

Enclosure
(Report to Council
Meeting of 20 November 2007)

For Meeting of
11 March 2008

File No: O/2246/2007
Address: 36 Mount Street and
61-63 Kings Road
Town: Leura

ITEM NO: 19

SUBJECT: PREPARATION OF A DRAFT LOCAL ENVIRONMENTAL PLAN TO PERMIT TOURIST ACCOMMODATION ON LOTS 1 AND 2 DP 1009510 AND LOT 1 SECTION 9 DP 5140, NO. 36 MOUNT STREET AND NOS. 61 AND 63 KINGS RD, LEURA

FILE NO: O/2246/2007

Recommendations:

- 1 *That pursuant to Section 54 of the Environmental Planning and Assessment Act, 1979 ("EP&A Act 1979"), the Council resolve to prepare a Draft Local Environmental Plan to amend Blue Mountains Local Environmental Plan 2005 (LEP 2005) for Lots 1 and 2 DP 1009510 and Lot 1 Section 9 DP 5140, No 36 Mount Street and Nos 61 and 63 Kings Road Leura to permit tourist accommodation as an additional land use and to adopt the draft instrument attached to this report for exhibition.*
 - 2 *That the NSW Department of Planning be informed of the Council's decision in accordance with Section 54(4) of the EP&A Act 1979.*
 - 3 *That the Council advise the Minister and the Director General of Planning that, in its opinion, an environmental study is not required pursuant to Section 57 of the EP&A Act 1979.*
 - 4 *That the Minister be requested to grant delegation to the Council to certify the Draft Local Environmental Plan under Section 65 of the EP&A Act 1979.*
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Report by Group Manager, Environmental and Customer Services:

Reason for report

The Council has received an application to amend the planning instrument as it applies to Nos. 61 and 63 Kings Road and No. 36 Mount Street to permit tourist accommodation. The Council has previously considered preparing a draft local environmental plan for No. 36 Mount Street and No. 63 Kings Road, Leura to permit tourist accommodation at its Ordinary Meeting of 14 December 2004. In the interim, the applicant has expanded the non-confirming use to an adjoining lot at No. 61 Kings Road.

This Report seeks to start a new plan preparation process to include No. 61 Kings Road as part of the site. In order to facilitate this, the Council is required to decide whether to prepare a draft local environmental plan (DLEP) in accordance with the plan-making process of Part 3 of the Environmental Planning and Assessment Act 1979 (the "EP&A Act, 1979").

As a consequence of the expanded nature of the business, the previous application to alter the planning instrument to permit tourist accommodation has been withdrawn by the applicant. The applicant was advised by Council that a fresh application would be required in order to continue the process as the previous Council resolution did not apply to the total site area.

Applicant/Owner: Mr M F Hennessy

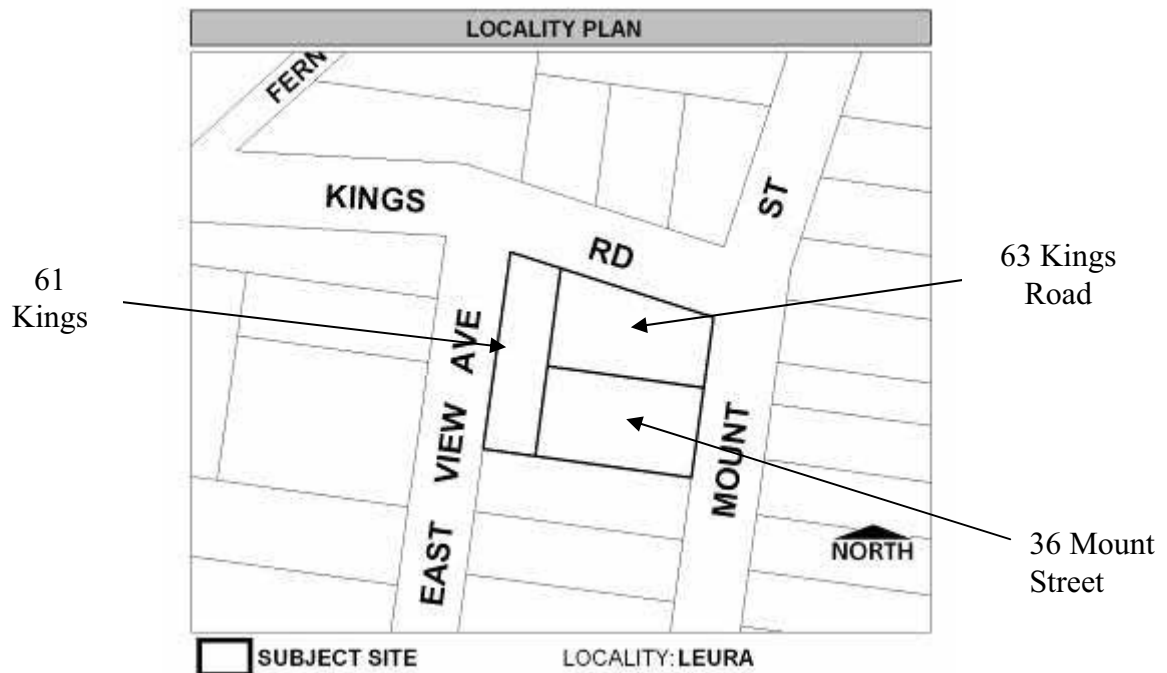
Application lodged: 26 September 2007

Property address

Lot 1 DP 1009510 – 36 Mount Street, Leura

Lot 1 Section 9 DP 5140 - 61 Kings Road, Leura

Lot 2 DP 1009510 - 63 Kings Road, Leura



Background

A tourist accommodation business has been operating from 63 Kings Road and 36 Mount Street since 2000. The use of the site for tourist accommodation has never been approved by the Council. The use was not permissible under the, then, Residential 2a1 zone under Local Environmental Plan No. 4, nor is it permissible in the present Living-Bushland Conservation zone of LEP 2005. The Council became aware of the business in December 2003, and following discussions with the owners it was determined that the consideration of the need for legal action in relation to the non-compliant use would be deferred pending lodgement of the application to amend the instrument to permit the use and the appropriate management of the operation in the site. Attachment 1 provides an overview of the actions taken by the Council in the matter of non-compliance.

