



New South Wales

## **Blue Mountains Local Environmental Plan 1991 (Amendment No 25)**

under the

**Environmental Planning and Assessment Act 1979**

I, the Minister for Urban Affairs and Planning, make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*.  
(P97/00256/PC)

ANDREW REFSHAUGE, M.P.,  
Minister for Urban Affairs and Planning

Sydney, 21st March 2001.

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Clause 1 Blue Mountains Local Environmental Plan 1991 (Amendment No 25)

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# Blue Mountains Local Environmental Plan 1991 (Amendment No 25)

## 1 Name of plan

This plan is *Blue Mountains Local Environmental Plan 1991 (Amendment No 25)*.

## 2 Aims of plan

This plan aims to amend *Blue Mountains Local Environmental Plan 1991* to:

- (a) increase the strength of the objectives contained within that plan as a test against which development must relevantly be assessed, and
- (b) improve the clarity of the objectives with respect to the Residential Bushland Conservation zone, and
- (c) replace the definition of *Usable land area* with two definitions, one relating to the area which may notionally be suitable for development, and the other relating to land that is unsuitable for development, and
- (d) clarify the operation of building site cover and principal development area provisions, with particular regard to the potential for both to apply to a single lot or development, and
- (e) alter the subdivision provisions, so that each new lot has suitable land for future development, and so that the number of lots created by a subdivision in the Residential Bushland Conservation zone for which a zone subscript of (8/ha) is specified on the map supporting that plan, more directly reflects the environmental capacity of the land, and
- (f) clarify the intent that the principal development area provisions do not apply to subdivisions.

## 3 Land to which plan applies

This plan applies to all land in the City of Blue Mountains to which *Blue Mountains Local Environmental Plan 1991* applies.

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**4 Amendment of Blue Mountains Local Environmental Plan 1991**

*Blue Mountains Local Environmental Plan 1991* is amended as set out in Schedule 1.

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Schedule 1 Amendments

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### Schedule 1 Amendments

(Clause 4)

#### [1] Clause 6 ZONE OBJECTIVES

Omit clause 6.3. Insert instead:

##### **6.3 Zone: Residential Bushland Conservation (RES-BC)**

- (a) To ensure that all development including subdivision is environmentally sensitive and site responsive and maintains and facilitates sustainable natural ecosystems and biodiversity within the Blue Mountains.
- (b) To utilise best practice water management techniques:
  - to protect, and where practicable to improve, existing perennial and non-perennial watercourses and the associated riparian zone, and
  - to protect, and where practicable to improve, water quality, and
  - to maintain pre-development downstream flow patterns, and
  - to promote ecologically sustainable water and land management practices.
- (c) To establish an appropriate landscape character by encouraging the preservation, regeneration and re-establishment of native bushland, where practicable.
- (d) To ensure that the form and siting of development, and the building materials, colours, and landscaping utilised in that development, are each appropriate for, and harmonise with, the bushland character of the area in which the development is to take place.
- (e) To ensure bushfire protection measures are adequate to protect proposed development and are able to be implemented without unacceptable adverse environmental impacts.

- (f) To ensure that non-residential land uses are compatible with the residential character of the area in which development is proposed.

**[2] Clause 9 GENERAL CONTROL OF DEVELOPMENT**

Omit clause 9.3. Insert instead:

- 9.3** Except as otherwise provided by this plan, the Council shall not grant consent to the carrying out of development on land to which this plan applies unless the Council has considered the objectives of this plan and the objectives of the zone and of any protected area in which the land is situated, and is of the opinion that the carrying out of the development complies with the objectives that are relevant to that development.

**[3] Clause 10 DEVELOPMENT CRITERIA—GENERAL**

Omit clause 10.5 (a) (iv). Insert instead:

- (iv) where the development is for the purposes of a dwelling, minimises “cut” or “fill” or both as far as is practical and contains such “cut” or “fill” or both within the dwelling where conditions allow, and

**[4] Clause 10.5 (a) (v)**

Insert after clause 10.5 (a) (iv):

- (v) incorporates best practice water management techniques to protect the surface and groundwater regimes and water quality for the site.

**[5] Clause 10.5 (c) and (ca)**

Omit clause 10.5 (c). Insert instead:

- (c) The Council shall not consent to subdivision, unless the bushfire protection measures required to protect the land to be subdivided are contained within a perimeter road or the boundaries of the property to be subdivided, and do not have any adverse environmental impact on

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any water supply catchment area or any development excluded land.

