

Planning Services

IRF18/5183

Gateway Determination Report

LGA	Blue Mountains
PPA	Blue Mountains City Council
NAME	Housekeeping Proposal No. 3 – various amendments
NUMBER	PP_2018_BLUEM_003_00
LEP TO BE AMENDED	Blue Mountains LEP 2015
ADDRESS	Various locations across the LGA
DESCRIPTION	N/A
RECEIVED	21 September 2018
FILE NO.	EF18/43230
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

The planning proposal is a minor housekeeping proposal which seeks to improve the clarity, accuracy and overall operation of the Blue Mountains LEP 2015, by removing a time restriction specified for item 4 of Schedule 1 Additional permitted uses, the inclusion of certain development as exempt and to improve the clarity of clause 6.5 Dwelling houses on land in the E2 Environmental Conservation zone.

Site description

The proposal seeks to amend two (2) existing clauses and adopt two (2) new clauses.

Non site-specific clauses

Three (3) of the proposed amendments are not site-specific site and if adopted will apply to relevant land across the local government area (LGA).

132 – 158 Grose Road, Faulconbridge

One (1) of the proposed amendments is site specific and relates to land at 132 – 158 Grose Road, Faulconbridge.

The site contains a sandstone quarry and is zoned part E4 Environmental Living and part E2 Environmental Conservation.

Bushland adjoins the site to the north, south and west. Land to the east is zoned E4 Environmental Living and comprises single and two story residential development. Refer to Figures 1 and 2 overleaf.

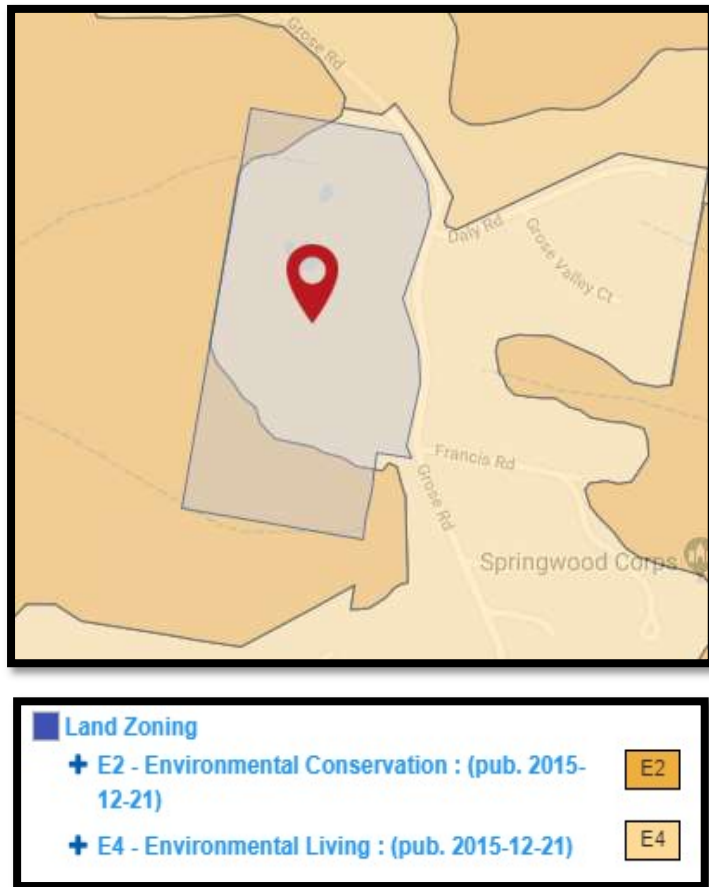


Figure 1: Land Zoning Map



Figure 2: aerial view of the 132 – 158 Grose Road, Falconbridge

Existing planning controls

The proposal seeks to amend the following existing controls:

- Part 6 Additional local provisions, Clause 6.25 Dwelling houses on land in Zone E2;
- Schedule 1 Additional permitted uses - Item 4 Use of certain land at 132 – 158 Grose Road, Faulconbridge; and
- Schedule 2 Exempt development.

