

ITEM NO: 8

SUBJECT: POST-EXHIBITION PLANNING PROPOSAL - 54 LUCHETTI AVENUE,
HAZELBROOK (AMENDMENT 8 TO LEP 2015)

FILE NO: F10396 - 17/237119

Delivery Program Link

Principal Activity: Using Land

Service: Land Use Management

Recommendations:

1. *That the Council notes the public exhibition was conducted in accordance with legislative requirements of the Gateway Determination (Attachment 1) and that one submission was received;*
 2. *That the Council adopts the updated draft Planning Proposal for 54 Luchetti Avenue, Hazelbrook (draft Amendment 8) to LEP 2015 (draft Planning Proposal) in Attachment 2;*
 3. *That the Council submits the draft Planning Proposal to the NSW Parliamentary Counsel's Office (PCO) to be made exercising the functions delegated in the Gateway Determination under section 59 of the Environmental Planning and Assessment Act 1979);*
 4. *That the Council delegates to the General Manager (or their nominee) the authority to make minor amendments to the draft Planning Proposal that may arise after the formal adoption of this planning proposal, subject to such amendments maintaining the policy intent of the draft Amendment; and*
 5. *That the Council receives a report on any changes made by PCO which change the policy intent of the draft Planning Proposal.*
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Report by Director Development & Customer Service:**Reason for report**

This report responds to the following resolution from the Ordinary Meeting of the Council of 22 August 2017, where it was resolved (in part) the following in relation to Draft Amendment 8 to LEP 2015 (in relation to 54 Luchetti Avenue Hazelbrook):

- "7 That the Council receives a report, subject to the Gateway Determination, at the conclusion of the notification period to enable consideration of submissions made to Blue Mountains Local Environmental Plan 2015 Amendment 8."*

[Minute No. 271]

Background

Draft Amendment 8 to Blue Mountains Local Environmental Plan 2015 (LEP 2015) proposes to rezone part of land at 54 Luchetti Avenue, Hazelbrook (Lot 1 DP1958100) from E2 Environmental Conservation to E4 Environmental Living and to remove the associated Protected Area – Ecological Buffer Area from the site.

The Planning Proposal arose following a Land and Environment Court (LEC) Appeal against the refusal of a development application for a 1 into 17 lot subdivision at 54 Luchetti Avenue, Hazelbrook. A key contention of the case was whether the mapped scheduled community 5B-Blue Mountains Swamps or community 5A – Blue Mountains Heath and Scrub remained on the site. In summary, while it was agreed that the site at the time of the court case did contain a small area of scrub at the western end of the site, that scrub community was no longer typical (in its current form) of either scheduled community. It is also important to note that at the time the development application was being assessed, a portion of mapped vegetation community was cleared under the Rural Fire Service 10/50 Vegetation Clearing Code (10/50 Code), prior to the site investigations during the court case. Therefore, the area of mapped community remaining at the time of the court case was limited.

The NSW Land and Environment Court subsequently approved the application for subdivision. As the presence of scheduled vegetation was the rationale for the application of the E2 Environmental Conservation zone on the site, confirmation that the vegetation was no longer present, suggests that the application of this zone may no longer be appropriate.

A Planning Proposal for land at 54 Luchetti Avenue, Hazelbrook was subsequently lodged with Council on the 22 June 2017. This Planning Proposal seeks to amend LEP 2015 by rezoning, from E2 Environmental Conservation to E4 Environmental Living, on part of the subject site. The Proposal also seeks to remove the Protected Area – Ecological Buffer Area, which is associated with mapped scheduled vegetation. As a consequence of the proposal, 13 additional lots are directly impacted and were included as an Addendum to the Planning Proposal.