- (ca) The Council shall not consent to development, other than subdivision, unless the development:
  - (i) incorporates effective measures, within the boundaries of the lot concerned, and satisfactory to the Council, to protect the development from bushfire, and
  - (ii) mitigates the adverse environmental impacts of those measures to the maximum extent practicable.

### [6] Clause 10.5 (da), (db) and (dc)

Omit clause 10.5 (d) and (da). Insert instead:

- (da) The Council shall not consent to development for the purpose of a dwelling house, or to development ordinarily incidental and ancillary to a dwelling house, on any lot created otherwise than in accordance with clause 34.1 (c), unless the development incorporates effective measures, satisfactory to the Council, to ensure that the development has no significant adverse environmental impact on:
  - (i) any environmentally sensitive vegetation unit (as listed in Schedule 3), and
  - (ii) any rare or threatened species of flora or fauna or its habitat and any unusual plant community, and
  - (iii) the hydrological aspect of the locality, and
  - (iv) any, lake, lagoon, or perennial or non-perennial watercourse, and
  - (v) any significant natural feature, including rock outcrops, rock ledges and cliffs.
- (db) The Council shall not consent to development, other than development referred to in clause 10.5 (da), on any lot created otherwise than in accordance with clause 34.1 (c), unless the development incorporates effective measures, satisfactory to the Council, to ensure that the development has no adverse environmental impact on any development excluded land.

- (dc) The Council shall not consent to any development (excluding a work for the purpose of providing public utility services), proposed to take place either wholly or partly on development excluded land:
  - (i) located within any lot created in accordance with clause 34.1 (c), and
  - (ii) identified when the Council granted consent to the subdivision by which the lot concerned was created,

unless the Council is satisfied, by means of a detailed environmental assessment, that the development has no adverse environmental impact on the development excluded land concerned.

**[7] Clause 10.9**

Omit clause 10.9. Insert instead:

**10.9 Site Coverage**

- (a) The Council shall not consent to development (other than development for the purpose of agriculture in the Megalong Valley) on any land zoned Rural Conservation, Bushland Conservation, Residential Bushland Conservation or Residential Investigation, if the total building site cover resulting from carrying out the development, including any part of the site covered by buildings ancillary to a main building (such as tennis courts, swimming pools, sheds and the like) exceeds the total building site cover specified in the following Table:

**Table**

Notional development area of the Lot	Total Building Site Cover
Less than 1,000 m <sup>2</sup>	160 m <sup>2</sup> or 40% of the notional development area, up to a maximum of 300 m <sup>2</sup> , whichever is the greater

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<b>Notional development area of the Lot</b>	<b>Total Building Site Cover</b>
1,000 m <sup>2</sup> or more but less than 2,000 m <sup>2</sup>	300 m <sup>2</sup> plus 10% of any amount by which the notional development area exceeds 1,000 m <sup>2</sup>
2,000 m <sup>2</sup> or more	400 m <sup>2</sup> plus 5% of any amount by which the notional development area exceeds 2,000 m <sup>2</sup> , up to a maximum total building site cover of 2,500 m <sup>2</sup>

- (b) Certain development on any lot consisting of or including land having an area of more than 4,000 m<sup>2</sup> zoned Bushland Conservation, Residential Bushland Conservation or Residential Investigation must take place within a Principal Development Area, as required by clause 30 and the Table to that clause.

### [8] **Clause 11 DEVELOPMENT CRITERIA—PROTECTED AREAS**

Omit clause 11.3. Insert instead:

#### **11.3 Environmental Constraint Area**

The Council shall not consent to development in a Protected Area-Environmental Constraint Area, unless it is satisfied, by means of a detailed environmental assessment, that the development complies with the objectives of the Protected Area that are relevant to the development and will comply with the development criteria in clause 10 that are relevant to the development.

### [9] **Clause 26 HOLIDAY CABIN**

Omit “usable land area” wherever occurring.  
Insert instead “notional development area”.



**[10] Clause 28 KEEPING OF HOOFED ANIMALS**

Omit clause 28.2 and 28.3. Insert instead:

- 28.2 The Council shall not grant consent to the use of land for the keeping of hoofed animals, unless the development incorporates effective measures, satisfactory to the Council, to ensure that the development has no adverse environmental impact on any development excluded land.
- 28.3 Consent of the Council is not required for the use of land for the keeping of hoofed animals where the stocking rate is less than 1 such animal per 5 hectares of notional development area.