Summary of recommendation

The preparation of the planning proposal is supported to proceed, with conditions, as the proposed amendments seek to improve the clarity, accuracy and overall operation of the Blue Mountains LEP 2015.

PROPOSAL

Objectives or intended outcomes

The intended outcomes of the proposal are to improve the overall clarity and accuracy of the BMLEP 2015, by rewording an ambiguous clause, removing an unnecessary sunset clause and through the inclusion of additional forms of development as exempt development on land zoned E4 Environmental Living.

The objectives of the proposal are clear and do not require amendment prior to public exhibition.

Explanation of provisions

The proposal seeks to amend the Blue Mountains LEP 2015, as follows:

Written Amendments

1. Amend Clause 6.25 Dwelling houses extending onto land in Zone E2 as follows:
 - clarify that the clause permits a dwelling house and ancillary development to extend up to 10m onto land in the E2 Environmental Conservation zone;
 - clarify that the benefits of this clause will apply to only one parcel of land; and
 - clarify certain ancillary development: driveway; on-site sewerage-management system; or an asset protection zone may extend beyond the 10m limit into land zoned E2 Environmental Conservation if appropriately sited.

These outcomes will be achieved by clarifying the objectives of the clause, rewording the sub-clauses and the inclusion of an additional subclause.

2. Amend Schedule 1 Additional permitted uses as follows:
 - remove the two (2) year time limit from item 4 of Schedule 1.
 - This will not alter the need for a mining and restoration plan, as requested by the clause, prepared by a suitably qualified person, prior to development of the site for the purpose of subdivision.

3. Amend Schedule 2 Exempt development as follows:

- introduce dividing fences as exempt development on land zoned E4 Environmental Living, where compliance with the prescribed requirements is achieved;

4. Amend Schedule 2 Exempt development as follows:

- introduce rainwater tanks (above ground) as exempt development on land zoned E4 Environmental Living, where compliance with the prescribed requirements is achieved; and
- reduce the setback from a boundary for rainwater tanks (above ground) on land zoned E4 Environmental Living from 10m to 450mm.

A draft of the proposed amendments can be found at **Attachment G**.

The provisions are clearly explained and do not require amendment prior to community consultation. However, the draft clauses have been prepared by Council, and these clauses will be subject to legal drafting and may change. The Gateway determination will include a condition requiring a statement of this effect be included in the planning proposal.

Mapping

There are no map amendments associated with this proposal.

NEED FOR THE PLANNING PROPOSAL

The planning proposal is not the result of a strategic study. The proposal is a housekeeping amendment that seeks to clarify and improve the overall accuracy and efficiency of the Blue Mountains LEP 2015.

A planning proposal is the best way to achieve these outcomes.

STRATEGIC ASSESSMENT

Regional / District

Greater Sydney Regional Plan - A Metropolis of Three Cities

The proposal is not inconsistent with the strategic direction, strategies and objectives in this plan.

Western City District Plan

The proposed amendments are not inconsistent with the planning priorities and actions under this plan.

Local

The planning proposal is for a minor housekeeping proposal and is not inconsistent with relevant Blue Mountains Council local strategic planning policies.

Section 9.1 Ministerial Directions

The following 9.1 Directions are relevant:

1.3 Mining, Petroleum Production and Extractive Industries

132 – 158 Grose Road, Faulconbridge comprises a quarry and the aim of this direction is to ensure reserves of extractive materials are not compromised by inappropriate development.

The proposal seeks to remove a time constraint for the restoration of land after the extractive operations on the site have ceased and does not seek to restrict or prohibit existing mining operations on the site and is not inconsistent with this direction.

2.1 Environmental Protection Zones

This direction is applicable as the proposal contains amendments to land in environmental protection zones.

- Proposed clause 6.25 Dwelling House extending onto Land in Zone E2

Clause 6.25 of the BMLEP 2015 currently allows dwelling houses and ancillary development to encroach up to 10m into land zoned E2 Environmental Conservation from land zoned residential, E3 Environmental Management or E4 Environmental Living.

