

Hoare
Schreiber

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MINUTE NO. 432

19. 18/243752. Post-Exhibition Planning Proposal - Housekeeping 2 - Draft Amendment 10 to LEP 2015

A MOTION was MOVED by Councillors Fell and Hollywood:

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 from the community;
2. That the Council adopts the updated draft Planning Proposal for draft Amendment 10 to LEP 2015 (Amendment to Clause 4.1G and Schedule 1) in Attachment 3 and notes the minor amendment to the title of the clause to now be 4.1G Lot consolidation in certain environmental and industrial zones;
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 3.36 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.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For	Against
Councillors	Councillors
Greenhill	
Christie	
Fell	
Myles	
Hollywood	
Van der Kley	
McGregor	
Brown	
Foenander	
Hoare	
Schreiber	

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ITEM NO: 19

SUBJECT: POST-EXHIBITION PLANNING PROPOSAL - HOUSEKEEPING 2 - DRAFT AMENDMENT 10 TO LEP 2015

FILE NO: F11178 - 18/243752

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 from the community;*
 2. *That the Council adopts the updated draft Planning Proposal for draft Amendment 10 to LEP 2015 (Amendment to Clause 4.1G and Schedule 1) in Attachment 3 and notes the minor amendment to the title of the clause to now be 4.1G Lot consolidation in certain environmental and industrial zones;*
 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 3.36 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 and Customer Services:**Reason for report**

This report responds to the following resolution from the Ordinary Meeting of the Council of 1 May 2018 where it was resolved in part:

- "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 the Blue Mountains Local Environmental Plan 2015 Amendment 10.*"

[Minute No. 175]

The Planning Proposal for draft Amendment 10 (Housekeeping 2) to Blue Mountains Local Environmental Plan (LEP 2015) relates to the consolidation of land under Clause 4.1G of LEP 2015. This requirement recognises the environmental sensitivities of the land and the

development capacity of the site. The amendment also proposes the addition of two land parcels into Schedule 1 of LEP 2015.

The draft amendment was on public exhibition for 15 days from 12 September 2018 to 26 September 2018, as required by the Gateway Determination for this Amendment. A total of five (5) submissions were received during the exhibition period. One was from a community member and the remainder from State Agencies.

Background

Draft Amendment 10 to Blue Mountains LEP 2015 (LEP 2015) proposes changes to a single clause in LEP 2015: Clause 4.1G (Lot Consolidation in Certain Environment Protection zones). This clause applies to a total of 704 allotments across the LGA. Less than 10% of these, had development potential changed or inadvertently removed as a result of the translation of the clause into LEP 2015.

The intention of the amendment is to ensure that the development potential available to the affected properties under LEP 1991 and 2005, is retained under LEP 2015. The clause as currently drafted does not achieve this. This is due to the interplay between the clause, zone and minimum lot size mapping. These operate slightly differently under LEP 2015 and when the clause was translated from LEPs 1991 and 2005, it resulted in an unintended loss of development potential; either reducing the number of potential lots in a subdivision or more significantly removing all development potential on currently undeveloped land.

The changes proposed in the Planning Proposal to clause 4.1G and the addition of two properties to Schedule 1 of LEP 2015, seek to rectify this.

In summary, the proposed amendments to Clause 4.1G and the use of Schedule 1 for two land parcels (as outlined in Attachment 1) include the following:

- Additional zones to be referenced in the clause to ensure the clause applies to land zoned E2 Environmental Conservation and IN1 General Industrial;
- Identification in Schedule 1 (Additional Permitted Uses) to LEP 2015 of two land parcels (containing seven (7) and two (2) lots respectively) which are mapped with two minimum lot sizes. The existing or proposed wording of Clause 4.1G cannot address this, as the clause does not allow for consideration of two minimum lot sizes.
- There are no mapping updates required as part of the amendment, as the changes to the wording of the clause clarify how the provision operates.

Importantly, none of these changes increase the development potential of the affected properties, but simply retain the opportunity available previously under LEP 1991 and LEP 2005.

