



Planning,  
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Environment

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## Plan finalisation report PP\_BLUE\_2017\_004\_00

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Amendment 5, Blue Mountains LEP 2015 (LGA wide)

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# 1 Introduction

## 1.1 Overview

### 1.1.1 Name of draft LEP

Blue Mountains Local Environmental Plan 2015 (Amendment No. 5).

The plan seeks to recognise, protect and conserve items of local heritage significance within the Blue Mountains Local Government Area, by introducing new heritage items, modifying existing items and removing items. The plan will achieve this by amending Schedule 5 Environmental Heritage and relevant heritage maps (the heritage mapping) of the Blue Mountains Local Environmental Plan (LEP) 2015.

The plan does not seek to make any changes to heritage conservation areas, Aboriginal heritage places, land zoning or development standards.

### 1.1.2 Site description

**Table 1 Site description**

Site Description	Type	Council Name	LGA
The planning proposal ( <b>Attachment A</b> ) applies to various sites across the Blue Mountains LGA.	Various sites	Blue Mountains City Council	Blue Mountains

### 1.1.3 Purpose of plan

The plan seeks to amend Schedule 5 of BMLEP 2015 and the associated heritage mapping by:

- introducing 62 new heritage items;
- introducing 'archaeological' and 'landscape' items;
- introducing 'archaeological conservation areas' and 'landscape conservation areas';
- modifying 287 existing heritage items; and
- deleting 31 heritage items.

#### Written Amendments

Written amendments to Schedule 5 will include:

- the listing of new items;
- deletion of recommended items, for the following reasons:
  - consolidation of existing listings;
  - removal of duplications;
  - items superseded by larger new listings (reserves); or
  - deleted as a result of study recommendations.
- modification to individual items, for the following reasons:
  - inclusion of interiors to the description of certain publicly accessible buildings such as churches, shops, schools and hotels;
  - removal of interiors from the description of certain publicly accessible buildings where inspections determined these interiors did not display adequate heritage attributes to warrant inclusion;

- change of item listing description where an item has been identified by a tenancy name, to the building name or a building description, for long term clarity as tenancies change over time; and
- to align local item listing details with the State heritage listing details to improve consistency;
- inclusion of additional information to listing descriptions in response to studies, further assessment or local knowledge.

## Mapping

The amending plan will require the alteration of 35 heritage map tiles under the Blue Mountains LEP 2015.

The map amendments fall under the following five categories:

1. introduction of new heritage items;
2. introduction of 'archaeological' and 'landscape' items;
3. introduction of 'archaeological conservation areas' and 'landscape conservation areas';
4. removal of the deleted items; and
5. modification of existing items.

Many large and complex items in 'natural' areas, which are currently identified on maps as a small dot point, such as walking tracks, will be shown using polygons to improve an understanding of the location and scope of these items.

Archaeological remains along the Great Western Highway will be mapped as archaeological conservation areas.

The maps are at **Attachment Maps**.

### 1.1.4 State electorate and local member

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

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

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

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

## 2 Gateway determination and alterations

The Gateway determination issued on 3 November 2017 (**Attachment B**) determined that the proposal should proceed subject to conditions. Council has met all the Gateway determination conditions.

The Gateway determination was altered on 12/12/2018, 28/11/2019 and 7/07/2020, to extend the timeframe for completion (**Attachment C**).

In accordance with the Gateway determination (as altered) the proposal is due to be finalised on 30/10/2020.

## 3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 7/04/2018 to 12/04/2018.

A total of 41 community submissions were received, comprising 32 submissions supporting the proposal and 9 objections (**Attachment F**).

### 3.1 Submissions during exhibition

#### 3.1.1 Submissions supporting the proposal

Community submissions in support of the proposal included:

- approval for the inclusion of items to the Heritage Schedule;
- recommended items be considered for listing; or
- recommended heritage listings be amended to include additional information to improve the accuracy of the item description.