The proposed changes to this clause will allow encroachments beyond 10m into land zoned E2 Environmental Conservation, for certain development: driveways, on-site-wastewater management systems and asset protection zones, where regard is given to prescribed criteria, including zone objectives and optimal site layout.

The Blue Mountains LEP 2015 has a strong suite of controls which seek to protect the natural environment and the proposed encroachments will only be permitted where it can be demonstrated the development will be appropriate with regard to environmental values of the land.

- Exempt Development

The proposed changes seek to allow dividing fences and rainwater tanks (above ground) as exempt development in E4 Environmental Living when consistent with the prescribed controls and to reduce the setback from a boundary for rainwater tanks (above ground) on land zoned E4 from 10m to 450mm.

The prescribed controls are at **Attachment G**.

In the Blue Mountains the E4 Environmental Living zone is applied to land suitable for residential development with a predominant bushland character. These lots may also be subject to environmental constraints or limited servicing. Allotments are usually 1200sqm in area, which is slightly larger than a standard residential lot, however, there is a community expectation that these lots may be utilised in a similar manner to lots with a residential zone.

The exempt provisions proposed in this proposal for fences are consistent with the provisions for dividing fences under the Codes SEPP.

The proposal seeks to have a boundary setback for rainwater tanks (above ground) in E4 Environmental Living zones at 450mm, however, the Gateway has

been conditioned to extend the boundary setback to 900mm to ensure consistency with proposed amendments to the Codes SEPP.

As these lots are generally used as residential lots permitting fences and rainwater tanks on E4 zoned land is unlikely to result in adverse environmental impacts.

It is recommended that any inconsistencies with this direction are minor.

4.4 Planning for Bushfire

This direction applies as the proposal will affect or is in proximity to land mapped as bushfire prone land.

To ensure consistency with this direction consultation with the Commissioner of the NSW Rural Fire Service is required and the Gateway determination will be conditioned accordingly.

5.2 Sydney Drinking Water Catchment

This direction is relevant as the proposal applies to land within the Sydney drinking water catchment.

The proposal states a key element of LEP 2015 is the recognition and protection of the natural environment, including the Sydney drinking water catchment. Any development associated with the amendments to Clause 6.25 will be subject to development consent, where the site's suitability will be subject to a merit assessment, including, consideration of development on the Sydney drinking water catchment.

To ensure consistency with this direction, consultation with Department of Primary Industries: Sydney Drinking Water Catchment and Water NSW has been included as a condition of the Gateway determination.

State environmental planning policies (SEPPs)

The proposal is consistent with the relevant SEPPs except as follows:

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

The proposal seeks to permit the following on E4 Environmental Living zoned lots, under Schedule 2 Exempt development of the BMLEP 2015, as exempt development:

- rainwater tanks (above ground), subject to specified development controls;
- 450mm boundary setback for rainwater tanks (above ground); and
- dividing fences, subject to specified development controls.

As previously discussed, dividing fences and rainwater tanks (above ground) are forms of development specified as exempt under the Codes SEPP, subject to certain requirements in certain zones. However, dividing fences are not eligible for exempt development in the E4 zone under the SEPP and the boundary setback for rainwater tanks in E4 zones is 10m.

As mentioned, the E4 Environmental Living zone in the Blue Mountains is applied to large lots suitable for residential development, and there is a community expectation that these lots are developed in a similar way to land zoned for residential purposes.

The proposed amendments to the LEP will remove the need for a development application and the associated regulatory burden from Council and land owners, which is consistent with the Codes SEPP's aim to streamline process for development that complies with the specified standards.

The proposed amendments seek to make exempt development for fences and rainwater tanks (above ground) on E4 zones within the Blue Mountains consistent with exempt development in residential zones under the Codes SEPP, and the proposed amendments are based on the specified standards for fences and rainwater tanks under the Codes SEPP ensuring the amendments are as consistent as possible.