The owners lodged an application for the amendment of the planning instrument in June 2004 to permit tourist accommodation as an additional land use on 63 Kings Road and 36 Mount Street. In June 2005 the business expanded to 61 Kings Road Leura. The Council was not advised of this development.

The Council has sought legal advice in regard to the non-compliant land use and there have been discussions with the applicant’s legal representatives. This issue is a separate matter and

is not a consideration in relation to the merits of the application for an amendment to the planning instrument or the consideration of related development application.

It is however relevant background to the need to recommence the DLEP process. In discussions with the applicant and their legal representatives, it has been agreed that the Council will stay any legal proceeding in relation to the issue of non-compliance pending the outcome of the application for amendment to the planning instrument. However, the Council has requested that the applicants cease the illegal use of 61 Kings Road pending the outcome of the request to amend the instrument. This could be achieved by reverting the use of this site to a 'holiday let' by not separately leasing Moo Manner and Butter Barn. The applicants have thus far refused to accede to that request because of the impact that such an action would have on the viability of the operation and the forward bookings for the site.

Site Description

The subject land is located on three (3) lots which comprise a three (3) street corner fronting Mount Street, Kings Road and East View Avenue in North Leura. The following are details of the site's characteristics as shown in Attachment 2:

- Total area of 3182 m².
- The site is within a residential locality which is characterised by cottages in a garden setting with a bushland backdrop.
- The development on the site is known as "Old Leura Dairy."
- The site slopes six (6) metres from the southern boundary to the northern boundary.
- The site contains six (6) structures, all of which were approved by the Council as residential or ancillary to residential structures.
- Five (5) of the structures are self contained and may be classified as separate dwellings owing to the provision of bathroom and kitchen facilities. In those dwellings which were approved as ancillary to a residential structure, minor internal modifications were undertaken without the Council consent to facilitate the separate leasing of the suites.
- The sixth structure does not contain kitchen facilities.
- The total site coverage of the buildings on the site is approximately 602m² or 19%.
- There are a total of 12 car parking spaces indicated on the plans.

The following provides a site analysis for each of the three lots:

36 Mount Street, Leura - Lot 1 DP 1009510

36 Mount Street has a site area of exactly 1200m², and has a 26.5 metre frontage to Mount Street. A driveway and crossover is provided to the site via this lot which is constructed of gravel. The plans show the location of 6 car parking spaces on this lot. The site has a significant drop from the frontage to the grass lined gutter and the street. Landscaping is in place and partially screens the development from the street.

The site contains a two (2) storey rendered dwelling, which was classified as a dwelling/granny flat under approval XB/1958/1999. This structure is referred to as the 'straw bale house' in documentation and comprises two (2) living areas, three (3) bathrooms, five (5) bedrooms with kitchen facilities. The dwelling is setback 18.4 metres from Mount Street and has a total gross floor area of 297.6m²

A studio is located at the western boundary of 36 Mount Street. This structure was approved as a pottery studio and comprises one (1) bedroom, a bathroom and a kitchenette with a gross floor area of 23.8m²

61 Kings Rd - Lot 1, Section 9 DP 5140

This lot has a site area of 854m² and contains a dwelling that was renovated in 2003. Works were approved for additions and a studio ancillary to the existing dwelling in 2003.

The dwelling, known as “Moo Manner” contains accommodation for up to fourteen (14) people and contains a laundry and an office which services the buildings on site and at 63 Kings Road and 36 Mount Street. The gross floor area is approximately 133m².

The studio known as “Buttercup Barn” is a two (2) level building which can accommodate two (2) people and has a gross floor area of 48m². There are facilities for tea making and a microwave in this building.

There are three (3) car parking access points to this site from East View Avenue. All access points require reversing in or out from the site and one of the car parking spaces is stacked. There are four (4) car parking spaces identified on this site.

63 Kings Road, Leura – Lot 2 DP 1009510

This lot comprises 1130m² in area and has a 21 metre frontage to Mount Street and a 46 metre frontage to Kings Road. There is vehicular access available via Kings Road and the plans indicate there are 3 car parking spaces on this site. Landscaping has been provided.

A historic cottage, estimated to be constructed in 1913 is located with a frontage to Kings Road, and faces east to Mount Street. The cottage, which is known as “The Worker’s Cottage” is constructed of weatherboard and brick and contains three (3) bedrooms, two (2) bathrooms and a kitchen, with a gross floor area of 90m².

Oral reports indicate that the site formed part of Ogilby’s Dairy, however no documentary evidence supports this claim.

A shed on site was approved for works comprising an existing workshop and storage areas under file X02/0401. This building is now used for the purposes of a meeting room and contains kitchen facilities, storage room, bathroom and one (1) bedroom. The gross floor area is 80.4 m².