**[11] Clause 30**

Omit the clause. Insert instead:

**30 PRINCIPAL DEVELOPMENT AREA**

- 30.1 This clause applies to any lot consisting of or including land having an area of more than 4,000 m<sup>2</sup> zoned Bushland Conservation, Residential Bushland Conservation or Residential Investigation.
- 30.2 No development shall take place on a lot to which this clause applies unless:
- (a) in the case of a lot created in accordance with clause 34.1 (c), the development takes place within a Principal Development Area, except where that development is:
    - (i) subdivision or development ancillary to subdivision, or
    - (ii) for the purpose of providing access or public utility services,
  - (b) in the case of a lot created otherwise than in accordance with clause 34.1 (c), the development takes place in a Principal Development Area, except where that development is:
    - (i) for the purpose of bushfire hazard reduction, or
    - (ii) ancillary or incidental to a dwelling house which was in existence at 27 December 1991, but only if any clearing of vegetation that is involved is not located on any development excluded land

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and is carried out on an area of less than 50 m<sup>2</sup>, and the total area cleared outside the Principal Development Area does not involve more than 5% of the notional development area of the lot, or

- (iii) for the purpose of providing access or public utility services, or
- (iv) subdivision or development ancillary to subdivision.

30.3 A Principal Development Area shall:

- (a) have a maximum total area, to be determined with regard to the notional development area of the lot, as specified in the Table to this clause, and
- (b) subject to clause 30.4, not include any development excluded land, and
- (c) have boundary setbacks of at least 15 metres, where the width of the lot at the building line is 50 metres or more, or boundary setbacks of least 10 metres, where the width of the lot at the building line is less than 50 metres, and
- (d) be located to the Council's satisfaction.

**Table**

<b>Notional development area of the Lot</b>	<b>Maximum Total Area of Principal Development Area</b> (applies to land described in clause 30.1)
Less than 2,000 m <sup>2</sup>	750 m <sup>2</sup> or the notional development area, whichever is the greater
2,000 m <sup>2</sup> or more	2,000 m <sup>2</sup> or 25% of the notional development area, up to a maximum of 5,000 m <sup>2</sup> , whichever is the greater

30.4 Clause 30.3 (b) shall not apply to a Principal Development Area within any lot where the part of the lot that is not development excluded land, and that is so configured as to be capable of being the site of a dwelling house, and of accommodating development ordinarily ancillary or incidental

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to a dwelling house, has a total area of less than 750 m<sup>2</sup>, but in that event the Principal Development Area shall include the minimum practicable amount of development excluded land and in no event shall the amount of development excluded land within a Principal Development Area exceed 750 square metres.

- 30.5 The Council shall not consent to development on a lot to which this clause applies unless it is or will be screened from view from outside the lot either by:
- (a) the retention of existing vegetation, within the lot, or
  - (b) the planting of indigenous vegetation within the lot which will achieve such screening within a time frame considered by the Council to be reasonable.

**[12] Clause 34 SUBDIVISION**

Omit clause 34.1. Insert instead:

**34.1 General Provisions**

- (a) The Density Control Provision shown on the Map specifies the maximum number of lots per hectare into which land may be subdivided with the consent of the Council.
- (b) The Council may consent to subdivision of any land covered by a Density Control Provision shown on the Map only if the total number of lots (other than lots for a public purpose) existing after the subdivision will not exceed the product of the notional development area of the original lot, in hectares, multiplied by the maximum number of lots per hectare specified in the Density Control Provision in respect of the original lot, rounded down to the nearest whole number.
- (c) The Council may consent to subdivision of any land that is zoned Bushland Conservation or Residential Bushland Conservation only if each new lot proposed to be created, (other than lots for a public purpose, and other than lots created as part of a cluster housing development), and intended to be the site of a dwelling house, includes land with a minimum area of 750 m<sup>2</sup>, no part of which is development excluded land, and which is so configured as to be capable of being the site

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- of a dwelling house and accommodating development ordinarily incidental and ancillary to a dwelling house.
- (d) The Council may consent to subdivision of any land for the purpose of cluster housing development only if it is satisfied that:
- (i) all development for the purpose of any dwelling house proposed to be erected as part of the cluster housing development, and
  - (ii) all development ordinarily incidental and ancillary to a dwelling house,
- is not to be located on any development excluded land.

