

Planning Services

IRF18/445

Plan finalisation report

Local government area: Blue Mountains

1. NAME OF DRAFT LEP

Blue Mountains Local Environmental Plan 2015 (Amendment No 1).

2. SITE DESCRIPTION

The planning proposal applies to land at 32 properties or areas, which is deferred land under the Blue Mountains Local Environmental Plan (LEP) 2015 as described in Table 1. A detailed description of these properties is at **Attachment F**.

Table 1: Subject sites

Subject sites	
No.	Address
1.	7–9 Lawson Long Alley, Mount Victoria
2.	17–57 Patrick Street, Mount Victoria
3.	R1 General Residential Land, Mount Victoria
4.	29–39 Hargraves Street, Blackheath
5.	38 Grose Street, Blackheath and adjoining properties
6.	115, 117, 121–125, 132–140 and 140A Mort Street, Katoomba
7.	132–140 Mort Street, Katoomba
8.	119–133 Twynam Street and Twynam Street road reserve
9.	24 and 26–30 Glenwattle Street, Katoomba
10.	R1 General Residential land in southern Katoomba
11.	R1 General Residential land in central Katoomba
12.	22 Denison Road and 19 Davidson Road, Leura
13.	R1 General Residential land in Leura
14.	23 Farnham Avenue, Wentworth Falls

15.	60 Claines Crescent, Wentworth Falls
16.	30–32 Yester Road, Wentworth Falls
17.	73–77 Queens Road, Lawson
18.	4–8 San Jose Avenue, Lawson ('Stratford')
19.	173 Valley Road, Hazelbrook
20.	20 Hazel Avenue, Hazelbrook
21.	56–68 Great Western Highway, Woodford
22.	70 and 70A Great Western Highway, Woodford
23.	690A Great Western Highway, Faulconbridge
24.	Areas north of Linksvie Road, Springwood and Hawkesbury Road, Winmalee
25.	9–11 Linksvie Road, Springwood
26.	Part St Columba's (St Columba's Elmhurst Precinct)
27.	3–11 and 17 Edna Avenue and 172–194A Burns Road, Springwood
28.	9 Kerry Avenue, Springwood
29.	Knapsack Reserve, Glenbrook
30.	2–10 Watson Street, Glenbrook
31.	21 Barnet Street, Glenbrook
32.	Eastern edge of Glenbrook Village, Glenbrook

3. PURPOSE OF PLAN

The draft LEP seeks to resolve the deferral of 32 sites under the Blue Mountains LEP 2015 by applying the relevant Standard Instrument zones and planning controls as follows:

- applying standard instrument zones to the 32 sites;
- applying the relevant standard instrument, mapped provisions to the 32 sites as follows:
 - lot size;
 - building height;
 - floor space ratio;
 - land reserved for acquisition;
 - heritage;
 - lot averaging;
 - riparian lands and watercourses;

- scenic and landscape values;
- built character; and
- natural resources: biodiversity and land;
- amending Part 7 Additional local clauses – development in villages, by:
 - inserting a new clause 7.14 Woodford Precinct, providing precinct objectives for development on the Great Western Highway, Woodford, identified as ‘Woodford Precinct B1-WD01’ on the Built Character Map;
- amending Schedule 5 Environmental Heritage to:
 - include 58 items to be listed under Part 1 Heritage items; and
 - to include one item under Part 2 Heritage conservation areas;
- mapping 12 heritage items listed in Schedule 5 Environmental heritage under the BMLEP 2015, which are not currently identified on the relevant heritage maps.

A detailed summary of the mapping amendments is at **Amendment J**.

When the Blue Mountains LEP 2015 was made, these sites were deferred to allow Blue Mountains City Council to further investigate the application of appropriate zones and controls. The deferred land is subject to either the Blue Mountains LEP 1991 or the Blue Mountains LEP 2005. As other sites remain deferred, both the 1991 and 2005 instruments will remain in force following the making of the subject proposal.

A total of 58 heritage items are listed in either LEP 1991 or LEP 2005 and were included in the draft LEP that proceeded the making of LEP 2015. These items were removed from that instrument when the subject sites were deferred.

A table of the heritage items to be listed under schedule 5 of the Blue Mountains LEP 2015 and the corresponding property addresses and lot and DP numbers is at **Attachment J**.

