

## **BLUE MOUNTAINS CONSERVATION SOCIETY SUBMISSION ON AMENDMENT 1, LEP 2015**

### **APPENDIX 1: EXTRACT FROM BMCS SUBMISSION TO DLEP 2013 RE: 173 VALLEY RD HAZELBROOK (then part of packet of lots below)**

#### **179-199 Valley Rd Hazelbrook**

#### **DLEP 2013 Map 006A, LEP 2005 Map 21**

This case study illustrates several of the Blue Mountains Conservation Society's concerns and subsequent recommendations relating to:

- how past planning decisions have led to anomalies in the application of zoning and minimum lot sizes with unsatisfactory environmental outcomes for this property (and probably similar other properties) in DLEP 2013
- minimum lot size covering E2 zones
- mapping of Protected Areas in E2 zones

#### **Site description**

This is a 240 acre (97 ha) property adjoining the national park comprising 4 (?) lots/parcels spanning 3 south-running ridges and creeks in south Hazelbrook-Woodford. These creeks and runoff from the site drain into Bedford Creek and ultimately into the Nepean River. The property (and dam on the site) is often visited by birdwatchers and the walking trails are used by local residents.

There are 3 road access points to the property: Valley Rd Hazelbrook, Riches Ave Woodford and Park Rd Woodford. Valley Rd is sealed almost to the entry to the property and all houses on Valley Rd up to the property are serviced. Riches Ave is unsealed for most of its length to the property, Park Rd less so but the unsealed section is steeper and rougher. In the case of Riches Ave, the access road becomes unsealed where the sewer stops at the upper section of Riches Ave where the small subdivided blocks end. This can be clearly seen on the LEP 2005 Map 21 Panel J: sewerage. From there down it is a 1 km (approx.) dirt road with 4 houses on large lots (25 acres) until the property is reached. These lots are not connected to the sewer. Riches Ave and Park Rd loop around and meet at the site of the 'Park Rd dam' which was used by Elvis the water-bombing helicopter during the 2001-2 bushfires in the area. Only 4WD vehicles can negotiate Riches Ave and Park Rd on this part of the property, and these vehicles have caused serious erosion around the dam area.

There is no development on the site at the Riches Avenue and Park Rd access points. However, some bushland on the site was (illegally) cleared many years ago and slashing of regrowth has been maintained by all owners since. There are old horse stables and a small house/shed at the Valley Rd entrance to the property which has been used as a residence. There are cleared patches at the Valley Rd section of the property on which cattle were grazing until recently. Otherwise, the property is mainly covered by native vegetation.

As far as we are aware, the property has not yet been assessed for Aboriginal significance.

## **Site history**

This site has a long history of subdivision attempts. Long term residents remember that around 20 years ago (it is unclear if this was before or after LEP 1991) there was an application for large scale subdivision on the site which was rejected on many grounds. Apart from lack of water and sewer provision and high bushfire risk, one of the grounds of rejection was the unsuitability of Riches Ave for vehicle access to the site. Apart from being unsealed for most of its length, Riches Ave is very narrow, being 4.6 m wide (gutter to gutter) in the sealed section, meaning that cars have to mount the kerb to pass each other. This creates an unacceptable risk in the event of a bushfire evacuation. In other words, there is no viable access to the site from Riches Ave.

In LEP 1991 much of this property, along with large adjoining properties, was designated the Hazelbrook/Woodford Residential Investigation Area (RES-1). All these Residential Investigation Areas were removed from LEP 1991 and incorporated into LEP 2005. However, it seems that 2 parcels of land on this property at the end of Valley Rd, remained in LEP 1991 and were zoned Bushland Conservation and Environmental Protection.

In the 1997 EMP Stage 2 Local Environment Study, Study Area 3 (p.116), the Hazelbrook/Woodford Residential Investigation Area was deemed to be not suitable for conventional residential development because of the extreme to high fire threat and because of its environmental constraints. These constraints were identified as steep slopes, significant creekline and moist cliffline vegetation communities downstream, and the presence of significant fauna species and significant fauna/flora habitats. Accordingly, the study recommended that the environmental constraint areas be zoned Environmental Protection and 'Bushland Conservation' (as it was termed in the study) no subdivision "in order to conserve the natural bushland character of the landscape and to promote the regeneration of natural bushland in areas with sparse tree or canopy cover" (p.116).

The Environmental Management Plan 2002 Volume 1 Planning Framework reiterated this view that the Hazelbrook-Woodford Residential Investigation Area was highly constrained by environmental factors and high levels of bushfire threat, that development would place considerable pressure on servicing and infrastructure, and that "the impact of development on watercourses and vegetation communities within the locality would be unacceptable" (p. 62). For these reasons, the Environmental Protection zone was applied over the environmentally constrained area and Living - Bushland Conservation with a No Subdivision notation applied to other land. This was consistent with the planning principles of the Draft LEP 2005 limiting urban expansion especially to exposed, environmentally sensitive and under-serviced areas such as this. However, in August 2003, following advice from Sydney Water, Council resolved to lift the No Subdivision notation on this and other Living - Bushland Conservation areas. Lifting the No Subdivision notation was purely on the basis of Sydney Water's current and future planned capacity to provide reticulated sewerage and potable water supply, not on the basis of environmental constraints.