The Planning Proposal was presented to the Ordinary Meeting of the Council on 22 August 2017 where it was resolved in part:

- “2 That the Council refers the draft Planning Proposal and addendum for Local Environmental Plan Amendment 8 to the Greater Sydney Commission for Gateway Determination under s.56 of the Environmental Planning and Assessment Act 1979;*
- 3. That the Council requests Written Authorisation to Exercise Delegation over the Planning Proposal in accordance with clause 23 of the Environmental Planning And Assessment Act 1979;*
- 4. That the Council includes a request to the Department of Planning and Environment that the draft Planning Proposal be designated low impact;”*

[Minute No. 271]

In accordance with Items 2 to 4 of Minute No. 271, the draft Planning Proposal and Addendum to Planning Proposal was submitted for Gateway Determination on 29 September 2017.

Gateway Determination

A Gateway Determination was issued by the Department as delegate of the Greater Sydney Commission (GSC) on 27 October 2017 (Attachment 1). This confirmed that under section 56(2) of the *Environmental Planning and Assessment Act* (EP&A Act), the proposed amendment to LEP 2015 should proceed, subject to the conditions of the Gateway Determination.

Each of these conditions, with associated comment, is addressed below.

1. *Prior to community consultation, Council is to amend the planning proposal by:*

- *Incorporating the 'Addendum to Planning Proposal to 54 Luchetti Avenue, Hazelbrook' with the planning proposal (prepared by Stimson & Baker Planning) so that the document is provided for exhibition purposes as one integrated document with Council's logo appended;*

Comment: The Planning Proposal was amended to incorporate the Addendum within the document.

- *Locating sections:1 (executive Summary); 2 (Introduction); and , 3 (The Subject Land) of the Stimson & Baker document within an appendix of the revised planning proposal;*

Comment: the Planning Proposal was amended to relocate sections 1, 2 and 3 into an appendix of the revised Planning Proposal.

- *Amending maps within the amalgamated planning proposal so these are enlarged to make these more legible and a north point is to be added to each;*

Comment: Maps embedded within the document were enlarged with a north point added to each.

- *Amending the appropriate sections, as follows:*

- *Clarify that the planning proposal does not require consideration under State Environmental Planning Policy No.44 – Koala habitat Protection (refer to p.21 of the Stimson & Baker document); and,*

Comment: Response to SEPP 44 was amended to advise that "the identified vegetation on the site does not include Koala feed tree species as identified in Schedule 2 of the SEPP and does not require consideration under SEPP 44."

- *Indicate that Council is satisfied that the provisions of State Environmental Planning Policy No. 55 Remediation of Land (refer to pp.21/22 of the Stimson & Baker document) do not apply.*

Comment: Response to SEPP 55 was amended to advise that Council is satisfied that the land is not contaminated and is suitable for consideration for rezoning.

2. *Community Consultation is required under sections 56(2)(c) and 57 of the Act as follows:*

- (a) *the planning proposal must be made publicly available for a minimum of 14 days; and*

Comment: The Planning Proposal, Gateway Determination and supporting documentation were publicly available for 34 days. The length of the community consultation period is addressed later in the report.

- (b) *the relevant planning authority must comply with the notice requirement for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A guide to preparing local environmental plans (Department of Planning and Environment 2016)*

Comment: The notice requirements and material made available for public exhibition comply with section 5.5.2 of "A guide to preparing local environmental plans" (Department of Planning and Environment 2016), by providing advice on the intended outcomes of the proposal; the land affected by the proposal; where and when the proposal can be inspected; how submissions may be lodged; last

date for submission and that Council will exercise delegation of the plan making functions.

3. *Consultation is required with the Office of Environment and Heritage under section 56(2)(d) of the Act.*

Comment: Consultation with State agencies and the general public was conducted in accordance with section 56(2)(d) of the Act. This is discussed in more detail below.

4. *Prior to community consultation, Council is to consult with the commissioner of the NSW Rural Fire Service to satisfy the requirement of S.117 direction 4.4 Planning for Bushfire Protection.*

Comment: The Rural Fire Service (RFS) was provided the amended planning proposal and supporting documentation on the 6 November 2017, four weeks prior to the commencement of public exhibition. Within this four week period, the RFS verbally responded, raising no issue with the proposal. This was confirmed in writing in the RFS response received on 11 December 2017.