Where possible, the current planning provisions have been translated into the corresponding Standard Instrument format.

4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Blue Mountains state electorate. Ms Trish Doyle MP is the State Member.

The site falls within the Macquarie federal electorate. Ms Susan Templeman MP is the Federal Member.

To the regional planning team’s knowledge, neither MP has made any written representations regarding the proposal.

NSW Government Lobbyist Code of Conduct: There have been no meetings or communications with registered lobbyists with respect to this proposal.

NSW Government reportable political donation: There are no donations or gifts to disclose and a political donation disclosure is not required.

5. GATEWAY DETERMINATION AND ALTERATIONS

The Gateway determination issued on 3 September 2015 (**Attachment B**) determined that the proposal should proceed subject to conditions.

The Gateway determination was altered on 20 June 2016 to amend and add conditions for certain sites. The Gateway conditions were revised:

- to remove sites where approval was not provided by relevant public agencies;
- in response to site requirements; and/or
- to include provisions to ensure compliance with requests made by public agencies.

The Gateway determination was altered again (**Attachment C**) to extend the time frame for completion on:

- 22 September 2016;
- 13 February 2017;
- 18 July 2017;
- 12 January 2018; and
- 19 July 2018.

The amending plan is consistent with the Gateway determination.

The proposal was originally due for finalisation by 10 July 2018. The proposal was submitted to the Department by Council prior to that date and has been subject to ongoing discussions with Council officers to clarify several matters that have now been resolved.

6. PUBLIC EXHIBITION

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 13 July to 10 August 2016.

Twenty-eight submissions and one petition signed by 206 people were received by Council. Council has addressed community concerns in the post-exhibition planning proposal on a site-by-site basis (**Attachment A**).

Of the community submissions, seven objected to the proposal, 15 supported the proposal and three objected to parts of the proposal and supported other parts. Significant issues raised by the community are as follows:

Request for a site review to ensure retention of development potential

The Deerubbin Local Aboriginal Land Council asked Council to review the proposed zoning for land at 7–19 Lawson Long Alley, Mount Victoria, 29–39 Hargraves Street Blackheath and Knapsack Reserve, Glenbrook. As these sites are either subject to a land claim or are likely to be in the future, the Land Council sought to ensure that development potential is consistent with the approach taken to privately owned land.

Council response

Council reviewed the sites on a merit basis, and where development potential was available on land at 7–19 Lawson Long Alley, Mount Victoria and 29–39 Hargraves Street Blackheath, an E3 Environmental Management zoning was proposed to provide appropriate development potential.

Reduction in minimum lot size provisions

Several submissions objected to the provision of a 720m² minimum lot size and requested the standard be increased.

Council response

Council advised that the land subject to the submissions was proposed to be zoned R1 General Residential under draft LEP 2013, with the intent that all land zoned to be R1 has

an MLS of 720m². However, the minimum lot size (MLS) was mistakenly omitted during the preparation of that draft instrument (which became BM LEP 2015). Subsequently, these sites were deferred from BM LEP 2015.

The current proposal seeks to rectify that omission by applying an MLS of 720m² to the deferred sites that are to be zoned R1. This will ensure consistency with other land zoned R1 in the LGA.

Removal of heritage items

One submission was concerned that heritage items had been removed from the maps on land in Mount Victoria, the Central and South Katoomba Precincts and in Leura.

Council response

Council reviewed the maps and confirmed that all the heritage items have been correctly transferred from the current LEPs.

Inappropriate controls

Submissions were received for land at: 3 Lilianfels Avenue (Echos Boutique Guesthouse), Katoomba; 4–8 San Jose Avenue, Lawson; and 2–10 Apex Street and 1–9 Penault Avenue, Katoomba (Mountain Heritage Hotel), requesting the proposed provisions be reviewed as follows:

- 3 Lilianfels Avenue (Echos Boutique Guesthouse), Katoomba: The submission requested the building height be increased from 5.5m to 8m;
- 4–8 San Jose Avenue, Lawson: The submission requested the R3 zone be extended and the proposed FSR, MLS and building height controls provision be reviewed as these were unreasonable; and
- 2–10 Apex Street and 1–9 Penault Avenue, Katoomba (Mountain Heritage Hotel): The submission requested an increase in FSR, building height and MLS as the proposed provisions are inconsistent with the surrounding area.