To ensure that the proposal does not conflict with proposed future amendments to the Codes SEPP, a condition of the Gateway determination has been imposed, requiring rainwater tanks (above ground) to have a boundary setback of 900mm.

It is noted that should the proposed amendment to the Codes SEPP be made, the proposed amendment to the LEP will be redundant. It is therefore recommended that the Gateway determination include a condition requiring the proposed amendment to include rainwater tanks (above ground) to Schedule 2 Exempt development, be removed from the proposal should this SEPP amendment be gazetted prior to the public exhibition of this proposal.

The proposed amendments are not considered inconsistent with the Exempt and Complying Development Codes SEPP or its intent and it is recommended these amendments be supported.

SITE-SPECIFIC ASSESSMENT

Social

Allowing fences and rainwater tanks (above ground) as exempt development is consistent with community expectations, and removes an unnecessary regulatory burden on both land owners and Council.

Environmental

The proposed amendments seek to improve the clarity, accuracy and overall operation of the Blue Mountains LEP 2015. The amendments are generally minor and the Blue Mountains LEP 2015 contains a strong suite of controls that seek to protect the environment.

Exempt development is generally development that results in minimal environmental impacts. Fences and rainwater tanks (above ground) are currently permitted as exempt development within general residential zones, subject to specified standards, under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

The Blue Mountains LEP 2015 has a large number of E4 zoned allotments which reflect the areas setting, however, land owners perceive and utilise E4 allotments as a form of residential zone, similar to other residential zones under the standard instrument. It is unlikely that these amendments will result in any adverse environmental impacts and the amendments are supported.

Economic

The proposal is a minor housekeeping proposal, seeking to improve the overall efficiency, clarity and accuracy of the Blue Mountains LEP 2015 and will not result in any significant economic effects.

CONSULTATION

Community

Council advised that the public exhibition is likely to involve written notification of the owners of land affected by clause 4 of Schedule 1 Additional permitted uses and that an advertisement will be placed in the local newspaper. The proposal and accompanying material will also be available on Council's website for the exhibition period.

The proposal is low impact and it is recommended that the Greater Sydney Commission's delegate agree to a public exhibition period of 14 days. The Gateway determination has been conditioned accordingly.

Agencies

Consultation with the following agencies is recommended:

- NSW Rural Fire Service;
- Department of Primary Industries: Sydney Catchment Authority;
- Water NSW; and
- Office of Environment and Heritage: National Parks and Wildlife Service.

TIME FRAME

The recommended time frame for making the LEP is nine months.

LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the local plan-making authority, given the nature of the proposal it is considered appropriate for authorisation to be issued.

CONCLUSION

The preparation of the planning proposal is supported, with conditions, as the proposed amendments seek 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. agree that any inconsistencies with section 9.1 Direction, 2.1 Environmental Protection Zones are justified; and
2. note that the consistency with section 9.1 Directions, 4.4 Planning for Bushfire and 5.2 Sydney Drinking Water Catchment are 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. The planning proposal should be made available for community consultation for a minimum of 14 days.
2. Consultation is required with the following public authorities:
 - NSW Rural Fire Service;
 - Department of Primary Industries: Sydney Catchment Authority;

- Water NSW; and
 - Office of Environment and Heritage: National Parks and Wildlife Service.
3. The time frame for completing the LEP is to be 9 months from the date of the Gateway determination.
 4. Given the nature of the planning proposal, Council should be the local plan-making authority.
 5. The proposed boundary setback for rainwater tanks is to be amended from 450mm to 900m to ensure consistency with proposed amendments to rainwater tanks (above ground) under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.
 6. Should State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 be amended to include a 900mm boundary setback for rainwater tanks (above ground) prior to the public exhibition of this proposal, the proposed amendment to include rainwater tanks (above ground) under Schedule 2 Exempt development of the Blue Mountains LEP 2015 will become redundant and is to be removed from the planning proposal accordingly.
 7. A notation is to be included in the proposal stating that the proposed written amendments will be subject to legal drafting and the provisions may be altered to meet legal drafting requirements.



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