Around 2002 the property was sold to a Sydney-based property development company. In late 2012 the property was passed in at auction under a mortgagee sale. It was subsequently sold in 2013. Given the long history of subdivision attempts, this is a site of great concern to the Society.

## **DLEP 2013**

### Zones applying to the property

In accordance with the Council's policy to translate LEP 1991 and LEP 2005 zones into the most closely fitting Standard Instrument zones in DLEP 2013, E2 has been applied to the Environmental Protection zone areas on this property, E3 applied to the LEP 1991 Bushland Conservation zone areas, and E4 applied to the LEP 2005

Living - Bushland Conservation zone areas. While this is consistent with Council's policy of translating current LEP zones to DLEP 2013 zones, it creates anomalies in the zones and the minimum lot sizes that are then applied to the property. These anomalies have been created through two LEPs having been applied to the property. An urban zone, Living – Bushland Conservation, was applied over part of the property when it was incorporated into LEP 2005. LEP 2005 was meant to cover already developed urban areas of the Blue Mountains, yet this property is on the outer fringes of south Hazelbrook-Woodford adjoining the national park. The anomaly becomes apparent when you consider that the areas of south Hazelbrook-Woodford further up the access roads from this property, closer to the highway and train line, are still covered by LEP 1991. So you have zones relevant to bushland areas (LEP 1991) applied to already developed residential areas, and urban zones (LEP 2005) applied to areas that really are in the undeveloped bushland adjoining the national park, at least in this case.

The upshot of this anomaly is that the most unsuitable area for residential development on this property – the portion at the end of Riches Ave which does not have water or sewer supply and with only a narrow 1 km dirt road leading to it - has had an E4 zone applied to it simply because this was a translation from the LEP 2005 Living – Bushland Conservation zone which previously applied. At the same time, the most developable part of this property – the serviced, already partly cleared and developed area with a sealed road access from Valley Rd – has a small portion of E4 at the property entrance followed by a more extensive and highly constrained E3 zone area. E3 was applied simply because this was a translation from the LEP 1991 Bushland Conservation zone that had previously applied.

**Arguably, an E3 zone should have been applied to all developable areas on these large lots**, as has occurred on similar lots at the end of Bedford Rd, Woodford. Alternatively, a larger minimum lot size could have been applied to the E4 areas e.g. 10ha, reflecting more accurately its environmental sensitivity. We also note that the recommendation in the LEP 1991 Rural Lands Planning Study Bushland Conservation Zone Report (p.85) that more extensive Environmental Protection zoning should be applied to the Bushland Conservation area on the property at the Valley Rd entrance has not been followed through in the DLEP 2013.

#### Minimum lot sizes applying on E3 and E4 zones on the property, and essential services

The anomaly in zoning becomes more apparent when the minimum lot size that is then applied to the E3 and E4 zone areas on the property is considered. The E3 area on this property at the end of Valley Rd has an AB3 30 ha minimum lot size applied, while the E4 areas at the end of Riches Ave and Valley Rd have a 1200m<sup>2</sup> minimum lot size applied. Remember that the Riches Ave part of the property is the area that is most highly constrained by lack of access and services.

Further, the E4 areas on the property have the designation Area G (Clause 4.1F) on the Lot Averaging Map. This clause allows for cluster housing development in E3 and E4 zones. While this is meant to limit the impact of housing development in these environmentally sensitive lands, it raises the issue of servicing such a development. It would seem from Clause 6.24 that any subdivision of the E4 area at the end of Riches Ave would be precluded by the current absence of availability of sewer, water and electricity services. The cost of providing these services, along with the stormwater management and other provisions that would apply, would be prohibitive for any developer given the limited lot yield that would be possible on this part of the property.

The only economically feasible subdivision option for the Riches Ave part of the property would be one or two dwellings on lots large enough for on-site sewer disposal. This is apart from any such houses requiring large water collection tanks and possibly off-grid electricity generation. However, any dwelling and on-site effluent disposal system on this/any part of the property would be located on a hillside draining down into

one of the creeks. Any on-site sewer disposal would not be acceptable, as confirmed by the Environmental Management Plan 2002 Volume 1 Planning Framework's statement that "the impact of development on watercourses and vegetation communities within the locality would be unacceptable" (p. 62).

While such constraints, plus the proximity of E2 zones and ecological buffer areas, seem to offer protection from inappropriate development on this environmentally sensitive property, the 1200m<sup>2</sup> minimum lot size (with cluster housing provisions) applying to the most undevelopable part of the property (the Riches Ave E4 area) seems anachronistic.

