

Planning Services

Gateway Determination Report

LGA	Blue Mountains
PPA	Blue Mountains City Council
NAME	Housekeeping (Am No.10)
NUMBER	PP 2018 BLUEM 002 00
LEP TO BE AMENDED	Blue Mountains LEP 2015
ADDRESS	LGA wide
DESCRIPTION	N/A
RECEIVED	5 June 2018
FILE NO.	IRF18/2978
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

INTRODUCTION

Description of planning proposal

This is a minor housekeeping planning proposal which seeks to reinstate provisions unintentionally removed during the standard instrument conversion. The planning proposal seeks to improve the overall accuracy and operation of the Blue Mountains LEP 2015.

Site description

The proposal is a housekeeping amendment and applies to a number of sites across the local government area (LGA).

The proposed amendments will affect approximately 704 individual lots across the LGA and seeks to reinstate development potential to 28 lots, that was unintentionally removed during the standard instrument conversion.

Existing planning controls

The proposal seeks to amend:

- Clause 4.1G Lot consolidation in certain environmental protection zones; and
- Schedule 1 Additional permitted uses.

For information, existing clause 4.1G is as follows:

4.1G Lot consolidation in certain environment protection zones

- (1) The objectives of this clause are as follows:
 - (a) to require the consolidation of certain lots on environmentally sensitive land,
 - (b) to manage premature subdivisions on the urban and bushland interface,
 - (c) to protect and manage areas of high ecological or scenic landscape value by preventing development on parcels of an inadequate size that may compromise those values.
- (2) This clause applies to land shown edged blue on the Lot Size Map that is in Zone E3 Environmental Management or Zone E4 Environmental Living.
- (3) Development consent must not be granted to development on land to which this clause applies that is in Zone E3 Environmental Management unless the land (including drainage reserves and unformed roads adjoining any lots) has been, or will be consolidated to create a lot that has an area of land in Zone E3 Environmental Management that is at least the minimum lot size shown for the land on the Lot Size Map.
- (4) Development consent must not be granted for the erection of a dwelling house on land to which this clause applies that is in Zone E4 Environmental Living unless the land has, or will be consolidated to create a lot that has an area of land in that zone that is at least the minimum lot size shown for the land on the Lot Size Map.
- (5) Development consent must not be granted under subclause (3) or (4) unless:
 - (a) no dwelling house has been erected on the land, or
 - (b) if a development application has been made for development for the purpose of a dwelling house on the land—the application has been refused or it was withdrawn before it was determined, or
 - (c) if development consent has been granted in relation to any such application—the consent has been surrendered or it has lapsed.
- (6) Despite subclauses (3)–(5), development consent may be granted for the erection of a dwelling house on land to which this clause applies if there is a lawfully erected dwelling house on the land and the dwelling house to be erected is intended only to replace the existing dwelling house.
- (7) Despite subclauses (3)–(6), development consent may be granted to the subdivision of land to which this clause applies if the subdivision:
 - (a) is a realignment of boundaries that does not create an additional lot, or
 - (b) is for the purpose of creating or widening a public road or public reserve or for another public purpose.

Summary of recommendation

It is recommended the proposal proceeds with conditions, as the amendment seeks to reinstate provisions and outcomes unintentionally removed during the standard instrument conversion and generally seeks to improve the clarity, accuracy and overall operation of the Blue Mountains LEP 2015.

PROPOSAL

Part 1 Objectives or intended outcomes

The objectives of the proposal are clear and do not require amendment prior to community consultation.

Part 2 Explanation of provisions

The proposal seeks to make the following written amendments:

- Amend Clause 4.1G Lot consolidation in certain environmental protection zones to include:
 - land zoned E2 Environmental Conservation; and
 - land zoned IN1 General Industrial.
- Amend Schedule 1 Additional Permitted Uses to permit the subdivision of the following properties:
 - 396 – 406 Great Western Highway and 16 Explorers Road Katoomba, and
 - 28 – 30 Powerhouse Lane, Katoomba.

A copy of the proposed provisions is at **Attachment A, pg. 3, 4 & 5.**

The Department understands the intent of the clause is to manage development on environmentally sensitive lots of an inadequate size, with split zonings, through consolidation and minimum lot size controls.

As land zoned E2 Environmental Conservation is not subject to minimum lot sizes under the Blue Mountains LEP 2015, with the proposed inclusion of the E2 Environmental Conservation zone within clause 4.1G, the proposal seeks to allow the minimum lot size provisions to apply to ensure appropriate development potential is reinstated to lots where this was inadvertently removed.