**[13] Clause 34.4**

Omit clause 34.4. Insert instead:

**34.4 Residential Bushland Conservation Zone—Special Provisions**

- (a) Where a Density Control Provision is shown on the Map, subdivision of the land, in accordance with clause 34.1, to a density exceeding that shown is prohibited.
- (b) For the purposes only of clause 34.1, the notional development area of that part of a lot zoned RES-BC and subject to a Density Control Provision of (8/ha) shown on the Map shall not include any land which is steeper than 20%.
- (c) The Council may only consent to subdivision of land shown RES-BC (NS), RES-BC (CONS) or RES-BC with a Minimum Area Requirement on the Map if:
  - (i) it is for a boundary adjustment where no additional lots are created, or
  - (ii) it is for the purpose of providing land for public purposes.

**[14] Schedule 4 DEFINITIONS, REFERENCES AND HEADINGS**

Insert in Schedule 4 in alphabetical order the following definitions:

***Cluster housing development*** means the development of land, containing an area of development excluded land, designed and for which consent is granted as an integrated whole and involving:

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- (a) the concentration of the development on land within the development site that is most suited to development, and
  - (b) the subdivision of land into five or more lots, and
  - (c) the erection of a dwelling house on each lot (other than on any neighbourhood or common property lot or lots), and
  - (d) at a minimum, the consolidation of the major part of the development excluded land within a neighbourhood or a common property lot, and
  - (e) the implementation of management measures approved by the Council, to create and maintain fire protection zones, and to protect and enhance the environmental value of the development excluded land referred to in paragraph (d) and any other natural areas within the development site,

that is subject to a scheme for joint ownership or a neighbourhood or a strata scheme.

***Development excluded land*** means any part of a lot:

- (a) that is land zoned Environmental Protection, or
- (b) that is designated on the Map as Protected Area-Environmental Constraint Area, together with any buffers required by the Council to protect such area, or
- (c) on which any Schedule 3 environmentally sensitive vegetation unit is located, together with any buffers required to protect that unit, or
- (d) that is the habitat of any threatened species, populations or ecological communities within the meaning of the *Threatened Species Conservation Act 1995*, the development of which would have a significant effect on the threatened species populations or ecological communities as determined in accordance with section 5A of the Act, or
- (e) on which any rare species of flora is located, together with any buffers required by the Council to protect that flora, or
- (f) that comprises a watercourse or any buffers required by the Council to protect that watercourse, or

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- (g) that has a slope in excess of 20%, or
- (h) comprising any significant landscape or special feature, such as rock outcrops and escarpments, which in the opinion of the Council is worthy of preservation.

Land that would otherwise be development excluded land because it is steeper than a nominated slope, but is:

- (a) less than 100 square metres in area, and
- (b) is not within 20 metres of other land steeper than the nominated slope,

is taken not to be development excluded land, on the basis only of its slope.

***Development ordinarily incidental and ancillary to a dwelling house*** includes:

- (a) the erection of structures or the carrying out of any works other than for the purpose of providing public utility services, and
- (b) the clearing of native vegetation, and
- (c) the provision of access, car-parking and hard-stand areas, and such measures, including the provision or use of stormwater control devices, sewage disposal areas, and the clearing of vegetation for fire protection zones, as are necessary in order to meet the requirements of clause 10.5,

but only where that development relates to the construction or the use of the dwelling house concerned.

***Notional development area*** means that part of a lot not zoned Environmental Protection and not designated on the Map as a Protected Area-Environmental Constraint Area.

***Rare species of flora*** means any flora species listed in the publication entitled “Rare or Threatened Australian Plants”, Briggs & Leigh, 1995 Revised Edition.

***Slope*** means the gradient of the natural ground level, being the vertical height divided by the horizontal distance expressed as a percentage. The slope of land is to be established by measuring the distance between 1.0 metre contour levels as shown on a detailed contour survey plan of the land concerned,

that plots any rock outcrops on the land as well as other features.

**Watercourse** means a body of water or a channel, being part of the natural ecological condition of a catchment, and which comprises a creek, stream, lake or wetland with:

- (a) a defined bed or defined banks, or
- (b) endemic riparian vegetation within or adjacent to the stream edge or banks which may provide habitat for aquatic or terrestrial animals, or
- (c) evidence of natural stream processes such as siltation, erosion, gullying, pool and riffle zones,

and which conveys continuous or intermittent water flows, but does not include a piped drainage line.

**[15] Schedule 4**

Omit the definition of *Usable land area*.