5. *Each public authority is to be provided with a copy of the Planning Proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.*

Comment: The RFS and Office of Environment and Heritage (OEH) were provided with a copy of the amended Planning Proposal and supporting documentation and were given 28 days to comment.

6. *A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the Act.*

Comment: It is noted that a public hearing is not required under the Gateway Determination.

The Department also authorized Blue Mountains City Council to exercise delegation in relation to the Planning Proposal for draft Amendment 8 (54 Luchetti Avenue, Hazelbrook) to LEP 2015. The Department designation for this Planning Proposal is PP_2017_BLUEM_002_00.

Public Exhibition

The Gateway Determination required consultation with the Commissioner of NSW Rural Fire Service prior to a 14 day public exhibition period. Allowing for this timeframe, the exhibition period could not commence until 6 December 2017. This would have resulted in the 14 day exhibition period ending on 20 December 2017.

In addition to the exhibition requirements under the Gateway Determination, Council's Development Control Plan (DCP) Part H – Public Participation states that exhibition shall not commence or finish between 20 December and 5 January to make allowance for the holiday period. As a result, the draft Planning Proposal for this amendment was placed on public exhibition for 34 days from Wednesday 6 December 2017 to Monday 8 January 2018, with advertising in the local paper to notify the community.

Letters were sent to all adjoining property owners, consistent with those who were notified of the development application on the subject site (54 Luchetti Avenue, Hazelbrook), adjoining land and affected properties. A total of 137 letters were issued to property owners adjoining and within the vicinity of the subject site.

A hardcopy of the amended Planning Proposal and supporting documentation was available for viewing at the Springwood and Katoomba Council offices and at the Springwood, Lawson and Katoomba Libraries. Information about the public consultation and the proposed amendment was also available on the Have Your Say (HYS) page on the BMCC website.

Council officers were available to answer questions, Monday to Friday between 8:30am and 5pm.

General public

The HYS summary report at the conclusion of the public exhibition showed that:

- 23 people visited the site;
- 6 people downloaded a document from the site; and
- 0 persons lodged a submission form.

One (1) submission via direct email was received during public exhibition from an individual who requested an expansion of the Planning Proposal to include a rezoning of 61-71 Queens Road and 51-53 Queens Road, Lawson to allow subdivision opportunities

Both of the listed properties are included in Amendment 3 to LEP 2015 solely as a consequence of the proposed changes to 54 Luchetti Avenue. The proposed amendments applying to 61-71 Queens Road and 51-53 Queens Road, Lawson as follows:

- 61-71 Queens Road: Remove PA-ecological buffer area
- 51-53 Queens Road: Rezone that part of site currently zoned E2 to E4.
Apply a MLS 1200m² to that part of the site currently zoned E2.
Remove PA-ecological buffer area

The planning proposal, including the above amendments to the provisions for 61-71 Queens Road and 51-53 Queens Road, have been exhibited and is now in the final stages of the process as prescribed by the Department of Planning and Environment's "A guide to preparing local environmental plans".

The above request to modify further controls, other than those exhibited as part of Amendment 8 to LEP 2015, are outside the scope of this Planning Proposal for Amendment 8 to LEP 2015.

State Agencies

Rural Fire Services (RFS)

The RFS have advised in their letter received on the 11 December 2017 that they have no objection to the proposal subject to a requirement that the future subdivision of land complies with *Planning for Bush Fire Protection 2006*.

Office of Environment and Heritage (OEH)

The OEH have advised that they support the conclusion that vegetation on the site is unlikely to be an endangered ecological community.

Heritage Division of NSW

The Gateway Determination only required consultation with two state agencies, the NSW Rural Fire Services and the Office of Environment and Heritage, under conditions 3 and 4 of the Determination. However, when OEH were notified of the Planning Proposal they advised it was forwarded to the Heritage Division of NSW for comment who have advised they have no objection to the planning proposal.

Outcome of Public Exhibition

The only change to the exhibited Planning Proposal is to update the section on Community Consultation. As discussed above, one submission requested rezoning on adjoining properties, which is outside the scope of the current amendment. The updated draft Planning Proposal with this modification is recommended for adoption (Attachment 2).