Council response

These sites were reviewed, and amendments have been made to the planning controls as follows:

- 3 Lilianfels Avenue, Katoomba: The maximum building height was incorrectly exhibited by Council at 5.5m. This was not Council's intention. The Council-endorsed height limit of 8m has been applied accordingly and is supported;
- 4–8 San Jose Avenue Lawson: The proximity of the sites to the Lawson town centre justified an increase in a portion of the site being zoned R3 Medium Density. To address topographical constraints, the mapped slope constraint provisions have been adjusted to ensure the physical constraints on the site are recognised. This approach seeks to achieve a balance between increased development opportunities while recognising the physical constraints of the site and is supported; and
- 2–10 Apex Street and 1–9 Penault Avenue, Katoomba: The site's location near the Katoomba town centre justified an increase in FSR from 0.7:1 to 0.8:1 for sites fronting 2–10 Apex Street and from 0.4:1 to 0.6:1 for sites fronting Penault Avenue and Glenview Street. These amendments are supported.

Objections to the application of environmental protection controls

Several submissions either objected to or raised concerns that the application of environmental protection measures would negatively affect future development of these sites.

Council response

Council addressed these concerns as follows:

- all the sites within this proposal were deferred under the Blue Mountains LEP 2015 to allow investigation and review by Council; and
- where sites comprise environmentally sensitive land but hold some development potential, the E3 or E4 environmental zones and protected area mapping have been applied to influence the design and location of future development while minimising adverse environmental impacts. Sites that comprise one or more environmental constraints and are not considered suitable for development have been zoned E2 Environmental Conservation to ensure the sensitive attributes of these sites are protected.

Objections to the removal of proposed controls and/or zoning

Several submissions were concerned about the impacts that the removal or reduction of environmental controls would have on these sites.

Council response

Zoning and mapped provisions have been translated as closely as possible from existing planning instruments into the standard instrument format. Where this is not possible the best fit approach has been used to translate planning provisions under the standard instrument format.

During the preparation of the standard instrument several background studies were prepared, however, some sites required additional investigation to ensure the proposed development controls were accurate for the sites attributes and were deferred from BMLEP 2015 to allow for review.

These sites were reviewed and, in light of the characteristics of individual sites, the most appropriate zoning and controls have been applied. In some instances where there is development potential or the site is better suited to a less prescriptive controls, appropriate zones and/or mapped provisions have been introduced.

Objection to the proposal to allow residential development on decommissioned sewerage treatment land

One submission objected to residential development being permitted with consent on a site that housed a decommissioned sewage station, as the site may be potentially contaminated, and the soil should not be disturbed.

Council response

The landowner provided Council with a preliminary site investigation report, which noted the land at 20 Hazel Avenue is suitable for several land uses, including, residential development.

Requests for acquisition of sensitive land by Council

Several submissions requested Council purchase sensitive land to ensure its ongoing protection.

Council response

Council is unable to comply with these requests owing to financial constraints.

Request for an Aboriginal heritage study

One submitter claimed there is evidence that the land at 9–11 Linksvue Road, Springwood is an Aboriginal cultural site and requested an Aboriginal heritage study be undertaken.

Council response

Council indicated it does not have the staff or financial resources to undertake an Aboriginal heritage study. However, any artefacts on this land found during any future development would require assessment and compliance with the *National Parks and Wildlife Act 1974*.

Late Submission – St Columba's School

In March 2019, the Department received correspondence from the Roam Catholic Church for the Diocese of Parramatta who own St Columba School at Springwood, one of the deferred sites in the planning proposal. Concern was raised that the planning proposal had not considered the Church's intent to redevelop part of the site and would reduce the development potential from what is currently permitted (see Figure 1).

It is noted that no submissions were received from the Church during the exhibition period and Council has confirmed that it had notified the Church of the proposal.

In February 2016, Council issued consent for the subdivision of part of the site in three stages to allow for seniors housing. The fourth stage was permissible under the provisions of the Blue Mountains Local Environmental (LEP) Plan 2005, however, a development application has not been lodged with Council for this stage with Council.

The planning proposal includes the removal of housing development entitlement for the proposed fourth stage (local provision would allow "self-sustained accessible housing" which is equivalent to seniors housing) and would zone the site from Private Recreation under Blue Mountains LEP 2005 to RE2 Private Recreation under the Blue Mountains LEP 2015. The local provision that would allow seniors housing is not being transferred to the Blue Mountains LEP 2015.