#### 3.1.2 Submissions objecting to and/or raising issues about the proposal

There were 44 submissions received from individuals and organisations including the NSW Environment, Energy and Science Group (EES), NSW Rural Fire Service (RFS), Transport for NSW (TfNSW) (RailCorp), Blue Mountains City Council (BMCC) and local historical groups.

Of the 41 individual submissions, 7 objected to the proposal (18%), 6 supported the proposal (15%), 23 requested refinements to the heritage schedules (57%) and 4 made general comments (10%).

**Table 2 Summary of Key Issues**

Issue raised	Council response and Department assessment of adequacy of response
Objection to a new listing at 27 Hope Street, Blaxland. The objection questioned the heritage significance of the dwelling and was concerned with the loss of development potential, the imposition of greater restrictions, additional costs and longer approval timeframes.	<p><u>Council Response</u></p> <p>Council undertook an independent heritage assessment of the dwelling to establish if the house met the criterial at a local level for listing. The heritage assessment found the house to have moderate historical significance, retaining its original and fine aesthetic significance and of high rarity value for Blaxland. In response to these findings, Council has proceeded with the listing.</p> <p><u>Department Assessment</u></p> <p>The Department has reviewed the supporting studies, including the independent heritage assessment for this site. The heritage assessment found the cottage is a rare surviving example of a modest weatherboard cottage, purpose built as a holiday retreat in the lower Blue Mountains, with most of its typical Federation era characteristics and elements retained.</p> <p>The Department is satisfied that suitable consideration has been given to the heritage attributes of the cottage, and that the cottage has adequate historical significance to support its inclusion in the Environmental heritage schedule, under BM LEP 2015.</p>

Issue raised	Council response and Department assessment of adequacy of response
<p>Objections to the inclusion of 'interiors' in the listing description.</p>	<p><u>Council Response</u></p> <p>The listing of interiors has been proposed for publicly accessible buildings which demonstrate adequate heritage attributes. All interiors were inspected by Council's Senior Heritage Planner to assess the integrity and significance of these interiors. Where the assessment found the interiors were generally intact and authentic, Council proceeded with these listings. Proposed listing of interiors that did not demonstrate adequate heritage attributes has been removed. Where buildings, or only part of buildings remain publicly available, the listings have been amended to ensure only the sections of the buildings with significant interiors are listed.</p> <p><u>Department Comment</u></p> <p>Interior listings only relate to 'publicly accessible' buildings, such as churches, shops, fire stations, hotels, village halls, or community centres. Where submissions were made objecting to, or seeking refinement of the interior's listings, Council inspected the properties to assess the heritage values. The Department is satisfied Council has listed only those interiors that displayed appropriate heritage attributes.</p>

### 3.1.3 Other issues raised

Other matters raised by submissions included:

- requests to refine item descriptions, through the inclusion or removal of property details, amendments to item names, correction of spelling errors, and the removal of previously subdivided and developed lots.

## 3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with agencies, listed below in Table 4, which have provided the following.

**Table 3 Advice from public authorities**

Agency	Advice raised	Council response
<p>Heritage NSW (formerly Heritage Office of the Office of Environment and Heritage)</p>	<p>The Heritage Council of NSW noted 30 of the proposed modifications relate to items also listed on the State Heritage Register (SHR), with the proposed amendments seeking to align the description and mapping of the local items to the SHR listing to ensure consistency.</p> <p>The submission notes the following three items have not been aligned with State Heritage:</p>	<p>Council notes that the following items have not aligned with the SHR listing:</p> <ul style="list-style-type: none"> <li>• Lapstone Hill Railway Tunnel (and WWII Mustard Gas Storage Site)</li> </ul> <p>Council reinstated the longer description listing of 'Lapstone Hill Railway Tunnel (and WWII Mustard Gas Storage Site)', instead of the SHR listing of 'Lapstone Hill Railway Tunnel' following public</p>