Progress of Amendment 8 to LEP 2015

The Gateway Determination delegated the functions of the GSC to Council, for the making of this planning proposal under section 59 of the *Environmental Planning and Assessment Act 1979*. This means that Council will work directly with PCO to make this LEP amendment in accordance with the Department's 'A guide to preparing local environmental plans' and 'A guide to preparing planning proposals'.

Sustainability Assessment

Effects	Positive	Negative
Environmental	Allowing for appropriate review of the draft plan.	Nil
Social	Providing an opportunity for the public to review and comment on the proposed provisions.	Nil
Economic	The proposed rezoning will allow for consideration of the creation of additional lots on the site.	Nil
Governance	The public exhibition of draft Amendment 8 (54 Luchetti Avenue, Hazelbrook) to LEP 2015 was undertaken in accordance with the provisions of clause 57 of the <i>Environmental Planning and Assessment Act 1979</i> and ensures transparent community consultation.	Nil

Financial implications for the Council

All costs including staff time and resources required in the processing of these LEP amendments is accommodated within existing operational budgets.

Legal and risk management issues for the Council

There are no identified legal or risk management implications for the Council as a result of finalising this LEP amendment.

External consultation

As detailed in this report, community and State agency consultation was undertaken for this draft amendment in accordance with the Gateway Determination.

Conclusion

This report provides an update to the Council on the results of the public exhibition process undertaken for Amendment 8 (54 Luchetti Avenue, Hazelbrook) to LEP 2015. The report does not propose any change to the exhibited draft plan, apart from incorporating the general outcomes of community consultation. The Gateway Determination granted Council delegation for the functions of the Greater Sydney Commission for the making of this planning proposal under section 59 of the *Environmental Planning and Assessment Act 1979*.

It is recommended that Council adopt the updated draft Planning Proposal (Attachment 2) to proceed with the making of this amendment.

ATTACHMENTS/ENCLOSURES

1	Gateway Determination for Amendment 8 to LEP 2015 (54 Luchetti Ave, Hazelbrook)	17/220451	Attachment
2	Amended Planning proposal - post exhibition (Jan 2018)	18/7607	Enclosure

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Attachment 1 - Gateway Determination for Amendment 8 to LEP 2015 (54 Luchetti Ave, Hazelbrook)



Your reference: 17/12672

Mr Robert Greenwood
General Manager
Blue Mountains City Council
Locked Bag 1005
Katoomba NSW 2780

Dear Mr Greenwood

Planning Proposal to amend Blue Mountains Local Environmental Plan 2015.

I am writing in response to Council's request for a Gateway determination under Section 56 of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the planning proposal (PP 2017 BLUEM 002 00) to rezone land at 54 Luchetti Avenue, Hazelbrook, from E2 to E4 zoned land, together with other land and associated mapping amendments.

As delegate of the Greater Sydney Commission, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

I have also agreed the planning proposal's inconsistencies with S117 directions 1.5 Rural Lands; 2.1 Environmental Protection Zones; and, 4.3 Flood Prone Land, are of minor significance. No further approval is required in relation to these directions. Council may, however, still need to obtain the agreement of the Secretary to comply with the requirements of S117 direction 4.4 Planning for Bushfire Protection. Should this prove necessary, Council is to ensure this occurs prior to the plan being made.

Plan making powers were delegated to Councils by the Minister in October 2012. It is noted that Council has requested to be issued with delegation for this planning proposal. I have considered the nature of Council's planning proposal and have decided to issue an authorisation for Council to exercise delegation to make this plan.

The amending Local Environmental Plan (LEP) is to be finalised within 6 months of the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office 6 weeks prior to the projected publication date. A copy of the request should be forwarded to the Department of Planning and Environment.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to

meet these commitments, the Greater Sydney Commission may take action under Section 54(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any further enquiries about this matter, I have arranged for Mr Philip Adams to assist you. Mr Adams can be contacted on (02) 8289 6224.

