

**BLUE MOUNTAINS LAND DEVELOPMENT (SPECIAL
PROVISIONS) ACT, 1985, No. 55**

New South Wales



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ELIZABETHÆ II REGINÆ

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Act No. 55, 1985.

An Act to validate certain environmental planning instruments, a development application, a development consent and a concurrence under the Environmental Planning and Assessment Act, 1979; to terminate certain proceedings; and for other purposes. [Assented to, 15th May, 1985.]

Blue Mountains Land Development (Special Provisions) 1985

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Blue Mountains Land Development (Special Provisions) Act, 1985".

Interpretation.

2. (1) In this Act—

"planning instruments" means—

- (a) Blue Mountains Local Environmental Plan No. 4, published in Gazette No. 168 of 3rd December, 1982, and any instruments published in the Gazette before 21st September, 1984 (including Blue Mountains Local Environmental Plan No. 12, published in Gazette No. 167 of 2nd December, 1983), amending or purporting to amend Blue Mountains Local Environmental Plan No. 4; and
- (b) Blue Mountains Local Environmental Plan No. 28, published in Gazette No. 137 of 21st September, 1984;

"Principal Act" means the Environmental Planning and Assessment Act, 1979;

"the Council" means the Council of the City of Blue Mountains;

"the relevant land" means—

- (a) land in the vicinity of Fitzroy Street and Gladstone Road, Leura, as shown edged heavy black on Sheet 1 of the map marked "Blue Mountains Local Environmental Plan No. 28" deposited in the office of the Council; and
- (b) portion 367 and part of portions 88, 153 and 366, Parish of Jamison, part of lots 9 and 10, section 2, D.P. 4305, part of a closed road and part of a public road off McLachlan Road, Leura, as shown edged heavy black on Sheet 2 of the map marked "Blue Mountains Local Environmental Plan No. 28" deposited in the office of the Council.

Blue Mountains Land Development (Special Provisions) 1985

(2) Expressions used in this Act shall, unless the contrary intention appears, have the same meanings respectively as they have in the Principal Act.

Validation.

3. (1) To the extent (if any) of any invalidity, each planning instrument shall be deemed to have been validly made, and—

(a) shall be deemed to have had, during the period that commenced on the day on which it was made or purported to be made and ended immediately before the date of assent to this Act; and

(b) shall have, on and after the date of assent to this Act,

the same force and effect as it would have had if—

(c) all the planning instruments had been validly made on the respective days on which they were made or purported to be made; and

(d) without affecting the generality of the foregoing provisions of this subsection—

(i) all conditions and preliminary steps precedent to the making of the planning instruments had been complied with and performed; and

(ii) the planning instruments formed part of this Act and this Act had been in force at all relevant times.

(2) To the extent (if any) of any invalidity—

(a) the development application dated 7th February, 1984, made or purported to be made under the Principal Act by Wills Denoon Travis and Partners Pty Limited to the Council in relation to the relevant land is validated;

(b) the grant of consent to that application by the Council before the date of assent to this Act is validated; and

(c) the grant of concurrence by the Director of Environment and Planning to the development the subject of that application is validated.

and no appeals or other proceedings lie in respect of the determination of the Council with respect to that application, but nothing in this subsection prevents the applicant from appealing under section 97 of the Principal Act with respect to that determination.

Blue Mountains Land Development (Special Provisions) 1985

(3) Subsection (1) has effect with respect to a planning instrument only in so far as the instrument applies or purports to apply to the relevant land (whether or not the instrument applies or purports to apply to any other land).

(4) Without prejudice to the generality of the foregoing provisions of this section, this section has effect in relation to any act, matter or thing and in relation to any person in respect of any act, matter or thing, whether that act, matter or thing—

(a) occurred or occurs, arose or arises or came or comes into existence; or

(b) was or is the subject of proceedings that were or are commenced, before, on or after the date of assent to this Act.

Termination of proceedings.

4. (1) Any proceedings in any court (including the proceedings in—

(a) *Annie Winters v. The Council of the City of Blue Mountains, The Minister for Planning and Environment, Leura Golf Club Limited, Fairmont Resort Pty. Limited, Cann's Albury Pty. Limited and Richard Barnsley Smyth, Director of Environment and Planning, in the Supreme Court of New South Wales, Court of Appeal No. C.A. 17 of 1985 (LEC 40126 of 1984); and*

(b) *Malcolm Graham Gainsford and Joanna Carroll v. The Council of the City of Blue Mountains and the Honourable Robert Carr, Minister for Planning and Environment, No. 40206 of 1984, in the Land and Environment Court,*

pending immediately before the date of assent to the Act in relation to—

(c) any of the planning instruments in so far as they apply to the relevant land (whether or not the instruments apply to any other land);

(d) any development application, grant of consent or grant of concurrence referred to in section 3 (2); or

(e) any associated matters,

are terminated.

Blue Mountains Land Development (Special Provisions) 1985

(2) Except in so far as the parties to any proceedings referred to in subsection (1) otherwise agree, the costs of or incidental to the proceedings incurred by a party to the proceedings shall be borne by the party, and shall not be the subject of any contrary order of any court.

(3) Notwithstanding anything in subsection (2), the Treasurer may, in the absolute discretion of the Treasurer, pay from the Consolidated Fund to any party to any proceedings referred to in subsection (1) the whole or any part of any amount that the Attorney General, on application made to the Attorney General in writing by or on behalf of that party, certifies as being the costs of or incidental to the proceedings reasonably incurred by that party up to the time of their termination by subsection (1).

(4) Nothing in subsection (1) applies to an appeal under section 97 of the Principal Act.

Determination of certain development applications by the Minister.

5. (1) The Minister may give directions to the Council that—

- (a) any development application; or
- (b) any development application of a class or description of development applications specified by the Minister,

made in relation to the land, shall be referred to the Minister for determination.

(2) The Minister, in relation to any development application the subject of a direction under subsection (1)—

- (a) shall be the consent authority; and
- (b) shall determine the application under and in accordance with the Principal Act.

(3) The Minister may give directions to the Council requiring it to furnish to the Minister such information with respect to any development application referred to the Minister under subsection (1) as the Minister may specify.

(4) The Council shall comply with any direction given to it under subsection (3) within such period as may be specified in the direction.

Blue Mountains Land Development (Special Provisions) 1985

(5) No appeals or other proceedings lie in respect of the determination of the Minister with respect to a development application referred to the Minister under subsection (1), but nothing in this section prevents the applicant from appealing under section 97 of the Principal Act with respect to that determination.

(6) In this section, a reference to a development application includes a reference to an application made under section 102 of the Principal Act.