Current Zoning

The subject site was previously zoned Residential 2(a1) under LEP 4. The site is currently zoned Living-Bushland Conservation under the provisions of LEP 2005. Both of the zonings prohibit the use of Tourist Accommodation. The site is not restricted or affected by any Protected Areas and there are no heritage items within the vicinity. The site is mapped as bushfire prone.

Proposed Amendment to LEP 2005

The application seeks to amend LEP 2005 to permit an additional use on the site, which comprises the allotments numbered 61 and 63 Kings Road and 36 Mount Street, Leura, for the purpose of the current non-conforming use being tourist accommodation for up to thirty (30) people in six (6) accommodation suites, with associated on site parking.

The applicants have submitted a development application concurrently with their application for amendment to the instrument, to seek approval for the tourist accommodation and to retrofit one of the suites to provide facilities which can accommodate a person with a disability. Under LEP 2005, each of the accommodation suites would be required to be adaptable.

The development application will be fully assessed if and when the DLEP is gazetted. During the course of preparing and considering the DLEP, modifications to the development application may be required in order to improve outcomes for the site and adjoining residents.

The proposed amending planning instrument is provided at Attachment 3 to this Report. The draft amendment will make provision for the following, subject to agreement by the Department of Planning:

- to permit tourist accommodation to the site;
- to limit the number of people able to be accommodated at the site;
- to limit the use of the site to visitors only, particularly in relation to any functions or events and to confine any future use of the premises as a refreshment room;
- to consolidate all the lots into one (1) lot.

In this instance, having regard to the nature of the locality, it is considered that creating an additional permissible use on the site for the purpose of tourist accommodation is preferred to altering the zoning of the land to one that permits tourist accommodation (ie a Village-Tourist zone). Such a zone would open the site to a range of other uses and permit redevelopment of the site in a way that would not be compatible with the present form of the development.

Public and Statutory Authority Notification

The application has not been publicly exhibited or notified to the relevant Statutory Authorities at this stage. This would be formally carried out in accordance with the provisions of the EP&A Act 1979, should the Council resolve to support the rezoning proposal and proceed to exhibition of the draft Plan.

Assessment of Proposal:

1. Objectives of LEP 2005

The nature, scale and design of this particular proposal for tourist accommodation satisfies the following Principal Objectives of the LEP 2005:

- 12(b) “ To meet the needs of residents, visitors and the business community through the provision of an appropriate balance of land uses and built forms that respond to the principles of ecologically sustainable development.
- 12(h) “To identify and retain the diverse built and landscape elements that contribute to the character and image of the Blue Mountains.
- 12(k) “To provide sustainable employment opportunities and strengthen the local economic base by encouraging a range of enterprises, including tourism, which respond to lifestyle choices, emerging markets and changes in technology, while protecting local amenity, character and environmental values.

Economically, the applicant states that the development makes a contribution to the Blue Mountains tourism industry by providing a unique eco-tourism business. The accreditation and awards won by the proprietors include:

- Certified by Ecotourism Australia
- Western Sydney Industry Awards
- Participation in the Australian Tourist Commission's Visiting Journalist's Program

The Living-Bushland Conservation zoning does not contemplate tourist accommodation development, instead seeking to allow a range of non-residential uses that are only conducted in association with a predominately residential land use. The scale and design of the existing development is consistent with the zone objective requiring that the form and siting of buildings, colours, landscaping and building materials are appropriate for and harmonise with the bushland character of the locality.

A preliminary assessment of the development against LEP 2005's requirements has been undertaken and complied with Attachment 4 - *Compliance Table*. It is recognised that the development compliments the built residential form of the area, providing a substantial setback from the street whilst accommodating substantial landscaping to screen car parking. The development harmonises with the environment by providing sound sustainable building design, complying with the LEP's requirements for the minimum soft impermeable areas.

2. Definition of use

The rezoning application proposes that the site be provided with one (1) additional land use to permit tourist accommodation. This would necessitate an amendment to Schedule 8 of LEP 2005, which identifies the site and permits the use of the site for tourist accommodation.

An overview of the relevant tourist related definitions is provided below:

Tourist Accommodation

Tourist accommodation is generally considered an intense land use which is confined to the Village Town Centre, Village Neighbourhood Centre and Village Tourist zones. These zones are located within the core villages or known tourist precincts like the Hydro Majestic and are well serviced by transport and social infrastructure.

Tourist accommodation is a broad land use and is defined as being:

“a building or buildings providing for short term accommodation and recreation which use, adapt or complement the existing building or buildings and which may include a refreshment room and space capable of being used for functions such as receptions, conventions or the like.”

The site's use is considered best classified as tourist accommodation due to the provision of recreation facilities on site, catering and the promotion of the site as a “corporate retreat” with meeting areas and breakaway areas provided within the larger buildings. The multiple occupancy nature of the site (6 buildings which sleep up to 30 people) also categorises the use as tourist accommodation rather than the less intense tourist type uses such as holiday lets or bed and breakfast establishments.

Holiday Let

Holiday lets are defined as being the use of a single dwelling for a short term period and are generally characterised as a low impact use. They are only distinguished from a typical residential dwelling use by leasing arrangements. As such, holiday lets are commonly found in residential areas and have limited impact on the residential amenity of an area. Holiday lets are permissible with consent in all residential and village zones under LEP 2005. Old Leura Dairy cannot be classified as a holiday let due to the multiple occupancies on each lot and the additional facilities and services which are available.

Bed and Breakfast

Bed and breakfasts are defined as dwellings which provide short term accommodation for up to 6 people, have no more than 3 bedrooms and operated solely by the permanent residents of the dwelling. This land use is also considered to be relatively low impact and is permissible with consent in all residential zones and the village zones under LEP 2005. The Old Leura Dairy cannot comply with the definition of bed and breakfast, by nature of the size and management of the operation.