Process to Date

Draft Planning Proposal

A Planning Proposal was prepared in line with "A guide to preparing local environmental plans" and presented to the Ordinary Meeting of the Council on 1 May 2018 where it was resolved in part:

3. That the Council refers the Planning Proposal to the Greater Sydney Commission or delegate requesting a Gateway Determination in accordance with the provisions of Section 3.34 of the Environmental Planning and Assessment Act, 1979;
4. That the Council requests Written Authorisation to Exercise Delegation over the Planning Proposal in accordance with clause 2.4 of the Environmental Planning And Assessment Act 1979;

5. *That the Council includes a request to the Department of Planning and Environment that the draft Planning Proposal be designated low impact;"*

[Minute No. 175]

In accordance with Items 3 to 5 of Minute No. 175, the draft Planning Proposal was submitted for Gateway Determination on 22 May 2018.

Gateway Determination

A conditional Gateway Determination was issued by the Greater Sydney Commission on 13 July 2018. A copy of the Gateway determination is attached to this report as Attachment 1. Please note, the Planning Proposal was modified through the Gateway Determination process as required by Condition 1 by inserting the prescribed text and by including the number of potential additional dwellings enabled by this proposal. A list of properties where there is a change to development potential has also been prepared (Attachment 2).

Public exhibition occurred as required by Condition 2 and agencies were consulted as required by Condition 3. A public hearing is noted in Condition 4 however it was not requested or required.

Condition 5 authorises Blue Mountains City Council as the local plan-making authority subject to compliance with the conditions of the Gateway determination, that any inconsistencies with section 9.1 (Ministerial) Directions are justified and there are no outstanding written objections from public authorities. The requirements of condition 5 have been satisfied and as a result Blue Mountains will process the draft amendment in accordance with the statutory requirements.

The time frame for completing the Amendment is 6 months from the date of the Gateway Determination (13 January 2019).

Public Exhibition

The Gateway Determination required consultation with the NSW Rural Fire Service prior to public exhibition. This consultation occurred and the response raised no objections to the proposal and no changes to the Planning Proposal were required before the commencement of public exhibition.

State Agency Consultation

The Gateway Determination required consultation with the following agencies and that they be given at least 21 days to comment on the proposal. This concluded on 26 September 2018.

Office of Environment and Heritage;

The Office of Environment and Heritage did not comment or communicate with Council to request information or additional time to respond.

Office of Environment and Heritage – Heritage Division;

The Office of Environment and Heritage – Heritage Division responded noting the Heritage Division has no objection to the amendment providing that it does not inadvertently modify the heritage provisions of the LEP.

The proposed amendment does not alter any zone or provision other than cl.4.1G and the noted additions to Schedule 1. Therefore there is no change to any heritage provisions in the LEP proposed in this amendment.

Water NSW (formerly Sydney Water Catchment)

Water NSW supports the draft amendment. The support for the proposal is noted.

Community Consultation

Letters were sent to owners of properties to which clause 4.1G was applicable prior to the start of public exhibition. Three types of letters, noting the following, were sent:

- No change as a consequence of the proposed amendment (376 letters);
- Development potential will be reinstated as a result of the proposal (23 letters); and
- Bespoke letters explaining the unique situation and solution to correct any loss of development potential (7 letters).

The following information was available at Springwood and Katoomba libraries, Springwood and Katoomba offices and on Council's website:

- Copy of the Planning Proposal, amended as required by the Gateway Determination;
- A Fact Sheet;
- An explanation of the proposed amendment;
- A copy of the Gateway Determination; and
- A clause comparison sheet.

The results of the website exhibition are:

- 79 people viewed the page;
- 62 people opened the documents; and
- There were 183 downloads of the attached documents.

Additionally, fourteen (14) people phoned or came to Council to talk to officers about the Amendment.

