be lost.
- Council is negotiating with Dept of Planning on what provisions will remain and what will be removed
- We don't know what the impact will be of what is lost until the community sees the draft LEP in November 2013
- Other Councils experience has been
 - the Department has shown very little flexibility
 - Other Councils who have gazetted standard instrument LEPs have not been able to include provisions to the extent or comprehensiveness of LEP 2005 and 1991

Timetable

- The timetable is unrealistic
- As a result there will be only 2 month public consultation period for the new draft LEP, currently November and December 2013.
- Mapping, modeling and analysis to ensure areas covered by LEP 1991 have the same zoning/protected area approach and mapped information as areas covered by LEP 2005 is likely to be compromised (NB Council was working towards a 2015 deadline to achieve this)
- No opportunity to consider/undertake analysis of emerging issues relevant to the new LEP – eg climate change and the increased risk of bushfire (see Victorian Bushfire Royal Commission)

Does a new LEP mean an increase in development?

- NSW government is imposing new housing targets for councils through the Draft Metropolitan Strategy for Sydney
- Combined Hawkesbury/Penrith/Blue Mountains target is **16,000** new dwellings by 2021, increasingly to **39,000** in 2031 – LEPs must demonstrate that they can meet this target
- Unsure of BM contribution to this total - previous discussions with Planning have been BM maybe required to have a target of up to 7,000 new dwellings
- New LEPs also represent opportunities for developers and individuals to lobby and seek to rezone their land or change provisions to allow increased development eg change lot sizes to allow for new subdivisions or change the zoning to permit residential development
- Council has stated that its general approach is “no major change” ie no substantially change to the existing planning provisions (or rules) or significant changes to the underlying permitted/prohibited land uses or lot sizes.

Language

- Language used within a LEP have implications in terms of development assessment and approval, and judgments in the Land and Environment Court.
- LEP 2005 and 1991 uses stricter language such as “complies with” while standard LEP uses the weaker “must have regards to”
- Planning have advised that this watering down of language will apply (no exemptions)

Format and mapping

- LEP 2005 has a cascading structure which moves from general to specific – its easy to use and understandable – the Standard instrument does not use this type of format.
- BM LEPs are supported by detailed mapping of information such as significant native vegetation and slope.
- You can look up your lot on the Council's website and access mapped information on a lot by lot basis such as zoning, protected areas, significant vegetation and so on.
- The Standard Instrument does not allow this type of detailed mapping and information to be viewed on a lot by lot basis. The Standard Instrument imposes requirements in terms of
 - What must be mapped
 - The scale of the maps
 - The number of maps
- These prescribed controls could mean the loss of information and mapping for the BM, which underpins a number of environmental provisions

Zoning – lack of equivalents

- The Standard LEP has a prescribed list of zonings which must be used, including prescribing development which is permitted/prohibited in each zone.
- Some of these standard zones translate well to the BM – others do not, especially areas on the bushland interface
- An example - areas zoned Living Conservation (LEP 2005) such as the character residential areas of Leura have no comparable zone under the Standard LEP – options are a rural zone or a large lot residential zone. Zoning these areas a residential zone under the standard instrument however has implications in terms of the compulsory application of certain State Environmental Planning Policies.
- Similar issues arise in terms areas zoned Bushland Conservation.

Zoning – Environmental Protection

- BMs is surrounded by World Heritage listed national parks, often buffered by bushland on private land. Bushland on private land also has scenic values and is part of the character of the BM.
- Much of this bushland on private land in the BM is zoned a form of Environment Protection (EP).
- An EP zone restricts development and protects bushland. A lot can be zoned totally EP or partly EP to allow some form of development such as a single dwelling house.
- The level, detail and extent of EP zoning (and the level of information and mapping to support it) in the BM is almost unique.
- It is essential that land zoned EP under our current LEPs is zoned a similar EP zone under the new Standard Instrument LEP.
- The Minister of Planning has refused to accept the EP zoning of land on the far north coast as proposed by local councils in their draft standard LEPs, and has requested a review.