Figure 1: Site 26: St Columba's Elmhurst Precinct

The Department considers that insufficient information has been provided by Council to justify amending the land use zone to allow residential development on this site, particularly given the proximity of the site to bushland and the more stringent standards that now apply to bushfire prone land.

It is therefore considered more appropriate that the development potential of this land is investigated further through a planning proposal process to amend Blue Mountains LEP 2015.

Conclusion

The Department is satisfied that the community submissions have been adequately considered, reviewed, and where appropriate the proposal amended. Where relevant, appropriate zones and planning provisions have been introduced or required amended to ensure the controls balance development outcomes with the sites attributes.

Local Planning Panel

The planning proposal was submitted to the Department in January 2018 and pre-dated the establishment of the local planning panel. Consequently, the planning proposal was not required to be referred to the local planning panel under section 2.19(1)(b) of the *Environmental Planning and Assessment Act 1979*.

7. ADVICE FROM PUBLIC AUTHORITIES

In accordance with the Gateway determination, Council was required to consult the following: NSW Office of Environment and Heritage; NSW Trade and Investment – Crown Lands; NSW Rural Fire Service; Rail Corp; Sydney Water; Transport for NSW; Roads and Maritime Services and Water NSW. The federal Department of Defence: Estate and Infrastructure Group and the NSW Department of Primary Industries (DPI) were also consulted and provided a response.

Copies of the agency responses are at **Attachment D**.

No objections were raised by consulted agencies. However, agency comments were addressed by Council as follows:

Department of Defence

The Department of Defence supports the rezoning and requested the RAAF base at Glenbrook be zoned SP1 Special Activities (Defence) to reflect that the land is owned by the Australian Defence Force, is not subject to the NSW planning system, and to provide a clear public perception of its use and of potential strategic objectives for the land.

Department comment

The land is zoned SP2 Infrastructure (Defence) under this amendment. *LEP practice note (PN 11-002) Preparing LEPs using the Standard Instrument: standard zones* states that areas of Commonwealth land used for Defence purposes should be zoned SP2 (Defence) (page 7, **Attachment E**).

The Department notes that the land is zoned SP2 Defence, consistent with the practice note, and that no changes are required.

NSW Rural Fire Service

The NSW Rural Fire Service (RFS) raised no concerns or issues in relation to bushfire risk.

Sydney Water

Sydney Water held no objections, and as the owner of the land at 20 Hazel Avenue, Hazelbrook, supported the application of an E4 zoning consistent with the current corresponding zone for the site.

Water NSW

Water NSW noted some lots are within the Sydney drinking water catchment and any future development on these lots will need to comply with State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011.

Water NSW made the following site-specific comments:

- 115–140A Mort St, Katoomba: Water NSW supports the E2 zoning and recommends the provision of a 100ha MLS over land zoned E2 Environmental Conservation; and
- 30–32 Yester Road, Wentworth Falls: Water NSW identifies the site as having high to extreme risk to water quality and requests the area be zoned E2 or E3 to reflect the environmental sensitivities of the land.

Department comment

- 115–140A Mort Street, Katoomba: Council advised it did not adopt this request as minimum lot size provisions have not been applied to privately owned land in an E2 Environmental Conservation zone across the LGA, i.e. subdivision is not permissible, and the application of the standard is not necessary;
- 30 – 32 Yester Road, Wentworth Falls: The Department notes the site is proposed to be zoned part E4 Environmental Living, with a minimum lot size of 10ha, and part E2 Environmental Conservation, with no MLS provision.

Council advised:

- the E2 Environmental Conservation zone is applied where there are one or more environmental constraints, and there are insufficient characteristics to trigger the expansion of the E2 zone on this site;
- the E3 Environmental Management zone objectives are more compatible with minimising risk to water quality; however, the land uses permissible with consent are more extensive;
- the land uses permissible with consent under the E4 zone are more restricted and less likely to impact on water quality;
- the proposed E4 zone is the transfer of the equivalent zone (i.e. Residential Bushland Character), and the E4 zone is compatible with the existing land uses and characteristics; and,
- the site is 2.1ha and the 10ha MLS will prevent further subdivision.

The Department supports Council's decision to retain the E4 Environmental Living zone for this site.