In respect of the amendment to clause 4.1G, in summary, the proposal seeks to guide development under the following zones, as follows:

E3 Zoned Land

Development consent for land zoned E3, where it includes land in zoned E2 and where both zoned land are located within a blue edge as shown on the lot size map, cannot be issued until:

- all the land that lies within the blue edge has or will be consolidated, and
- the consolidated area of land is at least the same area as the minimum lot size shown on the lot size map for the land zoned E3.

E4 Zoned Land

Development consent for the erection of a dwelling on land zoned E4 and located within a blue edge as shown on the lot size map, cannot be issued until:

- all the land within that blue edge has been or will be consolidated, and
- the total area of the consolidated area is at least the minimum lot size shown on the lot size map for the land zoned E4.

IN1 Zoned Land

Development consent for land zoned IN1, where it includes land in zoned E2 and where both zoned land are located within a blue edge as shown on the lot size map, cannot be issued until:

- all the land that lies within the blue edge has or will be consolidated, and
- the consolidated area of land is at least the same area as the minimum lot size shown on the lot size map for the land zoned IN1.

Department Comment:

Under this part, the planning proposal includes an amended clause 4.1G and the proposed additional permitted use amendment.

Given the technical nature of the proposed amendment to clause 4.1G, legal drafting may substantially alter the wording of this amended clause.

While it is considered that the explanation is suitable for exhibition purposes, in view of possible significant amendment of the clause, it is recommended that Council amend this part of the proposal by adding the following words immediately prior to the amended clause:

It is foreshadowed that the proposed amendments to the clause will be subject to legal drafting and this provision may be altered to meet legal drafting requirements.

Further, the number of potential dwellings that will be enabled by this amendment be provided under this part.

Mapping

There are no mapping amendments proposed as part of this planning proposal.

NEED FOR THE PLANNING PROPOSAL

The proposal is not the result of a strategic study or report, the planning proposal is a minor housekeeping amendment in response to development opportunities unintentionally removed during the standard instrument conversion.

The proposal seeks to improve the reinstate these provisions and improve the overall accuracy and operation of the Blue Mountains LEP 2015.

A planning proposal is considered the best way to achieve the intended outcomes.

Inclusion of certain land zoned E2 Environmental Conservation and IN1 General Industrial in clause 4.1G

The objective of clause 4.1G is to manage subdivision of certain environmentally sensitive land through the consolidation of allotments for subdivision purposes.

The consolidation provision in LEP 1991 and LEP 2005 required land within a mapped border to be consolidated prior to development, irrespective of zone, protected area designations or zone based minimum lot size requirements.

The mapped areas under these instruments were identified by lot boundaries and not zone boundaries. Further, the relevant clauses did not reference specific zones. The relevant clause in LEP 2005, for example, provided the following:

39 Consolidation (CONS) requirement

(1) Notwithstanding clause 32 (Land use matrix), where a consolidation requirement is shown by the notation (CONS) for land shown edged by a heavy line on Map Panel A, development (other than an existing use or for the purpose of bush fire hazard reduction) is prohibited unless all adjoining lots with this notation, which are shown edged with a heavy line, have been consolidated into one lot.

With the conversion of BMLEP 2015 to the Standard Instrument LEP format, clause 4.1G only applies to land zoned in either the E3 Environmental Management or E4 Environmental Living zones and requires consolidation within these zones (refer to clause 4.1G (3) and (4)). Consequently, where land is zoned E2 Environmental Conservation and included within the bordered area, this land cannot be taken into

account in meeting the minimum lot size specified in the lot size map. This was not Council's intention, with a mismatch between the maps and the clause.

Without the ability to include land zoned E2 in determining the applicable lot size to meet the minimum lot size standard, there has been an unintended loss of development opportunity on certain lots, either by reducing the number of potential lots in a subdivision or removing development potential completely.

As indicated, this discrepancy has occurred where zones other than E3 Environmental Management or E4 Environmental Living, principally the E2 Environmental Conservation Zone, is included in the delineated area on the Lot Size Map but is not specified in the written clause.

The other zone applies to one holding, zoned IN1 General Industrial, which is delineated on the Lot Size Map but is not specified in the written clause 4.1G, and therefore this clause does not apply to this land.