The NSW Roads and Maritime Services (RMS) and Endeavour Energy were contacted as land owners. The RMS noted no objection in principle to the planning proposal. The submission notes matters to be considered as part of any possible future development applications. Endeavour Energy responded noting no comments or concerns regarding the draft amendment.

Submissions from community

One submission from a community member was received. The issues raised and comments in response are as follows:

- LEP 2015 is what the residents want:
Comment: As detailed in this report, the clause in LEP 2015 was intended as a translation of previous planning policy under LEP 1991 and 2005, not the introduction of new policy. The proposed amendments are to ensure the same on-the-ground outcome is achieved.
- Wording of consolidation clauses in earlier LEP's was not placed on exhibition:
Comment: The reference to the consolidation clause in earlier LEPs was to provide background to the provision only, and is not part of the Planning Proposal. Earlier LEPs are however public documents, and available on the Council's or Department of Planning website.
- Mapping was not provided:
Comment: There are no mapping amendments proposed with this amendment.
- Suggests environmental land should not be developed;
- Objects to public land being developed; and
- Suggests owners should be compensated for undevelopable land.

Comment: With reference to the above three points, the intention of the amendment is to ensure that the development opportunities available under previous LEPs (1991 and 2005) are retained within the LEP 2015 clause. As such, the amendment will not result in undevelopable land. Additionally, the consolidation clause by its nature, recognises the environmentally sensitive nature of the land, by requiring its consolidation before development can occur.

Outcome of Public Exhibition

A review of clause 4.1G as proposed in draft Amendment 10 was undertaken in response to the agency consultation and public exhibition and while no changes are proposed as a consequence, a minor change to the title of the clause is proposed.

The proposed change is to add the words *and industrial* into the clause heading. This is proposed as it identifies the additional zones included in this clause. The proposed title for the clause will therefore be *4.1G Lot consolidation in certain environmental protection and industrial zones*.

The updated Post-Exhibition Planning Proposal with the above changes is attached to this report (Attachment 3).

Progress of Amendment 10 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	The draft amendment will reinstate the intended planning outcome under LEP 2015 and maintain the development opportunity available to affected properties prior to the making of LEP 2015.	Nil
Social	A number of property owners will have development opportunity reinstated	Nil
Economic	Development opportunity for a number of property owners will be reinstated	Nil
Governance	The public exhibition of the draft Amendment was undertaken in accordance with the Gateway Determination and ensures transparent community consultation. A Post-Exhibition Planning Proposal has been prepared and will be finalised in accordance with the Gateway process.	Nil

Financial implications for the Council

All costs including staff time and resources required in the processing of this LEP amendment 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 making this LEP amendment. To amend LEP 2015 in the way proposed (maintaining policy

intent), removes any potential risk for Council to be challenged on the loss of development opportunity.

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

The planning proposal seeks to make an amendment to LEP 2015 through minor changes to the drafting of Clause 4.1G and inclusion of two land parcels within Schedule 1. These amendments will serve to reinstate the development potential of this land parcels, as existing under LEP 1991 and 2005.

The Planning Proposal has been prepared in line with "A guide to preparing local environmental plans" and a conditional Gateway Determination was issued on 13 July 2018 noting that agency consultation and public exhibition could occur. The requirements prior to consultation and public exhibition were satisfied.

Additionally, the Gateway determination authorised Blue Mountains City Council as the local plan-making authority. Should the recommendations of this report be endorsed, the Council will finalise the processing of the draft Amendment in accordance with legislative requirements and the Gateway Determination.

To correct the operation of this LEP clause and to ensure that the intended planning outcomes are being achieved, it is recommended that Council adopt the updated draft Planning Proposal (Attachment 3), to proceed with the making of this amendment.