Roads and Maritime Services

Roads and Maritime Services' (RMS) comments are summarised as follows:

- RMS has no property objections, subject to the road reservations being maintained;
- advised Council should be satisfied that appropriate mechanisms are in place for developer funding for required transport infrastructure improvements that may be required;
- road safety concerns regarding any new childcare centre or school being located where such properties have a direct frontage to a classified road and recommended the inclusion of a new control under Part 6 Additional Local Provisions seeking to prohibit childcare centres on land fronting a classified road; and
- observed there have been changes to the FSR and height of buildings (HOB) controls.

In addition, RMS provided the following site-specific comments for 56–68 Great Western Highway, Woodford (proposed rezoning to B1 Neighbourhood Centre):

- a traffic impact study was requested prior to the gazettal of the LEP amendments;
- the number of entry and egress points along the Great Western Highway should be minimised for the site;
- a site-specific development control plan (DCP) was requested setting out: access restrictions and loading requirements to guide future development and to ensure the safety and efficiency of the highway is not compromised;
- the application of Clause 6.26 (Shops in Zones B1 and B2) was strongly supported;
- a reduction in the speed limit from 80km/h to 60km/h to facilitate the B1 zoning was requested by Council and not supported by RMS; and
- RMS advised any future footpath dining applications on the frontage to the Great Western Highway would require its concurrence.

Council comment

Council advised:

- a traffic impact study was undertaken for the Woodford site that found there would be no unacceptable impact on traffic flow efficiency, intersection delays or road safety surrounding the site;

- DCP precinct provisions were prepared and exhibited between 1 March and 31 March 2017 for this site. Council resolved on 2 May 2017 to amend the Blue Mountains DCP 2015 to include the site-specific controls for land at 56–68 Great Western Highway, Woodford. The DCP will be amended with the precinct provisions with the commencement of the amending plan (i.e. LEP Amendment No 1);
- childcare centres (now defined as centre-based childcare facilities) are a prescribed land use, permitted with consent, in the land-use table for the B1 Neighbourhood Centre zone under the Standard Instrument – Principle Local Environmental Plan. Consequently, this land use cannot be excluded from the B1 Zone land use table under the Blue Mountains LEP 2015. Accordingly, Council did not adopt this request, however, Council indicated that future development for the purposes of centre-based childcare facilities will be subject to development assessment; and
- the difference in FSR and HOB controls occurred between a previous draft instrument and the preparation of the subject planning proposal. No changes to the FSR or HOB controls have been made between the exhibition of the proposal and the plan being submitted for finalisation.

Department comment

The Department notes Council has appropriately acted on the relevant general comments made by RMS.

56–68 Great Western Highway, Woodford (proposed rezoning to B1 Neighbourhood Centre)

Each allotment has secondary access via Glen Street, Station Street or Vautin Lane and parking is provided to the rear of the shops away from the highway. There is no right-turn access from the highway, reducing the entry and egress to the small B1 Neighbourhood Centre precinct.

A site-specific traffic impact study was provided, which concluded there would be no unacceptable impact on traffic flow, efficiency, intersection delays or road safety in the surrounds of the proposed rezoning.

DCP provisions for this site have been prepared and exhibited. Council resolved to amend the Blue Mountains DCP with the precinct provisions with the commencement of Amendment 1.

Further, the application of Clause 6.26 (Shops in Zones B1 and B2), Clause 6.27 (Drive-through take away food and drink premises) and Clause 7.14 (Woodford Precinct) seeks to ensure development is compatible with the existing buildings and location and seeks to limit the size of shops and prevent unsuitable drive-through development on the Highway.

Conclusion

The Department is satisfied that the application of the B1 zoning and the provision of clauses 6.26, 6.27 and 7.14 to the Woodford site will ensure any future development will be compatible with the scale of the existing buildings; will not significantly increase traffic; and, is unlikely to result in negative impacts upon the Great Western Highway. Consequently, the Department is satisfied Council has adequately addressed the site-specific issues raised by RMS.

Sydney Trains

Sydney Trains provided the following site-specific advice:

690A Great Western Highway, Faulconbridge

Sydney Trains advised it no longer owns this land and therefore the SP2 Infrastructure zoning was no longer required. It raised no objections to the proposed E4 Environmental Living zone.