Yours sincerely



25/10/17

Catherine Van Laeren
**Director, Sydney Region West
Planning Services**

Encl: Gateway Determination
Written Authorisation to Exercise Delegation
Delegated Plan Making Reporting Template



Planning & Environment

Gateway Determination

Planning Proposal (Department Ref: PP_2017_BLUEM_002_00): to rezone land from E2 Environmental Conservation to E4 Environmental Living at 54 Luchetti Avenue, Hazelbrook, and other allotments, together with associated map amendments.

I, the Director, Sydney Region West, at the Department of Planning and Environment as delegate of the Greater Sydney Commission, have determined under section 56(2) of the *Environmental Planning and Assessment Act, 1979* (the Act) that an amendment to the Blue Mountains Local Environmental Plan (LEP) 2015 to rezone land from E2 Environmental Conservation to E4 Environmental Living at 54 Luchetti Avenue, Hazelbrook and other allotments, together with associated map amendments, should proceed subject to the following conditions:

1. Prior to community consultation, Council is to amend the planning proposal by:
 - incorporating the 'Addendum to Planning Proposal to 54 Luchetti Avenue, Hazelbrook' with the planning proposal (prepared by Stimson & Baker Planning) so that the document is provided for exhibition purposes as one integrated document with Council's logo appended;
 - locating sections: 1 (Executive Summary); 2 (Introduction); and, 3 (The Subject Land) of the Stimson & Baker document within an appendix of the revised planning proposal;
 - amending maps within the amalgamated planning proposal so these are enlarged to make these more legible and a north point is to be added to each;
 - amending the appropriate sections, as follows:
 - clarify that the planning proposal does not require consideration under State Environmental Planning Policy No. 44 – Koala habitat Protection (refer to p.21 of the Stimson & Baker document); and,
 - indicate that Council is satisfied that the provisions of State Environmental Planning Policy No. 55 – Remediation of Land (refer to pp.21/22 of the Stimson & Baker document) do not apply.
2. Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of **14 days**; and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment 2016).

PP_2017_BLUEM_002_00



Planning & Environment

3. Consultation is required with the Office of Environment and Heritage under section 56(2)(d) of the Act.
4. Prior to community consultation, Council is to consult with the Commissioner of the NSW Rural Fire Service to satisfy the requirement of S.117 direction 4.4 Planning for Bushfire Protection.
5. Each public authority is to be provided with a copy of the Planning Proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.
6. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission).
7. The timeframe for completing the LEP is to be **6 months** following the date of the Gateway determination.

Dated 25th day of October 2017.

Catherine Van Laeren
Director, Sydney Region West
Planning Services
Department of Planning and Environment

Delegate of the Greater Sydney Commission



Planning & Environment

WRITTEN AUTHORISATION TO EXERCISE DELEGATION

Blue Mountains City Council is authorised to exercise the functions of the Greater Sydney Commission under section 59 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) that are delegated to it by instrument of delegation dated 14 October 2012, in relation to the following planning proposal:

Number	Name
PP_2017_BLUEM_002_00	Planning proposal to rezone Land at 54 Luchetti Avenue, Hazelbrook, and other associated land, together with relevant mapping amendments.

In exercising the Greater Sydney Commission's functions under Section 59 of the EP&A Act, the Council must comply with the Department's "*A guide to preparing local environmental plans 2016*" and "*A guide to preparing planning proposals 2016*".