This proposal is seeking to rectify these oversights by including a reference to E2 Environmental Conservation and IN1 General Industrial zoned land under clause 4.1G.

Sites with two minimum lot sizes

Additionally, two parcels with the consolidation provision have been identified as being subject to clause 4.1G, comprise two minimum lot sizes.

As the provision of two minimum lot sizes prevents the application of clause 4.1G these sites have lost potential development opportunities.

The two sites that have been identified are:

- 396 – 406 Great Western Highway and 16 Explorers Road, Katoomba; and
- 28 – 30 Powerhouse Lane, Katoomba.

Both of these sites are owned by the Blue Mountains Council and are classified as 'operational'.

The amendment is seeking to add these two properties to Schedule 1 Additional permitted uses to permit subdivision and reinstate the development potential that existed under the previous instruments.

The proposed provisions do not seek to increase development potential beyond what was permissible under previous instruments.

STRATEGIC ASSESSMENT

State

Greater Sydney Region Plan 2018 - A Metropolis of Three Cities

Greater Sydney Region Plan 2018 - A Metropolis of Three Cities, is the relevant regional plan and seeks to manage growth and change in Greater Sydney, in the context of social, economic and environmental matters.

The proposal is for a minor housekeeping amendment which seeks to reinstate development opportunities inadvertently removed during the transition to BMLEP 2015. The proposal is not inconsistent with the Greater Region Plan 2018.

District

Western City District Plan

The Western City District Plan is a 20-year plan to manage growth in the context of economic, social and environmental matters in the Western City.

The planning proposal and its intended outcomes are not inconsistent with the Western City District Plan's, priorities and actions.

Local

Sustainable Blue Mountains 2025

The proposal is not inconsistent with local strategic planning document Sustainable Blue Mountains 2025 or other local strategic planning policies.

Section 9.1 Ministerial Directions

The proposal is consistent with the relevant section 9.1 Directions, except for the following:

2.1 Environmental Protection Zones

This direction seeks to maintain the environmental protection standards that apply to the land. This direction applies as the proposal will affect a number of lots within environmental protection zones.

The proposal is not seeking to reduce the environmental protection measures, however, will increase development potential within environmental protection zones.

Accordingly, to ensure adequate consideration has been given to this direction, consultation with the NSW Office of Environment and Heritage is recommended and the Gateway has been conditioned accordingly.

2.3 Heritage Conservation

This direction seeks to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.

This direction applies as the proposed amendment to clause 4.1G will affect three properties identified as local heritage items:

- LA025 – The Braes – 64 – 68 Grose Street, Leura;
- LD009 – Linden Lodge – 783 – 789 Great Western Highway, Linden; and
- WF020 – Rhondda Valley, grounds and railway sign – 106 – 120 and 110W Railway Parade, Wentworth Falls.

The proposal indicates that the proposed amendments to clause 4.1G will not affect the heritage items, however, to ensure adequate consideration has been given to this direction, consultation with the Office of Environment and Heritage – Heritage Division is recommended. The Gateway has been conditioned accordingly.

4.4 Planning for Bushfire Protection

This direction seeks to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas.

This direction applies as the planning proposal applies to land that is or is in proximity to land that has been mapped as being bushfire prone.

To satisfy this direction the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service prior to undertaking public exhibition and the Gateway determination has been conditioned accordingly.

5.2 Sydney Drinking Water Catchment

The objective of this direction is to protect water quality in the Sydney drinking water catchment.

This direction applies as the amendment to clause 4.1G will increase the number of developable lots and some of these lots are located within the Sydney Drinking Water Catchment.

Under item (4) of the direction, a planning proposal must be prepared in accordance with certain principles and requirements specified in that direction. Further, consultation with the Sydney Catchment Authority (SCA) is to occur prior to the Gateway determination. A planning proposal, however, can be inconsistent with the direction if the inconsistency is of minor significance.

It is noted that the Blue Mountains LEP 2015 recognises and protects the natural environment including the Sydney Drinking Water Catchment. The provisions in the LEP require consideration to be given to development in the catchment. Council has advised that the proposal is consistent with the direction in view of these requirements.

To confirm consistency with this direction, however, it is recommended that Council be required to consult with the SCA – now Water NSW, as a Gateway condition.

As this is a minor matter, it is recommended that the delegate agrees that Water NSW be consulted with during public exhibition and not prior to Gateway determination.