3. Existing Structures

It is considered that the existing structures are of a residential domestic scale. All structures on site have received approval from the Council over the past eight years. Consent was granted on each of the lots for a primary dwelling and ancillary buildings; i.e. studio, pottery studio, storage shed. Therefore the scale of development can be considered to be residential and consistent with the surrounding residential area.

4. Proposed Structures

Currently the buildings on the site do not comply with accessibility requirements under Clause 108(2) and Clause 109 of LEP 2005 and the relevant Australian Standards. The structures were approved as residential dwellings without the need to comply with these clauses.

In order to comply with the accessibility requirements of Clause 108 of LEP 2005 at least one of the accommodation suites will have to be modified. It is proposed to modify one of the accommodation suites to provide an accessible bathroom and parking. It is believed that the site has the capacity to comply with Council's requirements in relation to this matter. More information is required by the applicant, including more detailed plans, to assess the adaptability of the accommodation suites.

5. Impacts of use

The impact of the use of the site for tourist accommodation on the surrounding locality requires detailed consideration given the overarching objectives of the Living Bushland Conservation zone. There have been three (3) complaints in relation to the use of the site since July 2005. During the public exhibition period from the previous rezoning in 2004, two (2) objections were received from adjoining neighbours, raising concern in relation to noise and car parking and the possibility of the intensification of the site for use for weddings, conferences and functions. Concern was also raised in relation to the impact of car parking on the surrounding streets. A complaint in August 2006 was registered against the use of the site as a conference centre and for functions. There had been two weddings which had caused excessive noise and disturbance within the locality. The owner agreed to cease holding weddings at the site and claimed that the use of the site for conferences was not a high impact.

Limiting the functions to guests residing at the site would curb some of the impacts on local residential amenity.

Car Parking

Car parking within the street has been an issue raised by adjoining residents. The site currently provides 12 car parking spaces; although these have not been approved by the Council and do not comply with the relevant Australian Standards. The *Better Living Development Control Plan* requires the provision of 1 car parking space per 3 beds. With 29 beds this would require 10 car parking spaces. Plans will be required to be prepared by the applicant, which demonstrate compliance with the relevant standards for car parking during the assessment process. Vehicular access to the site needs to be upgraded to increase the use of on site parking and limit street car parking which affects adjoining residents.

Noise Impacts

As previously discussed, the development has received three (3) complaints in relation to the operation of the site. Complaints made with regards to noise were received in relation to events and functions. In order to manage this situation it is recommended that the wording of the draft amendment restrict the use of the site to activities for the visitors temporarily residing at the premises only. This would limit functions and conferences and reduce the possibility of noise impact on the surrounding residents. It would also bring the proposed use further into alignment with the objectives of the Living Bushland Conservation zoning of the site.

Services

The existing non-conforming use is operating in a satisfactory manner within the existing capacity of service infrastructure available to the site. Additional details will be required in the course of assessment of the development application with regards to waste management and maintenance for the site.

6. Sydney Regional Environmental Plan No. 20 (SREP 20)

The site is located within a sub-catchment of the Hawkesbury-Nepean River and is therefore affected by the provisions of SREP 20. The proposal is considered to be consistent with the aims and strategies of the SREP in the following manner:

- The stormwater is managed on site with on site detention systems
- The site is serviced by the existing Sydney Water sewerage system and has adequate capacity in the network to support the proposed development as advised by Sydney Water.

Any additional works that may be required in order to comply with Council's standards for accessibility and vehicular access will be conditioned to be constructed so as to ensure that pre development flows match post development flows and thereby restrict any impact on water quality within the catchment.

7. Bushfire Assessment

The site is mapped as bushfire prone as it is located in the 100 metre buffer area. A rezoning application is not integrated development under the provisions of the E P & A Act. The proposed rezoning would be subject to Section 62 consultation with the Rural Fire Service.

The concurrent development application is considered as an integrated development under Section 100B under the Rural Fire Act 1997 and Clause 91 under the E P & A Act 1979. As such, the applicant has lodged a bushfire hazard assessment to accompany the rezoning and the development application. This assessment recommends that additional bushfire protection measures be implemented including:

- Asset Protection Zones (APZ) are to be constructed and maintained to the standard prescribed in Planning for Bushfire Protection 2006; a document produced by the RFS.
- The development is to provide a minimum 10,000 litre water tank with either a petrol or diesel pump connected to a fire hose;
- An occupation evacuation plan;
- Retrofitting the Workers Cottage with sub floor shields along the western, northern and eastern elevations;
- Provide a sprinkler system around the perimeter of the property.

It is considered that these measures can be satisfactorily addressed within the site. Should the proposed amendment to LEP 2005 be supported by the Council, the proposal will be forwarded to the RFS for consideration at Section 62 stage.

8. Procedure for Preparation of a Draft Local Environmental Plan

In accordance with S.54(4) of the EP&A Act 1979, the Council may decide to prepare the draft LEP. Should it be decided to prepare a DLEP, the Department of Planning must be advised.

Since 2006, the procedure for DLEP preparation has changed. The Department of Planning has created the LEP Review Panel to streamline the plan-making system and seek sound justification for the necessity of the spot rezoning. Councils must now address criteria when considering the preparation of a draft LEP at S.54, based on pro-forma evaluation criteria established by the LEP Review Panel. The pro-forma evaluation is provided as Attachment 5 to this report.