Agency	Advice raised	Council response
	<ul style="list-style-type: none"> <li>Lapstone Hill Railway Tunnel;</li> <li>Gatekeepers cottage at Valley Heights; and</li> <li>Cox's Road and Early Deviations at Linden.</li> </ul> <p>In relation to the Cox's Road and Early Deviations at Linden the Heritage Council advised the SHR curtilage is smaller than the existing mapping of the item in the BMLEP 2015, which includes a section of the Cox's Road and the vacant undeveloped land to the west and south and four residential lots to the east. The vacant undeveloped land provides views to the west and preserves an 'open' bushland setting for the road, which is evocative of the early 19<sup>th</sup> century travellers experience and recommends the mapping of the item includes the vacant undeveloped land to the west and south.</p> <p>The Heritage Council of NSW raised no concerns with the other modifications (<b>Attachment G</b>).</p>	<p>submissions, including primary and secondary sources, which demonstrate the longer listing more accurately conveys the sites historical uses.</p> <ul style="list-style-type: none"> <li>Gatekeepers Cottage, Valley Heights</li> </ul> <p>Council advised that to maintain consistency, the description of the 'Gatekeepers Cottage' at Valley Heights has been aligned with the description of all local listing for 'gatekeepers cottages' within the local government area.</p> <ul style="list-style-type: none"> <li>Cox's Road and Early Deviations – Linden</li> </ul> <p>Council has retained the larger local listings mapped curtilage, as recommended by Heritage NSW, however, has removed the mapping over private lots 4, 5, 6 and 7 Caley Lane. These lots have developed and no longer contribute to the bushland setting or views.</p>
NSW Rural Fire Service (RFS)	The NSW RFS made no specific recommendations in relation to bush fire protection ( <b>Attachment H</b> )	No response required.
NSW Aboriginal Land Councils	No response received	No response required
Local Aboriginal Land Councils	No response received	No response required
Water NSW and Sydney Water	<p>Consultation was not required under the Gateway, however, Council consulted with Water NSW and Sydney Water as landowners.</p> <p>Water NSW objected to the proposed listing of Greaves Creek Dam, 4 Walls Cave Road, Blackheath (BH208) and Cascade Creek Dams, 100 -130 Mort Street, Katoomba (K162) for operational reasons.</p>	<p>In response to this submission council has:</p> <ul style="list-style-type: none"> <li>Aligned the mapping for the Medlow Dam in accordance with the SHR listing.</li> <li>Council, Water NSW and Sydney Water have agreed that Greaves Creek and Cascade Creek Dam and 100 – 130 Mort Street, Katoomba, hold heritage significance as part of the Blue Mountains Water Supply Group and should be listed. However,</li> </ul>



Agency	Advice raised	Council response
	<p>Water NSW did not object to the amendments to the existing listing for Medlow Dam 73 and 73A Beauchamp Road, Medlow Bath (MB005), but requested the mapping be changed to align with the SHR mapping.</p>	<p>Water NSW and Sydney Water hold concerns over establishing the correct curtilage. At this stage no curtilage has been proposed and the dams are identified on the maps as dots/points until a suitable curtilage can be agreed.</p> <ul style="list-style-type: none"> <li>• Additionally, Council has added additional information to the inventory sheets to clarify ongoing management concerns and the need for heritage assessments and strategies to take place in the longer term.</li> </ul> <p><u>Department Comment</u></p> <p>The Department supports the identification of dams and 100 – 130 Mort Street, Katoomba, as dot points on the relevant maps. Should a curtilage be determined in the future, the maps can be amended as part of a future housekeeping amendment.</p>
Transport for NSW	<p>Consultation was not required under the Gateway determination, however, Council consulted with Transport for NSW as a landowner.</p> <p>Transport for NSW requested a detailed heritage assessment of the footbridge to confirm its heritage value to justify its inclusion with the Woodford Memorial Park Group listing (WD010) due to the poor condition of the bridge, cost and safety issues and its intention to remove the bridge.</p>	<p>Transport for NSW has advised of its intention to remove the footbridge and held a community consultation exercise in Sept/October 2020.</p> <p>Council received supplementary historical information, prepared by local historians, which demonstrates that the footbridge was only one of three built by RailCorp and is the only surviving example of its type. Council has updated the heritage inventory sheet to provide greater detail and clarity. Subsequently, Council considers the bridge has adequate heritage attributes to warrant its listing and the railway footbridge is retained as part of the 'Woodford Memorial Park Group' listing at this time.</p> <p><u>Department Assessment</u></p> <p>The Woodford Memorial Park Group Heritage Inventory Sheet</p>