70 Great Western Highway, Woodford

Sydney Trains requested the retention of the E4 Environmental zoning.

Department comment

Both 690A Great Western Highway, Faulconbridge and 70 Great Western Highway are to be zoned E4 Environmental Living, satisfying Sydney Trains' advice. This zoning is supported by the Department.

DPI Water

DPI Water advised it had reviewed the proposed zone changes of the identified properties and supports the proposed rezoning to E2 Environmental Conservation, stating this zone will protect watercourses and riparian vegetation and satisfies the objectives of the *Water Management Act 2000*.

DPI Land

DPI Land reviewed the proposal and advised the land owned by the Crown at 7–19 Lawsons Long Alley, Mount Victoria is subject to an unresolved Aboriginal Land claim and suggested Council seek comment from the local Land Council.

Department comment

The Deerubbin Local Aboriginal Land Council was consulted and made a submission seeking the retention of development potential for this site. While the site is highly constrained, a portion of the site is suitable for development, with access to services and infrastructure. Accordingly, the site has been proposed to be zoned E3 Environmental Management to provide development potential such as dwelling houses, a range of accommodation types, centre-based childcare facilities and community facilities.

NSW Office of Environment and Heritage (OEH)

OEH commented that several sites join the Blue Mountains National Park and noted that the provisions do not appear to increase the development potential of these sites. Further, land adjoining the national park needs to be zoned appropriately and be subject to development controls that ensure the development does not adversely impact on the national park.

Department comment

The sites adjoining the national park will generally result in a like-for-like transfer of existing zone(s) and controls and will therefore provide the same level of protection currently offered by this controls. The controls for several sites adjoining the National Park were reviewed. The provisions were found to be appropriate and were retained as exhibited.

In these circumstances, it is considered the amendment appropriately addresses OEH's comments.

8. POST-EXHIBITION CHANGES

The proposal has been subject to several post-exhibition changes. These are discussed on a site-by-site basis in detail at **Attachment F**. In summary, the post-exhibition amendments were to:

- rezoning part of a site at 7–9 Lawson Long Alley, Mount Victoria to E3 Environmental Conservation;
- expanding a vegetation area on land at 24 and 26–30 Glenwattle Close, Katoomba;

- a minor increase of a maximum building height applying to land at 3 Lilianfels Avenue, Katoomba;
- a minor increase in FSR controls applying to properties in Apex Street and Penault Avenue, Katoomba and Penault Avenue and Glenview Street, Katoomba;
- removing a proposed E2 Environmental Conservation zone for part of the site at 22 Denison Street and 19 Davidson Street, Leura;
- applying an R3 Medium Density zone to a portion of the site at 4–8 San Jose Avenue, Lawson and associated controls;
- for land at 56–58 Great Western Highway, Woodford, removing Clause 4.1F (Cluster housing on land in certain environment protection zones) and active street frontage provisions as these controls do not apply to the current B1 Neighbourhood Centre zone which applies to the site; and,
- for land at 2–10 Watson Street, Glenbrook, the application of a minimum allotment size of 200ha.

The Department is satisfied that the amendments are appropriate, are a reasonable response to Council's merit-based site investigations, minor in nature and do not necessitate further exhibition, and will improve the overall accuracy and operation of the Blue Mountains LEP 2015.

9. ASSESSMENT

The plan is recommended to proceed as it seeks to resolve land deferred under the Blue Mountains LEP 2015 by applying appropriate zones and controls from the Blue Mountains LEP 1991 and 2005 into the Blue Mountains LEP 2015.

The sites contained within the proposal were deferred to allow Council's detailed investigation. These sites have been reviewed and, where appropriate, development controls, including suitable zones, have been applied. This formed the basis of the planning proposal.

The Gateway determination conditions, as well as the relevant community and public agency submissions, have been satisfied.

The planning proposal is consistent with the relevant section 9.1 Directions, except for Direction 6.2 Reserving Land for Public Purposes. The inconsistency with this Direction is justified due to being of minor significance (see following).

It is considered that, in general, there would be no loss of development potential as a result of the planning proposal, except for the St Columba site (see Figure 1). As discussed previously insufficient information has been provided to allow consideration of this site for residential purposes at this time.