The LEP Review Panel will scrutinise the proposed draft LEP early in the procedure. The Panel will ensure that the draft LEP is consistent with State and Regional planning objectives and strategies before it goes to the Minister for Planning.

The Panel Review process includes the following steps:

1. Evaluate the proposed draft LEP against set criteria;
2. Advise the Director General and/or Minister about the proposed draft LEP;
3. Advise the Council whether or not to proceed with drafting the LEP.

Councils are requested to avoid, where possible, resolving to prepare site specific amendments to existing plans. A compelling reason must be provided demonstrating the need to prepare such a plan. With regards to the current application it is considered that the only alternative to the site specific amendment would be to undertake action to close the current operation down.

The “Old Leura Dairy” provides a permanent employment generating activity of relatively small scale site responsive design. As part of the tourism industry, it contributes to the economy of the Blue Mountains and it has achieved recognition for showcasing sustainable

building practices as part Blue Mountains visitor experience. The Council has previously expressed support for this facility for these reasons.

The use of an enabling clause aims to ensure that the scale and nature of the existing operation is retained.

Subsequent to the LEP Review Panel’s determination, if the draft LEP was to proceed, relevant authorities such as the RFS, service providing authorities and environmental protection agencies will be notified of the proposal under Section 62 of the E P & A Act.

Should the Council decide not to commence preparation of the DLEP, the site will need to revert to only those uses permissible and approved by the Council, and these include:

- revert to single dwellings, or
- as approved Bed and Breakfasts, or
- as Holiday Lets

Conclusion

The application for DLEP preparation seeks the amendment of the land use zoning to permit tourist accommodation. The tourist accommodation will provide the means for short term visitor accommodation and recreation for a maximum of thirty (30) people at any one time. The operation of the site will be restricted to use by temporary residents only, thereby limiting the impact of the tourist business on surrounding residents.

Whilst the proposal is not permissible in the Living-Bushland Conservation zone, the tourist facility satisfies the principal objectives of the LEP 2005, in regards to meeting the needs of residents, visitors and the business community, while providing built forms that respond to the principles of ecologically sustainable development. The development is also broadly consistent with the objectives of the Living Bushland Conservation zone, particularly in ensuring that the form and siting of buildings, colours, landscaping and building materials are appropriate for and harmonise with the bushland character of the locality.

Should the rezoning be supported, there will be a number of on site issues which will need to be addressed. These include:

- ensuring that at least one (1) of the accommodation suites is accessible and addressing the adaptability of accommodation suites,
- providing car parking and vehicular access to the site in accordance with Council’s requirements,
- ensuring that the site and buildings comply with the requirements of the Planning for Bushfire Protection policy and
- managing the site to ensure minimum impacts on the surrounding residents.

The development provides best practice integration of tourist facilities utilising an ecologically sustainable approach whilst providing an important economic benefit to the tourism industry. The proposal is in keeping with the bushland character of the zoning and is considered to have merit in its ecologically sensitive design, character and amenity to the area. It is recommended that the Council commence the plan-making process to permit the use of Tourist Accommodation as an additional land use on the site of Old Leura Dairy.

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Attachment 1 – Background

Background

The subject site has a history of non-compliance which was first identified by the Council in late 2003. The following provides an account of the actions taken by the Council to address the matter.

December 2003

The Council became aware, through advertising and the media, that property at No. 63 Kings Road and No. 36 Mount Street Leura was being used and promoted as tourist accommodation with two (2) structures on each of these allotments being let separately on a short term basis. This was an illegal use in the Residential 2(a) zone (Local Environmental Plan No. 4) as it was then zoned in 2003, and remains so in the Living Bushland Conservation zone as it is zoned now.

January 2004

The Council requested in writing that the kitchenettes in the structures known as the “Studio” on 36 Mount Street and the “Milking Shed” on 63 Kings Road be removed and that they were not to be let separately from the main dwellings on each of those allotments. This would enable the use to remain classified as a holiday let which did not require consent at that time.

February 2004

Further meetings were held between the proprietors and the Council officers in February 2004. It was advised that the separate letting of the “Studio” and “Milking Shed” would require a rezoning to permit the use. The proprietors decided to lodge a rezoning application for 36 Mount Street and 63 Kings Road, Leura. The applicants were verbally advised that, should a rezoning application be lodged, any compliance action to address the illegal operation of the site would be stayed pending the outcome of the rezoning process.

June 2004

A rezoning application was lodged for 36 Mount Street and 63 Kings Road Leura on the 11th June 2004.

14th December 2004

The Council resolved to prepare a draft LEP for 36 Mount Street and 63 Kings Road.

June – July 2005 – Public exhibition of the draft LEP was undertaken. It was in this time that the Council became aware that the business had extended to 61 Kings Road Leura without the Council consent or any advice to the Council of the change in operation. This use involved the separate letting of two structures (“Moo Manner” and “Buttercup Barn”) at 61 Kings Road, which is adjacent to 63 Kings Road.

September 2005 – The proprietor was advised in writing that the use as tourist accommodation of 61 Kings Road was illegal. It was advised that the proprietor should restart the rezoning process to include 61 Kings Road. The owner was given 21 days to respond to the Council’s letter.

July 2006 – The owner advised the Council that he wished to amend the current rezoning process.

September 2006 - the Council officers met with the owner on site in response to complaints from neighbours regarding the expansion and operation of the Old Leura Dairy and advised that an amendment to the rezoning process was not possible, but that a new rezoning process was required.

March 2007 – The advice provided at the site meeting of September 2006 was confirmed in writing.