Agency	Advice raised	Council response
		<p>(<b>Attachment I</b>) identifies the park as a small but significant c1919 park and notes the footbridge may have some rarity values. The Inventory goes on to advise the pedestrian footbridge marks an important historical use as the site of Woodford's early railway stations, as well as, providing an essential link between the park and locally historically significant reserves - such as Wilson Glen to the south.</p> <p>The heritage inventory demonstrates adequate heritage significance to warrant the inclusion of the footbridge in the listing and is supported by the Department.</p>

The Department considers Council has adequately addressed matters raised in submissions from public authorities.

### 3.3 Post-exhibition changes

#### 3.3.1 Council resolved changes

At Council's Ordinary Meeting on 29/09/2020, Council resolved to proceed with the planning proposal with the following minor post-exhibition changes (**Attachment J & J1**):

##### Proposed listings removed from the amending plan

Two of the proposed listings have been removed, post exhibition, in response to submissions.

- 'Simpson-Lee House' was removed as the building is not considered to have the typical heritage attributes associated with listings in the Blue Mountains, such as those properties which date from Victorian, Federation or Inter-War periods, which area at risk of demolition or loss.
- 'St Columba's Grotto Tracks' is located on the St Columba's school site. The school has had ongoing issues with trespassing and were concerned that a separate listing would draw attentions to the grounds. The Tracks individual listing was removed, and the track has been incorporated into the listing for St Columba's College (WL001).

##### Changes to listing details in Schedule 5 Environmental Heritage under the BM LEP 2015

Changes to listing details generally came within the following categories:

- the inclusion or removal of 'interiors' to listing descriptions, for publicly accessible buildings, where interiors do/do not demonstrate adequate heritage attributes;
- the inclusion of 'former' to listing descriptions where the buildings are not being used as their description implies, for example, where a building is listed as a church but has been converted to a dwelling;

- updates to street addresses and Lot and DP numbers; and
- changes to the listing descriptions to better reflect the sites historical values or use.

#### Changes to heritage maps under the BM LEP 2015

Two maps have been updated, post exhibition, in response to submissions.

- 'The Chalet', Medlow Bath - the property owner advised certain lots have been subdivided, and subsequently no longer form part of the heritage site. Accordingly, these lots have been removed.
- 'Cox's Road and Early Deviations – Linden, Linden Precinct' – the mapping was proposed to align with the State Heritage listing curtilage for this site. However, Heritage NSW, in its submission, suggested Council's larger local listing curtilage be retained as the land preserves an 'open' bushland setting for the road, which is evocative of the early 19<sup>th</sup> Century. However, four privately owned allotments, at 4,5, 6 and 7 Caley Lane, have been removed. These have been developed and comprise contemporary dwelling houses and no longer contribute to the views or bushland setting.

#### Inventory sheets

All proposed and existing items included in the planning proposal have a heritage inventory sheet to support the listing. Some of the existing heritage sheets have been updated with improved information and assessments. These changes are non-statutory.

A detailed table listing the post exhibition amendments and justification is at **Attachment K**.

The Department considers that these post-exhibition changes are justified and do not require re-exhibition, on the basis that the amendments are:

- minor amendments that do not alter the intent of the planning proposal;
- are a reasonable response to comments provided by the public authorities; and
- generally, seek to improve the accuracy of the Blue Mountains LEP 2015.