State environmental planning policies

The proposal is consistent with the relevant State Environmental Planning Policies.

SITE-SPECIFIC ASSESSMENT

Social

The proposal is for a minor housekeeping amendment to reinstate development opportunities inadvertently removed during the conversion to the standard instrument LEP (BMLEP 2015) and will not produce any significant social impacts or benefits.

Environmental

The proposal seeks to reinstate provisions from previous instruments removed accidentally during the 2015 LEP conversion. The proposal will increase the number of developable lots, however, it is considered unlikely to result in any negative environmental impacts.

Further, if the proposal results in future development the BMLEP 2015 contains strong provisions for the protection of the environment, and environmental impacts will be given consideration during the development application assessment process.

To ensure this is the case, Council's consultation with the Office of Environment and Heritage is recommended.

Economic

The proposal is for a minor housekeeping amendment to reinstate development opportunities inadvertently removed during the conversion to the standard instrument LEP (BMLEP 2015) and will not deliver any significant economic impacts or benefits.

CONSULTATION

Community

Council have proposed to provide written notification of the public exhibition to all land owners affected by the proposed amendments to clause 4.1G.

Further, an advertisement, advising of the proposal will be placed in the local newspaper and on Council's website.

The proposal is to be publicly exhibited for 14 days due to the minor nature of the proposed amendments.

It is recommended the delegate agrees to a public exhibition period of 14 days. The Gateway has been conditioned accordingly.

Agencies

Consultation with the following agencies is recommended:

- Office of Environment and Heritage;
- Office of Environment and Heritage – Heritage Division;
- WaterNSW (formerly Sydney Water catchment); and
- NSW Rural Fire Service – prior to public exhibition.

Note: In accordance with section 9.1 Direction 4.4 Planning for Bushfire Protection, Council is to consult with the NSW Rural Fire Service prior to public exhibition and, if necessary, amend the planning proposal accordingly.

TIME FRAME

Council have proposed a 6-month time from for completing the LEP amendment. This is considered reasonable given the minor nature of the proposed amendments.

LOCAL PLAN-MAKING AUTHORITY

Council have requested to exercise delegation.

It is noted that Council owns two properties affected by the proposed amendment. However, as the proposal is minor, seeking to reinstate provisions that were under LEP 1991 and LEP 2005 and is not seeking to include additional development potential beyond what was achievable under previous LEPs, it is recommended that Council be authorised to be the local plan-making authority.

CONCLUSION

The planning proposal is supported to proceed with conditions, as the proposed amendment seeks to reinstate provisions and outcomes unintentionally removed

during the standard instrument conversion and generally seeks to improve the clarity, accuracy and overall operation of the Blue Mountains LEP 2015.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. **note** that any inconsistencies with section 9.1 Directions 2.1 Environmental Protection Zone; 2.3 Heritage Conservation; and 5.2 Sydney Drinking Catchment are minor, however, to ensure consistency with the terms of the Directions consultation with the relevant authorities has been recommended;
2. **agree** that given the minor significance of the proposal, consultation with Water NSW (formerly Sydney Water Catchment) may be undertaken by Council during the exhibition period and not as required by section 9.1 Direction 5.2 Sydney Drinking Catchment; and
3. **note** that the consistency with section 9.1 Directions 4.4 Planning for Bushfire is unresolved and will require justification.

It is recommended that the delegate of the Greater Sydney Commission, determine that the planning proposal should proceed subject to the following conditions:

1. Minor editorial matters under Part 2 Explanation of provisions.
2. The planning proposal should be made available for community consultation for a minimum of 14 days.
3. Consultation is required with the following public authorities:
 - Office of Environment and Heritage;
 - Office of Environment and Heritage – Heritage Division;
 - Water NSW (formerly Sydney Water Catchment); and
 - NSW Rural Fire Service – prior to public exhibition.

Note: In accordance with section 9.1 Direction 4.4 Planning for Bushfire Protection, Council is to consult with the NSW Rural Fire Service prior to public exhibition and, if necessary, amend the planning proposal accordingly

4. The time frame for completing the LEP is to be 6 months from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council should be the local plan-making authority.



9 July 2018

Terry Doran
Team Leader, Sydney Region West



13/07/2018

Ann-Maree Carruthers
Director, Sydney Region West
Planning Services

Contact Officer: Alicia Hall
Planning Officer, Sydney Region West
Phone: 9860 1587
20.06.2018