April – July 2007 – the Council has been in discussions with the owners and has sought legal advice on the need to issue orders to cease the non conforming use at 61-63 Kings Road and 36 Mount Street.

It was agreed that orders seeking the cessation of all non conforming uses at the site would be stayed provided that the owners lodged a fresh rezoning application and a development application for the use of the site as tourist accommodation. The decision of whether or not to commence class 4 proceedings would be deferred until at least:

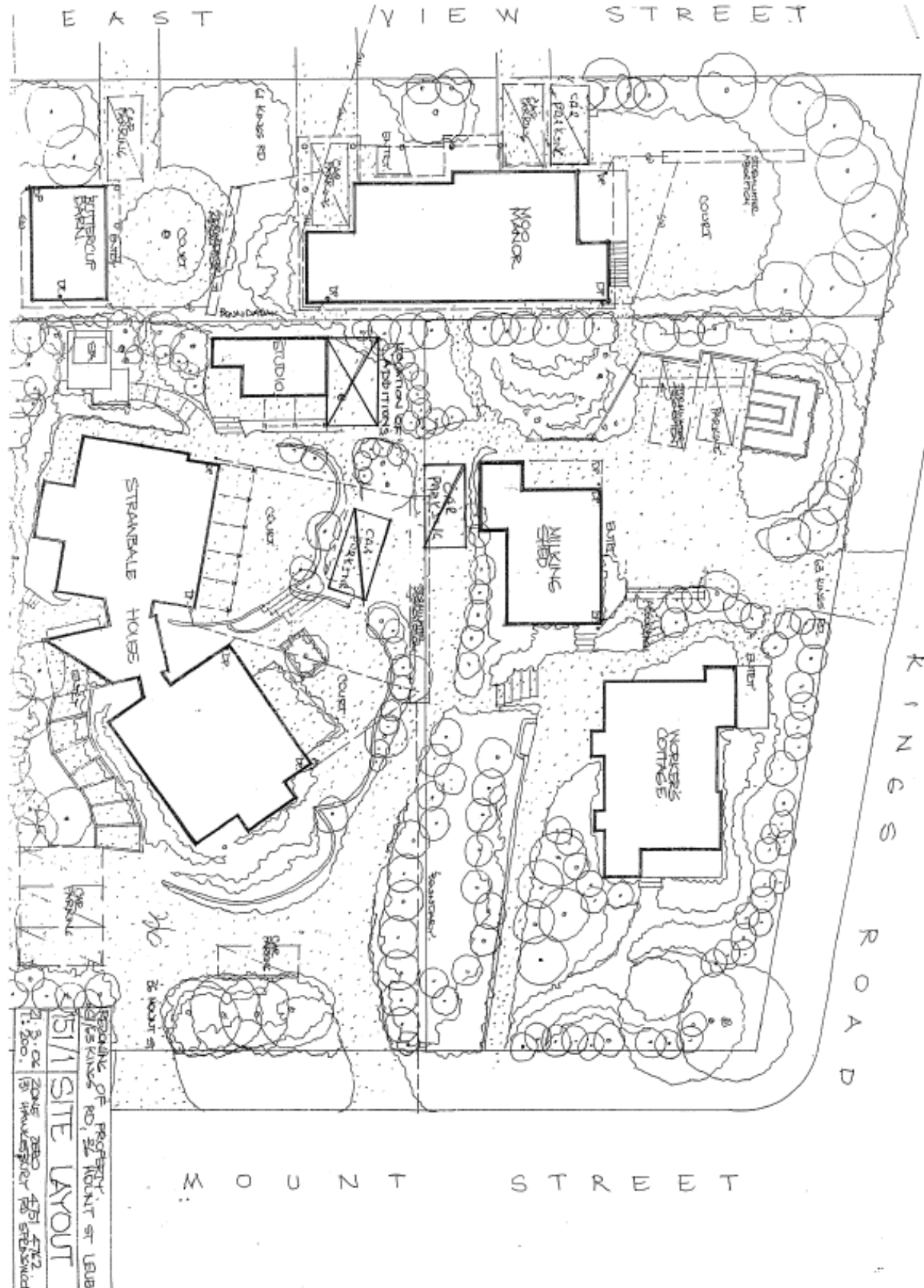
- the development application and new rezoning process had been lodged, and
- the Council had considered whether it wishes to proceed with a Section 54 resolution, and
- the Department of Planning has indicated its position.

The development application was to demonstrate that the site has the capacity to provide tourist accommodation and comply with the relevant Council standards. In particular the applicants were advised to ensure that car parking and accessibility requirements were able to be met within the existing development.

The Council requested in writing that the applicants operate 61 Kings Road in a legal manner. This would require that Buttercup Barn and Moo Manner not be let separately. At this stage the owners have refused to comply with this request.

27 September 2007 – A rezoning application and development application seeking approval of the tourist accommodation at the site was lodged.

Attachment 2 – Site Plan



PROJECT OF PROPERTY 2880 4751 5702
 1/5 KINGS RD, 52 MOUNT ST UENB
 21. 3. 04 ZONE 2880 4751 5702
 1: 2000 (b) 1/5 KINGS RD, 52 MOUNT ST UENB

SITE LAYOUT

Attachment 3 – Preliminary Draft Amendment

Blue Mountains Local Environmental Plan 2005 –

Draft Amendment [insert amendment number]

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*.

Minister for Planning

Sydney 2007

Blue Mountains Local Environmental Plan 2005

Draft Amendment [insert amendment number]

under the

Environmental Planning and Assessment Act 1979

1 Name of plan

This plan is *Blue Mountains Local Environmental Plan 2005 – Draft Amendment [insert number] ‘Old Leura Dairy’*.