The amending plan is consistent with the Greater Sydney Region Plan and the Western City District Plan. The Department is satisfied that the planning proposal gives effect to the district plan, in accordance with section 3.8 of the Environmental Planning and Assessment Act 1979, improving transparency in development controls that apply to the local government area and protecting and enhancing the bushland and biodiversity in the area (Planning Priority W14) by applying a consistent approach to land use zoning.

The proposal was subject to several post-exhibition changes. These have been appropriately made either in response to community submissions or to rectify minor errors, including mapping errors, and are recommended to be supported.

Section 9.1 Directions

When the Gateway determination was issued, it was considered that the proposal was consistent with relevant section 9.1 Directions, except for Direction 6.2 Reserving Land for Public Purposes.

Direction 6.2 Reserving Land for Public Purposes

Condition 2 of the determination required the approval of the relevant authorities to apply particular zones for land in public ownership as follows:

70 and 70A Great Western Highway, Woodford

No. 70 is owned by Rail Corp and RMS owns no.70A. It was proposed to zone the land to RE1 Public Recreation.

At the time the Gateway determination was issued, it was indicated that RMS supported the RE1 zone (**Attachment D**), while Rail Corp had not provided a comment. During the consultation period, Sydney Trains on behalf of Rail Corp requested the land at 70 Great Western Highway, Woodford remain zoned E4 Environmental Living. Council retained the E4 zoning for this part of the site.

While RMS has given concurrence, the Secretary's approval has not been provided in terms of this Direction in regard to 70A Great Western Highway, Woodford. To comply with the Direction, it is recommended that the Secretary's delegate agree that this inconsistency is justified on the basis of minor significance.

7–19 Lawsons Long Alley, Mount Victoria

The land is proposed to be zoned E2 Environmental Conservation and is owned by NSW Trade and Investment – Crown Lands. The planning proposal does not seek to reserve the land for a public purpose or remove a similar zone. Nevertheless, Council consulted the authority to meet the terms of the condition attached to the determination. Advice was provided as follows:

- NSW Trade and Investment – Crown Lands requested the Local Aboriginal Land Council be consulted as the land was subject to an unresolved land claim (**Attachment D**); and
- the Deerubbin Local Aboriginal Land Council was consulted and requested the zones on the site be reviewed to ensure development potential is consistent with the approach taken for privately owned land. In response, a portion of the site was proposed to be rezoned E3 Environmental Management to ensure development potential on the site is provided.

It is considered that Council has taken the appropriate action and, as the land is not proposed to be zoned for a public purpose, this proposed amendment is not subject to the section 9.1 Direction.

690 Great Western Highway, Faulconbridge

When the time Gateway determination was issued, the site was owned by Sydney Trains, and it is proposed to remove a special use zone (rail) applying to the land. However, the site has been sold and is in private ownership (**Attachment D**). Consequently, this Direction does not apply. Sydney Trains does not object to the zone.

In terms of the consistency of post-exhibition amendments (see section 8 of this report) with section 9.1 Directions, it is considered that given the minor nature of the amendments, these Council alterations are consistent with relevant section 9.1 Directions.

State environmental planning policies (SEPPs)

The draft LEP is consistent with relevant SEPPs or deemed SEPPs.

Regional and district plans

The amending plan is consistent with the Greater Sydney Region Plan and gives effect to the Western City District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*.

10. MAPPING

The proposal comprises 32 sites and amends 134 maps. A detailed summary of the mapping amendments is at **Attachment I**. The maps have been checked by the Department's ePlanning Team and sent to Parliamentary Counsel.

11. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979* (**Attachment G**). Council confirmed on 15 February 2019 that it was happy with the draft and the plan should be made (**Attachment H**).

12. PARLIAMENTARY COUNSEL OPINION

On 20 February 2019, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

13. RECOMMENDATION

It is recommended that the Secretary's delegate agree that any inconsistency with section 9.1 Direction 6.2 Reserving Land for Public Purposes is justified in accordance with the terms of the Direction.

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- the proposal seeks to resolve 32 sites deferred under the Blue Mountains LEP 2015 by applying the relevant Standard Instrument zones and planning controls;
- the Gateway determination conditions and relevant community and public agency submissions have been satisfied;
- the plan is consistent with the relevant section 9.1 Directions, except for Direction 6.2, which is justified on the basis of minor significance, and is consistent with relevant SEPPs; and
- the amending plan is consistent with the Greater Sydney Region Plan and gives effect to the Western City District Plan.



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