Dated 25th October 2017

Catherine Van Laeren
Director, Sydney Region West
Planning Services
Department of Planning and Environment

Delegate of the Greater Sydney Commission



Planning & Environment

Attachment 5 – Delegated plan making reporting template

Reporting template for delegated LEP amendments

Notes:

- Planning proposal number will be provided by the Department of Planning and Environment following receipt of the planning proposal
- The Department of Planning and Environment will fill in the details of Tables 1 and 3
- RPA is to fill in details for Table 2
- If the planning proposal is exhibited more than once, the RPA should add additional rows to **Table 2** to include this information
- The RPA must notify the relevant contact officer in the regional office in writing of the dates as they occur to ensure the publicly accessible LEP Tracking System is kept up to date
- A copy of this completed report must be provided to the Department of Planning and Environment with the RPA's request to have the LEP notified

Table 1 – To be completed by Department of Planning and Environment

Stage	Date/Details
Planning Proposal Number	PP_2017_BLUEM_002_00
Date Sent to DP&E under s56	6 September 2017 (as amended)
Date considered at LEP Review Panel (if applicable)	N/A
Gateway determination date	25/10/17

Table 2 – To be completed by the RPA

Stage	Date/Details	Notified Reg Off
Dates draft LEP exhibited		
Date of public hearing (if held)		
Date sent to PCO seeking Opinion		
Date Opinion received		
Date Council Resolved to Adopt LEP		
Have changes been made to the draft LEP after obtaining final PC opinion?	YES NO	
Date LEP made by GM (or other) under delegation		
Date sent to DPE requesting notification		

Table 3 – To be completed by Department of Planning and Environment

Stage	Date/Details
Notification Date and details	

Additional relevant information:

ITEM NO: 9

SUBJECT: DEVELOPMENT APPLICATION NO. X/482/2017 FOR SENIORS HOUSING DEVELOPMENT COMPRISING 8 UNITS, INCLUDING DEMOLITION OF TWO EXISTING DWELLINGS ON L 1 DP 399169, L 1 DP 870339, 363 & 365 GREAT WESTERN HIGHWAY, SPRINGWOOD

FILE NO: F11178 - X/482/2017 - 17/266360

Recommendations:

That Development Application No. X/482/2017 for seniors housing comprising 8 units, including demolition of two existing dwellings on L 1 DP 399169, L 1 DP 870339, 363 Great Western Highway, SPRINGWOOD NSW 2777, and 365 Great Western Highway, SPRINGWOOD NSW 2777 be determined pursuant to S.80 of the Environmental Planning and Assessment Act 1979 by refusing consent to the application, for the following reasons:

- 1. The Council cannot be satisfied the location of the development meets the requirements for a suitable access pathway between the public transport service and the development as required by State Environmental Planning Policy (Housing For Seniors and People With a Disability) 2004 (SEPP Seniors) Clause 26, in particular, an access pathway suitable for an electric wheelchair, motorised cart or the like between the site and the westbound bus stop on the Great Western Highway;*
- 2. Roads and Maritime Services (RMS) does not support the proposed driveway access arrangement from the highway and has not provided concurrence for the proposed development under Section 138 of the Roads Act 1993;*
- 3. The development does not meet the Objective of Chapter 3 in SEPP Seniors Clause 14 which is to locate and design development in a manner particularly suited to both those seniors who are independent, mobile and active as well as those who are frail, and other people with a disability regardless of their age;*
- 4. The application does not address the provisions in SEPP Seniors Clause 27(2) for seniors development in the vicinity of land identified as bush fire prone, which has prevented consultation with the NSW Rural Fire Service as required in Clause 27(3);*
- 5. The application does not contain written confirmation from Sydney Water that the sewer and town water infrastructure on the site has the capacity to accommodate the proposed development, as required by SEPP Seniors Clause 28;*
- 6. Safe pedestrian access pathways, independent of the driveway, are not provided on the site. Therefore, the development does not satisfy the pedestrian accessibility provisions in SEPP Seniors Clause 38 and Schedule 3(2), in the Seniors Living Policy: Urban Design Guideline for Infill Development Part 5, and in DCP 2015 Part E2.3.4;*
- 7. The building heights measure between 8m and 9.2m and therefore do not comply with the 8m height controls in SEPP Seniors Clause 40(4)(a) and LEP 2015 cl.4.3. The application does not seek a variation under SEPP 1 and LEP 2015 cl.4.6.;*
- 8. The building in the rear 25% of the site does not comply with SEPP Seniors Clause 40(4)(c) which requires the building not exceed 1 storey in height;*