2 Land to which this plan applies

This plan applies to the land shown by distinctive edging on the map [insert number] marked “Blue Mountains Local Environmental Plan 2005 – Amendment [insert number], being Lot 1 DP 1009510, Lot 1 Section 9 DP 5140 and Lot 2 DP 1009510.

3 Aims of plan

The aim of this plan is to permit a tourist accommodation in accordance with specific requirements to preserve the amenity of the area.

4 Amendment of Blue Mountains Local Environmental Plan 2005

Blue Mountains Local Environmental Plan 2005 is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 4)

Schedule 8 - Additional land uses

Insert in appropriate order:

ALU [insert number] 61 and 63 Kings Road and 36 Mount Street, Leura

Lot 1 DP 1009510, Lot 1 Section 9 DP 5140, Lot 2 DP 1009510: development for the purpose of tourist accommodation, but only if:

- a) all of the subject lots are consolidated, and
- b) accommodation is limited to the equivalent of 30 single beds or less, and
- c) the use of the subject land, including for any functions or in relation to providing food for consumption on the premises, is limited to guests temporarily residing on the premises.

Attachment 4- LEP 2005 Compliance Table

A preliminary assessment of the proposed tourist accommodation has been undertaken having regard to the requirements of LEP 2005. This assessment is not equivalent to the detailed assessment that will be undertaken in assessing the development application having regard to s.79C of the EP&A Act 1979. Such an assessment would also take into account any community submissions and comments by public authorities. The assessment is based on the preliminary information provided at this stage and is presented in a compliance table below:

Clause	Standard	Proposed	Compliance
12	Compliance with the principal objectives of the plan that are relevant to the development	The tourist facility is considered consistent with the principle objectives of the LEP through meeting the needs of residents, visitors and the business community through the provision of appropriate balance of land uses and built forms that respond to the principles of ecologically sustainable development. The development is sympathetic to the environment and proposes to encourage a range of enterprises including tourism, whilst making measures to protect local amenity, character and environmental values.	Yes
13	Compliance with the objectives of the Living Bushland Conservation zone that are relevant to the development	Although the development is not permissible in the zoning, objectives such as allowing a limited range of non-residential land uses, only when they are conducted in association with a predominantly residential land use, conform with the proposal. The development also proposes harmony with the environment with the building forms, colours and landscaping.	Yes – having regard to the built environment and the surrounding residential community, the proposal is considered consistent for the zone objectives.
15	Locality Management within the living zones Building Height	All buildings comply with the requirement of 8 metres height and 6.5 metre height at the eaves except the ‘Straw Bale House’, which has a building height of 9 metres. A SEPP 1 objection will accompany the DA. It is noted however that this variation was approved for the structure as approved as a dwelling in 2000 when LEP 4 applied. The structure was built and approved under a previous environmental planning instrument and as such development standards in relation to an existing building do not apply. The current rezoning and application seeks approval for the use of an existing building and as such compliance with this requirement is only required for new work proposed.	Yes
	Front Setback	The development standards require a minimum 8 metre setback from the primary front boundary, and a minimum 4 metre setback from the secondary boundary. All buildings except the ‘Moo Manner’ and ‘Buttercup Barn’ meet the 8 metre setback from the primary setback. No additional works are proposed that will contravene this standard.	Yes

Clause	Standard	Proposed	Compliance
	Setback from Other Boundaries	The buildings meet the requirements for the setback maximum width to the street frontage of no greater than 80 per cent and all have a setback off a dwelling from the side or rear boundary of the site of 1 metre.	Yes
	Site Coverage	Maximum site cover within the Living Bushland Conservation Zone is 30%. The total site area is 3182m ² . The maximum site coverage for this site would therefore be approximately 955m ² . The existing site coverage is 602m ² equating to approximately 19% of the site. It is unclear precisely how much area will be maintained as soft pervious or landscaped areas. The minimum required is 60%. Additional works may be required to improve accessibility to and within the site. However it is considered that the site has the capacity to comply with the LEP requirement.	Yes
	Environmental Considerations	The site is accommodated with existing landscaping and does not propose native vegetation removal. The site is not located in any Protected Areas.	Yes
32	Permissibility	The proposed development is not permissible in the zone.	No
44	Environmental Impact	The tourist development will not have adverse impact on the environment. The buildings do not pose threats to the vegetation, any rare species of flora and fauna.	Yes
57	Stormwater Management	The existing buildings are serviced with stormwater retention pits and minimises the impermeable	Yes
60	Consideration of character and landscape	The proposed tourist development is designed to minimise the visible bulk and compliments the existing character of the street. Each dwelling has the appearance of detached dwelling development, keeping in character of the residential area. The built form of the building displays articulated residential design. The proposal is consistent with the clause.	Yes
66	Detailed landscape plan for certain residential development	The site currently exhibits a suitable landscape setting and meets the requirements of the LEP.	Yes
78	Consideration for bushfire protection	If the rezoning was to proceed, the Rural Fire Service (RFS) will be notified in accordance with Section 62 of the EP&A Act 1979. The concurrent DA is an integrated application and it therefore requires the concurrent approval of the RFS.	Yes
98	Access to land from a public road	The development satisfies the LEP's requirements for vehicle access from a public road.	Yes
99	Car Parking	The Better Living DCP requires the provision of 1 car parking space per 3 beds. With 29 beds this would require 10 car parking spaces. The plans indicate 12 spaces for the	No