ATTACHMENTS/ENCLOSURES

1	Gateway Determination	18/165261	Attachment
2	List of properties	18/260699	Attachment
3	Final Planning Proposal	18/260695	Attachment



NSW RURAL FIRE SERVICE



The General Manager
Blue Mountains City Council
Locked Bag 1005
KATOOMBA NSW 2780

Our reference: R18/1342

24 August 2018

Attention: Erica Duffy

Dear Sir/Madam,

Consultation concerning draft Amendment 10 to Local Environmental Plan 2015 (LEP 2015)

Reference is made to Council's correspondence dated 25 July 2018 seeking comment in relation to the above planning proposal, to make a housekeeping amendment to LEP 2015. The planning proposal seeks an amendment to Clause 4.1G *Lot Consolidation in certain environmental protection zones* of Blue Mountains Local Environmental Plan 2015 and include 2 clauses into Schedule 1 *Additional permitted uses*.

The objective of this amendment is to make minor alterations to this clause to reinstate provisions and outcomes that were present in LEP 1991 and LEP 2005, but were unintentionally removed, in the drafting of LEP 2015. There were two amendments proposed to be included in this clause including land in zone E2 Environmental Conservation, area calculations and land in zone IN1 General Industrial.

The New South Wales Rural Fire Service (NSW RFS) has reviewed the proposal with regard to Section 4.4 of the directions issued in accordance with Section 117(2) of the *Environmental Planning and Assessment Act 1979*.

The objectives of the direction are:

- (a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and
- (b) to encourage sound management of bush fire prone areas.

The direction provides that a planning proposal must:

- (a) have regard to *Planning for Bushfire Protection 2006*, and
- (b) introduce controls that avoid placing inappropriate developments in hazardous areas.

Based upon an assessment of the information provided, the NSW RFS raises no objection to the proposal. Future developments, located on bush fire prone land are required to demonstrate compliance with the aim, objectives and Section 4.3.6 (d) of *Planning for Bush Fire Protection 2006*.

If you have any queries regarding this advice, please contact Craig Casey, Development Assessment and Planning Officer, on 1300 NSW RFS.

Yours sincerely,

Nika Fomin
Manager, Planning and Environment Services

Postal address
NSW Rural Fire Service
Planning and Environment Services
Locked Bag 17
GRANVILLE NSW 2141

T 1300 NSW RFS
F (02) 8741 5433
E records@rfs.nsw.gov.au
www.rfs.nsw.gov.au



Michelle Maher

From: WILLIS, MARK <MARK.WILLIS@sydneywater.com.au>
Sent: Wednesday, 10 October 2018 12:50 PM
To: Erica Duffy
Cc: Blue Mountains Corporate E-Mail
Subject: RE: Exhibition of draft Amendment 10 to Blue Mountains LEP 2015

Hi Erica,


Sydney Water has reviewed the draft amendment 10 to the Blue Mountains LEP 2015 and have considered it in relation to our property at 52 Bullaburra Road Bullaburra.

I wish to confirm that Sydney Water supports the proposed amendment 10 to the Blue Mountains LEP 2015.

If you have any questions, please contact me on 8849 3637.

Regards,

Mark Willis
Disposals Leader
Group Property
Sydney Water, Level 13, 1 Smith Street, Parramatta NSW 2150

 Ph 8849 3637
Mob 0466 546 311
mark.willis@sydneywater.com.au

-----Original Message-----

From: Erica Duffy [<mailto:eduffy@bmcc.nsw.gov.au>]
Sent: Wednesday, 19 September 2018 11:50 AM
To: propertydisposals <propertydisposals@sydneywater.com.au>
Subject: Exhibition of draft Amendment 10 to Blue Mountains LEP 2015

Good morning,

Council recently forwarded a letter notifying Sydney Water Corporation of the exhibition of draft Amendment 10 to LEP 2015, this letter has been returned. If this is the incorrect branch can you please forward it to the section which oversees land owned by Sydney Water.

One parcel of land at 52 Bullaburra Road Bullaburra is owned by Sydney Water and identified as affected by Clause 4.1G and the letter sent is attached to this email.

If you require further information please contact Erica by return email or on 4780 5663.

Kind regards
Erica

Erica Duffy | Senior Strategic Planner | t 02 4780 5663 | e eduffy@bmcc.nsw.gov.au

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