World Heritage Area

- The Blue Mountains' economy is totally dependent on local and international tourism and visitation generated by the Blue Mountains natural environment and status as a World Heritage Area.
- World Heritage Listing confers an obligation on the federal and NSW state governments to properly protect and manage this internationally recognised natural asset.
- Our current LEP 2005 was specifically designed to limit adverse impacts of development on the World Heritage Area from the surrounding urban areas. The need for effective LEPs is required under the joint Commonwealth and NSW Strategic Plan for the Greater Blue Mountains World Heritage Area.
- One area of critical concern is that the new Standard LEP could see the removal of existing provisions related to managing stormwater impacts from new development. The vulnerable hanging swamps of the upper Mountains region are especially vulnerable to increased storm water and the resulting silt runoff. These swamps are critical to the biodiversity of the World Heritage Area.
- The Environmental Defender's Office has provided legal advice to the Blue Mountains Conservation Society that there are grounds under Commonwealth's *Environment Protection and Biodiversity Conservation Act* for requesting Council, in conjunction with the Commonwealth government, to conduct a 'strategic assessment' of the impacts on the World Heritage Area of the proposed Standard LEP.

Protected Areas

- LEP 2005 has a number of provisions related to Protected Areas.
- There are 6 Protected Areas in LEP 2005 including period housing, vegetation, slope, escarpment and ecological buffers and 5 in LEP 1991 including land between towns, escarpment areas and canopy conservation.
- Protected Areas are mapped areas which have special features. The LEPs place additional assessment or decision-making requirements on developments which impact on Protected Areas.
- The Standard LEP allows localised provisions to be inserted such as Protected Areas. However, other councils have been allowed to insert only one or two Protected Area type provisions within their standard LEP.
- This means many of the existing Protected Area provisions may be lost. Council has been informed for instance that the Period Housing Protected Area is highly unlikely to be included in the new Standard LEP.

Environmental Assessment provisions

- Our current LEPs contain specific environmental impacts assessment or information requirements for new developments.
- This includes clauses dealing with site analysis requirements, landscaping, bushfire, weeds, rare flora species, site disturbance and stormwater.
- Council has indicated that discussions with Planning indicate that many of these current LEP requirements will be required to be moved to the BM Better Living Development Control Plan (DCP) and not included in the new consolidated LEP.
- This is of concern as DCPs are merely policy or guidance documents, have lesser legal weight than LEPs and are not enforceability in the courts.

And many more other issues....

- These are just some of the concerns of the Society – there are many more.
- The issues canvassed above are also outlined in two Council Reports available on Councils website
 - Council Meeting 16 October 2012
 - Council Meeting of 11 December 2012

In the future - White Paper

- The NSW Government have just released the Planning White Paper – it represents the biggest and most significant change to planning and development in NSW.
- The major reform in the White Paper is the emphasis on community input at the strategic level through LEPs, with limited or no community input at the development approval stage.
- The stated aim is that 80% of new development will be **exempted** from development approval, or will be **complying or code** development (no development approval required if certain standards are met).
- This means that 80% of new development will occur with NO community input or consultation as no development approval will be required. Similarly as no development approval is required, no specific environmental assessment of the development will occur.
- Code and complying development includes new houses, major additions to houses, villas, townhouses, small subdivisions, multi unit developments, and retail and commercial developments.
- The White Paper emphasis on community input at the strategic planning/LEP making stage means that getting our new LEP right is more important than ever.
- To find out more come to the Society's public meeting on the White Paper, May 30th 7:30pm at the Hut.

What the Society is doing

- The Society will be continuing its campaign to ensure the best possible LEP for the Blue Mountains.
- This include advocating for meaningful community input, including at least a three month public consultation period for the draft LEP.
- The Society believes that our new LEP must be at least equal to, if not more stringent, than our current LEPs in terms of environmental assessment provisions, development controls and environmental protection zoning, given our World Heritage status and the severe development constraints on a city within a national park.
- We are also requesting meetings with Council, our local state and federal members, and relevant state and Commonwealth Ministers and Departments.
- Possible further public meetings, letter writing stalls and more are planned.