Clause	Standard	Proposed	Compliance
		development; however the design does not comply with relevant standards. Plans will be required to be prepared by the applicant that demonstrate compliance with the relevant standards for car parking during the assessment process.	
108	Accessibility of dwellings	The LEP requires 20% of all accommodation suites to be designed for people with disabilities. Currently, none of the guest rooms are accessible. Plans are being prepared which will bring the development into compliance with Council's requirements. It is considered that the site has the capability of complying with these requirements.	Yes
109	Adaptability	Currently the dwellings do not comply with the requirements for adaptability. Design alterations will be required, together with a statement from the applicant to justify any remaining non-compliance with this clause.	No

Attachment 5 – LEP Pro-forma required for submission to the Department of Planning

LEP Pro-forma Evaluation Criteria		
Category 1 – Spot Rezoning LEP		
1.	<p>Will the LEP be compatible with agreed State and regional strategic direction for development in the area (e.g. land release, strategic corridors, development within 800m of a transit node)?</p> <p><i>Explain:</i> The LEP is compatible with State and Regional directions. The proposal is considered minor, however it will contribute to the tourism economy of the Blue Mountains. The proposal will accommodate visitors to the World Heritage Area within an existing urban area and will not detract from any of the environmental values of the area.</p>	Yes
2.	<p>Will the LEP implement studies and strategic work be consistent with State and regional policies and Ministerial (s.117) directions?</p> <p><i>Explain:</i> The LEP is consistent with all Section 117 directions, excepting Part 6.3(4)(c) of the directions which require that no additional development standards are imposed in addition to those already contained within the principal environmental planning instrument being amended.</p> <p>It is proposed that the draft amendment contain provisions that require:</p> <ul style="list-style-type: none"> a) The consolidation of all lots within the site; b) The restriction of the accommodation to the equivalent of 29 single beds or less; and c) The use of the site to be restricted to guests temporarily residing at the premises. <p>It is considered that in this instance the inconsistency is justifiable as the provisions of the draft LEP are of minor significance and would only apply to the subject site and will ensure the long term maintenance of the residential amenity of the locality.</p> <p>The alternatives provided within Part 6.3 of the Section 117 directions are to either:</p> <ul style="list-style-type: none"> a) make tourist accommodation a permissible use within the Living Bushland Conservation zone; or b) rezone the subject site to the Village Tourist zone. <p>Neither of these options are considered reasonable.</p> <p>Permitting tourist accommodation within the Living Bushland Conservation zone will result in the possibility of higher density uses within low density residential areas, creating land use conflict between land users, additional demands on services, and adverse impacts on environmentally sensitive areas.</p> <p>Rezoning the subject site to the Village Tourist zone will impart development rights to the site, permitting higher density development which is likely to conflict with the surrounding residential amenity.</p> <p>The draft amendment is enabled through Clause 38 of LEP 2005 which</p>	Yes

LEP Pro-forma Evaluation Criteria		
Category 1 – Spot Rezoning LEP		
	<p>permits the provision of additional development standards. Clause 38 reads:</p> <p>“Notwithstanding clause 32 (Land use matrix) and subject to subclause (2), a person may with consent carry out development on land identified in Schedule 8 that is specified in that Schedule for the land, subject to such conditions as are so specified.”</p> <p>Therefore it is considered reasonable in this instance to impose additional development standards to ensure the long term amenity of the locality.</p>	
3.	<p>Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/subregional strategy?</p> <p><i>Explain:</i> The land subject to this LEP is not located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/subregional strategy.</p>	No
4.	<p>Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?</p> <p><i>Explain:</i> The additional land use of a tourist accommodation on the site will allow a viable operation of a successful business while providing a unique eco-tourism establishment to the Blue Mountains tourism industry. The proposal does not propose the rezoning of land that will result on the loss of any employment lands.</p>	Yes
5.	<p>Will the LEP be compatible/complementary with surrounding land uses?</p> <p><i>Explain:</i> The proposed land use is considered compatible and complementary with the surrounding residential land uses. The tourist accommodation ensures that the form and the siting of the buildings, colours, landscaping and building materials are appropriate for, and harmonise with the residential bushland character of the locality. The management of the site, whether for functions or the preparation and consumption of food, is limited to visitors temporarily residing at the premises. This ensures the impacts such as noise and car parking of the tourist accommodation use is minimal to the surrounding residents.</p>	Yes
6.	<p>Is the LEP likely to create a precedent; or create or change the expectations of the landowner or other landholders?</p> <p><i>Explain:</i> The impacts of the LEP are localised and focused. The development is to provide medium sized tourist facilities to the Leura area while still keeping the appearance of detached dwellings. The proposed additional land use will not increase the level of services to the area and as discussed above, the management of the business for the use of functions and consumption of food is restricted to the visitors temporarily residing at the premises.</p>	No

LEP Pro-forma Evaluation Criteria		
Category 1 – Spot Rezoning LEP		
	Therefore the landowner will be limited to the amount of tourist accommodation activity allowed for the site and this will be reinforced as provisions within the LEP. It is considered that other landholders in the vicinity will not have expectations of creating a medium sized tourist facility.	
7.	<p>Will the LEP deal with a deferred matter in an existing LEP?</p> <p><i>Explain:</i> This LEP is a stand alone spot rezoning that was brought to Council’s attention due to the non compliant nature of the land use in the zoning. The land was not considered in the LEP 2005 review as Council had not recognised the use during the review of the city wide LEP.</p>	No
8.	<p>Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?</p> <p><i>Explain:</i> There have been no other spot rezonings in the locality.</p>	Yes