## 4 Department's Assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as modified).

As outlined in the Gateway determination report (**Attachment L**), the planning proposal submitted to the Department for finalisation remains:

- consistent with district plan relating to the sites;
- consistent with all relevant Section 9.1 Directions; and is
- consistent with all relevant SEPPs.

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage.

**Table 4 Summary of strategic assessment**

	Consistent with Gateway determination report Assessment	
Regional Plan	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
Local Planning Panel (Panel) recommendation	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

**Table 5 Summary of site-specific assessment**

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Environment impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

## 4.1 Detailed Assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable.

### Regional Plan

The planning proposal has not been assessed against The Greater Sydney Region Plan 'A Metropolis of Three Cities' as this plan was not in effect at the time the Gateway determination assessment was undertaken. The Gateway determination required the planning proposal to be updated prior to exhibition to demonstrate its consistency with this Plan.

The proposal was updated prior to exhibition and is consistent with the Plan, specifically with Objective 13: Environmental heritage is identified, conserved and enhanced of the Plan, which aims to promotes Sydney's heritage and culture.

### Local Strategic Planning Statement

The Gateway determination was issued in 2017, prior to the implementation of the Blue Mountains Local Strategic Planning Statement (LSPS), which was endorsed in March 2020.

To ensure consistency, the amending plan has been considered against Council's LSPS. The plan is generally consistent with the LSPS and specifically with Local Planning Priority 5, which seeks to conserve and enhance the heritage, character and liveability within the LGA.

The amending plan gives effect to this priority by seeking to introduce, remove and update local heritage listings, to ensure heritage items are recognised, clarified and given statutory protection, ensuring the long-term conservation of cultural and environmental heritage items within the Blue Mountains LGA.

### Local Planning Panel Recommendation

The planning proposal was submitted to the Department in late 2017, prior to the establishment of the local planning panels (Panel) in 2018. Consequently, a Panel recommendation is not required to accompany this plan.

## Section 9.1 Directions

### 2.3 Heritage Conservation

Consistency with this direction required consultation and clarification from the Office of Environment, Energy and Science (EES), formerly the Office of Environment and Heritage. EES (**Attachment G**) made one recommendation in relation to the 'Cox's Road and Early Deviations – Linden (LD008)' item (refer to the discussion on page 8). Council amended the proposal accordingly. EES raised no objections to the listing, delisting or other modifications to heritage items. The amending plan is consistent with this direction.

### 4.4 Planning for Bushfire

To ensure consistency with this Direction, consultation with the Rural Fire Service was required. The RFS (**Attachment H**) raised no objections to the planning proposal and consequently the amending plan is consistent with this direction.

## 5 Post assessment consultation

The Department has consulted with the following stakeholders after the assessment.

**Table 6 Consultation following the Department's assessment**

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	35 maps have been reviewed by the Department's ePlanning team and meet the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> ( <b>Attachment D</b> )  Council confirmed on 24/03/2021 that it was agreeable with the draft and that the plan should be made ( <b>Attachment E</b> )	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	On 24/03/2021, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at <b>Attachment PC</b> .	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

## 6 Recommendation

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 draft LEP has strategic merit being consistent with Blue Mountains Local Environmental Plan.
- It is consistent with the Gateway Determination.
- Issues raised during consultation have been satisfactorily addressed, and there are no outstanding agency objections to the proposal.



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24 March 2021

Adrian Hohenzollern  
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## Attachments

**Attachment A** – Planning Proposal

**Attachment B** – Gateway determination

**Attachment C** – Gateway Alterations

**Attachment D** – Section 3.36 (1) consultation with Council

**Attachment E** - Council's Section 3.36 consultation response

**Attachment F** – Council's response to submissions

**Attachment G** – EES – Heritage Division’s submission

**Attachment H** – RFS submission

**Attachment I** – Woodford Memorial Park Group – WD010 (modified) Heritage Inventory Sheet

**Attachment J** – Council Report

**Attachment J1** – Council Minute

**Attachment K** – Post exhibition amendments table

**Attachment L** – Gateway determination Report

**Attachment - Maps**